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1. Your name:

Stephen Davies

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Charity or social enterprise

Individual

5. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

6. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Entertainment Agencies should not be allowed to charge up-front fees as enough is paid in commission. Entertainment agencies should be more tightly regulated and licensed and should not be allowed to run sole representation of artistes in an industry where there are so many trying for so few jobs. Tighter control should also be put on agents making deals with companies resulting in artistes being paid less than NMW and our unions should be allowed to act on our behalf with NMW depts.

7. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

There should be no upfront fees charged by an agency. It should only come out of jobs obtained.

8. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

9. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

In the entertainment sector Agencies are not necessarily employment agencies in the definition

10. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

11. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

12. What do you think the cooling off period should be?

The same as with any cooling off period where a contract is required

13. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

In recent cases entertainment agencies have come under fire for non payment of NI contributions yet in most cases it is the production company and not the agency that is employing the cast.

14. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

15. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

16. Do you think employment agencies and businesses should publish information about their business?

Yes

Where else do you find out whether they are any good at their job

17. What information do you think would be of most interest to:

Work-seekers

How many companies use their service, How many jobs have been secured and how many people do they represent

18. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

19. If you answered yes, what information do you think it should be compulsory to publish?

see Q17

20. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

21. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

22. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

to many people in the entertainment sector are being scammed and ripped off

23. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

24. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

25. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

26. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

27. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

28. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Number of complaints, number of Investigations, The number of upheld complaints

1. Your name:

STR Limited

2. What organisation do you represent (if any)?

STR Limited

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

5. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Point 1 - this needs to be on a level playing field - we dont charge applicants fees, but the countries within the EEC do, that is not acceptable as we are in direct competition. Point 2 - All parties need to know who to turn to for payment queries, it must be simple & efficient for the employment business and the candidate. This makes for a successful business. employment businesses do not want to hide, they wish to manage their business as efficiently as possible. Point 3 - We are comfortable with the current definition of reasonable fees for the transfer of people, we think that this is fair. Point 4 - in regards to paye workers only we agree with this, other workers LTD contractors for example do not have this right when assuming these people are working through our recruitment business. If in regards to asserting a right pre placement then we are comfortable with this outcome.

6. Are there any other outcomes that you think should be achieved by the new legislation?

No

7. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

8. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

9. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

I am not qualified to be considered to look at imp[roving the definition and cant see any improvement.

10. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

As in other financial decisions there is a cooling off period, I think this shouls be the same - 7 days

11. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

12. What do you think the cooling off period should be?

7 days

13. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

There are less scrupulous organisations within our market and particularly targetting the lower paid workers that need to have some form of control aspect.

14. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

I believe there is sufficient wording for the protection of work seekers

15. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

I would be unable to improve the wording - its not my field of specialism so I am unable to make a solid judgement

16. Do you think employment agencies and businesses should publish information about their business?

Yes

Recruitment businesses and agencies already do this, after all thats how the majority attract candidates. I see no need for press based publication, but on the website is sufficient and in most cases already in place.

17. What information do you think would be of most interest to:

Work-seekers

Candidates would know who works in their area of speciality and will therefor be of more benefit.

18. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

Its a business decision, surely the companies that publish information are showing their credibility.

19. If you answered yes, what information do you think it should be compulsory to publish?

No Response

20. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

The REC and APSCO in particular work hard to deliver professional services and representation to recruitment companies and government. There appears to be a dearth of new trade bodies that diminish the value of representation and are quite pointless. I think there should be a limit. The two here are the only trade bodies of any value in our sector.

21. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No idea

22. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

In the recruitment sector there is huge disparity across the types of organisation that operate within it, some professional and others less so. Recruitment companies will try and cut corners and on this basis enforcement is essential.

23. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Too much phoenixing exists.

24. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

No I don't - I think this will simply slow up the already slow tribunal process and individuals may not be working for employment businesses.

25. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Simple notes available from agencies / trade bodies as to what to do if they are dissatisfied.

26. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

100% name and shame!

27. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

A legitimate business keep records, that can be relied upon throughout a contractors life or an agencies relationship with a client etc. This is simply good practice.

28. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

This form is not working accurately - Work seekers should have ID, references, cv's, certificates, licenses and contracts Hirers should have contracts, terms arrangements, Other - none

1. Your name:

Recruitment for Education

2. What organisation do you represent (if any)?

Recruitment for Education (REd)

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

5. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

We work with teachers in schools so whilst teachers should not be hindered from moving they also have a professional obligation to the children in their care to provide sufficient notice to the school to be able to advertise and replace them so classes are not left without a teacher.

6. Are there any other outcomes that you think should be achieved by the new legislation?

No

7. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

8. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

9. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

Complicated

10. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

11. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

12. What do you think the cooling off period should be?

not sure - we don't charge in the education sector

13. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

No issue in education sector as far as I am aware so probably unnecessary red tape.

14. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Specific to education sector - sufficient notice period should be required so classes are not left without a teacher

15. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Very complicated!

16. Do you think employment agencies and businesses should publish information about their business?

Yes

Yes but only what is relevant to our sector and our business

17. What information do you think would be of most interest to:

Work-seekers

Where our vacancies are, our credentials, testimonials, service levels

18. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

It makes it extremely difficult for smaller businesses to compete. Currently work seekers come to us for our highly efficient, personalised service but they would not choose to register if they compared the number of vacancies etc we have against larger companies.

19. If you answered yes, what information do you think it should be compulsory to publish?

No Response

20. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

REC audit gives confidence

21. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

22. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

23. Do you think that prohibition orders should be included in the new enforcement regime?

No

24. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

25. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

26. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

27. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

28. What records do you think employment agencies and employment businesses should be required to keep relating to:

Whatever is decided needs to be manageable for small businesses to comply with. Huge amounts of paperwork will take people away from being able to be operational and businesses could fail on the back of it

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Extraman Ltd

3. What organisation do you represent (if any)?

Extraman Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Although I do not see how legislation can achieve outcome 4.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Legislation should be passed requiring accrued holiday pay to be included on payslips, with severe penalties for companies who fail to properly pay holiday. In the sector in which my company works, (industrial) there is widespread and wholesale abuse of holiday pay legislation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

I do not think a definition is important. who reads it?

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

I have never known a situation yet where it is not clear already.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

No

It depends what information is being referred to. Most agencies already publish on their websites all information that shows them in a favourable light.

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

I cannot see what this would achieve.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

They exist on contributions from all members and are seldom able to drive ethical behaviour because of that.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

(Referring to the industrial sector) Companies should be required, with severe penalties for non-compliance to: Conform openly and demonstrably with holiday pay legislation If operating a Personal Protection Insurance scheme, they should have to demonstrate that it is non-profit making Those operating the Swedish derogation should need to prove that staff working under it entered fully understand and agree with what they signed up to That those operating travel and subsistence schemes are audited annually, and lose their dispensation instantly should they not be operating in line with legislation

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Abuse is so widespread, even endemic, that of course the Government should act.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

And be strictly enforced. The right to employ large numbers of staff should carry with it absolute obligations.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

After a pre-screening process. My company has successfully defended four claims during the past year, costing ourselves and the tax payer huge sums of money. In none of the cases did the judge consider the claimants produced any evidence at all

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

A clear, brief, Government backed and enforced statement of rights that temporary workers are entitled to.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

It would be a step towards countering abuse

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Of course

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

All contractual details, work history and payment history (including holiday pay)

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Alyson Cahill

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

This will make it easier for temporary workers to understand what their rights are.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

There should be more clarity on what penalties employment agencies/businesses can expect if they are not compliant.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Why should anyone be charged a fee?

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

Most ordinary people use the term 'employment agency' for organisations whether they supply temporary and permanent workers. I think that all businesses who find work for people should be called an agency - a permanent agency or a temporary agency.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

With any contract you have a cooling off period. Why should an agency be any different?

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

28 days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

I worked for an agency who used an 'umbrella' company for thr payroll. I had to sign another contract with the company which stated that it superseded any other contract. When there was a problem with my pay, the agency blamed the umbrella company and vise versa. It took ages to sort out.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

It is too complicated. Why not just say that a transfer fee will be payable during a period decided between the hirer and employment business.

17. Do you think employment agencies and businesses should publish information about their business?

Yes

It may help workers decided which company to use, but some of the information which you have suggested may be commercially sensitive. I think that the following would be of use. Feedback/reviews from work-seekers and hirers The type of occupational sector that the agency/business operates in Equalities policies Trade association memberships Inspections carried out by government departments

18. What information do you think would be of most interest to:

To work-seekers: sectors operated in trade association membership inspections conducted a scale of compliance rating (similar to the Food Standards Agency 'food hygiene rating').

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

It may be commercially sensitive

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

I've worked for 2 agencies who were REC members and still didn't issue contacts or pay some workers.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

When i worked for an agency they had an inspection from EAS and it was most instructive. There are many 'rogue' agencies out there who will thrive and damage the industry without government enforcement.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

It will send a clear message to those in the industry to clean up there act.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Many people will not go to a tribunal as little will be done to the agency.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

More advertising about EAS and what they do. A requirement for agencies/businesses to advise workers what to do in respect of a complaint (both internally and externally).

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Otherwise it's one persons' word against anothers.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

All records relating to any placements that have been made, whether that be about the worker, the hirer or any other agency.

Q1: Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

Q2: Your name:

Right Track Recruitment UK Ltd

Q3: What organisation do you represent (if any)?

Right Track Recruitment UK Ltd

Q4: E-mail address:

Q5: Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

Q6: Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Please give reasons for your answer All agencies are different in the way they work and have different ethics.

Q7: Are there any other outcomes that you think should be achieved by the new legislation?

Yes

If yes, please give details on what these are That the recruitment industry should not be allowed to govern itself.

Q8: Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Please give reasons for your answer Because the agency already makes money out of the candidates when they go on assignment.

Q9: If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

When they find the right person for the job, or if they suffer a loss because of the client or candidate

Q10: Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Respondent skipped this question

Q11: Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Respondent skipped this question

Q12: If you answered yes to question 5, do you think there should be one standard cooling off period?

Respondent skipped this question

Q13: What do you think the cooling off period should be?

Respondent skipped this question

Q14: Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Please give reasons for your answer So people know who is paying for them and who there actual employer is.

Q15: Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Please give reasons for your answer If the agency suffers a loss then they should be compensated

Q16: Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

Q17: Do you think employment agencies and businesses should publish information about their business?

Yes

Please give reasons for your answer Everyone should be honest about there charge rates and fees so that we can change the views of companies that they are greedy and untrustworthy. Honest business is always the best policy.

Q18: What information do you think would be of most interest to:

Work-seekers

Please give reasons for your answer i think both.

Q19: Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

Please give reasons for your answer same answer as 17

Q20: If you answered yes, what information do you think it should be compulsory to publish?

what umbrella companies they use. the processes of the company

Q21: Do you think trade association codes of practice help to maintain standards in the sector?

Respondent skipped this question

Q22: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Audits for all agencies on everything from invoicing to sending people out on assignments and who they use for what.

Q23: Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Please give reasons for your answer Recruitment industry is not trustworthy enough to do it them selves.

Q24: Do you think that prohibition orders should be included in the new enforcement regime?

Respondent skipped this question

Q25: Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

Please give reasons for your answer because its right to be able to

Q26: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

AN EMPLOYMENT CONTRACT WHICH IS SIMPLE TO UNDERSTAND THAT DETAILS THEIR RIGHTS AS A WORKER

Q27: Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Please give reasons for your answer. we need to see who is good and bad so clients and candidates can choose who to use.

Q28: Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Please give reasons for your answer this is essential

Q29: What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Please give reasons for your answer Copies of cv's and certs, work permits accounts, charge rates and financial information.

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Samantha Hill

3. What organisation do you represent (if any)?

Myself

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Beware that you are including professional entertainment agents in this category and their business is sometimes different and needs to be in order to protect and promote their clients.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Some employees may feel pressurised and need to take time to evaluate what they have been told before being able to make an informed decision.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

It should depend on the employee

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

If there is no legislation, there is room for employees to be taken advantage of

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

If you've got nothing to hide, you've got nothing to fear

18. What information do you think would be of most interest to:

Work-seekers

All charges, what they relate to, evidence of success for previous employees

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

If they are taking a fee/commission, they should be obliged to reveal how that is spent

20. If you answered yes, what information do you think it should be compulsory to publish?

Don't know

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

But not enough

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

It shouldn't be, because Government then becomes Big Brother

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

No idea

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

All workers should have a voice

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No idea

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Government should proffer transparency

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

BMA Models Ltd

3. What organisation do you represent (if any)?

bma models ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

points 1 and 3 are a yes, and points 2 & 4 are no: The government is wasting time and money on this type of regulation. No other employment staff business is regulated to this extent. A clear example is the well known and national building industry. This employs a range of temporary workers on a range of temporary jobs i.e. A building contractor will employ sub contractors not only to complete a job but also get there costs in order to quote on a job, meaning you will get different quotes from different contractors in order to be competitive. Consequently taking this parallel example all employment style agencies and businesses should come under the same umbrella. Clearly a model agency in order to quote for a photographic assignment should be able to ask the sub contractor, that is the model, what their price would be to do this job. Hence different models will give different quotes. Therefore the agency can quote on the assignment and pay different models different fees. if the model has a grievance or is not paid this is no different to a building contractor not paying a trader for whatever reason. The trader can obviously take what action he sees fit , likewise a model. In conclusion a part from laws relating to immigration, work permits etc there should be little or no regulation at all. In summary, finally the costs savings for the government is easy to calculate and the fact that model agencies can get on and run a profitable business, also benefits the government taking taxes from the model and the agency.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

deregulation

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

a builder doesn't charge his workers fees for working for him, no business should be able to charge workers fees for working

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

deregulated

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

yes, because no fees should be charged to the work seeker at all, no other business charges fees for work i.e. sainsbury's doesn't charge their worker for working for them, or a builder doesn't charge a sub contractor

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

if joining an agency it should be 1 week?

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

if I employ a sub contractor, the sub contractor if not paid would take the appropriate action

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

derugulation, if a sub contractor does not fulfill his term of employment he should be open to the appropriate action by the contractor

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

not applicable to us

17. Do you think employment agencies and businesses should publish information about their business?

Yes

so work seekers can see your a bona fide company

18. What information do you think would be of most interest to:

if the agency is limited accounts will be published tax and vat etc,and one answer could be is that regulation that is already in place relating to limited companies. All limited companies can be accessed in respect of their financial status, so maybe the ANSWER is 'should all practising agencies be limited'.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

if all agencies are limited the necessary information required to see the company is bona

vide is already available

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

out dated

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

completely deregulated, the business that is run effectively, profitably and competitively will survive

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

deregulate

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

government guidelines on the internet

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

there will be no need as legislation will be minimal

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

if a limited company we are already regulated by the tax office

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

workseekers-all payments to the workseeker for year hirers-all contracts for 1 year

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Yes, I would like you to publish or release my response

2. Your name:

Central England Committee Equity

3. What organisation do you represent (if any)?

central england committe equity

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

Trade union or staff association

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

I need more clarification before I can answer on behalf of my committee.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The inherent rights of the unemployed should be protected.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

The unemployed are in a vulnerable position already. no. These agencies make a commercial profit as it is.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

DEfine your definitions of terms please.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Self obvious.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

Self evident.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

S.Ev'

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Abuse is wide spread.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Define your definition of terms please.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

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Yes, I would like you to publish or release my response

2. Your name:

Helen Raw

3. What organisation do you represent (if any)?

Helen Raw

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

I am an actor and we have to pay through the nose to various casting sites to be able to just apply for auditions. It's getting ridiculous as more and more of these sites are popping up and it's always the actor/job seeker who has to pay an annual fee - very often these same sites advertise unpaid work but still make you pay to apply for the job.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

I would like to see entertainment agencies better regulated. At the moment, anyone can set themselves up as an agent with no experience or knowledge of the industry and leaves new and young performers wide open to exploitation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

I don't think charges should be allowed in the entertainment OR modelling sector.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

If charges are to be applied, they should be paid by those continually advertising the jobs, not the people trying to apply for them.

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

I think the wording is fairly clear and by my understanding, casting sites provide exactly the service provided and should be subject to this legislation

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Casting sites currently have a cooling off period but as our industry is very fluid, the cooling off period is often of no use. 'Spotlight', (<https://www.spotlight.com/join/eligibility.asp?book=20>) for example, costs around £150 per year and often, there are no suitable auditions for many of its members for months at a time, yet it is a requirement of our industry to be listed in Spotlight. It is a vicious circle for actors.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

I think it should be industry dependent.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Having been a temp for many years in between acting jobs, I would often be waiting for payment as the agency wouldn't take responsibility and would send me back to the client. Clarity in all cases would be excellent.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

It reads well as it is.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

This should be extended to entertainment agencies who often hold people to contracts and jobs long after they have moved to another agency.

17. Do you think employment agencies and businesses should publish information about their business?

Yes

The points of interest noted in 7.17 would make for very interesting reading within companies in the entertainment sector who make wild claims about their clientele and number of opportunities. It would certainly lead to more transparency.

18. What information do you think would be of most interest to:

Work-seekers

The points noted in 7.17 of the consultation would be of most interest to me

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

I don't think it should be compulsory but it would be nice to see companies willing to share this information in good faith.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

It's important that people feel empowered to take control of their situation.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

It would be good to know which companies to actively work with and which ones to avoid.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

This would display their seriousness for the issues.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

How many jobs provided, offered Average financial worth of those jobs Average length of engagement

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Yes, I would like you to publish or release my response

2. Your name:

Denny Hodge

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

As an actor I am only able to find the majority of my work by subscribing to casting websites. I appreciate that these sites also provide additional services such as online cv and photographs but a lot of them charge additional amounts for these services too. In the case of Spotlight the annual membership fee is the same for everyone but the amount of job information received is not the same. For example, as an individual without an Agent I will not receive notification of well-paid jobs yet I pay the same fee. I feel that equal information should be given to all subscribers. In addition, Spotlight is acknowledged as the one casting site that it is vital for an actor to join in order to demonstrate the quality of their work. It is only right that after subscribing we all have the same opportunities.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

If a fee is paid to receive casting information, the same casting information should be received by everyone.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

They should be allowed to charge a fee when they provide an online presence for the actor but the service they provide should be exactly the same for everyone.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Sometimes casting sites advertise jobs that seem to be a 'sprat to catch a mackerel'. After a few days of subscribing it becomes obvious that they do not have any well paid work on offer.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

Two weeks. This is long enough to gauge the quality of the work being advertised.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

Work-seekers

At the moment we know very little about these Agencies.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

We know very little about these Agencies and how they source the jobs on offer. Many casting sites have the same advertise the same jobs. Does the hirer place these adverts or do they copy each other?

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

In the entertainment sector there are many people seeking to make money from entertainers. It is vital to know who to avoid.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Colin Charles Travers

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Employment Agencies currently are able to issue contracts of employment/engagement which are heavily weighted in their favour, with no rights or concessions to the work seeker. This is a "take it or leave it" attitude

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Some employment agencies seem to hold the work seeker responsible and subsequently will not represent the worker again. This is done by not submitting the work seeker for any future job openings.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

It should be disclosed on first contact whether the employment agency is dealing with the employer direct, or are they "second tiering" for a primary agency.

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

Employment agencies will do what they want to do, thinking the work seeker will not know how to complain and to whom.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

The EAS have admitted that they have little or no power to keep rogue agencies in line.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

To keep rogue employment agencies off the internet and off the streets.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

Employment agency contracts give the work seeker no rights.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

In general it is not known to individuals that they can complain to the EAS. Most contracts have a clause in them to allow the individual the right to opt-out of the EAS. They then

have a subsequent clause to take away the safety net of the EAS, saying that if you do not agree to this then you do not get the job.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Name and shame the wrong doers

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

This will ensure that they comply with legislation

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Other employment agencies/employment businesses?

What information is passed about an individual to another employment agencies. I do know of a recruiter in one agency calling another to "bad-mouth" the individual when he found out the individual was looking to move jobs.

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

GB Recruitment (Staffs) Ltd, GB Copier Systems Ltd

3. What organisation do you represent (if any)?

GB Recruitment (Staffs) Ltd, GB Copier Systems Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Every worker whether temporary or permanent in the uk should be treated fairly, achieving minimum wage with AWR protection in the case of temporary and with the protection of ACAS in the case of permanent.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Umbrella businesses seem to exploit HMRC loop holes to profit. In times of austerity this is surely should be outlawed. AES reports show increased disciplinary action for 2010/11. They are a proactive body as opposed to ACAS who are reactive. This organisation should be strengthened. AES 2012 targets should be fully supported.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Every individual has the right to work. Agencies in the commercial sector largely charge fees to the Client/recipient/end user at a reasonable rate. The market is extremely competitive already, with agencies competing in customer service, quality etc commision driven to put people into work. The onus is with the Agency to profit from successfully finding work. No placements no fees!!!!

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

Definition should now state; employment agencies operate within AWR and working time

regulations. This satisfies most 1973 requirements and brings it up to date. Businesses charging workers can be excluded from the definition of Agency and be required to be called something other to differentiate them.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Ideally, but must be fair, given some companies/agents with incur some immediate costs.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

In answer to question 11. 7-14 days depending on the type of advance payment, guarantees of performance in time to procure employment etc. Also, dependent upon proper advice e.g. as with AWR, that candidates/work seekers are given.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

AWR already covers this in the commercial, education, and industrial sectors satisfactorily

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

Current statutory notice periods are in place for full time/permanent workers. AWR and REC(best practice- compliance led) contracts give freedom to both "hirer", agency and worker to terminate contracts without penalty.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

It is established practice. I have tested the wording with respected Legal people specialising in employment law and they are comfortable with it.

17. Do you think employment agencies and businesses should publish information about their business?

No

The market is already highly competitive. Businesses decide themselves who they deal with through competitive tendering, interview and selection, referral etc etc. They do not need Government to assist them in choosing suppliers. It is also more RED TAPE - which contradicts purpose.

18. What information do you think would be of most interest to:

sorry this question doesnt make sense

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

This would cause discrimination. Small businesses fight to keep business local for local workers. they thrive on competing with larger business it is the true nature of a free market, where competition is rife. Again it goes against the purpose of reducing RED

TAPE. See answer to 17.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

We as like businesses want to see the common good and follow best practice. The REC for example deliver good advice, however, auditing should be random, and not pre arranged. THE DfE have pulled funding of the Quality Mark for safer recruitment via Agencies - this is a retrograde step. The Education sector within the REC is one of the strongest in the UK. Most members back the QM, the DfE however stifle it due to restrictions in advertising the QM - as it cannot be seen to favour one business against another - so whats the point!!!!

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

NONE

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

see previous responses

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

agree with current regulation 12.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

Its fair, and open to all.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Information on Direct Gov. is comprehensive. Links and guides to get to this information should be made known through TV advertising, media etc. It is a central site for other very useful information and concise, untampered.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

To discourage malpractice and exploitation of workers. It would enhance the Government in the eyes of the public and give encouragement to those businesses maintaining good standards and striving for improvement.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

The REC is of sufficient status to carry out audits and should be relied up on to visit those agencies registered. Agencies complying will offer transparency at audit. All files open to scrutiny.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

All personnel records, payroll.

1 Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Northern Recruitment Group Limited

3. What organisation do you represent (if any)?

Northern Recruitment Group Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

This is a silly question and should not be used to justify more red tape. In our experience these outcomes exist at present and there is no need for further or amended legislation.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

This should already be clear in workers' contracts.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

We are not aware of any problems here, why change the regulation?

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

We are not aware of any problems here, why change the regulation?

17. Do you think employment agencies and businesses should publish information about their business?

No

Why? This introduces more red tape and the unscrupulous agencies will ignore it or falsify the information. How could it be verified?

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

Why? This introduces more red tape and the unscrupulous agencies will ignore it or falsify the information. How could it be verified?

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

They may not be perfect but they provide some measure of assurance on standards.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

This question is too wide. What's the point of legislation if it's not to be enforced?

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Maintain the current system of enforcement, which provides a robust system and focuses criminal sanctions on serious cases. We do not believe that we need to introduce further tribunal rights because work-seekers already have a range of rights through employment tribunals.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

If this can be done without further red tape for all employment agencies/businesses.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

This depends on the regulatory requirements. If they are what any reasonable business should be doing then, yes. If they introduce more record keeping they will further undermine the flexibility of an important UK industry sector.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Strange question allowing only one choice! Keeping records on work seekers is the most difficult as there are often many applicants for any job as well as unsolicited applications.

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Yes, I would like you to publish or release my response

2. Your name:

Wote St Employment Bureau

3. What organisation do you represent (if any)?

Wote St Employment Bureau

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

The whole ethos of temporary work is based on job movement! Temp to perm transfer fees are reasonable - what other industry would you question their fee structure? We offer expertise, please understand that.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Government having confidence in using the recruitment industry to help people back to work. For instance, allowing them to earn whilst receiving some benefit, instead of institutionalising people and making them benefit dependant.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

however it should be for associated services only, such as redundancy counselling, mentoring and training.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

do you mean question 8?

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The perception of an employment agency is providing temps - we need to show how we can genuinely help people overcome the hurdles of getting back to work.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

you don't cooling of time with solicitors or accountants, we would be charging for our and expetise not a product.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

and that the money can be recovered from the hirer.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

temporary work or contingency as we like to call it is all about flexibility. It's not always convenient for someone to end a contract themselves, but that is for us to manage.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

what is classed as unreasonable? This is a charge for services rendered and is negotiated at the beginning of the relationship. We offer several variations of temp to perm fees. Often if there is to be a transfer fee at the end, it is to lower the weekly bill rate charged until the client is confident in engaging the temp permanently, or it's to spread the cost for them. We don't charge these people willy nilly. We negotiate a reasonable rate of pay for our services. Believe it or not our Clients WANT to do business with us.

17. Do you think employment agencies and businesses should publish information about their business?

No

why?

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Without a chartered status it helps small businesses comply and prove best practice. We are members of TEAM and find it invaluable to our business. I am also a Fellow of Institute of Recruitment Practice - this shows our Clients we are serious about working professional and ethically.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

standard application forms - it can difficult to gather relevant information without being discriminatory. For instance, when people register for temp work, we will eventually need their date of birth for payroll purposes, but we don't ask for it initially for fear of being considered discriminatory.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

in cases such as gang leader licensing etc

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

see above

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

the whole point of temporary is about the flexibility, temps are not permanent members of staff and so are not employed as such. However, may be there could be a seperate system for dealing with complaints.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

A good recruitment service should be selling the positives of the temporary workers' rights already. How flexible work can help them overcome obstacles such as CV gaps, returning to work after parental leave etc.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

what good would it do to name and shame - use the infomation instead to improve the industry. Too much time is wasted pointing the finger, let's get on with it and improve our economy.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

payroll info, h&s etc

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Yes, I would like you to publish or release my response

2. Your name:

Essential Personnel

3. What organisation do you represent (if any)?

essential personnel

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Employment agencies need to have terms ratified by some sort of official body Change to clause 10-too complicated

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

would lead to exploitation of the most vulnerable people who are looking for work. High qualified and experienced people can find work easily. Only the applicants who will find it hard to get work will pay fees

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Yes but I think it should be limited to 7 days. People want to find work quickly and delaying it means it just slows up the process and people may miss out on opportunities

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

7days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

Very clear who pays the wage. Umbrella companies have to give illustrations to workers. \temporary staff are given so much information when they satrt working that they know who is paying them

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

no one understands it. it is extremely confusing

17. Do you think employment agencies and businesses should publish information about their business?

No

Its irrelevant how many people are on your books or how many vacancies you have. Its irrelevant how long it takes to fill a vacancy because some need filling immediately and some take longer. It will add to the ever increasing administration

18. What information do you think would be of most interest to:

Testimonials from previous users. these need to be authentic such as comments on facebook and linked in. Work seekers need to know what type of work agencies have on offer and hirers the type of workers the agency has

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

as above

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

If you are a member of e.g the REC there are professional codes of conduct that you follow. Without this there are no guidelines to follow

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade body

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Because at the moment there is noone else that is enforcing it

24. Do you think that prohibition orders should be included in the new enforcement regime?

I dont know what prohibition orders are

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Would be open to abuse- lots of workers would try to get agencies to settle out of court. for agencies with hundreds of temporary workers it would be a nightmarish situation. also agencies are the middleman between the client and candidate

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

I think agencies should be a member of a trade body and let individuals know that if the agency does something wrong they can complain to that body

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

will stop rogue agencies

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

too many rogue agencies operating without regard to the law

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

terms of engagement signed, instructions on bookings, awr information

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Yes, I would like you to publish or release my response

2. Your name:

Gold Group Ltd

3. What organisation do you represent (if any)?

Gold Group Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

The temp to perm fee's are between the agency and the client. A significant amount of work goes in to finding the right people to meet clients needs and they are the life blood of any agency whose work in helping facilitate the flexible workers market and helping boost the economy can not be under valued. As such these Temp to perm fee's should not have restrictions enforced on them but should be a matter of discussion between an agency and a client during their negotiations, which will already facilitate them in being reasonable dictated by the market the agency works in and the quality of the staff required. Also work seekers already assert various rights. There should not be any attempt to try and create a "league table" or enhance competition in an already overly competitive market. Work seekers are not restricted on who they use and have the ability to go to use whoever they wish. Any attempt to categorise agencies based on the number of jobs they have or how quickly it takes them to fill them etc would be detrimental to the industry and equally would create more red tap, not remove it by creating further administrative tasks that have no benefit to anyone. The market is lead by the jobs available, not how quickly a position is filled or how many jobs are being worked.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Making RPO's accountable for the same restrictions enforced on other agencies. For example the ability to use pay when paid clauses should be removed because agencies are required to pay workers for the work they have carried out before receipt of payment from a client so why should an RPO be allowed to withhold funds from a recruitment agency putting unnecessary strain on their cash flow?

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

It is clear enough as it is, anyone that works via their own Ltd company the agency pays and anyone working via an umbrella solution is paid via them. This is outlined in any contracts or assignment schedules provided to the contractors.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

There should be nothing wrong with recouping any fee's or damages incurred through an early termination of a contract by the contractor. Some contractors that are supplied are niche and consequently difficult to find to do these jobs and incredibly specialist. It should be fair to be able to recoup any fee's incurred due to claims by clients working on projects with strict deadlines that lose money due to an unforeseen termination by a contractor and consequently take proceedings against an agency to recoup said costs. However anyone should be entitled to be able to submit notice for any position held.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

I think the whole regulation could be improved. As mentioned earlier, the ability to charge a transfer fee to hirers is of a business to business relationship and should have no impact on the work seeker. Because it is agreed during the negotiation process and contractually then what ever the fee is agreed at is mutual to both parties and therefore can be none other than reasonable. This should therefore not have any form of restriction enforced upon it.

17. Do you think employment agencies and businesses should publish information about their business?

No

Certain information is already available on most agencies websites about the company as standard. Whether a work seeker decides to use that agency is entirely their own choice and based on the job that they are interested in. No further information should be

published or made mandatory to publish as it creates a lot of unnecessary administration.

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

To be a member of a trade association you already have to adhere and meet certain standards which are very good for the sector. We are also required by some of those trade associations to pass certain audits to remain accreditation. If more is done publicly to make clients aware of the standards that can be expected by achieving these trade associations then it would be a positive thing for the sector and help clients to avoid rogue agencies.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

The sector should be self regulated, by applying legislation all that happens is that there is a lot of red tape, creating more unnecessary administration, increasing costs to both clients and agencies and ultimately the work seeker can end up losing out. If agencies adhere to the codes of conduct that we sign up to when becoming part of a trade association then these standards are more than enough. They also have a clear complaints procedure and take any complaints seriously.

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Going straight to a tribunal is nothing but a waste of time and effort for both parties concerned and the only winners are the lawyers making extortionate fee's regardless of the out come and will make it drag out as long as possible in the legal system.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Onyx Recruitment

3. What organisation do you represent (if any)?

Onyx Recruitment

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

All sounds sensible, but concerned by the assumption that temp to perm fees might hinder movement. Temp to perm fees should be allowed based on the commercial agreement between client and agency and agreed up front. There should not be a limit imposed on when temp to perm fees are charged. - This is akin to suggesting that if a house is rented to a tenant and then the owner agrees to sell the house to the tenant, he has to sell it for less than the market value because rent has been paid in the interim....

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Why are entertainment and modelling agencies allowed to charge fees? - Should be same rules for all agencies.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

Yes - too complicated

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

No fees should be charged by ANY type of agency

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Should be the responsibility of the agency as temporary worker is employed by the agency

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

17. Do you think employment agencies and businesses should publish information about their business?

No

Work seekers are not interested in anything about the recruitment agency other than are they dealing with a vacancy that is of interest to the work seeker. - They then of course want to be treated in a professional manner but that has nothing to do with the size or finances of the recruitment agency

18. What information do you think would be of most interest to:

Hirers

Hirers may have some interest in the background of the agency, but again, what they really want to know is can the agency fill their vacancy and that has nothing to do with financial information or size of agency.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

A minefield! - What information would be relevant to the agency's ability to fill a particular role. Who would police such a requirement?

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Absolutely - such as TEAM. However these are only codes and only apply to members so legislation is also needed to maintain standards.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

NONE. Great to encourage agencies to belong to associations with codes of conduct but they are not compulsory to join and codes are not law. Needs regulation.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Yes Sector needs legislation. Could be funded by agencies who have to pay an annual subscription to be licensed

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

If agencies do not comply with legislation, they should not be allowed to trade

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

Yes, but only if there is better protection for the employer. - Small employers have suffered terribly in recent years with the law and tribunal system making it too easy for spurious claims to be brought by the individual.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

When they register with an agency, should be a requirement they are handed paperwork detailing their rights when working with an agency

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Yes - but only at conclusion of investigation and not when investigation is being carried out.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

BUT ONLY SIMPLE RECORDS.... We have to comply with a lot of regulations as it is. Need to comply but also a need to have time to do the job rather than spend too much time proving compliance.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Basic contact details and the work seekers requirements. Proof of identity.

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Yes, I would like you to publish or release my response

2. Your name:

NCM Consulting Ltd

3. What organisation do you represent (if any)?

NCM Consulting Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

• Before an employment agency advertises a role in a foreign country, it must be able to demonstrate to both the hirer and the worker jointly that it fully understands the immigration rules, procedures and requirements for that country and how they will be expected to cooperate. This should include a knowledge of the appropriate forms and the details asked for therein. • Once an employer in a foreign country has indicated its intention to engage a candidate from the UK through an employment agency, the agency should fully and diligently comply with the immigration rules, procedures and requirements for that country and not pick and choose for the sake of its own interests how it cooperates.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

If there have been any complaints made against the agency in the last few years that were investigated and upheld and upon which issues the agency failed to comply.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

If there have been any complaints made against the agency in the last few years that were investigated and upheld and upon which issues the agency failed to comply.

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Only to a limited extent. For instance, even if I took this agency to court and successfully sued them for professional negligence, the Association of Executive Recruiters would at best give this agency the mildest of knuckle raps. Organizations like that are really just cosy clubs that seek to avoid disciplining their members substantively. Legislation

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Ensure that workers understand that even where the Employment Agencies legislation fails to protect them, the agent can still be held to account under the laws of agency, contract and negligence. It is important that employment agents still understand that they still cannot evade justice simply because the worker has opted out. Also, there should be a mechanism I place such that where either of the hirer or the worker suspect the agent is deviating from expectations, the hirer and the worker should be able to contact each other to ensure that the agent is behaving the way the agent should. Perhaps this contact could either be direct or through an intermediary at the BIS or something. Take my case for example. I had been successfully interviewed for a role in Hong Kong. When the agent came to offer me the role formally, the offer had deviated substantially from expectations. We strongly suspect that the agent was not acting in our best interests and may have even been attempting a tax fraud against us. While we wanted to contact the hirer directly to ask their understanding of the situation, we were frightened to do so fearing that if the agent found this out, they would retaliate. Remember, the agent is in a very powerful position

and agency is a well known problem in economics.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Without the assistance of the Employment Agencies Standards inspectorate I am quite certain that the agency that was negligent in my case would have done nothing to improve their service to workers.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Definitely. The MD of the agency in my case was not just negligent, she recorded a voicemail (which I still have) where she was caught lying to evade liability. People as dishonest as this should definitely be prohibited from operating as employment agents, for the sake of hirers and workers alike.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

There is insufficient information on the BIS website to help individuals who, having opted out of the protection, fall prey to unscrupulous behaviour by an agent. Come to think of it, there needs to be an awareness campaign in the media to ensure that workers know to turn to the BIS when faced with such difficulties. Simply pointing such victims as myself to no-win -no-fee lawyers practicing professional negligence would be a huge help. Rudimentary help on how to put a case against a wayward agent would be helpful too. Above all I think there needs to be information on your website explaining professional negligence, in particular that an agent owes a worker a duty of care and that where that duty of care is breached and this causes the worker financial loss (the loss of a £250,000 contract in my case) then the agent is liable for that loss and any damages too.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Absolutely. If an agent has breached the regulations (or law), but allowed to continue operating then at the very least workers should know exactly what the agent has been guilty of. How can a hirer or worker make an informed decision over an agency if that information is not available?

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Absolutely 100%. It should be mandatory that the agent provides the worker with a full written job description describing all the key terms, including dates, locations, duties, remuneration etc, before the worker even gets to the interview stage. This did not happen in my case; the job (an IT contract in Hong Kong) was described to be in snippets over various unrecorded phone calls and emails. I never received a proper job description. Equally, the agent should be compelled to provide a full written contract to the worker several weeks before the employer requires the worker to commence work (longer if the role is abroad). In my case, the hirer told the agent to offer me the role formally on 1st November 2011. The agent did this verbally over the phone. I did not receive a written

contract from the agent until 7th December (yes, 7th December) but it was too late by then as the hirer in Hong Kong had already grown tired of the agent's negligence and was already of a mind to withdraw its offer.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Employment agencies should be required to keep the following in electronic form as an absolute minimum: Written job descriptions. All communications including letters, phone conversations, voicemails, emails and attachments, text messages. The contracts, terms & conditions between the hirer and the agent. The contracts, terms & conditions between the agent and the worker. It should be mandatory for an agent to store this information and failure to maintain it properly should result in a fine. In my case, the hirer sent their contract to the agent the 24th October to formally establish the relationship (this was nearly two months after I had been interviewed for the role!). To reassure me that progress was being made, the agent even forwarded me a copy of that email that day (but with their private contract detached). Based on that email from the hirer, the agent should then in turn have issued me with a contract beginning on 1st November, but thanks to some crossed wires at their office in London, the MD of the agency did not realise the hirer had sent it all the information it needed to issue me with said contract. Consequently, for the next six weeks, chaos reigned and only ended when the hirer withdrawing its offer.

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Yes, I would like you to publish or release my response

2. Your name:

The Association of Nanny Agencies

3. What organisation do you represent (if any)?

The Association of Nanny Agencies

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

Trade Association - non profit

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Fees should be payable from the Work seeker to take up DBS, and if the work seeker wants a Cv typed up a charge should be payable. Maybe there could be a ceiling. Otherwise especailly smaller business find themselvews doing all the owrk for the job seeker and they get work from another source using the information from a particular agency. Many small agencies will struggle to keep buinesses runinning For an agency to pay the temporary fee to the worker if the client does not pay would cause financial problems for the agency. The current system where the client is responsible is fairer. should this come into place many agencies will be caught out. The contracts of temp to permanent movement should not hinder work movement. However all companies would be supplied with terms of business and will know the charges before taking on a permanent person. Maybe a ceiling in place would be better

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Stricter rules on the recruitment in childcare. All applicants must be able to offer relevant references adn have a CRB (DBS). All agencies must be able to see this CRB and able to take a copy. This is the only safe way for children.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

For CRBs and if the candidate wants a Cv from the agency and copies of references.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Until the candidate is placed and then if the agency finds them work a refund is given to

the candidate for administrating the above on their behalf

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

If the agency is charging the candidate absolutely and terms of how this will work will be given to the candidate and an invoice raised.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

4 weeks

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Businesses could fail due to cash flow if the agency had to pay if the client didn't. It is costly and time consuming for a small business to chase this. If companies knew that the agency had to pay whatever then it may encourage some not to pay at all. Very detrimental to small businesses financially

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No

It is very time consuming especially for one man bands agencies so i think the further paper work would hinder a small business from being able to run. Most agencies have a website where general details about the agency are on offer. If all categories of agencies were requested to join a Trade Association this would ensure that agencies followed a strict code which would be reassuring for the applicants

18. What information do you think would be of most interest to:

Hirers

Services they offer How to apply and procedure General advise applicable to them for hirers The services an agency offer and history of the agency terms of business after sales service procedure If the agency belongs to a Trade Association

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

As is on offer at the moment is fine. There could be a set standard but it needs a lot of

thought taking into consideration small businesses and not just large organisations

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Trade Associations set standards and this is then making companies accountable to follow this code of practice. This reassures the applicant and the hirer if a company does not comply to the set standards they loose their membership

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

They should be keeping records anyway

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Hirers?

all the above

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Yes, I would like you to publish or release my response

2. Your name:

Dijon Logistics Management Limited

3. What organisation do you represent (if any)?

Dijon Logistics Management Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No Response

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Professional interim managers operating through Limited Companies should be excluded from the legislation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

This should be clear from the contract

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

No compelling evidence that it is needed

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Carisbrooke (Boston) Ltd

3. What organisation do you represent (if any)?

Carisbrooke (Boston) Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Yes, it should not group small businesses (contractors) into the same bracket as tempory workers. Contractors / Interims operating through their own limited companies are independent business people and do not need the same level of protection from recruitment agencies.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

I think you mean question 8

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

John K Milner

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

This isn't a simple matter of yes know. Many of us are in business on our own account and so can choose in co-operation with clients and agents what approach to engagement makes most sense. I register with agencies sometimes for fee or subscription and sometimes not. I judge value on assignments offered.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

I think the legislation needs further thought before it goes ahead. Career interims are not vulnerable, far from it and we could be severely inconvenienced this goes ahead without some specific opt out routes.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Agencies may choose to offer services for a fee. If such fees are cost effective then we interims may well choose to pay.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

It seems reasonable to offer a service of registration for assignments through which interims might get the benefit of advertisement and be put forward to assignments not greatly Daimler to artistes and models

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

An employment agency needs have clear qualified scope for its work. Is it expecting to be commissioned by employers who pay it to find successful candidates for employment? Is it

offering a subscription service to candidates for whom it will actively seek work in a defined area. As long as the role is properly qualified in this kind of way then the term employment agency has less opportunity for those who would mislead potential clients.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Try before you buy is a reasonable demand and reputable agencies would be happy to do it if the laying field was levelled in this way.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

One month

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

Surely a contract will make this clear?

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Anus Wolfendale

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

That professional interim managers should be excluded from the legislation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

14 days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

SCE Management & Consultancy Ltd

3. What organisation do you represent (if any)?

SCE Managment & Consultancy Ltd.

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

I do not believe Employment business/agency should be restricted from charging job seekers fees ad long as they do mot charge clientd ss well. The other points are acceptable.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Limited Liability companies - professional interims - should be excluded from this legislation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

See 6above

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

have not read the document

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

Should Q.12 refer to Q.11 not 5?

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

This should eliminate ambiguity.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Can't comment as I have not read document

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

As Q.15

17. Do you think employment agencies and businesses should publish information about their business?

Yes

To inform Clients & Candidates

18. What information do you think would be of most interest to:

Question does not make sense

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

There should be a code of conduct for each recruitment category

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

code of conduct, credible professional institute as per accountants, HR, Procurement etc.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Insufficiently knowledgeable to comment

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

If regulations exist there id already a requirement on business to demonstrate compliance

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

not sufficiently knowledgeable to answer

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Vee Solutions Ltd

3. What organisation do you represent (if any)?

Vee Solutions Ltd.

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

I am an interim exec working through my own limited company and frequently move between assignments with various clients.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Bureaucracy and red tape should be minimised.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

There is no justification for up front fees unless there is up front work required. Where work is needed then the agency should be paid for the work.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Where a brief needs to be taken from a client and CV selection and interviews are necessary.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Not familiar with definition

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

Transparency is critical.

18. What information do you think would be of most interest to:

Work-seekers

Fees. Notice periods. Contract terms. Warranty periods. Expenses policy. Non exclusivity clauses.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Name and shame.....

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

You have to have records!!!

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

BlazeBlue Ltd

3. What organisation do you represent (if any)?

BlazeBlue Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Provides protection for potentially vulnerable people

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Not restrict the business of interims, consultants and high end contractors

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Specialised positions requiring significant resources

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Assume refers to question 7 and 8

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

Adequate

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Protection

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

Vary according to circumstances of individual

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

Adequate measures in place now

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Not always the fault of the individual

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

Adequate

17. Do you think employment agencies and businesses should publish information about their business?

No

No need

18. What information do you think would be of most interest to:

Hirers

Do not understand the question and functionality is poor

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

See above

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Can do no harm

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

None

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Pointless otherwise

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Gives teeth

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

Unfair otherwise

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Available on internet, CAB etc

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Teeth

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Pointless otherwise

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Other employment agencies/employment businesses?

Functionality too poor to respond

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Yes, I would like you to publish or release my response

2. Your name:

Stas Chobrzynski

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Career Interim and small business (2 employees) owner.

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Clarify the status of the professional / career interim manager, whether they obtain assignments (work) directly or through a recruitment or other agency.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Only if directly employed through a Contract of Employment.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Cutting Edge Consulting

3. What organisation do you represent (if any)?

Cutting Edge consulting

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

Interims should be included in the act and not allowed to opt out

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

Work-seekers

Turn over, payment arrangements, number of cases against them in the last year as a % of the number of workers.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

Turn over, payment arrangements, number of cases against them in the last year as a % of the number of workers.

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Michael Reid

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

This is reasonable broadly. The legislation should prevent as well as possible, the exploitation of low paid workers and job seekers. However, agencies that place interim directors, professional consultants, advisers and portfolio workers are not currently part of the problem and inclusion of such bodies would be a completely unnecessary level of control and bureaucracy that would take up government and agencies' resources with no beneficial result. These should really not fall into the scope of this legislation.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Fair regulation of the amount of money that finds its way from the employer of day-to-day temporary staff to the staff themselves.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Of course. Where an agency has expended effort and used its expertise to place people in an appropriate role, that must be rewarded.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

I presume you mean Question 8. Answer above.

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

Simplification is always welcome.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

It depends entirely on the fairness of the fees.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

There is no point in having legislation to protect the weak if government does not enforce it. They are not in a position to do that themselves.

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Naming and shaming is a more powerful tool than mere penalties.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

Employment agencies yes. Businesses have too much regulatory administrative overhead already.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Spartan Consulting

3. What organisation do you represent (if any)?

Spartan Consulting

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Interim Manager

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No Response

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Interim management

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Avidd Ltd

3. What organisation do you represent (if any)?

Avidd Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Labour flexibility is key to recovery

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Interim managers should be permitted to run their own businesses and not treated as employees. It would be reasonable to limit the term of and engagement to say, one year unless special circumstances apply where the role is specific to a job to be completed and the schedules timing for that job exceeds one year

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Provided fees are transparent, reasonable and made very clear before any contract is agreed, then fees encourage job placement activity

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Leave this as a commercial decision between contracting parties

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

There are both unnecessary restrictions and loopholes in the definition

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Some agencies use high pressure tactics and fail to give adequate time for due

consideration

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

2 weeks

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Often the employer and the agency have failed to make this clear

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

It should be defined by law as a maximum amount unless the contracting parties agree in writing to a lower level

17. Do you think employment agencies and businesses should publish information about their business?

No

No more than currently required anyway

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

Too easily drift into a RTP

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Laws which are not enforced are pointless

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

a law without teeth is pointless

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No we have small claims courts to handle disputes.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Clear website and compulsory requirement for agencies to inform people about it.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Helps individuals avoid problem agencies

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Without this yet another tax payer funded investigatory body will grow and grow or be ineffective

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Michael Davis

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Terms such as "work-seeker" and "temporary workers" do not apply to interim managers and consultants, who are in business as a supplier of expertise to their client under contract through a limited company.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

A clear distinction between hourly paid contractors in long term relationships just doing a job and evading tax, and daily paid Interim Executives adding real value to the client by providing a unique service through a limited company. Contractors work in an on-going operational way, whereas Interims work in a project way, delivering outcomes and benefits to a deadline against a unique Brief.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

How else is agency going to remain in business?

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Where an agency provides an Interim for a client, to cover their enormous operations, sales and marketing effort.

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

CCSA Consulting Limited

3. What organisation do you represent (if any)?

CCSA CONSULTING LIMITED

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

I believe it restricts me as an individual interim manager

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

Not necessary as determined on an individual level

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

John Manager

3. What organisation do you represent (if any)?

None

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

I am an interim manager working through a private limited company

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

Reduction of bureaucracy

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

In the interim management sector service providers who arrange contracts between the limited companies of interim managers and organisations using the services of the interim managers should be able to make charges to either or both of the the interim manager's company or the end client

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Interim Managers working through limited companies should have no employment rights. Their contract should explain their rights and these should not include holiday pay, redundancy, sick leave etc

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Proftel Ltd

3. What organisation do you represent (if any)?

Proftel Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Seeking and finding scarce skills on behalf of a Client

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

One month

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

No

18. What information do you think would be of most interest to:

Work-seekers

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Competition is a great leveller

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

There is sufficient guidance around through professional groups.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Not needed

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Yes, I would like you to publish or release my response

2. Your name:

John Muir

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Independent Interim Manager

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Work seekers needs to exclude career interim manager who are in business on the own right, and have a business to business relationship with employment agencies and client businesses

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

Legislation needs to distinguish better between different types of temporary works. A career interim manager, with a business to business contract can be excluded from this legislation

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

legislation is likely to restrict business opportunities for career interim managers and contract employees, constrain growth in a valuable industry sector supporting UK growth and lead to an overall increase in the level of unemployment

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

As a career interim I do expect to operate in a business to business customer - supplier relationship with clients, not an employee - employer relationship

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

No these seems likely creating a monitoring industry with no value, but adding cost to business which will reduce competitiveness of the UK economy

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Hugh Francis

3. What organisation do you represent (if any)?

None

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Independent Interim Manager

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

self employed interims/self employed should not be included in employment legislation

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

They have to be allowed to charge fees to the recruiting company or they will not be in business. If the "agency" is providing advice as well as being an introducer then there should be a fee

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Do you mean Q8? They have to be allowed to charge fees to the recruiting company or they will not be in business. If the "agency" is providing advice as well as being an introducer then there should be a fee

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Name and shame or name and praise

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Intermac Solutions Ltd

3. What organisation do you represent (if any)?

Intermac Solutions Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Interim managers should be free to set up contracts with the employer direct or via an employment agency

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Interim managers

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Where agencies have facilitated the engagement

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

David Hart

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

When they provide a service.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

Already clear.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

Not read it.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

Not read it.

17. Do you think employment agencies and businesses should publish information about their business?

Yes

All businesses should do so not just employment businesses.

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Interim Export Trade Ltd

3. What organisation do you represent (if any)?

Interim Export Trade Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

Interim Manager

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Agencies dealing with interim managers do not charge them fees, instead drawing an income from the employer, like any reputable search & selection firm.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

That is to employers, not to candidates

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

Legislation should not allow interim agencies to charge fees to candidates under any circumstances, only employers, the end client

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

Not necessary if fees are not charged to candidates

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

I'm sure that we have too much employment law already. It seems that anyone charging candidates for placements should be prosecuted for fraud, and the principle of employers paying for the agency's services upheld.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

Government needs to enforce the regulations, not create yet another tier to complicate the issue further

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

Just enforce the regulation, please

17. Do you think employment agencies and businesses should publish information about their business?

No, not by compulsion- but reputable firms will do so anyway

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

the simplest way is for the government to let the industry trade bodies govern the business, by creating a forum for these bodies to bring together their own regulations into a coherent set of rules. any company not joining the trade body isn't allowed to practice

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

See above

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Yes, enforce the existing regulations and increase the fines for malpractice

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Yes, to keep the bad apples out of the industry, which is too easy to enter, currently

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Interims are employed on short assignments, most of which they generate themselves. I have only been placed by an agency, who took a fee from my employer, and everyone was happy with the arrangement

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

People seeking temporary work can be conned by the fraudsters in the industry, who want to take money from them. this is fraud pure and simple, and if it isn't a crime presently, it should be and the full force of the law brought to bear on the fraudsters

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Yes, naming & shaming the bad guys is a good, & cost effective approach

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

It is deemed necessary, provided the industry designs the required records with the trade bodies' forum, suggested above. the discussions will need to be time-limited to six months to ensure that the legislation is passed as soon as possible

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

I don't know

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Lodgeforce Ltd

3. What organisation do you represent (if any)?

Lodgeforce Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No Response

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

Professional interim managers draw up a contract which is crystal clear. More Government interference is unhelpful

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Professional interim managers can enforce through the court system because they have a contract.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Professional interim managers tend to be in a different league from "temp" staff and have more experience of how to deal with tricky situations. Their rights are set out clearly in the contract as is the system for arbitration where and amicable agreement cannot be reached.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Jim McDougall

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

As an interim professional my rights do not need protecting by the state. I provide a service and get paid for the work I do, if I do well I get more work, if I do badly I lose it. The whole concept of the professional interim/consultant is that I am independent of the employee/employer relationship so I can be objective and can be brought in do a job quickly and easily, and when the work is done I go. Were this relationship be deemed as employment then the whole relationship would be changed, I would be more expensive and frankly clients would be reluctant to use such services because of the legal obligations and complexity involved. This government is supposed to supporting enterprise but instead it is planning to suffocate it.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

I do not believe any of this legislation will achieve anything. It is solely for the benefit of the state and will provide work for quango's and government employees at the cost of enterprise.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

In a free market anyone who provides a service should be entitled to charge a fair and reasonable charge. They have to make a living and if a client is prepared to pay such a fee why not. This government should not be stifling enterprise with ever more legislation.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

I do not see, as an interim professional, that there is anything wrong with the existing legislation. Again this entire proposal is in contradiction of what this government is supposed to stand for.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

The government should not be interfering in the free market economy.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

There is no need to impose legislation where a combination of contract and common sense exists already

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

If someone breaches a contract they should accept the consequences. The state should not be involved in contractual arrangements freely entered into in any way.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

This legislation interferes with freely entered into contracts. It should be scrapped.

17. Do you think employment agencies and businesses should publish information about their business?

No

The Companies Acts cover this adequately

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

The Companies act provides the basic information to be filed. Internet searches reveal any problems which any employment agency would work hard to avoid. The market is becoming ever more open and therefore self regulating, this proposal is a donosaur in a digital age

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

Unemployment is unacceptably high already. The recruitment sector exists to ensure employers and their employees and contractors are best matched and as such is one of the main drivers in the economy for reducing unemployment. Legislation will add cost and complexity to the process and interfere in the market. Ultimately this cost will have to be passed on with the result that either employers will find other ways of recruiting or employees/contractors will be paid less. The result is everybody loses

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Professional Interim Managers/Consultants are in business on their own account and in no sense employees. The relationship is not the same as permanent employees and they do not need this protection. Contract law is completely adequate to protect their interests. If you start making contractors have the same rights and rigidity as employees you will destroy labour flexibility which will hurt the economy

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Individuals working as interim managers are not naive. These are professionals who are fully capable of finding out what their rights and obligations are for themselves, they do not need their hands held by the nanny state.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Everyone in this sector has access to the internet so it is normal to check for any issues before doing business with an agency. This should be a powerful tool to ensure compliance with the law

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

This is unnecessary bureaucracy that can only add to costs which hurts contractors/employees, the agencies themselves and their clients

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Agencies keep records for their own purposes as part of normal management. If they succeed both employers and employees/contractors benefit. Legislation can only stifle enterprise and make it harder or more expensive for jobs to be filled. Anything the government does will interfere with the free market and ultimately stifle innovation and

generate more unemployment

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Nlrec Limited

3. What organisation do you represent (if any)?

Nlrec Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

We feel that EITHER professional interim managers operating through their own company should not be subject to the new Regulations OR that there should be an opt out as the present 2003 Regulations 32(9) in the new legislation.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

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No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

JH Garnier & Associates Ltd

3. What organisation do you represent (if any)?

JH Garnier & Associates Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Only to the client who is using the agency to match a candidate

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

Need to separate out agencies who supply temps on their own books and those who are introducers between the client and the interim executive

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

This should be irrelevant as no fees should be charged to the work seeker

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

Question wrongly written. Refers to wrong question.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

The contracts between the client and the agent, and between the client and the interim, and between the agent and the interim should make the position clear without need for legislation

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

Regulation not required if the Terms and Conditions are documented correctly in the various contracts between contracting parties

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

This should not be necessary. If the hirer believes the fees are unreasonable, then the hirer does not need to follow up with the hire.

17. Do you think employment agencies and businesses should publish information about their business?

No

It depends upon the situation and the confidentiality required on a case by case basis. This should not be complicated by regulation / red tape

18. What information do you think would be of most interest to:

This is an open question. It depends on each assignment. Red tape again.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

This should be discussed at the recruitment and interview stages and should not be complicated by red tape as it cannot dictate for each circumstance

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

The IMA and the IIM both have codes of practice for the agency and the work seeker.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

If hirers only recruited from the pool of work seekers who are "regulated" by the IIM and via agents who are regulated by the IMA this will be sufficient. The problems come when work seekers and non IMA agents seek to contract with a hirer as the process is not self-regulated.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

Red Tape. Get rid of it and then deal with the IIM and the IMA to ensure their own rules are fit for purpose

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

Sounds like more red tape. The IMA and IIM should be able to avoid inappropriate behaviour between the agents, clients and work seekers and with appropriate contracts the law of the land should keep the 3 parties in check against poor performance

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Work seekers are not employed by the client so the employment tribunal is not appropriate. The course of enforcement is through contract default by either party.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The IMA and the IIM should review and update their guidance to their members from time to time to keep abreast with developments in the work place and the law.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

There should not be any infringements if the legislation is not enacted. Any infringements to contracts will be dealt with by the courts.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Only in the case where the employment agency is a provider of temps on their own payroll.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Normal business intelligence with respect to the market, the suppliers and the buyers

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Frank Thaxton

3. What organisation do you represent (if any)?

-

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

under the present 2003 Regulations 32(9) " ... a work seeker which is a company, and the person who is or would be supplied by that work seeker ...can give agreement .. that the Regulations shall not apply. " This is commonly called a limited company opt out. It was put in the Regulations so that independents in business on their own account could remove themselves and the "hirer" of interims from the scope of the regulations. BIS are now proposing that there would be NO right of opt out in the new regulations and professional interims and other senior professionals would be subject to wide ranging employment regulations really designed to protect the "vulnerable" not experienced senior managers and executives operating in business on their own account. (interims and consultants) The main options, in my opinion, therefore for submissions to the consultation are to either : Remove entirely professional managers operating through their own company from the scope of the new Regulations OR To include an opt out as the present 2003 Regulations 32(9) in the new legislation

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Present regulations seem to work

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

It can cover a wider field than employment agencies as understood by 'the common man'

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Individuals should be allowed 'cooling off' periods

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

14 days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

David James

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Although low-paid workers who are forced to work on a temporary basis require protection, other people who choose to operate as interim workers should not be caught up in legislation that could cause them to be treated as employees of their client. This is because this would restrict their flexibility and marketability and increase their payroll and tax administration.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

It should be set out in the contract. If temps aren't paid they withdraw their labour so the model is self-regulating.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

In general, yes. However, 'ilf someone chooses to opt out protective legislation because they wish to be considered as an independent provider of services they should be able to.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Iain Sturrock

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The current proposals would appear, unless amended, to cover the work of senior interim managers who, providing services through their own companies deliver significant value to the UK economy. Under the present 2003 Regulations 32(9) " ... a work seeker which is a company, and the person who is or would be supplied by that work seeker ...can give agreement .. that the Regulations shall not apply. " A similar opt out or alternatively full exemption from the scope of the regulations for interim managers operating through their own companies is required to maintain the effectiveness of the interim sector and its contribution to British business. Such opt out or exemption can be achieved without impacting the protection the legislation will offer to 'vulnerable' employees and work seekers.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Sally Treble

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

The current regulations are too lax and allow vulnerable workers and work seekers to be exploited by agencies

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

It is essential that BIS and EAS are granted enforcement powers. The agents dismiss both departments because they currently cannot bring agencies to task.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

If an agency actively pursues work for a worker seeker then they have to be remunerated in some form.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

However, if the agency is paid by the employer then they cannot also charge the work seeker.....and in the entertainment industry only a commission can levied on workers.

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

A clear definition of an 'employment agency' would be helpful to work seekers. i.e. Theatrical employment agency / construction etc...

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

Yes! In the majority of cases work seekers are pressured into 'signing on the dotted line' immediately and vulnerable work seekers are often fearful of refusing.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

30 days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Absolute clarity is required! Since the abolition of agents licensing - and the advent of numerous television 'independent producers' undertaking programmes for the Broadcasters, agents are being encouraged by those producers to undertake the role of the employer i.e. payment of NHI etc. The work seeker is not informed of the detail until a problem arises. Re-licensing of agents is the answer - particularly if EAS and BIS have extended enforcement powers.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

The more that is known about the workings of an agency can only be of benefit to a work seeker and hirer.

18. What information do you think would be of most interest to:

Hirers

A code of conduct for all agencies.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

The names of the hirers. Do they comply with the current regulations i.e. client account etc..

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Responsible practitioners will join a trade association and abide by a code of practice. However, rogue practitioners would soon be expelled for bringing an 'association' into disrepute (if they joined!)

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

All agencies should be mandated to sign up to a 'code of conduct' and Employers made aware of the code of conduct for the sector in which the employer is 'hiring'.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

It would be of benefit to the British economy. HMRC, BIS and EAS could prove vital to curtailing 'under the counter' cash deals resulting in workers receiving their correct pay - and paying their taxes and NHI.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

The current prohibition orders are working. It is right that agents found to be in breach of the law/regulations should be stopped from continuing those breaches under a 'new' names.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

However, work seekers are often too afraid to take solitary action against an employer. The government has to change the legislation to allow unions to take action against employers to protect the most vulnerable workers.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

If the unions could to protect their members then workers would only need to approach their union who would advise them on their rights.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

The ordinary worker in the street pays their taxes and NHI. If agencies infringe the legislation then they have no right to anonymity. The world should know of their infringements.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Do all agencies keep a 'client account'?. Do all agencies pay workers' NHI deducted payments to HMRC?

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Hirers?

Clear and transparent records of the employer. The amounts paid to workers. The taxes paid. NHI paid. And the amounts paid to the agencies.

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Yes, I would like you to publish or release my response

2. Your name:

Power IT Solutions Limited

3. What organisation do you represent (if any)?

Power IT Solutions Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Employment businesses are just that, accordingly a fee for services rendered is entirely reasonable.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

There should be more focus on what businesses and individuals actually want and need not what government thinks is appropriate.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Whenever they provide a service they should be allowed to charge a fee.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

When it is agreed by all parties to be appropriate.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

This would make sense.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

14 days would be a sensible and workable cooling off period.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

It is already obvious.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

Work-seekers

Rate and margins information should be mandatory on all contracts.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

Rate and margins information should be mandatory on all contracts.

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

A clear and easy mechanism for complaints and assistance.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Hirers?

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Yes, I would like you to publish or release my response

2. Your name:

David Hammond

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Interim Manager and Consultant

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Not as it affects Interim Managers and Consultants. Interim Managers and Consultants are not employees and therefore employment protection legislation is irrelevant and not required by them. Employment legislation only acts as a barrier to obtaining assignments (referred by agencies) and providing services to clients (hirers).

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Interim Managers and Consultants are in business on their own account and Employment Legislation should therefore explicitly exclude Interim Managers and Consultants.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

They should be free to charge fees to other businesses through which Interim Managers and Consultants perform their services.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Agencies and Recruitment Firms should be free to negotiate fees with other businesses (through which Interim Managers and Consultants perform their services) eg for the introduction of assignments.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

It should explicitly exclude the activity of intermediation with and referral of business to

Interim Managers and Consultants.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Definition of Work Seeker should explicitly exclude Interim Managers and Consultants.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Definition of Work Seeker and Temporary Worker should explicitly exclude Interim Managers and Consultants.

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Corporate Counsel

3. What organisation do you represent (if any)?

Corporate Counsel

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Professional interim managers should be treated as independent business entities for the purpose of taxation and should be covered under a contract for services.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Darren Thurston

3. What organisation do you represent (if any)?

Self-employed

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

Interim Manager

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No Response

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Remove entirely professional interim managers operating through their own company from the scope of the new Regulations OR Retain the opt out as the present 2003 Regulations 32(9) in the new legislation

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Powell and Associates Ltd

3. What organisation do you represent (if any)?

Powell & Associates Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Some Interim Executive Agencies do not charge the employer, but do make a charge to the limited company supplying the resource.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

It is unclear whether individuals who provide services via their own companies would be covered by this change.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No

I think that this might be quite onerous for some of the smaller agencies.

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

I think that it would be useful, but should not be compulsory. How would these figures be audited?

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

In the case of gang-masters.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

There should be the option to 'opt-out' if an individual is acting as a supplier of services through a limited company.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Association of Executive Search Consultants (AESC)

3. What organisation do you represent (if any)?

Association of Executive Search Consultants (AESC)

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

The Association of Executive Search Consultants (AESC) is the worldwide professional association for the retained executive search and leadership consulting industry. The AESC promotes the highest professional standards in retained executive search and leadership consulting through its industry recognized Code of Ethics and Professional Practice Guidelines. The AESC also serves to broaden public understanding of the retained executive search and leadership consulting process and acts as an advocate for the interests of its member firms. In the UK, the AESC brings together 33 leading executive search firms operating from 42 offices (primarily in London). Their role is to assist their clients in the placement of highly skilled and experienced professionals into senior executive positions in all sorts of organizations. The work-seekers they are engaging with as potential candidates are very sophisticated and highly experienced individuals who are not at risk of exploitation. Against this background, whereas we generally agree that the current legislation which regulates the recruitment sector needs a review and we also generally agree with the four outcomes which the future system should achieve, we believe that the executive search consulting profession should be better left outside of the scope of the new recruitment legislation. This is essentially because, in our view, the executive search consulting profession is fundamentally distinct from the other sorts of recruitment businesses that are raising public policy concerns. In no circumstance can an executive search consultant receive a fee from a prospective candidate. It is a core ethical principle of the retained executive search profession enshrined in our AESC Code of Ethics to avoid any conflict of interest notably in only accepting fees payable by the hiring organisations We do not believe that there is a lack of confidence in work-seekers who are appropriate to the services we provide to use our services.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The current definition is: 13 (2) For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them. We would like to see the definition clarified to exclude the executive search sector. We suggest that the legislation and definition of “employment agency” be restricted to focus on job-seekers earning a salary below a certain threshold. It is below this level at which protection needs to be afforded from unscrupulous recruiters – not at the top end of the recruitment market where our members traditionally operate.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

We believe the regulation should be removed in its entirety and refer you to our comments above under our response to Question 1

17. Do you think employment agencies and businesses should publish information about their business?

No

We believe that comparisons between such wide ranging businesses in the recruitment industry would be misleading. We take particular exception to the suggestion (under Outcome 4 of the proposed legislation) of a regulatory provision which would require publication of the items listed in para 7.17 of the consultation document. Our exception to

this relates to the fact that many of the items listed are of no relevance whatsoever to our business, our clients or our candidates. To force publication of such information would impose unnecessary administrative burdens on our business and runs counter to the Government's Red Tape Challenge cited as one of the reasons for this consultation.

18. What information do you think would be of most interest to:

Work-seekers and hirers seeking to avail themselves of our services will wish to know our expertise in the sector or management strata they are seeking to fill/secure a position. We already publish this information. We see no regulatory need to require us to publish this or any other information about our business. Should clients or candidates wish to receive further information from us we will provide this to them, as appropriate, in each individual circumstance.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

We refer you to our responses to Questions 10 & 11 above.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

The AESC promotes the highest professional standards in retained executive search and leadership consulting through its industry recognized Code of Ethics and Professional Practice Guidelines (available on the AESC website)

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

None

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

See above

24. Do you think that prohibition orders should be included in the new enforcement regime?

See above

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

See above

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

See above

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

See above

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

We refer you to our general comments under as to the applicability of the legislation to our business.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

See above

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Phil Hutchinson

3. What organisation do you represent (if any)?

No Response

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Beauty Consultants Bureau

3. What organisation do you represent (if any)?

Beauty Consultants Bureau

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

1. Agree, except in some instance - ie for skills training - it should be possible to charge the temporary worker. The agency is providing time and tangible resources to the worker and if they then do not work or only complete a minimum number of assignments then the company cannot re-coup its investment. 2. Agree, Use of umbrella companies has become popular since the introduction of the AWR and this can leave the worker vulnerable. 3. Agree. Indeed. We have found temp to perm fee's or extended working have been an advantage to our company. 4. Disagree. There are lesser expectations on temporary workers in terms of reliability, skills and commitment so I think that there should be a reciprocal commitment from the agency. This should still be in a fair framework and maybe the increased employment entitlements (rights to an employment tribunal) should be linked to the length of the booking, so those on bookings of 6 months are more protected.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

1. Enforcement of legislation & good practice. 2. Restriction of agencies that go out of business & then rise out of the ashes within a day having avoided all PAYE commitments.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

As specified above, for the provision of training. This provides valuable skills for the worker, and within the temporary work framework, the trained temp may only do 1 or 2 assignments before moving on, thus leaving the agency without a return on their investment.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

I think you mean question 8. As already answered.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The whole act needs re-writing and to be made understandable by the masses rather than the lawyers who represent the masses. Make it simple and you will make it more workable.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

It seems fair. If I want to ask someone to pay for a days training that they have time to weigh up how advantageous it will be to them before they commit.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

I think you mean question 11. The cooling off period could be a minimum recommendation of 12 hours for example so at least the worker leaves the premises to think about it. If I have a training course running the day after the worker has registered then it would be a shame if they missed out for the sake of complying with the cooling off legislation. A result of this could be that they miss out on work until the next training opportunity.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

For those companies who like to operate in a slightly cloudy environment then it will force them to be clear.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

All the text of the act as it stands is ungainly. An agency should not penalise a worker for cancelling a booking, but it could all be written more clearly.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

The whole act would benefit from rewriting but it is hard to define "unreasonable". Restricting transfer fees gives some agencies real problems and the new hirer takes advantage of the services provided.

17. Do you think employment agencies and businesses should publish information about their business?

No

In the format that was discussed it sounded really negative & I would not welcome it.

18. What information do you think would be of most interest to:

Work seekers - our research shows that they are driven to our website through recommendation by friends or our reputation and they simply want to know how to apply to

join us. Hirers - our clients never use our website and are totally uninterested. Operational information and stats are presented at PSI meeting (preferred supplier).

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

Its just nonsense.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Although it is optional to join a trade association, ergo those who join have the highest intentions to provide a quality service, those who don't can loose their way.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

A good practice document that all have to sign up to, maybe when this has been committed to the agency has a kite mark or a standards stamp they can use on their web sites / stationery to flag up to their workers that they are committed to a minimum standard of service.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

There are just too many small and quiet agencies that take advantage of workers, and give the industry a poor reputation. They enable illegal working, tax avoidance and poor work environments.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Great - this would restrict the agencies who have the Phoenix Factor.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

I feel harsh saying that, but these are litigious times. We run a really ethical, honest, forward thinking agency, but we could end up tied up with petty gripes. This in turn would end up with lots of "pay offs" simply to make a time consuming problem go away, which in turn will only further encourage the "its your fault not mine and you must pay" mentality that is rife in the country today.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No idea.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

It doesn't really matter, but any infringements are monitored until they are corrected anyway.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work seekers; passport, NI number, photograph, copy of Conditions of Work. I REALLY THINK THAT THE PIECE OF LEGISLATION THAT REQUIRES A COMMUNICATION WITH EACH WORKER TO CONFIRM THE BOOKING LOCATION / PAY RATE / HOURS ETC IS ONEROUS AND POINTLESS. We give clear verbal instruction, pay rates are always the same, locations generally the same, job type always the same. I just thought I'd flag up how tedious this is. Hirers: evidence of terms of business, agreed charge rates and temp to perm agreements as well as invoices / copies of workers timesheets etc.

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Yes, I would like you to publish or release my response

2. Your name:

Steve Allen Entertainments

3. What organisation do you represent (if any)?

Steve Allen Entertainments

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

I fully support the Agents Associations representations on this proposed legislation - that both the Employment Agencies Act 1973 and the Conduct Regulations remain in force.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The Legislation currently in force should be strengthened with a much firmer response by the Inspectorate towards any transgressions. The proposals currently under consideration would put all artists at greater risk from the many more 'cowboy' firms, which would flood our industry.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Bona Fide businesses will keep the required records

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

3 year records of enquiries, charges, contracts and accounts

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Hire A Band Ltd

3. What organisation do you represent (if any)?

Hire A Band Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

I agree with the recommendations made by The Agents Association of Great Britain

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Reintroduction of a license requirement for entertainment agencies.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

None

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The sector is too large and varied for one piece of legislation.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

A contract should be applicable to all parties.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

Who are the directors.

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Experience of benefits gained by being a member of The Agents Association of Great Britain.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Too many dodgy operators in the sector which damages the reputation of the sector as a whole

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

UK Chamber of Shipping

3. What organisation do you represent (if any)?

UK Chamber of Shipping

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

Local government

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

These aims are supported, subject to more detailed comments on the questions that follow.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

See response to question 14 below.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Work-seekers should not be charged for seeking to enter the labour market.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Do you mean Question 8?

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

It has been well-established for many years and is well understood.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

It is not clear what benefits this would bring.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

In most cases it will be clear who is responsible for paying wages, depending on whether a worker is supplied by an EA or an EB. However, legislation should provide for joint and several liability between EAs/EBs and employers. It should also require EAs and EBs to establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate workers for monetary loss that they may incur as a result of the failure of the agency or the relevant employer under the contract of employment to meet its obligations to them.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

Information published by EAs and EBs, or by a trade association on their behalf, would enable the publication of useful statistics showing the strength and flexibility of different labour markets, temporary employment trends and supply and demand for different skills.

18. What information do you think would be of most interest to:

The above information would be of interest to both work-seekers and hirers, as well as EAs/EBs generally and the national authorities.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

Basic, factual information from which employment trends can be identified (see answer to question 17)

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

Not all trade associations have Codes of Practice. Those that do have no sanctions for breaches.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

The vehicle for the settlement of disputes relating to employment should be employment tribunals.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

This should be provided by the Department for Business, Innovation and Skills.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

They should maintain up-to-date registers of all workers recruited or placed through them, to be available for inspection.

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

StuckForStaff.com

3. What organisation do you represent (if any)?

StuckForStaff.com

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

Small business (10 to 49 staff)

Trade union or staff association

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

If Employment Agencies are set up to provide services for work-seekers, including information about opportunities and work-seekers are happy to pay reasonable fees, in order for that service to sustain, it should be a consumer choice, as long as the said businesses do not have monopoly over said opportunities. Unscrupulous or misleading businesses should be acted upon. Agree with other points.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Workers should be given clearer defined avenues on how to deal with companies that are late in paying, or do not pay and there should be greater clarity on payment rules and expectations for both sides.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Firstly, if the industry operates in the same way as the modelling/entertainment sector e.g. promotions industry. Workers within the promotions industry are employed/self-employed in a similar way to entertainers/models and undergo the same levels of self-promotion. In fact many actually work in both sectors simultaneously. On the subject of the entertainment/modelling sector it seems outdated how a whole industry can be ring-fenced. Businesses either act ethically or they do not. This industry as it stands is one of the most exploited out there, with the ability to sell a 'dream' and a very very small chance of success from a paid for service. It seems backward that this is the industry which is not more closely monitored, and can easily be masqueraded. Secondly, where the agency or

business is not directly involved in placing a work-seeker, but simply provides them tools and resources and information to more successfully seek work. In a down economy, employment agencies should be encouraged to help people seek out opportunities of work. After all not all business models can make off the placement - some make off the provision of resource - if that resource can assist that worker in achieving more time to dedicate to work and less to searching for work and in turn provide a more stable income then all the better.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

(See above - i have answered in Question 8 our reasons. In case there is a problem displaying any information we have re-posted this information here too) Firstly, if the industry operates in the same way as the modelling/entertainment sector e.g. promotions industry. Workers within the promotions industry are employed/self-employed in a similar way to entertainers/models and undergo the same levels of self-promotion. In fact many actually work in both sectors simultaneously. On the subject of the entertainment/modelling sector it seems outdated how a whole industry can be ring-fenced. Businesses either act ethically or they do not. This industry as it stands is one of the most exploited out there, with the ability to sell a 'dream' and a very very small chance of success from a paid for service. It seems backward that this is the industry which is not more closely monitored, and can easily be masqueraded. Secondly, where the agency or business is not directly involved in placing a work-seeker, but simply provides them tools and resources and information to more successfully seek work. In a down economy, employment agencies should be encouraged to help people seek out opportunities of work. After all not all business models can make off the placement - some make off the provision of resource - if that resource can assist that worker in achieving more time to dedicate to work and less to searching for work and in turn provide a more stable income then all the better.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

'Employment Business' itself is very defined, whereas the definition of 'Employment Agency' is so broad that could encompass anything outside the scope of Employment Business. For this reason its interpretation could be very subjective, whereas it really should be defined to specifics, for the benefit of those operating in industries closely surrounding it; this would help prevent misinterpretation and allow for a simpler evaluation process with less legal involvement. Furthermore the landscape has changed so much due to emerging technologies and the 'ways of doing business' ie. mobile phones, internet, and social media that the '1973 Act' really needs reviewing; what may previously have been defined as a contravention of the act, now may be nothing more than a service like so many others whose basis is nothing more than a way to save time in todays world.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

But only in situations where service has not already been given, or information been irrevocably provided. For instance, access to contacts that can just be copied or saved on a hard drive. Cooling off should be able to be pro-rated if it has incurred direct expense to be administered to that customer.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

In the interests of simplicity, one cooling off period for services, and another for the provision of information or resource.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

It will reduce the burden of administration on agencies, and will make things clear to the work-seeker and who to follow up with for payments and tax documents.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

More clarity - workers should be allowed to leave or terminate a contact, however if it is done with serious detrimental effect to a business, this could be critical to a business, by nonchalance on behalf of a work-seeker.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

A certain amount of transparency and public information (size, sector, established date, purpose) would help work-seekers to establish credibility. Also a central review system (amazon style) where work-seekers could leave public comments. As long as it is clear simple questions for businesses, it would be an asset.

18. What information do you think would be of most interest to:

Work-seekers

Credibility / other users reviews. Contact info and established business track record.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

For clarity, credibility and trust

20. If you answered yes, what information do you think it should be compulsory to publish?

Contact info, established date, public (centralised monitored so no slander) reviews

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

They are not all encompassing, difficult to assign and implement, and a cost to businesses that do not necessarily benefit anyone. Or in our personal experience and understanding with Equity, aren't enforced anyway through fear of upsetting subscribers.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Looking at individual cases clearly when following up complaints - not subjecting to blanket rules for all examples and industries, as they are all different. With industries shifting so

often, it is crucial unless ongoing regulatory reform takes place more frequently.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

For quality standards and protection against exploitation definitely. Regards charging fees to work-seekers (and assuming that unscrupulous companies are ousted), then allowing people to make a choice on what they do and buy should be allowed.

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

But only in drastic circumstances - trivial situations will just waste everyone's time, hinder business and the economy, and fuel a suing and benefits culture.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

One simple fact-sheet centrally available. Those serious about enforcing their rights will look into it further. Those not, will dismiss it. The simplicity should help separate the real problems from the more trivial.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Serious and deliberate infringements should be published so that people can choose whether to trust that business. However, the rules on infringements need to change as currently not all "infringements" are for the benefit of the work-seeker - some seem to hinder their quest for employment, not support it.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

It just makes sense. It will encourage working to a standard, and will make an accusation process easier. The key here is simplicity, so that record-keeping and complying doesn't hinder business activity.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Work seekers: Different for all types of business. But definitely contact information and employment information
Hirers: As above, and where placing, full records of the contracts and terms
Other: It depends on what they do. If they are providing a service or resource to aid people in work-seeking, only a detail of the transaction made, like any other purchase. What was sold, what was promised. If they provide a more detailed service, this should reflect that.

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Yes, I would like you to publish or release my response

2. Your name:

Bennachie Associates Limited

3. What organisation do you represent (if any)?

bennachie associates limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

The government must give professional interim managers the option to use what ever agency methodology these use and not to hinder what has been working so well for many years

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

the agencies get their fees from the mark up in the daily or fee based charges to the clients

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

it is covered by the current legislation that they must provide a contract, this can be covered by better awareness

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

Work-seekers

what there charge fees are to clients, payment terms (how quickly they settle invoice),

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

we are not employees we are business to business. this will just make the tax rules even more confusing. How can we as a business claim employment tribunal rights and in the other said argue with the tax authority we are not employees

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Adventum Limited

3. What organisation do you represent (if any)?

Adventum Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

The interim market works through a different business model, where the agencies operate by charging a fee to the interim manager. The first outcome would effectively make this impossible and would have a severely detrimental impact on this sector of the economy.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

As stated earlier, the interim management sector operates by the agencies charging a fee to the interim manager and this should continue.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

Interim management, where there is a contract between the agency and the Interim Manager (or his limited company)

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

Not in the situation of Interim Management contracts

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Not in the case of Interim Management

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Henley Interim

3. What organisation do you represent (if any)?

Henley Interim

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Interim manager are businesses on their own account, are not “vulnerable”, to be included in the recruitment sector legislation erodes their “in business on their account” and they should not be subject to inappropriate employment legislation.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Interim manager are businesses on their own account, are not “vulnerable”, to be included in the recruitment sector legislation erodes their “in business on their account” and they should not be subject to inappropriate employment legislation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

Basic stuff about business structure, aims and goals

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

Only if they are employed directly.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Forrest Recruitment Ltd

3. What organisation do you represent (if any)?

Forrest Recruitment Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Qualified yes; in point 3 the word "reasonable" will be hard to define, there is large variation from sector to sector; the fees should merely be transparent and agreed in advance according to contract law.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

An end to over-detailed legislation. The industry should be regulated, not micro-managed.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

There is no moral reason why agencies should not be able to offer a fee-paying service to any job-seeker. However employers would probably force the costs on to applicants by refusing to pay for the service themselves; probably a bad outcome.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

It is good enough.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

no opinion

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Yes, but in general there already is complete clarity.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

It seems crystal clear

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

Either repeal it and leave it to commercial practice, or leave it alone!

17. Do you think employment agencies and businesses should publish information about their business?

No

It's up to them. Why should the government be interested?

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

This would be highly prescriptive; it is not practice in most areas of business, and there seems to be no value to users. Who would check the accuracy of the information?

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

Legislation is all we need for protection of users. "Standards" meaning "quality of service" is a matter for individual businesses.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

I am very suspicious of this. What is meant by "tools"? What is meant by "standards"? We have a duty to obey the law. Apart from that we should be allowed to run our businesses as we think fit. If a practice is sufficiently undesirable it should be against the law.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

It is legislation. Enforcing it is what the government is for! we need less prescriptive, but enforced, legislation. A licensing regime with open entry but with sanctions (see 24) should be introduced to provide funds for enforcement.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Yes. We have a duty of care and trust towards the people who use our services. Serious abuse of that trust by way of criminal activity should result in a ban.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

Qualified yes. I prefer direct enforcement, and a complaint to the government inspectorate would be quicker in general.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Booklets from the government

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

But only where serious sanctions are imposed. Too much about minor infractions will swamp out the important stuff

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Although the regulations on records are too prescriptive, removing them entirely will make life hard for complainants and inspectors.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Application forms, interview notes, record of assignments, job descriptions, anything about workplace which is relevant to health and safety. Nothing about other agencies/businesses

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Yes, I would like you to publish or release my response

2. Your name:

Advance Contracting Solutions Limited

3. What organisation do you represent (if any)?

ADVANCE CONTRACTING SOLUTIONS LIMITED

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Large business (over 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Yes, we have no objections to the outcomes above.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company contractors and the lower-paid temporary staffing sector. Limited company contractors are not at risk of exploitation like the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the professional end of the market with unnecessary regulation

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Quite possibly. We presume this means workers should not be charged fees outside of these sectors. We agree with this in principle but are not experienced in all possible circumstances to be able to comment on whether it would be right or not to charge fees outside of the entertainment and modelling sectors.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

See answer above.

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The current definition misleads as it infers that all employment agencies' clients must

permanently employ candidates. In addition, we would recommend introducing a clearer distinction between companies providing supplementary services connected with the recruitment process, such as on-line job sites. These companies are not in a position to influence the employment decision between the end-user client, the staffing company and work-seeker. However, as they are involved in identifying suitable candidates for roles, there is potential for them to be considered 'employment agencies' under the scope of the current definition. We would suggest defining an employment agency as that which provides services for the purpose of identifying and placing suitable candidates into positions at end-user clients, where such clients employ or engage the candidates directly and candidates are not supplied by the employment agency directly as a principal.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question does not apply to the work carried out Advance Contracting Solutions Limited.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Contracts should make this clear and indeed ours does. However we do feel that the actions/statements of many recruitment consultants can lead to confusion in this area. We are working with our own recruitment company clients and with APSCo to train recruiters so that poor practices in this area are gradually eroded. Certainly this is a problem more prevalent in lower paid contracting than in higher paid professional business to business recruitment. Legislation should consider contract content, and perhaps there should be some requirement for training programmes in this area to be evidenced.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

In the professional sector, there is a commercial, business to business contract in place between the recruitment firm and a limited company, and in such situations any termination should remain in line with the terms of the commercial agreement in place.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

A requirement to agree transfer fees before an assignment begins should be sufficient, and this agreement should also be transparent to the contractor. We work with professional, career contractors, who very rarely take permanent roles, so this really isn't an issue in our industry.

17. Do you think employment agencies and businesses should publish information about their business?

No

We do not believe the kind of information suggested in the consultation would be of much use to a contractor looking for his/her next assignment. In the professional sector, contractors usually source assignments from job board adverts, or via networking. The sort of information suggested in the consultation would not be accurate for any reasonable length of time, and would be of little benefit to contractors. Therefore, we believe requiring staffing companies to publish such information would only accomplish a league table of sorts, which could only be of benefit to larger more established companies, but would provide no advantage to work-seekers or clients.

18. What information do you think would be of most interest to:

Work-seekers

Specialist sector experience of each consultant/agency - both hirers and work seekers

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

As members of APSCo, we believe that working with trade associations should be the way forward if there is a drive towards transparency. There are many ways in which trade bodies can help and encourage their members to increase their levels of professionalism. APSCo members are subject to a strict vetting process and are committed to maintaining high standards of practice.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade associations such as APSCo play an important role in driving up standards particularly through training.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

If Government did not enforce legislation in the recruitment sector, non-compliant businesses would have an advantage over compliant, professional businesses.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

We believe that enforcement of such regulations should be conducted by EAS inspectors who have the real-world sense to dispense justice and appropriate sanctions in a considered and even-handed manner.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site. Trade Associations should also work to provide this

information.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Knowing about previous cases helps to improve practice. Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

All compliance matters should be evidenced in processes and documentation. This should not be considered burdensome for those who are genuinely wanting to do it right.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

a) From work-seekers: Recruitment businesses already ♣ Right to Work in UK confirmation ♣ ID documents ♣ CV ♣ collect the following: ♣ Contacts details ♣ Contracts ♣ Relevant phone/email logs ♣ PES check docs Company docs if ♣ Actual refs received, no requirement to take out references Timesheets/invoices b) From hirers: Recruitment ♣ Opt outs ♣ applicable Relevant phone/email ♣ Contracts ♣ businesses already collect the following: Comparable employee information ♣ Invoices/timesheets ♣ Contacts details ♣ logs if the work-seeker is within scope of the AWR

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Yes, I would like you to publish or release my response

2. Your name:

Cingulate Consulting Limited

3. What organisation do you represent (if any)?

Cingulate Consulting Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

As an experienced HR manager/director, now working as an interim through my own limited company I use employment agencies as one source for my assignments. Once on assignment I regard myself as a supplier to the organisations of services not as an employee thus I neither need nor want the employment rights given to direct employees. I have no problem with the first three statements, particularly for individuals who are seeking to become employees....I am not.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Distinguish between 'career interims' via an 'opt out' and those who are using employment agencies for permanent or temp to perm introductions.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

If they are an employee as per previous answer. Where a genuine interim assignment is based on a different contractual arrangement i.e. supplier to organisation not employee of organisation (I would include here that assignments on a fixed term contract basis do make you an employee of the organisation) then it should be clear that the interim has no employment rights.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Clarity on what contractual arrangements constitute employment and which do not.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Parkside Recruitment Limited

3. What organisation do you represent (if any)?

Parkside Recruitment Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Yes, we have no objections to the outcomes above.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The legislation should seek to protect the vulnerable, without penalising highly-paid, highly-skilled professional business consultants who are not at risk of being exploited.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The current definition is misleading as it infers that that all employment agencies' clients must permanently employ candidates. In addition, we would recommend introducing a clearer distinction between companies providing supplementary services connected with the recruitment process, such as on-line job sites. These companies are not in a position to influence the employment decision between the end-user client, the staffing company and work-seeker. However, as they are involved in identifying suitable candidates for roles, there is potential for them to be considered 'employment agencies' under the scope of the current definition. We would suggest defining an employment agency as that which provides services for the purpose of identifying and placing suitable candidates into positions at end-user clients, where such clients employ or engage the candidates directly

and candidates are not supplied by the employment agency directly as a principal.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question is not relevant to the business undertaken by Parkside Recruitment Limited

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

N/A

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

This ambiguity does not exist in our experience. Our contracts always make this clear.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Limited company contractors with rare/niche skills cannot be simply swapped in and out. A project could be damaged if a limited company contractor was to walk off site because he had a better paid job elsewhere to start immediately. For this reason, it is essential that the right to termination must be in line with the commercial requirements of the client.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

We would not want to see any creep towards the prohibition of temp-to-perm fees. The legitimate business interests of the employment business that has invested significant up-front effort, cost and expense into sourcing and placing a contractor, and the on-going cost of maintaining contractors in assignments must be appreciated and recognised.

17. Do you think employment agencies and businesses should publish information about their business?

No

We do not believe that publishing the sort of information the consultation suggests would have any positive effect on the levels of professionalism. We would be extremely cautious about requiring transparency of commercial data in the public domain, and we're particularly concerned about the detrimental effect this would have on start ups and SMEs.

18. What information do you think would be of most interest to:

N/A - see above

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No - see above

20. If you answered yes, what information do you think it should be compulsory to publish?

N/A

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

We are a member of APSCo and consider that their code of practice helps to maintain standards in the sector by providing a visible representation to market of best practice, which goes beyond that of legislated provisions, and which is enforced by APSCo.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade associations such as APSCo play an important role in driving up standards.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

If Government did not enforce legislation in the recruitment sector, non-compliant businesses would have an advantage over compliant, professional businesses.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Employment tribunals are concerned with employment rights, and not with the conduct of recruitment companies.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Knowing about previous cases helps to improve practice. Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

We do not believe that the industry needs complicated and in-depth legal requirements on record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice by professional recruitment companies to keep such records, whether statutorily required or otherwise.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

a) From work-seekers: Recruitment businesses already ♣ Right to Work in UK confirmation ♣ ID documents ♣ CV ♣ collect the following: ♣ Contacts details ♣ Contracts ♣ Relevant phone/email logs ♣ PES check docs ♣ Company docs if ♣ Actual refs received, no requirement to take out references ♣ Timesheets/invoices b) From hirers: Recruitment ♣ Opt outs ♣ applicable ♣ Relevant phone/email ♣ Contracts ♣ businesses already collect the following: ♣ Comparable employee information ♣ Invoices/timesheets ♣ Contacts details

♣logs if the work-seeker is within scope of the AWR c) other employment agencies/employment businesses? Recruitment businesses already collect the Third party Managed Service Provider our Recruitment Process♣following: Outsourcing documentation.

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Yes, I would like you to publish or release my response

2. Your name:

Connex Holdings

3. What organisation do you represent (if any)?

Connex Holdings

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

the point re clarity on who pays the contractor there are a number of ways candidates are paid in the sector and i think legalisation on this will restrict fleability to the labour market

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

More legislation in the sector could well prove a drag on our sector, the more legislation the higher our costs, the more we have to charge and the less clients will want to use us. Double effect off a slowdown in hiring and reduced profits in the sector.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

Recruitment is a success based industry (ie you place a candidate and you earn a fee) we should not be charging fee's for no work done ie to allow candidates to register with us

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

sometimes agencies pass on legitimate expenses (say cost's of CRB's) whilst not a fee we have to be careful that the baby is not thrown out with the bathwater.

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

14 days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

As i stated earlier this is a constant moving feast (umbrella, PAYE, IR35, Ltd Companies) etc legislating for this will restrict the options and not allow innovation moving forward.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

17. Do you think employment agencies and businesses should publish information about their business?

No

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Employment Solutions/First Logistics Limited

3. What organisation do you represent (if any)?

Employment Solutions /First Logistics Limited

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

Recruitment Agencies and Employment Business do not charge candidates fee's in commercial business outside the entertainment area Complicated with Umbrella's Recruitment Agencies are already bound by legislation in the code of conduct 2003 doesn't need changing, other employment agencies would have a field day with this change The change in Employment law over the past 5 years aimed at Employment agencies is excessive with WTD, Two increases in holiday pay, AWR, now the conduct regulation. Business leaders have sat with Neil Carberry and told him they need the help of Recruitment Agencies ,to fill vacancies the governing bodies REC, IOR for the industry have informed government that their has been too many legislation changes, it confuses the Clients and work seekers and is costly for the Employment Business's Workers have confidence now to assert their rights nothing needs to change if Employment Tribunals were introduced the rights of the work seeker would be infringed

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Confusion Too many changes in Employment Law regarding Agency workers

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

No

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

The Employment Tribunal system is over loaded, there is also a charge to be levied to apply for a Tribunal explain how this would benefit a work seeker The current legislation is adequate protection for Business and Work Seekers

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

BSI directed by ACAS

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Level playing field

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Orange Genie Group

3. What organisation do you represent (if any)?

Orange Genie Group

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Large business (over 250 staff)

Umbrella Employer & Accountancy Service Provider

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

We believe the four outcomes identified are the right 'fundamentals' for a new regulatory framework to deliver. We believe the current legislative framework is out of date, confusing, in large parts unnecessary and ineffective and we strongly support a blanket repealing of this legislation and its replacement with a much more targeted, clearly focussed and simpler regulatory framework.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

At this overall aim level, contractors employed by our umbrella company and clients working through their own limited companies have business to business (B2B) relationships with recruitment businesses/employment agencies and as such they should not be part of or provided for within the new regulatory framework that will deliver the proposed outcomes. Existing legislation (WTR, NMW, MSC, IR35, employment rights legislation etc) is already in place which, if enforced properly, ensures appropriate standards of compliance within the umbrella business and accountancy services industry. Including these types of business within the new framework will run completely contrary to the overall 'reduction of red tape' aim, create more confusion and bureaucracy and constrain both individual businesses and the flexible workforce more generally at a time when this element of our UK workforce is key to supporting the required economic growth for the country. We are also of the opinion that using the different ways of working via limited companies (umbrella employer or personal service companies) is not an appropriate approach to be taken to determine whether workers are covered by the regulatory framework or not. In our view, any new regulatory framework should be limited to the key elements of the relationships between the hirer and the recruitment business/employment agency and between the recruitment business/employment agency

and the worker (where the recruitment business/employment agency engages the worker directly) and should be aimed at protecting the vulnerable rather than trying to regulate the industry more broadly. We believe consideration should be given to different terminology within the new regulatory framework, particularly in relation to the use of the term 'employment businesses'. This term is used to describe a recruitment business that finds workers for an end hirer and then supplies these workers on an ongoing basis directly to the hirer where the ongoing contractual relationship is between the hirer and the recruitment business and not between the hirer and the worker. In such relationships, invariably, the recruitment business is not (indeed works very hard not to be) an employer of the worker. They pay the worker on a PAYE basis AS IF they were an employee but the worker does not get any of the key benefits of an employment relationship. Consequently, in our view, the use of the 'employment business' term is confusing and unhelpful. We would like to see a clearer, more precise definition of an 'employment business' and would suggest a definition of 'recruitment agency'.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

We are neither an employment business nor agency as defined under the current legislation and do not charge employees or clients fees for work seeking services. Our umbrella business makes a margin on the provision of services into employment businesses and our accountancy service charges fees for the provision of accountancy and other professional services to the personal service companies. We have no role to play in this targeted outcome. Please note our umbrella business will help our employees obtain another assignment when an existing assignment has finished by looking for suitable assignments for them via job boards and agencies.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

We believe that consideration should be given to different terminology within the new regulatory framework, particularly in relation to the use of the term 'employment businesses'. This term is used to describe a recruitment business that finds workers for an end hirer and then supplies these workers on an ongoing basis directly to the hirer where the ongoing contractual relationship is between the hirer and the recruitment business and not between the hirer and the worker. In such relationships, invariably, the recruitment business is not (indeed works very hard not to be) an employer of the worker. They pay the worker on a PAYE basis AS IF they were an employee but the worker does not get any of the key benefits of an employment relationship. Our umbrella business is the genuine employer of workers supplied in such circumstances (we are in the business of employing workers) and yet we are not 'employment businesses' as defined by the current legislation because we don't find individuals for hirers. Consequently, in our view, the use of the 'employment business' term is confusing and unhelpful as it suggests that all employment agencies' clients must permanently employ candidates.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No view/knowledge/comment to make on this question

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No view/knowledge/comment to make on this question

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

We agree there needs to be clarity on who is responsible for paying all workers. This responsibility should sit firmly with the 'employer' of the worker. The employer will vary depending upon the way the worker chooses to work. If the worker is engaged directly by the employment business (as currently defined), the employment business should be 'deemed' as the employer and hold responsibility for pay and this obligation on employment businesses should be enshrined within the new regulatory framework. If the worker is not working directly for an employment business, the employment business should not have responsibility for pay in such circumstances. The other 'alternative' ways of working for the workers are typically either through an umbrella business or working in business on their own account (when the worker is genuinely self-employed) through their own limited company or on an unincorporated basis). In such circumstances, the existing legislation outside of the Conduct regulations framework already exists to deliver the required responsibility for pay. If the worker is an employee of an umbrella business, the umbrella business is responsible for paying the worker. If the worker chooses to work via their own business (personal service company or on an unincorporated basis), that business is the employer and should be responsible for paying the worker. This approach properly reflects the ways of working chosen by the worker and provides appropriate pay protection depending upon the chosen approach. For example, a self-employed worker who chooses to be in business on their own account foregoes the protections of a more secure 'employer' – this additional financial risk is part of the 'risk vs reward' decision to work in business rather than be employed. Equally, if a worker chooses to work via an umbrella business, he/she will be entitled to the required pay protection (and employment rights and protections) from that employing, third party organisation. No 'new' legislation is required to deliver these rights and protections. Additionally, in practise now the umbrella business will always pay the worker and often not recover the money from the agency even if the worker had opted 'in' to the existing Regulations. Any new regulatory framework simply needs to ensure that if an employment business (as defined currently) engages a worker directly, it is responsible for pay for that worker.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

The contracts individuals have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees should be reasonable.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

The contracts individuals have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees should be reasonable.

17. Do you think employment agencies and businesses should publish information about their business?

No

We believe statutory information is sufficient in the commercial sector.

18. What information do you think would be of most interest to:

No view/knowledge/comment to make on this question

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No view/knowledge/comment to make on this question

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

We believe that robust codes of practice, rigorously enforced are the most effective way of identifying and exposing industry bad practice. However without genuine enforcement a code of practice is a worthless piece of paper.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No view/knowledge/comment to make on this question

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

We believe the 'right answer' in regulatory framework terms for any sector is a combination of clear, targeted, focussed legislation which is then rigorously and consistently enforced by the relevant authorities. This consultation is a great opportunity put in place much more targeted, clearly focussed and simpler legislation based upon the four targeted outcomes identified by DBIS but this improved legislation will be ineffective without robust and consistent enforcement.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

We believe that effective enforcement of legislation is essential and we see a role for prohibition orders as an ultimate sanction for repeated non compliance in any industry.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

We believe employees of any organisations currently can and should continue to be able to enforce their employment rights through the Employment Tribunal process. Our umbrella business employees currently have this recourse and we are of the view that they should retain these remedies (which all employees have). We also believe that enforcement of the new regulatory framework should continue to be delivered by the EASI body. We would also suggest that a positive additional element would be an arbitration service (along the lines of the ACAS model) also being provided, possibly by the EASI, in order to try to provide mediation and settlement services ahead of any formal action through the EASI process. Such an arbitration option could save significant time and cost on all sides, ensuring only valid, substantive claims need to use the formal process.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Individuals working directly for employment agencies (without full employment rights) should be given information to ensure they are fully aware of their rights.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

We strongly believe that rigorous enforcement of any and every regulatory framework is key to delivering industry compliance. We support openness and transparency in enforcement activity, including details of infringements and naming of persistent non compliant businesses.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No view/knowledge/comment to make on this question

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No view/knowledge/comment to make on this question

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Poolia UK Ltd

3. What organisation do you represent (if any)?

Poolia UK Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes, we have no objections to the outcomes above.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The legislation should seek to protect the vulnerable, without penalising highly-paid, highly-skilled professional business consultants who are not at risk of being exploited.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The current definition is misleading as it infers that that all employment agencies' clients must permanently employ candidates. In addition, we would recommend introducing a clearer distinction between companies providing supplementary services connected with the recruitment process, such as on-line job sites. These companies are not in a position to influence the employment decision between the end-user client, the staffing company and work-seeker. However, as they are involved in identifying suitable candidates for roles, there is potential for them to be considered 'employment agencies' under the scope of the current definition. We would suggest defining an employment agency as that which provides services for the purpose of identifying and placing suitable candidates into positions at end-user clients, where such clients employ or engage the candidates directly and candidates are not supplied by the employment agency directly as a principal.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

This question is not relevant to the business undertaken by Poolia.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

This ambiguity does not exist in our experience. Our contracts always make this clear.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Highly paid, highly skilled consultants should be able to enter into contracts that include penalties for termination. These clauses are necessary for clients to protect their investments, as projects could be jeopardised if consultants terminate the contract mid-way through.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. Any fees should be transparent and stated in contracts.

17. Do you think employment agencies and businesses should publish information about their business?

No

We do not believe the kind of information suggested in the consultation would be of much use to a contractor looking for his/her next assignment. In the professional sector, contractors usually source assignments from job board adverts, or via networking. The sort of information suggested in the consultation would not be accurate for any reasonable length of time, and would be of little benefit to contractors. Therefore, we believe requiring staffing companies to publish such information would only accomplish a league table of sorts, which could only be of benefit to larger more established companies, but would provide no advantage to work-seekers or clients.

18. What information do you think would be of most interest to:

N/A See above

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

See above

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

We are a member of APSCo and consider that their code of practice helps to maintain standards in the sector by providing a visible representation to market of best practice, which goes beyond that of legislated provisions, and which is enforced by APSCo.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade associations such as APSCo play an important role in driving up standards.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Transparent and proportionate enforcement creates a level playing field for all companies.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Employment tribunals are concerned with employment rights, and not with the conduct of recruitment companies.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Knowing about previous cases helps to improve practice. Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

We do not believe that the industry needs complicated and in-depth legal requirements on record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice by professional recruitment companies to keep such records, whether statutorily required or otherwise.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

a) From work-seekers: Recruitment businesses already ♣ Right to Work in UK confirmation ♣ ID documents ♣ CV ♣ collect the following: ♣ Contacts details ♣ Contracts ♣ Relevant phone/email logs ♣ PES check docs Company docs if ♣ Actual refs received,

no requirement to take out references Timesheets/invoices b) From hirers: Recruitment ♣
Opt outs ♣ applicable Relevant phone/email ♣ Contracts ♣ businesses already collect the
following: Comparable employee information ♣ Invoices/timesheets ♣ Contacts details
♣ logs if the work-seeker is within scope of the AWR c) other employment
agencies/employment businesses? Recruitment businesses already collect the Third
party Managed Service Provider our Recruitment Process ♣ following: Outsourcing
documentation.

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Jefferson Sales Consultancy Ltd

3. What organisation do you represent (if any)?

Jefferson Sales Consultancy Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

14 days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

No

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Institute of Recruiters

3. What organisation do you represent (if any)?

Institute of Recruiters

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

1. We support the aim of restrictions from charging fees to agency workers, an open and free route to finding employment is vital. 2. Clarity on who is responsible for paying agency workers protects those workers from exploitation, we support this outcome wholeheartedly. 3. A free employment market will help workers and employers, therefore we agree that agency workers should not be hindered from moving between jobs. 4. We agree that agency workers should have confidence to use the recruitment sector and must be able to assert their rights. Having said that, the route to achieve this is not so straight forward and will observe closely the government's willingness to take on board industry views.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Replacing existing confusing and fragmented regulation with a simple regulatory framework is a desired outcome that is good for the industry and those served by it. The majority of members were unclear as to why the regulations were fragmented in different acts, and how there were expected to understand all aspects of regulation. A framework that makes it easier to operate your business, while safeguarding workers rights is an outcome we all want to achieve from this consultation process. Naming and shaming bad practice by agencies and individuals is already happening with the EAS but without the resources behind it the program will have limited impact. What could work better is allowing professional bodies to implement government enforcement, allowing non profit bodies to pick up the slack in resources not available in a shrinking public sector.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

An open and free route to finding employment is vital. There is no evidence to indicate that this will provide a better solution to work seekers.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

N/A

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

It is already broad and can catch any contexts below its top line description.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

Not Applicable to IOR Members who do not charge fees to work seekers.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No

13. What do you think the cooling off period should be?

N/A

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Clarity on who is responsible for paying agency workers protects those workers from exploitation, we support this wholeheartedly although in general this is already dealt with by current legislation and contracts.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

A free employment market will help workers and employers, therefore we agree that agency workers should not be hindered from moving between jobs however further clarification around the terms of such a termination and wording is required to ensure there are no adverse effects to the employment agency.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

Where commercial matters affect these decision it is very difficult to treat all cases with any more detail, as this may cause more issues than it solves.

17. Do you think employment agencies and businesses should publish information about their business?

No

Members are clear that commercial information is too sensitive to publish and will create an anti competitive environment.

18. What information do you think would be of most interest to:

N/A - This would not benefit work seekers.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

Members are clear that commercial information is too sensitive to publish and will create an anti competitive environment.

20. If you answered yes, what information do you think it should be compulsory to publish?

N/A

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Without doubt standards enforced by professional bodies are vital, but at the same time there should be aligned to government standards with clear and defined routes of action in the event of poor standards and practice. Naming and shaming bad practice by agencies and individuals is already happening with the EAS but without the resources behind it the program will have limited impact. What could work better is allowing professional bodies to implement government enforcement, allowing non profit bodies to pick up the slack in resources not available in a shrinking public sector.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

CPD and qualifications which are standards based and consistent across all bodies.
Greater collaboration between professional bodies.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Standards cannot be upheld without a clear level of enforcement. Naming and shaming bad practice by agencies and individuals is already happening with the EAS but without the resources behind it the program will have limited impact. What could work better is allowing professional bodies to implement government enforcement, allowing non profit bodies to pick up the slack in resources not available in a shrinking public sector.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

In many cases the unclear regulations and lack of awareness is the reason for poor practice, not intent. Supporting people to better practice should be the main objective, with prosecutions a last resort.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

EAS should be the primary route within this recruitment sector, but other options which are relevant should also be open.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Basic understandable guidance issues by all stakeholders.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

It is important that there are clear consequences to persistent criminal acts, and work seekers should be able to research infringements against agencies and individuals who break the law.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Without clear auditing the act of enforcement becomes very difficult. Many areas of recruitment involve individuals relying on the professionalism of the industry and processes and audit trails will ensure standards can be managed and improved.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Information to ensure the safe supply of staff to companies, with all proper checks completed and that those checks are current and complete.

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Clive Hurst

3. What organisation do you represent (if any)?

Would be performers and models

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Trade union or staff association

Campaigner

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

No worker should ever pay any fee up-front, or pay for 'other services' - upfront. Government should start to understand that the only job for employment agencies/businesses, is to find work, for work-seekers. They have no other role to play. Neither should they imply that workers need to enhance their career prospects by paying 'other fees'. No work - no fee! That is the only way for work-seekers to have any confidence in the so called recruitment sector. Work-seekers can only assert their rights, if they actually knew what their rights were!

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Stop the daily exploitation of work-seekers in the modelling and acting sectors who pay fees, but get little or no work. Please see my full list of what I expect from new legislation, on this webpage: <http://www.thestage.co.uk/stagetalk/viewtopic.php?f=16&t=10587> I expect agency licensing. I expect the department of employment to make it illegal for an employer to use an agency - that was not licensed. I want the OFT to put in a cooling off period on any photography contract signed on a companies premises, if it is subject to finance. This would stop the most serious abuses of would be actors and models being charged up to £3,000 for worthless portfolios/websites. Applicants are unlikely to pay such huge amounts, out of their own pocket.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

WE have seen the grossly unfair exploitation of workers in the acting and modelling sectors, so who in their right mind, would want to see such exploitation in other areas of

employment. In 15 years the BIS EAS have failed to curb crooked employment operators. It is quite obvious that any extension to these 'scams' would only increase the number of victims, who can ill afford to be scammed... The word vulnerable, seems to disappear from BIS EAS Radar. It is too easy for rogue operators to trade, especially when we have a government department that will not deliver on their promises.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

It should also include companies who claim they are not an agency, but will help you kick-start your acting/modelling career, by charging for 'other services'. There has been a tremendous increase in companies using this 'business model'. Numbers will continue to increase!

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

I do not think cooling off periods have worked in the past. The only thing that will work, is a total ban on up-front fees and 'other fees'.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Workers deserve to know who is employing them. It is a basic right.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

Agents who offer jobs for specific hirers should publish who that hirer is and if they are working through an intermediary/another company, the details of that other company. A worker in the entertainments industry needs to know if a job is genuine or not. They need to be able to find out such information - easily.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

See 18

20. If you answered yes, what information do you think it should be compulsory to publish?

See 18

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

No! Trade associations only think about their members. They have no interest whatsoever in work-seekers, especially if it costs them money. Profit at almost any cost, is what drives business.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Regulations are the only thing that works, providing that a regime of fines were put in place. If there are no fines then there will be widespread none compliance. Why bother if there are no real penalties?

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

So far the government has done little or nothing to enforce such legislation, That has to change...

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

In the past this has been the only tool. This cannot continue. Hitting wrong-doers in their pocket (fines) is the only real answer.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Actors and models have little chance of doing this, especially since there are fees to be paid for this 'service', which may be higher than the amount in question.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The government spends little or no time making those in the entertainment and modelling sectors aware of their rights. Every agent should have a webpage devoted to BIS EAS Regulations. This is not rocket science!

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

'Section 9' has protected BIS EAS, it has protected crooked agents! What it has not done - is protect 'work-seekers! It is worthless 'section's especially since information gained has not led to prosecutions!

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Without records, how can you find out if the agency - is following such legislation?

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Hirers?

No agency should offer work that they do not have the hirers permission - to offer it. Therefore every single job should be recorded on file showing written proof from that hirer. Every hirer must keep a record of the date they were paid and must tell the worker at the earliest opportunity the date the money was received (not banked) and the date it was passed on to the worker. No agent should demand that a worker be paid later than 14 working days.

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Yes, I would like you to publish or release my response

2. Your name:

Rullion Group

3. What organisation do you represent (if any)?

Rullion Group

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Large business (over 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Yes we agree with the four outcomes above. In relation to who is responsible for paying temporary workers consideration needs to be given to contractors who are genuinely self employed and those that choose to work as employees of an intermediary.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company (both PSC & umbrella) contractors and the lower-paid temporary staffing sector. Limited company contractors are not at risk of exploitation like the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the professional end of the market with unnecessary regulation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

In its current guise, the definition of ‘employment agency’ has the potential to classify companies who provide supplementary services connected with the recruitment process as ‘employment agencies’. This is because they are involved in finding candidates for positions, however they do are not directly involved in the employment decision between

the end-user client, the staffing company and work-seeker. Further to this, the current definition implies that all employment agencies' clients must permanently employ candidates. We would suggest defining an employment agency as that which provides services for the purpose of finding and placing suitable individuals into positions at end-user clients, where such clients directly employ or engage them. These individuals are not supplied by the employment agency directly as a principal.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question is not relevant to the business undertaken by the Rullion Group

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

N/A

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

This ambiguity does not exist in our experience. Our contracts always make this clear.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

In the professional sector, there is a commercial, business to business contract in place between the recruitment firm and a limited company, and in such situations any termination should remain in line with the terms of the commercial agreement in place.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. Any fees should be transparent and stated in contracts.

17. Do you think employment agencies and businesses should publish information about their business?

No

A clear and transparent contract should provide all the information necessary, and any further information can be requested by the informed professionals entering into these business to business relationships. Our contractors come to us because we have the role that suits them best, they rarely pick an employment business on its own merits.

18. What information do you think would be of most interest to:

N/A

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

20. If you answered yes, what information do you think it should be compulsory to publish?

N/A

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

As a member of APSCo and REC we are committed to achieving best practice, and compliance is extremely important to us. We believe that all employment businesses should be members of a reputable trade association, as they can have an appreciable effect on professionalism within the industry.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade associations such as APSCo and the REC play an important role in driving up standards.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Transparent and proportionate enforcement creates a level playing field for all companies.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Employment tribunals are concerned with employment rights, and not with the conduct of recruitment companies.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

We do not believe that the industry needs complicated and in-depth legal requirements on record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice by professional recruitment companies to keep such records, whether statutorily required or otherwise.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

a) From work-seekers: Recruitment businesses already ♣ Right to Work in UK confirmation ♣ ID documents ♣ CV ♣ collect the following: ♣ Contacts details ♣ Contracts ♣ Relevant phone/email logs ♣ PES check docs Company docs if ♣ Actual refs received, no requirement to take out references Timesheets/invoices b) From hirers: Recruitment ♣

Opt outs ♣applicable Relevant phone/email♣ Contracts ♣businesses already collect the following: Comparable employee information♣ Invoices/timesheets ♣ Contacts details ♣logs if the work-seeker is within scope of the AWR c) other employment agencies/employment businesses? Recruitment businesses already collect the Third party Managed Service Provider our Recruitment Process♣following: Outsourcing documentation.

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Yes, I would like you to publish or release my response

2. Your name:

Human Capital Investment Group

3. What organisation do you represent (if any)?

Human Capital Investment Group

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Large business (over 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

1. Yes, the current legislation works well in this regard. 2. Yes. 3. No. The contracts that currently exist do not hinder movement. Temp to perm fees are currently negotiated in the contract between the parties at levels that are acceptable to both parties. There is no requirement for further legislation in this area. 4. The Recruitment Sector is a vibrant and successful sector as both work seekers and hirers enjoy confidence in the benefits this commercial relationship brings to both parties. There is no need for further legislation in this area.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

We believe that this is already a well regulated professional sector

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

We would not seek to charge our workseekers.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

We would like to see consistency in the definition used, which could be acheive by aligning with the definition in the recently introduced Agency Workers Regulations.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

N/A to our market as we do not charge work seekers

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Neither the current legislation nor this consultation, take account of the complex supply chain that exists in the recruitment sector with Managed Vendors, and Umbrella Companies, alongside employment businesses, when defining who is responsible for paying the temporary workers.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

The Regulation as it is currently written gives appropriate protection to work seekers.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

We do not believe that it is the role of government to decide what is a reasonable or legitimate fee between two parties. The transfers fees should be negotiated between the parties as part of the commercial contract between them.

17. Do you think employment agencies and businesses should publish information about their business?

No

This would add another layer of administration, with no obvious benefit. This is not a requirement placed on any other industry so it is difficult to understand why this would be a requirement for the recruitment sector. It is difficult to see what information could be accurately produced across such a diverse sector that would be useful and it would be extremely difficult/expensive to enforce or police.

18. What information do you think would be of most interest to:

N/A, see answer to previous question

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

This would add another layer of administration, with no obvious benefit. This is not a requirement placed on any other industry so it is difficult to understand why this would be a requirement for the recruitment sector. It is difficult to see what information could be accurately produced across such a diverse sector that would be useful and it would be extremely difficult/expensive to enforce or police.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

We have been involved in the creation of trade association codes of practice for this sector in the past and believe that they are an effective way of maintaining standards where they are designed to educate as well as police organisations. Procurement processes will often use membership of professional bodies as a selection criteria, primarily as this is an effective way for an organisation to demonstrate compliance.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

We believe that on the whole this is already a well regulated, professional sector that does not require any additional either regulatory, or non regulatory tools.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

We believe that on the whole this is already a well regulated, professional sector that does not require any additional either regulatory, or non regulatory tools. The current legislation is already effectively enforced.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

We believe that on the whole this is already a well regulated, professional sector that does not require any additional either regulatory, or non regulatory tools. The current legislation is already effectively enforced, however in case of extreme breaches of legislation it is right that prohibition orders exist.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Work seekers already have the right to enforce many rights at an Employment Tribunal or County Court. Providing for additional rights to be enforced in this way increases the “red tape” associated with this sector, contrary to the government’s stated intent, and increases the burden on an already stretched Employment Tribunal system.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

www.gov.uk already provides a great deal of information aimed specifically at work seekers and agency workers about how existing law applies to them. In addition employment agencies’/business provide additional information and advice on making the most of the services they provide.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

The Agency Workers Regulations has recently placed a significant record keeping burden on this sector. We already keep records to demonstrate compliance with the current regulatory requirement and further legislation in this area is unnecessary.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

The Agency Workers Regulations has recently placed a significant record keeping burden on this sector. We already keep records to demonstrate compliance with the current regulatory requirement and further legislation in this area is unnecessary.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

The Agency Workers Regulations has recently placed a significant record keeping burden on this sector. We already keep records to demonstrate compliance with the current regulatory requirement and further legislation in this area is unnecessary.

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Yes, I would like you to publish or release my response

2. Your name:

Childsplay Models LLP

3. What organisation do you represent (if any)?

Childsplay Models LLP

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

No

We are a child model agency and the promotional material we produce to represent the children on our books is very costly. If we are unable to recoup these costs we would be unable to trade.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

It is only fair that people be allowed a cooling off period.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

7 days. In the period since the law was changed we have not had one parent decide to

cancel their contract with us within the 30 day period. This is because we ask them to go away and think about the implications of joining our agency, so by the time they enrol with us they have made their mind up that joining us is right for them and their child. We have found that the 30 day period just restricts promotion of the models on our books.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

From the point of view of the child modelling industry it is always made clear to parents who it is that will be paying their child for any work undertaken. However, this can be one of several companies from production companies to advertising agencies and can actually change from the start to finish of a job.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

Yes

In the child modelling industry there is a lack of clarity and much misinformation about what is involved and fees charged. We feel it is only right that as much information be made to potential models as possible in order for them to make an informed decision about which agency to join.

18. What information do you think would be of most interest to:

Work-seekers

How an agency works, how an agency will represent their models, costs involved, terms and conditions. In our industry, hirers do not use our website for hiring. Communication is done via email or telephone, so there would be little benefit in putting information for hirers on our website.

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

This is the professional thing to do. As much information should be made available to parents as possible.

20. If you answered yes, what information do you think it should be compulsory to publish?

How an agency works, how an agency will represent their models, costs involved, terms and conditions.

21. Do you think trade association codes of practice help to maintain standards in the sector?

No

There are no trade associations in the child modelling sector.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

With regards to the Child Modelling industry in which Childsplay Models works, there are

many scams and people who either chose to ignore or are ignorant of the law. This was never an issue when child model agencies had to be licensed, which we were. Problems in our industry have only appeared since the licensing of model agencies was scrapped. It is our opinion that the licensing of agencies should be reinstated.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Syntax Consultancy

3. What organisation do you represent (if any)?

Syntax Consultancy

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Yes we agree with the four outcomes above

7. Are there any other outcomes that you think should be achieved by the new legislation?

The regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company contractors and the lower-paid temporary staffing sector. Limited company contractors are not at risk of exploitation like the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the professional end of the market with unnecessary regulation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The definition in its current form implies that all employment agencies' clients must permanently employ candidates. It is also not clear enough in recognising the distinction between actual 'employment agencies' and companies who offer supplementary services connected with the recruitment process. Although the business purpose of these sites and LinkedIn, is to find suitable candidates for positions they are not directly involved in the employment decision between the end-user client, the staffing company and work-seeker.

We would recommend defining an employment agency as that which provides services for the purpose of finding and placing suitable individuals into positions at end-user clients. These individuals are not supplied by the employment agency directly as a principal, and will be directly employed or engaged by the end-user client. Companies, such as internet job sites and LinkedIn, is to find suitable candidates for positions they are not directly involved in the employment decision between the end-user client, the staffing company and work-seeker. We would recommend defining an employment agency as that which provides services for the purpose of finding and placing suitable individuals into positions at end-user clients. These individuals are not supplied by the employment agency directly as a principal, and will be directly employed or engaged by the end-user client.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Syntax consultancy does not undertake the type of business that this suggestion is relevant to.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

It is important that in the business to business contract between a staffing company and a limited company contractor, that the staffing company has the right to withhold payment where the limited company is in breach of the contractual terms, or where no proof is provided of satisfactory services undertaken

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Highly paid, highly skilled consultants should be able to enter into contracts that include penalties for termination. These clauses are necessary for clients to protect their investments, as projects could be jeopardised if consultants terminate the contract mid-way through.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. Any fees should be transparent and stated in contracts.

17. Do you think employment agencies and businesses should publish information about their business?

No

We do not believe the kind of information suggested in the consultation would be of much use to a contractor looking for his/her next assignment. In the professional sector, contractors usually source assignments from job board adverts, or via networking. The sort

of information suggested in the consultation would not be accurate for any reasonable length of time, and would be of little benefit to contractors. Therefore, we believe requiring staffing companies to publish such information would only accomplish a league table of sorts, which could only be of benefit to larger more established companies, but would provide no advantage to work-seekers or clients.

18. What information do you think would be of most interest to:

N/A

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

see above

20. If you answered yes, what information do you think it should be compulsory to publish?

N/A

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

We are a member of APSCo and consider that their code of practice helps to maintain standards in the sector by providing a visible representation to market of best practice, which goes beyond that of legislated provisions, and which is enforced by APSCo.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade associations such as APSCo play an important role in driving up standards.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

If Government did not enforce legislation in the recruitment sector, non-compliant businesses would have an advantage over compliant, professional businesses.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

We are unconvinced that legislation set out to regulate the conduct of recruitment companies is an appropriate vehicle for workers to enforce their rights.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Knowing about previous cases helps to improve practice. Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

We do not believe that the industry needs complicated and in-depth legal requirements on record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice by professional recruitment companies to keep such records, whether statutorily required or otherwise.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

a) From work-seekers: Recruitment businesses already ♣ Right to Work in UK confirmation ♣ ID documents ♣ CV ♣ collect the following: ♣ Contacts details ♣ Contracts ♣ Relevant phone/email logs ♣ PES check docs ♣ Company docs if ♣ Actual refs received, no requirement to take out references ♣ Timesheets/invoices b) From hirers: Recruitment ♣ Opt outs ♣ applicable ♣ Relevant phone/email ♣ Contracts ♣ businesses already collect the following: ♣ Comparable employee information ♣ Invoices/timesheets ♣ Contacts details ♣ logs if the work-seeker is within scope of the AWR c) other employment agencies/employment businesses? Recruitment businesses already collect the Third party Managed Service Provider our Recruitment Process ♣ following: Outsourcing documentation.

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Flying With Geese Ltd

3. What organisation do you represent (if any)?

Flying with Geese Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Individual

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

If you believe in a free market economy then you need a free market for labour as well

7. Are there any other outcomes that you think should be achieved by the new legislation?

No

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

If you employ an agent to find you work then they should be rewarded if they are successful.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

The matter of 'choice' should always rest with the work seeker. It is difficult enough to find and then hold on to a job without have a third party getting in the way of the contractual relationship between employer and employed.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

Seven working days

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

It depends what is behind the question. If the aim of any amendment to the regulations is to ensure that only the employer can pay the employed then my answer is no. If on the other hand the purpose of this question is to genuinely clarify who the paying authority is at the start of a period of employment then the answer is yes.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

17. Do you think employment agencies and businesses should publish information about their business?

Yes

18. What information do you think would be of most interest to:

Work-seekers

The fees charged, how many people and in what categories they represent, how many people they successfully place in employments expressed as a percentage of those they represent

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No

24. Do you think that prohibition orders should be included in the new enforcement regime?

No

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Institute of Interim Management

3. What organisation do you represent (if any)?

Institute of Interim Management (IIM)

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

We agree in principle with the four outcomes listed.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Any new legislation must ensure that there is an opportunity for Interim Managers to place themselves outside the scope of the new regulatory framework. One of the key aspects of the present Conduct Regulations for the Institute is the 'opt-out' available to incorporated workers set out in Regulation 32(9), and our support for this dates back to the time when the Regulations were being drafted some 11 years ago. At the time, the Institute of Interim Management recognised that, as Interim Managers are senior executives who do not work under the day to day supervision of their clients, they do not seek or need the protections mandated by the Regulations, aspects of which were inappropriate to the way Interim Managers contract and work with their clients. We therefore met with officials from the Department of Trade & Industry to ask what might be done to ensure that Interim Managers could fall outside the scope of the Regulations, and were subsequently very pleased to see the inclusion of the wording in Regulation 32(9). Ever since the Regulations came into effect, it has always been the Institute's position that, on balance, the opt-out acts to the benefit of Interim Managers, and it is our recommendation to Institute of Interim Management members who are incorporated workers that in normal circumstances they should sign to opt-out when sourcing assignments through employment businesses. We also reiterated that support in our response to the Department for Business Enterprise & Regulatory Reform when it issued a consultation paper in 2009 to review the operation of the Conduct Regulations. Section 13(3) Employment Agencies Act 1973 defines an Employment Business as "...the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control

of, other persons in any capacity.” Given this definition, when a Provider as an employment business supplies an Interim Manager to work at a client, theoretically such supply should be outside the scope of the Conduct Regulations, because Interim Managers working on a self-employed basis are not under the control of the client. However, the degree of control can be a matter for debate and consideration by the courts, so the opt-out in Regulation 32(9) is used to put the Interim Managers outside scope, and means the non-application of the Regulations is beyond doubt. Regulation 32 taken as a whole serves two purposes: • It brings incorporated workers within the scope of the Conduct Regulations • In paragraph 9, it provides incorporated workers the opportunity to opt-out of scope, subject to certain conditions. As should be evident from the description earlier as to how Interim Managers operate, most Interim Managers are incorporated workers within the meaning of Regulation 32. However, it is essential nevertheless to recognise that the terms ‘employee’ and ‘worker’ are not interchangeable. Despite being workers, Interim Managers are not employees of either the end user client or of any employment business which might place them with a client. Thus they want to be free to negotiate terms with clients and employment businesses on a business-to-business basis, not an employment basis, and do not wish contractual terms such as are found in Regulation 15, to be imposed by regulation where there is no place for them (because they are terms applicable to an employment contract) or they are being imposed too early in the process. To look at a few such terms from Regulation 15 in detail: • Paragraph (b) (and also Regulation 12): the employment business will pay in the event that the client does not. Interim Managers, whether incorporated or not, are self-employed, and accept the risk of non-payment as a normal commercial risk or entrepreneurship. Indeed, the acceptance of financial risk is one of the determining factors in setting their tax status as self-employed, and it should not be removed by regulation • Paragraph (d): rate of remuneration. Because under Regulation 14 this term has to be agreed before the employment business provides work finding services, the Interim Manager has no opportunity to influence the rate of remuneration based on his/her assessment of the complexity or difficulty of the assignment which is eventually found, and may therefore find that the remuneration level is set a rate which is too low having regard to the nature of the task • Paragraph (e): frequency of payment of remuneration. Interim Managers are often required to work at clients which are in a parlous financial situation. They may therefore require payment at shorter intervals to reduce exposure, or indeed, payment in advance. As in the previous bullet, this assessment cannot be made by the Interim Manager before the employment business provides work finding services and has identified a client • Paragraph (f): holiday entitlement and pay. This has no place in a commercial contract. In May 2006, the International Labour Organisation made a Recommendation (Recommendation R198, 95th Session of the Conference) on employment relationships. The most important clause is Clause 8: “National policy for protection of workers in an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due.” The freedom to negotiate and agree contractual terms is of particular importance given that Interim Managers find only a third of their work through employment businesses – it would be unfortunate if they had to adopt different contractual relationships when dealing with employment businesses and when dealing direct with clients. Without the opt-out, problems also arise under Regulation 19, because the employment business cannot introduce the Interim Manager to the client unless the Interim Manager agrees in advance that he/she is willing to undertake the role on offer. As will be appreciated, Interim Managers operate at a senior level in their clients, and success in a role is achieved as much by the ‘personal chemistry’ working between Interim Manager and client, as by the Interim Managers experience, qualifications and skill. In addition, it is often the case that

the role as described by the client will need to be redefined once the Interim Manager has had the opportunity to review what the client's problems are and the solution needed. The Interim Managers therefore needs the opportunity to meet the client before confirming willingness to undertake the role, which Regulation 19 prohibits, save for the opt-out. Furthermore, the Providers in the Interim Management sector each maintain a 'candidate' database of potential Interim Managers, and any one database may include several thousand; but as an employment business may only fulfil a few hundred roles at most in a year, the numbers of candidates far exceed need. A driving factor leading to these large databases is that Interim Managers of course wish to maximize their opportunity to be considered for assignments, and will therefore register with a number of relevant employment businesses in parallel. The opt-out therefore only requires employment businesses and Interim Managers to agree terms when there is an identified client and role. Without it, Regulation 14 would require employment businesses to agree terms with every Interim Manager on their candidate databases, even if there were no prospect of work arising. An unnecessary time consuming and costly administrative burden. The Conduct Regulations also impose a significant data gathering requirement on employment businesses, both in terms of data sought from the client (Regulation 18) and data sought from the Interim Manager (Regulation 19). But for the opt-out, the need to collect this data in advance would significantly slow down the recruitment process, thereby having a negative impact on speed of response – one of the qualities most highly valued by clients which use Interim Managers. The opt-out is therefore certainly needed in relation to the current Conduct Regulations. We would be seriously concerned if no equivalent provision were to be in the new legislation and the effect was to bring within scope Interim Managers who have previously been outside. This would also not be in keeping with the Red Tape Challenge.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Question not particularly applicable to Interim Managers, but no, fees would simply not work.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

N/A

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The definition was framed before the invention of the internet, and its wording may bring within scope internet job noticeboards and other websites where jobs are posted, such as LinkedIn. We believe that the posting of jobs in this way does not constitute the activity of an employment agency, and the definition should be updated to exclude such internet jobsites where the posting of jobs is purely an ancillary activity.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Question not applicable to Interim Managers

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

Question not applicable to Interim Managers

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

When an Interim Manager is appointed through a Provider to a client, there are two alternative contractual models: • Client><Provider><Interim Manager • Client><Provider and, separately, Client><Interim Manager Whichever model is used, we do not believe that in practice there is any confusion about who is responsible for paying the Interim Managers, and that, if an opt-out exists to take Interim Managers outside scope, there should be no need for legislation anyway. However, in the absence of an opt-out and where the Provider is responsible for payment, there should be a requirement for a contract dealing with payment terms. Such a contract should include a clear definition of the services to be performed by the Interim Manager, and specifying the circumstances in which payment can be withheld by the Provider. The current Conduct Regulations require the contract to be in place before the Provider supplies CVs to the client, but this is unrealistic. The requirement should be at the time the assignment commences.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Question not applicable to Interim Managers

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Question not applicable to Interim Managers

17. Do you think employment agencies and businesses should publish information about their business?

Question not applicable to Interim Managers

18. What information do you think would be of most interest to:

Question not applicable to Interim Managers

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Question not applicable to Interim Managers

20. If you answered yes, what information do you think it should be compulsory to publish?

Question not applicable to Interim Managers

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Codes of practice can help to raise standards. Any code of practice needs to be reinforced by a vetting procedure on entry to the association, and by a disciplinary process if standards are not adhered to. A problem of course with any code of practice is that not all businesses which could and ought to be members of an association are in fact members.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Question not applicable to Interim Managers

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Question not applicable to Interim Managers

24. Do you think that prohibition orders should be included in the new enforcement regime?

Question not applicable to Interim Managers

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

The answer is YES for employees but NO for Interim Managers. If an opt-out is available under the new legislation, the likelihood is that Interim Managers will have exercised it, so will be outside scope and have no rights to enforce under the legislation. For those Interim Managers who are within scope, either because they have chosen not to exercise the opt-out, or because there is no opt-out available, it remains the case that Interim Managers operate on a company law business-to-business basis. An employment tribunal is an inappropriate forum for Interim Managers to use to enforce their rights.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Question not applicable to Interim Managers

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Publication of findings can act as both a deterrent and an educational tool to others. However, it is for consideration that trading names should only be published in cases of gross infringements.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Question not applicable to Interim Managers

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Question not applicable to Interim Managers

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Gravitas Recruitment Group

3. What organisation do you represent (if any)?

Gravitas Recruitment Group

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Yes, these outcomes are reasonable and appropriate for blue collar and high street sectors. White collar workers are different. Genuine Limited Company Contractors should be dealt with separately.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company (both PSC & umbrella) contractors and the lower-paid temporary staffing sector. Limited company contractors are not at risk of exploitation like the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the professional end of the market with unnecessary regulation. We would like to see a clear distinction in the new regulatory framework between highly-paid, highly-skilled professional business consultants providing their services through limited companies to end-user clients who do not have day to day supervision, direction or control over the method by which they provide the required service, and lower-paid, often unskilled and vulnerable individuals who work under the supervision, direction, and control of the end-user client. We would like to put forward for consideration the proposal that all limited company contractors (whether working through a personal service company or an umbrella company) are automatically considered outside of the scope of the new regulatory framework, because there is a genuine business to business relationship between the parties, rather than a relationship similar to that of employer and employee. The highly-paid individuals (known in the industry as "limited company contractors"), which our employees generally place are business consultants either running their own personal service companies or for convenience working through umbrella companies, and use recruitment firms only as a conduit to the end-user client. These are not the "work-seekers"

that the Government aims to protect. The vast majority of limited company contractors neither want nor need the protections afforded by the current Conduct Regulations, which is borne out by the number that opt out via Regulation 32. We currently have 98 contractors out on assignment, only 2 of them are 'opt-in.' There is already precedent in UK legislation regarding this issue. The Agency Workers Regulations (“AWR”) acknowledge the professional, self-employed nature of consultants engaged in business to business relationships with staffing companies and end-user clients, and allow such individuals to be considered outside of the scope of those regulations. Unfortunately, the AWR made a differentiation between the type of limited company through which a contractor provides its services, forcing all umbrella company contractors to be within scope. We do not believe that the differentiation between umbrella companies and personal service companies is relevant – what is relevant is the genuine business to business relationship. It is also important to recognise that the different treatment within the AWR of those working through umbrellas to those working through PSCs did have a detrimental effect on the umbrella industry, as many professional business consultants moved into PSC models instead. We appreciate the need for safeguards to prevent unscrupulous firms, with lower standards, from using limited companies (either PSCs or umbrellas) simply to avoid complying with legislation. We have considered this issue in depth and we propose some safeguards: 1. To ensure that only those individuals who are truly business consultants, and not vulnerable workers be considered outside of scope, one option may be a pay rate (i.e. the gross amount paid to the limited company by the employment business) threshold under which limited company contractors would automatically be considered within scope of the regulations. Precedent for this exists in the Treasury’s review of the tax arrangements of public sector appointees in May 2012, which set a precedent regarding the threshold of what might be considered a senior, and highly-paid individual. 2. We would propose that all limited company contractors have the right to avail themselves of the rights and protections contained within the new regulations if they wish, by way of an opt in process. This opt in would be similar in operation to the current opt out of the Conduct Regulations, but the mechanics would be simplified to avoid the problems inherent in the current system. The current opt-out system is fraught with difficulties. It has never been clear at what point an opt-out notice must be obtained in order for it to be valid: before the assignment commences, or before the CV is even submitted to the client. Also, due to the nature of contract recruitment, it is very often the case that a client will want a contractor to start the assignment before all the necessary paperwork is executed between the contractor, the company supplying the contractor, and the employment business. Unlike in the lower-paid temporary staffing sector, where a work-seeker would normally go into a “high street” branch office of the staffing company, and provide all the required documentation before being accepted onto the company’s books, in the professional sector communication is usually by telephone and email, under extreme pressure of time. Professional contractors are often working away from home, and it’s not uncommon for the recruitment process, from CV sent to start date to take no longer than a day or so. As a result, it is inevitable that many contractors – who have willingly opted out of the conduct regulations – are actually legally within the regulations because neither they, nor the company supplying the contractor get the opt-out notice executed in time before the assignment commences. For recruitment firms, having to gain opt out forms from limited company contractors who opt out as a matter of course, adds a layer of unnecessary and burdensome administration to the recruitment process. Having instead an automatic opt out for only these highly-paid, highly-skilled business professionals in business to business relationships will ease the regulatory burden upon the professional staffing industry, and allow the Government to focus the legislation on those more vulnerable work-seekers who require protection.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

In its current guise, the definition of ‘employment agency’ has the potential to classify companies who provide supplementary services connected with the recruitment process as ‘employment agencies’. This is because they are involved in finding candidates for positions, however they do are not directly involved in the employment decision between the end-user client, the staffing company and work-seeker. Further to this, the current definition implies that all employment agencies’ clients must permanently employ candidates. We would suggest defining an employment agency as that which provides services for the purpose of finding and placing suitable individuals into positions at end-user clients, where such clients directly employ or engage them. These individuals are not supplied by the employment agency directly as a principal.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question is not relevant to the business undertaken by Gravitas Recruitment Group Limited

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

We do not believe that ambiguity exists within the professional staffing sector regarding who is responsible for paying the temporary worker is common within the professional staffing sector. This is because payment provisions and responsibilities are made clear in the contract between the staffing company and the limited company contractor, and generally speaking experienced limited company contractors are very familiar with their modus operandi. We agree that a statutory obligation for a contract to exist between the parties that clearly sets out payment terms and conditions is necessary, including for business to business relationships. However, the requirement for such a contract should be at the point the assignment is agreed, not before the staffing company provides CVs, as is currently the case. We would not wish to see any new legal fetters imposed upon what payment terms can be agreed between the employment business and limited company contractor. It is important that in the business to business contract between a staffing company and a limited company (PSC & umbrella) contractor, that the staffing company has the right to withhold payment where the limited company is in breach of the contractual terms, or where no proof is provided of satisfactory services undertaken

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Limited company contractors with rare/niche skills cannot be simply swapped in and out. A project could be damaged if a limited company contractor was to walk off site because he had a better paid job elsewhere to start immediately. For this reason, it is essential that the right to termination must be in line with the commercial requirements of the client.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. Any fees should be transparent and stated in contracts.

17. Do you think employment agencies and businesses should publish information about their business?

No

We do not believe the kind of information suggested in the consultation would be of much use to a contractor looking for his/her next assignment. In the professional sector, contractors usually source assignments from job board adverts, or via networking. The sort of information suggested in the consultation would not be accurate for any reasonable length of time, and would be of little benefit to contractors. Therefore, we believe requiring staffing companies to publish such information would only accomplish a league table of sorts, which could only be of benefit to larger more established companies, but would provide no advantage to work-seekers or clients.

18. What information do you think would be of most interest to:

N/A

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

We consider that compulsory publication of information will place an additional administrative burden on businesses, in particular smaller businesses and this seems to run counter to the intention of the government to reduce red tape. In addition it may serve as a barrier to entry to new businesses thereby reducing the level of competition in the market. We genuinely do not believe that publishing what would in effect be a league table of information would be useful to work-seekers or end-user clients, but would undoubtedly be detrimental to smaller, and less established recruitment firms.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

As members of APSCo, we believe that working with trade associations should be the way forward if there is a drive towards transparency. There are many ways in which trade bodies can help and encourage their members to increase their levels of professionalism. APSCo members are subject to a strict vetting process and are committed to maintaining high standards of practice.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade associations such as APSCo play an important role in driving up standards.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

Transparent and proportionate enforcement creates a level playing field for all companies.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Employment tribunals are concerned with employment rights, and not with the conduct of recruitment companies.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Knowing about previous cases helps to improve practice. Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

Standards of record keeping in the industry are already excellent.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

a) From work-seekers: Recruitment businesses already ♣ Right to Work in UK confirmation ♣ ID documents ♣ CV ♣ collect the following: ♣ Contacts details ♣ Contracts ♣ Relevant phone/email logs ♣ PES check docs ♣ Company docs if ♣ Actual refs received, no requirement to take out references ♣ Timesheets/invoices b) From hirers: Recruitment ♣ Opt outs ♣ applicable ♣ Relevant phone/email ♣ Contracts ♣ businesses already collect the following: ♣ Comparable employee information ♣ Invoices/timesheets ♣ Contacts details ♣ logs if the work-seeker is within scope of the AWR c) other employment agencies/employment businesses? Recruitment businesses already collect the Third party Managed Service Provider our Recruitment Process ♣ following: Outsourcing documentation.

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

GCS Recruitment Specialists Ltd

3. What organisation do you represent (if any)?

GCS Recruitment Specialists Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Medium business (50 to 250 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

We have no objections to the outcomes above.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The framework should be designed to properly reflect the differences between highly-paid, highly-skilled Limited Company contractors and lower-paid temporary staff. Limited company contractors are NOT at risk of exploitation - unlike the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the Professional end of the market with unnecessary regulation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The current definition implies that all employment agency clients must permanently employ candidates. It is also not clear enough in recognising the distinction between actual ‘employment agencies’ and companies who offer supplementary services connected with the recruitment process. We recommend defining an employment agency as that which provides services for the purpose of finding and placing suitable individuals into positions at end-user clients. These individuals are not supplied by the employment agency directly

as a principal, and will be directly employed or engaged by the end-user client.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

This suggestion does not apply to the work carried out by GCS

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

It is important that in "business to business" contracts (between a staffing company and a Limited Company contractor) that the staffing company has the right to withhold payment where the Limited Company is in breach of the contractual terms, or where no proof is provided of satisfactory services undertaken.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Highly paid, highly skilled consultants should be able to enter into contracts that include penalties for termination. These clauses are necessary for clients to protect their investments, as projects could be jeopardised if consultants terminate the contract mid-way through.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. We ensure that our fees are transparent and stated in our contracts.

17. Do you think employment agencies and businesses should publish information about their business?

No

We do not believe that publishing the sort of information would have any positive effect on the levels of professionalism. We would be extremely cautious about requiring transparency of commercial data in the public domain.

18. What information do you think would be of most interest to:

Not applicable - see response above

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

No - see response above. Also, information is published on our website.

20. If you answered yes, what information do you think it should be compulsory to publish?

Not applicable

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

We are a member of the Association of professional Staffing Companies (APSCo) and consider that their code of practice helps to maintain standards in the sector by providing a visible representation to market of best practice, which goes beyond that of legislated provisions, and which is enforced by APSCo.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

If clear and transparent contracts are required for "business to business" relationships, market forces will ensure that the informed professionals entering in to these relationships are well served.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

If Government did not enforce legislation in the recruitment sector, non-compliant businesses would have an advantage over compliant, professional businesses.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Bad recruitment companies that give the industry a bad name.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

Employment tribunals are concerned with employment rights, not with the conduct of recruitment companies.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their website.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

Publishing company names would not be helpful.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

Standards of record keeping in the industry are already excellent.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Recruitment businesses already collect the Relevant ♣ Eligibility to Work in the UK ♣ ID documents ♣ CV ♣ following: ♣ References ♣ Contact details ♣ Contractual documentation ♣ phone/email logs Timesheets/invoices b) From hirers: Recruitment businesses already ♣ Opt outs ♣ Relevant phone/email logs ♣ Contractual paperwork ♣ collect the following: Comparable employee information if the ♣ Invoices/timesheets ♣ Contacts details work-seeker is within scope of the AWR

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Think IT Recruitment Ltd

3. What organisation do you represent (if any)?

Think IT Recruitment Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Small business (10 to 49 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Yes, these outcomes are reasonable especially for for blue collar and high street sectors, maybe less so for high level professionals, eg IT / Finance contractors

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company (both PSC & umbrella) contractors and the lower-paid temporary staffing sector. Limited company contractors are not at risk of exploitation like the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the professional end of the market with unnecessary regulation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The current definition is misleading as it infers that that all employment agencies' clients must permanently employ candidates. In addition, we would recommend introducing a clearer distinction between companies providing supplementary services connected with the recruitment process, such as on-line job sites. These companies are not in a position to influence the employment decision between the end-user client, the staffing company

and work-seeker. However, as they are involved in identifying suitable candidates for roles, there is potential for them to be considered 'employment agencies' under the scope of the current definition. We would suggest defining an employment agency as that which provides services for the purpose of identifying and placing suitable candidates into positions at end-user clients, where such clients employ or engage the candidates directly and candidates are not supplied by the employment agency directly as a principal.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question is not relevant to the business undertaken by Think IT REcruitment so I cant really answer it

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

This question is not relevant to the business undertaken by Think IT REcruitment so I cant really answer it

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

This question is not relevant to the business undertaken by Think IT REcruitment so I cant really answer it

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

It is important that in the business to business contract between a staffing company and a limited company (PSC & umbrella) contractor, that the staffing company has the right to withhold payment where the limited company is in breach of the contractual terms, or where no proof is provided of satisfactory services undertaken

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. Any fees should be transparent and stated in contracts.

17. Do you think employment agencies and businesses should publish information about their business?

No

We do not believe that publishing the sort of information the consultation suggests would have any positive effect on the levels of professionalism. We would be extremely cautious about requiring transparency of commercial data in the public domain and we're particularly concerned about the detrimental effect this would have on start ups and SMEs.

18. What information do you think would be of most interest to:

No-one apart from the civil servants who came up with this completely ridiculous, Labour/Blairite inspired target based, time wasting idea

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

NO, 100% NO - see above

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

As members of APSCo, we believe that working with trade associations should be the way forward if there is a drive towards transparency. There are many ways in which trade bodies can help and encourage their members to increase their levels of professionalism. APSCo members are subject to a strict vetting process and are committed to maintaining high standards of practice.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

If clear and transparent contracts are required for business to business relationships, market forces will ensure that the informed professionals entering in to these relationships are well served.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

If Government did not enforce legislation in the recruitment sector, non-compliant businesses would have an advantage over compliant, professional businesses.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

We believe that enforcement of such regulations should be conducted by EAS inspectors who have the real-world sense to dispense justice and appropriate sanctions in a considered and even-handed manner.

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

A Government website with information for temporary workers would be helpful.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

Publishing company names would not be helpful. I do agree somewhat with publishing information but a small infringement could cause a bad name later on for a company when the situation has been dealt with and processes changed for the better.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

We do not believe that the industry needs complicated and in-depth legal requirements on

record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice by professional recruitment companies to keep such records, whether statutorily required or otherwise.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Other employment agencies/employment businesses?

Recruitment businesses already collect the PES check ♣ Right to Work in UK confirmation ♣ ID documents ♣ CV ♣ following: Actual refs ♣ Contacts details ♣ Contracts ♣ Relevant phone/email logs ♣ docs ♣ Company docs if applicable ♣ received, no requirement to take out references Timesheets/invoices b) From hirers: Recruitment businesses already ♣ Opt outs ♣ Contacts ♣ Relevant phone/email logs ♣ Contracts ♣ collect the following: Comparable employee information if the ♣ Invoices/timesheets ♣ details work-seeker is within scope of the AWR c) other employment agencies/employment Third party ♣ businesses? Recruitment businesses already collect the following: Managed Service Provider our Recruitment Process Outsourcing documentation.

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Yes, I would like you to publish or release my response

2. Your name:

Asgard Promotions Ltd

3. What organisation do you represent (if any)?

Asgard Promotions Ltd

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

We agree with the submission made by the Agents Association.

7. Are there any other outcomes that you think should be achieved by the new legislation?

No Response

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No Response

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No Response

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No Response

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No Response

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No Response

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No Response

17. Do you think employment agencies and businesses should publish information about their business?

No Response

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

No Response

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

No Response

24. Do you think that prohibition orders should be included in the new enforcement regime?

No Response

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No Response

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

No Response

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No Response

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No Response

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

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Yes, I would like you to publish or release my response

2. Your name:

Healthcare Locums plc

3. What organisation do you represent (if any)?

Healthcare Locums plc

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Large business (over 250 staff)

Legal representative

Micro business (up to 9 staff)

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

The regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company (both PSC & umbrella) contractors and the lower-paid temporary staffing sector. Limited company contractors are not at risk of exploitation like the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the professional end of the market with unnecessary regulation.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

No Response

10. Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

In its current guise, the definition of ‘employment agency’ has the potential to classify companies who provide supplementary services connected with the recruitment process as ‘employment agencies’. This is because they are involved in finding candidates for positions, however they do are not directly involved in the employment decision between

the end-user client, the staffing company and work-seeker. Further to this, the current definition implies that all employment agencies' clients must permanently employ candidates

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

No

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

No Response

13. What do you think the cooling off period should be?

No Response

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Contracts should make this clear, but pay when paid clauses should be prohibited for PAYE temps, where they work under the supervision and direction of the end-user client

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

Highly paid, highly skilled consultants should be able to enter into contracts that include penalties for termination. These clauses are necessary for clients to protect their investments, as projects could be jeopardised if consultants terminate the contract mid-way through

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. Any fees should be transparent and stated in contracts.

17. Do you think employment agencies and businesses should publish information about their business?

Yes

Publishing the sort of information the consultation suggests would have a positive effect on the levels of professionalism.

18. What information do you think would be of most interest to:

No Response

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No Response

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

Compliance is extremely important to us. We believe that all employment businesses should be members of a reputable trade association, as they can have an appreciable effect on professionalism within the industry.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Trade associations such as REC play an important role in driving up standards.

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

If Government did not enforce legislation in the recruitment sector, non-compliant businesses would have an advantage over compliant, professional businesses. Also, legislation that is not enforced would carry little weight.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

Bad recruitment companies give the industry a poor reputation. Prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

Knowing about previous cases helps to improve practice. Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

We do not believe that the industry needs complicated and in-depth legal requirements on record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice by professional recruitment companies to keep such records, whether statutorily required or otherwise.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

No Response

1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

2. Your name:

Direct Employers Association

3. What organisation do you represent (if any)?

Direct Employers Association

4. E-mail address:

5. Please tick the boxes below that best describe you as a respondent to this consultation on implementing employee owner status

Business representative organisation/trade body

6. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation - outcomes are listed below: • Employment businesses and employment agencies are restricted from charging fees to work-seekers • There is clarity on who is responsible for paying temporary workers for the work they have done • The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable • Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

Legislation should be in place primarily to protect workers and work-seekers from unscrupulous practices. At the same time, it should ensure that the end hiring organisation is protected from unscrupulous practices from employment intermediaries.

7. Are there any other outcomes that you think should be achieved by the new legislation?

Yes

Clarity on the schemes that employment businesses can use with temporary labour forces. The recruitment industry should be able to work within legislation that is not onerous but that does have protections in place for intermediaries as well as the workers.

8. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Agencies should not be charging work-seekers fees as the agency is paid by the employer. However, it is acceptable for agencies to charge for associated services as long as those services are not mandatory.

9. If you answered yes to question 7, in what circumstances do you think agencies should be able to charge fees?

We assume that this actually refers to Question 8.

10. Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

"...whether by the provision of information or otherwise..." This clause does not necessarily meet the current internet based information and publishing services such as job boards, social media sites and company career pages. The providing of information in this manner

was not possible when the act was originally created. In our opinion, the providing of information about job possibilities is not engaging in employment agency or employment business activities and should be exempt from any employment legislation.

11. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

A cooling off period for fee based work is sensible. However, 30 days seems excessive and possibly onerous on the employment business and the employer.

12. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

13. What do you think the cooling off period should be?

We assume that this actually refers to the answer to question 11 and 12. Maximum of 7 days cooling off period, from the acceptance of the role.

14. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

Employment businesses should be required to agree terms relating to pay with work-seekers, including rate of pay and clarification on how and when the work-seeker will be paid and who is responsible for paying them. Normally, this should be the 'engaging' employment business, unless otherwise agreed by contract.

15. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

Current wording protects the work-seeker and employee from unfair penalties It also protects the employment agency and/or employment business for potential loss or damages if the worker does not perform the contracted for duties.

16. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

Setting of a transfer fee amount is a commercial decision that should be agreed between the employment business and the hiring organisation. 'Unreasonable fee' is a difficult concept to determine or enforce by law. Industry trade associations should be encouraged to set 'best practices' guidelines on relevant fees. This section also refers to potential Terms of Notice period of 8 weeks after the end of the assignment period or 14 weeks from the commencement of the assignment. Again, this is a term that should be established between the employment agency and the hiring organisation, not by statute.

17. Do you think employment agencies and businesses should publish information about their business?

Yes

Although we think it is 'best practice' for employment agencies and businesses to publish information about their businesses, it should not be mandatory by statute.

18. What information do you think would be of most interest to:

Hirers

Work-seekers and Hirers both: Type of industry specialisations Size of the business Client lists References Financial stability of the business, if a publicly traded business Number of jobs available Number of work-seekers available (not relevant to search firms) Equality policies

19. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

Although we think it is 'best practice' for employment agencies and businesses to publish information about their businesses, it should not be mandatory by statute. This type of legislation would over ride the rights to privacy of privately held businesses.

20. If you answered yes, what information do you think it should be compulsory to publish?

No Response

21. Do you think trade association codes of practice help to maintain standards in the sector?

Yes

As a trade association, we believe firmly that establishing Codes of Practice encourage hiring organisations and employment agencies/businesses to operate at the highest level. Best practice standards can be shared across the employment sector, improving professionalism of recruiters. High quality, strategically focussed trade association representatives are the crucial link between Government and industry and have a key role to play in the drive towards economic growth. We work to educate our members on technology, sourcing channels, skills analysis, innovation in process and communications, KPIs such as Return on Investment. This will lead to developing standards for professionalisation of the recruitment function.

22. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

No Response

23. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

In order for any legislation to have teeth, it must be enforced. The EAS seems to be the right body of government to manage this enforcement.

24. Do you think that prohibition orders should be included in the new enforcement regime?

Yes

The prohibition orders are necessary to ensure that owner/operators of employment businesses are fit and able.

25. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

26. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Individuals should be provided with an outline of their rights under employment legislation and how they might enforce them. This outline could be developed in conjunction with trade associations to ensure it is provided in language that is easy to understand and that ensures all parties have a clear understanding of obligations and enforcement channels.

27. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

With a large proviso: Only after confirmation that an investigation has been completed and charges/enforcement actions have been implemented. Many employment businesses are small enterprises that could be adversely affected if findings were published that had not yet been proven. Another method might be for Government to create a directory of investigations that employers could access for information on employment agencies/businesses. Access to this directory could be restricted in scope, based on investigative status as determined by the EAS and Freedom of Information statutes.

28. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

If employment agencies and employment businesses do not keep records of compliance, then how would government know whether the business is compliant.

29. What records do you think employment agencies and employment businesses should be required to keep relating to:

Work-seekers?

Work seekers CV/Application forms and details, but note that this is already subject to the Data Protection Act. Details of roles applied for and status of those applications
Contracts with employment businesses
Hirers Minimal data from the hiring organisation
Contact information
Contracts with employment agencies/businesses, whether for permanent or temporary employment
All correspondence relating to the employment process
Billing and payment details
Other employment agencies/employment businesses
Contact information
Contracts with employment agencies/businesses, whether for permanent or temporary employment
All correspondence relating to the employment process
Billing and payment details

David Mason

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: David Mason

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

Agency workers should be protected from the unscrupulous agencies. The introduction of the AWR does not do this and is a total waste of time and effort. However, my concern is that some workers will not feel that they are able to assert their rights due to language or cost implications.

I am certain that changes to the regulations will not improve growth through labour market flexibility, reduce burdens on business and give employers the confidence to take more people on.

I disagree that the regulations are costly to any party involved. The only time that costs are incurred is when changes to the regulations are introduced without guidance to back them up.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

Employment agencies and employment businesses should be made aware of sanctions that could be used if they fail to comply with the regulations.

Employment agencies and employment businesses should be registered or licenced.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

Why only ask about the definition of employment agency? What about the definition of employment business? Legal documents need to lengthy to ensure that any holes are filled in. All this really needs to include is the fact that employment agencies put people in permanent positions and businesses make temporary placements – which may, or may not, lead to a permanent placement.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

This would ensure that work-seekers are not put under the ‘hard sell’ from certain types of agencies.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

28 days

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

Problems with paying a temporary worker can be caused by the business using a payroll function or ‘umbrella company’. More often than not the ‘umbrella company’ will issue its own set of terms to the worker.

If a payment is not received, then the agency will blame the umbrella company and vice versa.

In fact, I believe that payroll functions and umbrella companies should be included in the Act and Regulations.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

It is useful to a point

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

Work-seeker

- That the agency/business is registered/licenced with the relevant authorities.
- How to complain and to whom

Hirers

- That the agency/business is registered/licenced with the relevant authorities.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

It will help decide which agency/business to join or do business with

c) If you answered yes, what information do you think it should be compulsory to publish?

Details of registration / licences
Membership of associations
The sectors operated in
Details of associated businesses

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

There are far too many questions raised in this question to give a definitive answer. Codes of practice are only any good if everyone signs up to them. There are far too many rogue agencies out there to make this a viable option. This would only be of use if it were compulsory!

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

NONE

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Not only enforce it, but more powers should be given to those who do enforce it - such as fines and licencing.
Codes of practice in industry have not worked – just look at the press.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

Directors and or owners of employment agencies and businesses should be made aware of the ramifications that they face in failing to comply.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

Not all work-seekers have the wherewithal to do this. Some will be out of the UK, some will have language barriers and some just scared.
Tribunals can't copy at the moment, this would just cause longer delays.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Advertise. Online, in papers, on television, in agencies/businesses, at embassies – the more advertising the greater number of people will be reached and that way they will know where to find what their options are, what their rights are and how to enforce them

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

This could be damaging to the agency/business especially if a new business fails to comply. All that would happen is that more businesses would cease trading and put more people out of work.

How would this happen if there was no-one to enforce the regulations??

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

It is a fundamental requirement to keep records

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

Registration details

Contracts

Assignment details – including rates of pay

All communication between parties

b) hirers?

Contracts

All communication between parties

Details of worker requirements

Requests for workers

c) other employment agencies/employment businesses?

Contracts

Any connection between parties

Nautilus International

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: Charles Boyle

Organisation (if applicable): Nautilus International

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Introduction concerning Nautilus International

Nautilus International is the trade union and professional organisation representing 24,000 (18,000 in the UK) Masters, Officers, Officer Trainees (cadets) and other marine professionals including Marine Pilots and YTS personnel. Nautilus is very grateful for the opportunity to respond to this consultation.

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

Nautilus supports these outcomes as they are aimed at protecting workers. However, as the Conduct of Employment Agencies and Employment Business Regulation 2003 (Conduct Regulations) are likely to be effectively re-written/repealed Nautilus is of the view that any new regulation of the recruitment sector should be statute and that the sector is not left to self-regulation. Statutory underpinning would provide certainty, the basis for the enforcement of rights and the investigation of complaints for non-compliance.

Furthermore, Nautilus, as a trade union for maritime professionals, wishes to make some comments relating to the ILO's Maritime Labour Convention, 2006 (MLC), which contains provisions on recruitment. The MLC has been ratified by over 30 countries and the UK is expected to follow this year.

Link to the MLC:-

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_090250.pdf

The Conduct Regulations and the Employment Agencies Act 1973 (EAA) contain provisions which already implement some (but not all) aspects of MLC Title 1.4 on recruitment and placement. There are also provisions on labour supplying responsibilities in MLC Regulation 5.3, Standard A5.3 and Guideline B5.3. By virtue of MLC Article VI, paragraph 1, the Regulations and Standard A are mandatory and Code B is not

mandatory. Ratifying countries must fully implement the Regulations and Standard A; however they cannot ignore Guideline B as MLC Article VI, paragraph 2, states that they "... shall give due consideration to implementing [their] responsibilities in the manner provided for in Part B of the Code". The BIS team concerned with this process is therefore referred to the aforementioned provisions of the MLC and asked to consider the implications of any changes they decide to make. Whatever the outcome, the UK must comply with the MLC.

The UK's MLC tripartite working group (MLC/TWG) (consisting of the Maritime and Coastguard Agency (MCA) and the social partners (mainly Nautilus International and RMT for seafarers and the Chamber of Shipping for shipowners) have been working on identifying the present gaps which will have to be plugged for full compliance. Nautilus is concerned that any changes to the Conduct Regulations will create further gaps and therefore it is imperative that the MLC/TWG is made aware of any proposals at an early stage so that it can ensure that any gaps are plugged by other legislation.

I am aware that Matt Giacomini, policy adviser at the MCA and member of the MLC/TWG, is taking a leading role on this issue at the MCA. Please note also that there are and have been a number of public consultation packages on MLC implementation. A current package relates to recruitment and placement which consists of, amongst other things, draft Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement [Title 1.4]) Regulations 20xx) and a Marine Guidance Note. The consultation closes on the 3rd May 2013 and Nautilus will be submitting a response. It may be that BIS could give early indications to DfT/MCA of any further provisions which the latter may wish to include in those Regulations if the the corresponding provisions of the EAA/Conduct Regulations is likely to be changed.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

There should be a statutory requirement for agency workers to receive written information about their assignments. There should be an effective enforcement regime including: (i) a statutory system for agency workers or their representatives to make complaints to the Employment Agency Standards Inspectorate (which should be retained); statutory rights for workers to take cases of infringement to an employment tribunal.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

As regards industry sectors in general then Nautilus is of the view that it is unfair to charge

work-seekers fees. More specifically for seafarers, MLC Standard A1.4, paragraph 5(a), prohibits the charging of such fees in the context of seafarer recruitment.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

The current definition is wide and should remain so. Improvements could be made by amending it to expressly include: (a) online job/recruitment services; (b) job boards; (c) head hunters.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

In the areas where fees are allowed there is plenty of scope for vulnerable workers to be led into parting with fees on the basis of misrepresentations being made agencies which exaggerate the prospects of career opportunities. It is essential that workers are given a cooling off period so that they can reflect, take advice and research the relevant job market.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

There should be a standard 30 day period cooling off period across the board.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

Workers can be confused in situations when there are at least two other parties involved: the employment agency (EA)/employment business (EB) on the one hand and the hirer on the other. Sometimes there are more than one EA/EB involved. The legislation should make it clear that in the case of EA's the hirer is responsible for paying and in the case of

EB's it is the EB with which the worker is in contract which is responsible for paying. The current principle (set out in regulation 15(b) of the Conduct Regulations) that EB's cannot avoid paying the worker if the hirer has not paid the EB should continue and be set out in the worker's contract.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

There should be a minimum penalty for breach of regulation 6. Nautilus would suggest that this should be: two weeks pay or (bearing in mind that the worker may not be in regular work) an average of two weeks pay over a twelve week period (whichever is the greater). In the case of very sporadic work then reference could be made to the national minimum wage to formulate a penalty (e.g. two weeks the NMW at 40 hours per week).

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

The current provisions are complicated and the effect with its 8 weeks/14 weeks periods unnecessarily restricts movement from temporary work to permanent work. In temp to perm situations it makes business sense that EB's expect a fee but this should be set at a reasonable level and should not inhibit free movement of the worker from temp to perm.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

They should publish information on the sectors to which they supply. MLC title 1.4, paragraph 2, states that the recruitment provisions apply to recruitment and placement services "whose primary purpose is the recruitment and placement of seafarers or which recruit and place a significant number of seafarers". Publication of such information would therefore help to identify such services.

Question 11: What information do you think would be of most interest to:

a) **work-seekers** **hirers**

Worker seekers: general information about the service/level of care to work-seekers and contract terms; complaints procedures; references/recommendations/complaints by other work-seekers; sectors in the which the EA/EB is active; clientele in terms of hirers; in the limited circumstances in which fees can be charged – details of the level of the same and cooling off period.

Hirers: details of commission/fees and other contract terms; temp to perm conditions and fees; information of work-seeker satisfaction levels, again details of references/recommendations/complaints from other work-seekers and clients.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes **No**

b) It is only if it is made compulsory that all EA's and EB's will be required to publish such information..

c) If you answered yes, what information do you think it should be compulsory to publish?

All the information set out in the answer to question 11.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes **No**

b) Please give reasons for your answer.

Compliance with Codes of Practice (CoP) will help but they should be in addition to statutory regulation, not instead of the same. A CoP could contain provisions which are bespoke to a particular recruitments sector compliance with which could be promoted to potential hirer clients. The MCA are in the course of developing a voluntary certification scheme for seafarer recruitment and placement services and this has support from the social partners and some seafarer recruitment services.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

It is essential that government backed enforcement regimes remain in place, such as the Employment Agencies Standards Inspectorate. Specialised regimes could be set up in the way that the Gangmasters Licensing Authority was set up to address specific problems in the sectors to which it applies. Consideration could be given to extending this type of oversight into other sectors such as care, hospitality and construction.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Only a Government agency is likely to be endowed with the power and resources to ensure proper enforcement.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

Yes prohibition orders are an essential enforcement tool aimed specifically at preventing unsuitable persons from carrying on a particular activity within the recruitment sector due to past misconduct. If prohibition orders were removed there would be no other way to prevent such persons from operating. Other regimes, like company director disqualification, would only apply in insolvency situations and would not be generally applicable to the various types of non-insolvency related misconduct that can arise in the recruitment industry.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

It is only right that individuals have a means of redress and the employment tribunal should be at least one of the avenues open to them. However the Employment Agency Standards Inspectorate should also continue, so as to help complainants and deal with the more serious cases of non-compliance.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Government materials published in various formats, e.g. hardcopy and website information. Hirers and trade unions to educate and inform work-seeker about their rights.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each

employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

This would provide transparency where misconduct has taken place and also create an incentive to comply, as any bad publicity would rightly adversely effect reputation in the market.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

It is submitted that legislation is the best way in which to maintain these requirements. Non compliance can then be dealt with through the courts and tribunals with offences and penalties where appropriate.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

For (a), (b) and (c) then as a minimum the records currently required under Schedules 4, 5 and 6 of the Conduct Regulations. Records relating to seafarers would have to be kept to show compliance generally with the MLC provisions referred to in the answer to question 1 above. Note too that there is a specific requirement in MLC Standard A1.4, paragraph 5(c) for recruitment and placement services to maintain an up-to-date register of all seafarers recruited or placed through them.

As a further point (not specifically raised above in any of the questions) Nautilus would note that it is essential that the current restriction (contained in regulation 7 of the Conduct Regulations) against providing workers to cover for an industrial dispute is maintained. Without such a provision the UK's strike laws would be seriously adversely effected. The

UK is required to comply with Article 11 (freedom of association) of the European Convention on Human Rights as well as other international instruments. Therefore nothing should be done to reduce the effectiveness of the current laws relating to industrial action.

Equity



Consultation on reforming the regulatory framework for employment agencies and employment businesses

Equity is the UK based trade union which represents over 37,000 actors and creative workers including supporting artists and walk-ons. For many years Equity has contributed to the creation and reform of legislation and regulations pertaining to agencies and agency workers. During this time important improvements have been made, particularly regarding the ban on charging up-front fees and the safeguards for the modelling sector. That said, it remains important to preserve and improve the framework in which agencies in the entertainment sector operate because of the high number of mobile and potentially vulnerable workers in this sector.

1. Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation? (Employment businesses and employment agencies are restricted from charging fees to work seekers, there is clarity on who is responsible for paying temporary workers for the work they have done, the contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable, work seekers have the confidence to use the recruitment sector and are able to assert their rights).

We agree with the four outcomes. As central principles these four proposed outcomes give a firm basis on which to legislate. However we do not believe that these principles once enacted should act as a substitute for the existing regulatory structure. It is our position that the existing regulations and powers administered by EASI do not adequately police the agency industry. Any governmental move to reduce the existing measures to control this sector would give further opportunity for vulnerable agency workers to be exploited.

2. Are there any other outcomes that you think should be achieved by the new legislation?

We would also recommend that transparency should be a key outcome. The requirements of agencies and employment businesses to provide terms and conditions, contracts and other statements in writing should be retained. We also believe that proper Government, criminal and civil enforcement mechanisms should be a priority when considering new laws and regulation in this field.

We would welcome an improved system of enforcement. We will comment later in this response with the proposals for workers to pursue actions via the Employment Tribunal system. Whereas in principle we would not object to the facility being introduced, we would have grave concerns if new legislation meant that this would be the only channel through which aggrieved workers could enforce their rights. The ET regime is being reviewed currently and costs for applications are being introduced. It is our view that individual claimants would require legal representation to pursue a claim via the ET which

would again expose the individual, particularly those without union membership, to significant financial detriment.

3. Do you think that there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

In line with the response from the Trade Union Congress, we do not believe that the existing arrangements for the entertainment sector should be extended to other sectors. We also believe there should be a reconsideration of the issue of fee charging in the entertainment sector as this provision is currently abused by unscrupulous agents and employment businesses.

Our underlying principle in developing an appropriate framework is that the fees charged by agents for the services they provide can only be deducted from earnings – so that the agent takes a fee as a result of work found.

For some years Equity has petitioned for a total ban on upfront fees made by agencies within the entertainment sector, including for walk on and supporting artists. The charging of artists for inserting their details and or image into an agency's book on an annual basis, as some do, is, we consider, almost certainly unnecessary in today's industry. It is unfair to expect our members to pay a fee simply to register with an agent if there is little or no prospect of gaining work through that agent.

4. Do you think the current definition of 'employment agency' as set out in section 13 of the Employment Agencies Act 1973 should be improved?

We do feel that this definition needs some review. We recognise that legitimate directory services in the entertainment sector currently could be said to fall within the definition, despite their business models differing significantly from typical agencies. We would welcome further discussions on why certain business models that do not receive a revenue stream directly as a result of advertising jobs or a placement/finder's fee to successful applicants are still considered by the current regulations to be fully fledged employment agencies or businesses.

Newer legislation would be welcomed that made a distinction between fully functioning employment agencies and directory services that may or may not advertise work opportunities.

5. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes. The existing cooling off period came into being after a long process of consultation and this further legislative review should not dispose of this asset to future agency workers.

6. If you answered yes to question 5, do you think there should be one standard cooling off period?

We believe the cooling off period should be levelled up to 30 days.

7. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes. There is a degree of clarity in the current regulations as responsibility shifts between employment agencies/business and employer depending on which model the agency chooses to utilise. Significant problems exist today when an agency switches from trading as a typical agency to then trading as an employment business depending on what type or value of work they are offering their agency clients. This “morphing” between these current definitions should be tackled or even outlawed by the improved regulations. The situation exists today whereby a great deal of work has to be undertaken to examine whether any agency was indeed trading as an agency or an employment business before we can prosecute the relevant party for breach of the regulations. The businesses should be bound to trade under one definition or the other and not hop and choose which definition makes them more money. This flexibility of approach to fielding work to agency workers should be removed.

8. Regulation 6 restricts employment agencies and businesses from penalising a work seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

This practice is not commonplace in the entertainment industry, however we agree with the comments made by the TUC with regard to Regulation 6.

9. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

This practice is not commonplace in the entertainment industry, however we agree with the comments made by the TUC with regard to Regulation 10.

10. Do you think employment agencies and businesses should publish information about their business?

In principle we do. The current regulations demand that a worker must be in receipt of the agency’s full terms and conditions prior to undertaking any work secured by them. In reality this regulation is rarely accorded to. We would welcome a legal duty to be placed on agencies to publish details about their business including the standard terms and conditions which are included in contracts used by them. This would assist workers over claims of unlawful deductions being made or rates of commission being applied that they were, prior to completing the job, unaware of.

11. What information do you think would be of most interest to work seekers and hirers?

In the entertainment sector transparency and confidence on the part of work seekers would be greatly improved by obliging agencies to publish details of their client organisations (e.g. the BBC), the number of work seekers currently on their books, the number of placements they have secured in the last 12 months and details of fees and commission charged by the agency, including a breakdown of what is included in the fee, such as photographic services.

12. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes, as discussed above.

13. Do you think trade association codes of practice help to maintain standards in the sector?

Yes, however we believe that a reliance on self regulation will lead to a decline in standards. To have the civil legal system as a worker's sole arbiter of any dispute would place thousands of individuals at a severe disadvantage. It would also expose all trade associations and unions to increased demand for resources as quite naturally trade union members would seek the assistance of their union to administrate any civil claim.

In the entertainment industry the two main trade associations for agencies, the Personal Managers Association and the Agents Association do publish their own codes of conduct. Unfortunately neither body possesses under their own rules any powers to sanction or penalise any agency member that has breached the code. Therefore it is our firm view that any hope of self regulation for agencies within the entertainment industry is futile. Such disputes become the subject of legal action if the worker has the means or if they are a union member. Otherwise unscrupulous agencies simply avoid any penalty for their unlawful conduct.

14. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

For some time Equity has argued that we also need a licensing regime for agencies operating in the entertainment sector and proper enforcement through a dual system of civil and criminal sanctions.

An extension of licensing and powers used by GLA and the National Minimum Wage enforcement unit to the EASI would be beneficial, however as mentioned elsewhere in this response, we believe that a regime that is defined and backed up by legislation is essential.

15. Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes. The entertainment sector in particular has a high proportion of vulnerable workers and Government enforcement is an effective deterrent. EASI in particular does not currently have adequate powers and would benefit from the ability to legally recover any unpaid fees.

We would also favour the introduction of a system that would allow EASI to levy fines on agencies that were held to have breached the law. We believe that the current system, whereby EASI is unable to exact any direct, immediate financial penalty to agencies that officials can clearly see have acted contrary to the law, is insufficient. This is a major failing of the current regime and should be addressed directly in the new regulations.

16. Do you think that prohibition orders should be included in the new enforcement regime?

We do. A robust system of enforcement is required to address the numerous cases that arise each year. We also believe that the evidential burden required to bring prohibition order proceedings should be reviewed. The current system does not allow EASI to bring prohibition proceedings against agencies that repeatedly offend. This again gives unscrupulous agencies the impression that EASI lack the authority to fully enforce the existing law and regulations.

17. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

In principle, we do, but we do not see this channel being adequate should there be no other mechanism, including existing routes, for agency workers to raise complaints to seek to have their rights enforced.

18. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

A publicity campaign on how to enforce rights within the context of an employment tribunal process would be an appropriate starting point however, as stated elsewhere we are not in favour of rights being enforced exclusively via Employment Tribunals.

19. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

This would develop into an excellent asset to any future agency worker should it be introduced. A new system of fining agencies coupled with a system of publicising agencies that have been fined on a fixed, permanent web page would assist workers immensely. Over time details of upheld complaints would become an effective warning list to workers. The existence of such a publication would serve as such a huge deterrent to agencies that they would modify their conduct in order to avoid being named.

20. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes but no further improvement is sought on the current duty to publish full terms and conditions and maintain a client trust account.

21. What records do you think employment agencies and employment businesses should be required to keep relating to work seekers, hirers and other employment agencies/businesses?

A fully illustrated accounting system which is accessible to workers and EASI officials. This requirement exists currently but further emphasis must be placed on this requirement.

April 2013

Birmingham Law Society

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: Mary Kaye, President

Organisation (if applicable): Birmingham Law Society

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

These are necessary but not sufficient aims. Charging an up-front fee to work-seekers is likely to put a barrier in the way of a person finding work and to limit the number of agencies/business they contract with. This can only be justified in very limited circumstances where not to permit a fee to be charged would unjustly put the burden of introducing the work-seeker into the workplace on the agency/business. Similarly it would be counterproductive were the contracts between recruitment firms and work-seekers to prevent their transfer into permanent employment or the creation of permanent jobs and a balance must be struck between the interests of the recruitment firm who has performed the introduction, the hirer and the work-seeker.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

Although it is necessary that the work-seeker should know who is responsible for paying them there is more that they need to know. Considerable expense and inconvenience can be caused to work-seekers, recruitment firms and hirers alike if there is uncertainty about whether and to what extent the work-seeker is intended to be entitled to employment law rights. Are they entitled to paid annual leave, national minimum wage and rights under the Equality Act 2010? This legislation is an opportunity at least to require recruitment firms and work-seekers to address the question at the outset of the relationship which, whilst not binding upon employment tribunals, would be relevant to the determination of the status of the work-seeker.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

There is inconsistency between the meaning of employment in the Employment Agencies Act 1973 (which includes employment by way of a professional engagement or otherwise under a contract for services) and the meaning of employment in most other pieces of legislation such as the Employment Rights Act 1996 which is limited to a contract of service. It is appropriate that the regulation of recruitment firms should not be limited by the nature of the relationship entered into between the firm and the work-seeker or between the work-seeker and the hirer. However there is the potential for confusion to be caused by this inconsistency not least in the minds of the work-seekers who may understandably think that the employment agency or business has found them “employment” when it has merely found them “work”. It is also clear that the regime anticipates either an agency which supplies work seekers who will be employed (with its extended meaning) by the hirer or a business which supplies work seekers who will be employed by the business. There are commonly arrangements now where the work seeker is engaged through an “umbrella” third party company or partnership which the work seeker themselves is owner of or partner in. The definitions in s.13 do not appear to be flexible enough to cover this and it is a potential loophole. There is also a problem for service companies supplying work for group member companies. Inadvertently and without intent the legislation often catches these companies also. Finally the definition is different to that of employment service provider under the Equality Act 2010 and it would be an advantage to businesses operating in this field if they had clarity about their obligations under the several pieces of legislation.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

There is the potential for a “hard sell” of agencies services and the work-seeker should have the opportunity to compare more than one agency before being

committed to make payment. This has to be balanced with the rights of the agency to be reimbursed for out of pocket expenses and the parties' interests in the agency having the confidence to start working on behalf of the work-seeker.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

14 days

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

The right for the temporary worker to be paid the agreed sum for the work they have agreed to undertake must be the most basic right of the relationship and for the worker to have confidence that they can ensure that they are paid for the temporary work they must know against whom they can enforce that right.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

The language of the regulation does not match the clarity of recent employment legislation and is comparatively inaccessible for the non-legal user. It would be easier were it to be couched in imperative terms. For example: "An employment business may not include in its contract with the hirer a term which purports to charge the hirer a transfer fee in the event that the work-seeker takes up employment with the hirer or is supplied to the hirer by a different employment business. This does not apply to terms which stipulate that a work-seeker's assignment with the hire shall be of a minimum length or which stipulate a minimum period of notice." Instead of the present wording of reg.10(1).

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

In our view further legislation is unnecessary. Agencies will wish to publicise their successes. Further regulation is unwelcome.

c) If you answered yes, what information do you think it should be compulsory to publish?

The information referred to in the response to Q10 b above.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

This very much depends upon the trade association in question. Almost always the association will primarily seek to benefit its members rather than aim to raise standards.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Agency workers tend to be the lowest paid and most vulnerable in the labour market, and so there is a continued need to have specific enforcement processes to deal with unscrupulous agencies. However, agency workers should also have access to justice in the Employment Tribunal for individual complaints.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

For the reasons set out above, agency workers tend to be the most vulnerable in the labour market.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

Allowing individuals to bring claims in the Employment Tribunal under the Conduct Regulations will reduce the administrative burden currently on the statutory enforcement bodies. As statutory enforcement is seen as a last resort, it may mean that some unscrupulous agencies breach the Conduct Regulations realising that there is little risk of enforcement. Allowing private individuals to enforce rights in the Tribunal will encourage those unscrupulous agencies to become compliant, without increasing the administrative burden on the enforcement bodies. However what is proposed is a potentially controversial extension of the ET jurisdiction. If the work-seeker is a worker then they can already claim for unpaid wages, national minimum wage or holiday pay from the ET. If they are not a worker but genuinely self-employed then it's ideologically a significant move to allow payment due under a contract for service to be enforceable in the ET. The Employment Tribunal Act 1996 (s.3(2)) only extends jurisdiction to contracts of employment. Therefore even were the self-employed not to be given new rights and merely be able to enforce their contracts in the ET rather than the County Court it's would require primary legislation. Exactly who should have access to the ET to enforce which rights and to achieve what potential remedy are issues which require more detailed consideration than is possible in the answer to this question.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Agencies should be required to provide a summary of bullet points about the agency worker's rights when they register, including directing them to a Government or ACAS website, which summarises their rights in plain English.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

Yes, but only if the agency is found to have acted unlawfully – i.e. no publication if the agency is exonerated.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

This is too prescriptive. The better approach is to set out what standards need to be achieved and maintained, with regulatory enforcement for failure. There may be an argument for requiring these to be kept in relation to matters such as checks necessary to comply with the Immigration, Asylum and Nationality Act 2006 and where CRB checks are carried out by the agency before supplying bank workers into roles where such checks are needed. A balance needs to be struck between the needs of the hirer to have confidence that an employment agency or business is compliant and the needs of the agency/business not to be overburdened with procedure. Since this organisation's expertise is employment law our comments are directed towards the regulatory requirements relevant to the field of work.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

Hunters Recruitment and Training Ltd

Confidentiality & Data Protection

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Yes, I would like you to publish or release my response

Your details

Name: Patrick O'Donoghue

Organisation (if applicable): Hunters Recruitment & Training Ltd

Address: 70 High Street, Shoreham by Sea, West Sussex

Please tick the boxes below that best describe you as a respondent to this consultation.

Micro business (up to 9 staff)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

b) Please give reasons for your answer.

The principles are well-meaning, certainly with regard to clarifying the legislation. However, we wish to avoid Recruitment companies such as ourselves being burdened by excessive administration and troubled by inappropriate litigation. We already have trade organisations like the REC plus The Employment Agencies Standards Inspectorate who perform an excellent function in regulating the industry and instilling an ethical culture. I fear that these bodies could lose some of their authority, and worry that the occasional disgruntled 'candidate' who feels the world owes him/her a favour could cause disproportionate disruption.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

Safeguarding the trading opportunities for smaller recruitment companies such as Hunters Recruitment. Rather than the 'name and shame' option mentioned in the consultation how about celebrating good practice, ie listing companies that have consistently met or exceeded the standards. Perhaps empowering the Employment Agencies Standards and Inspectorate will similar authority to Ofsted in education whereby they have can grade the standards of practice and compliance observed.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Hunters Recruitment does not believe in charging fees to candidates for our services, and in our experience our business has not been hindered by the legislation. Therefore, we see no reason to change existing law.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

b) Please give reasons for your answer.

I thought it is self-evident and written into contract that the employment business will pay the temporary worker regardless of whether the business has been paid itself. We have encountered several situations in which our client has gone into administration. In all these cases we have been affected and lost money, but we have still always paid our staff. We believe that if legislation is introduced it should be to safeguard the employment business, and that the employment business' invoice be deemed a secured loan. Otherwise, employment businesses are at risk

as they could be treated as a means to a free bank loan, and in some cases this could force employment businesses to close.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes **No**

b) Please give reasons for your answer.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes **No**

b) Please give reasons for your answer.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

No

b) Please give reasons for your answer

I ticked 'no' because we wouldn't welcome any directives or legislation to this end. Hunters believes that it is good practice to publish some business information, eg name, company status, jobs available, what roles we recruit for, location, contact details.

Question 11: What information do you think would be of most interest to:

a) **work-seekers** **hirers**

a) **Work-seekers are interested in i) what they have to do to register, ii) what nature and variety of work we offer, iii) job-hunting advice, iv) 'live' jobs available.**

b) **Hirers are interested in what sort of work and job roles we cover. They are also interested in what it may cost them. Testimonials. I doubt any recruitment company would want their prices published. This is because this**

information is privileged and sensitive, a contract between the Hirer and the Recruitment Company. There may well be different rates for different clients based on a series of unique circumstances and trading history.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

b) Please give reasons for your answer.

Hunters Recruitment strongly objects to this suggestion in the form presented. Whilst it is common sense, not requiring legislation, to indicate the nature of the business and the area of expertise and, indeed, the type of work offered, we have serious concerns as to any attempt to legislate. Principally, we are concerned that:

- a) publishing business critical information could be disadvantageous and even detrimental to our business. Did I read correctly that the proposal includes the length of time a vacancy has been live? We would not wish for any competitor to be aware of this information, and, of course, each vacancy is more than a set of statistics; there is a personal story behind each vacancy and this is caught up in the privileged recruiter/client relationship. The information could be utilised by other companies to their own advantage, for example they could interpret this information to identify our clients and leverage their business against ours.**
- b) Our clients may object to the publication of information they have entrusted with us.**
- c) There is an unmentioned administrative implication. Somebody, employed by the recruitment agency, will be required to administer these publications, and this will be cost time and money. Even the fact that I am now responding on this form is at a cost to our business as I have had to take time out of work to complete this task. I am happy to do so because I am frightened of the consequences of this aspect of the proposal. The resources required to administer and update these publications will be at an undesirable cost to Hunters.**
- d) What is the point? Our business model is based on integrity, flexibility and transparency. Our clients work with us because they know we do a good job and at a fair price, and our candidates would not remain loyal if they didn't value the service they receive. Since we meet all of our clients and have formed positive, business relationships with them it would not make one iota of difference whether certain information was in the public domain. In fact, because we are a small recruitment agency and business in comparison with some big organisations then from a PR point of view such publication will immediately place us at a disadvantage. We will be seen to offer fewer 'job roles' than many of our competitors, and since many people are inclined to judge on size we fear that we will ultimately lose out.**

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes

b) Please give reasons for your answer.

Hunters has found that business comes to us because of our membership of the REC. We value the legal advice and code of practice. We appreciate that it is a voluntary membership, and we make the most of the training and qualifications that REC offers.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

t

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

No

b) Please give reasons for your answer.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No

b) Please give reasons for your answer.

This seems to be a disproportionate time and expense. The Employment Agencies

Standards Inspectorate already does a first class job in terms of regulating the industry. This sort of legislation mostly serves to empower the litigation minded personality type that looks to see what they can personally extract from a situation, the type that looks for opportunities to find fault and ‘exercise their rights.’ Even though our company always acts in accordance with the law and with ethics such enforcement rights open up the possibility of our time being wasted and law suits made, so this becomes yet another worry for us as a small company. If there is an issue, then as things stand the individual could contact the Employment Agencies Standards Inspectorate. We value EASI in support of our own PR. Companies that breach these standards will fear EASI. Offering recourse to Employment Tribunals could only damage our PR and cost us time and money if we become the subject of an unfair claim.

I just don’t see how changing the law to allow recourse to Employment Tribunals will help society and regulate the industry in a better way than is already the case now. In practice there could also be a major issue with interpretation. Many employers like to trial out temps to discern team fit, reliability, work ethic and so on. A decision to end a temp assignment may be based on personal and subjective opinion (eg the candidate was often late to work, or just wasn’t a match for the team). If and when this gets tested at Tribunal there would be too much that is subject to ‘interpretation.’

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Employment agencies and businesses should advise candidates on registration. Alternatively this guidance could be on company websites.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

b) Please give reasons for your answer.

Not routinely, but ‘yes’ for repeated infringements with no attempt made to remedy. I’m saying ‘no’ because this is already managed well by EASI. Companies that fail to meet the requirements and code of their trade body (eg REC) should be struck off from that trade body. If I was hiring a recruitment company I would only hire a company affiliated to a trade standards body like the REC.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

b) Please give reasons for your answer.

No, it is for the Inspectorate to determine that the company has failed to comply with regulatory requirements. Keeping documents may help prove that the company is compliant, but once again we wish to avoid unnecessary administrative burden which ultimately penalises the smaller companies.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

Registrations records; id; work-seeking/hunting relevant information; details of assignments undertaken.

b) hirers?

Jobs specifications; hiring requests

c) other employment agencies/employment businesses?

Joseph Rowntree Foundation

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: Louise Woodruff

Organisation (if applicable): Joseph Rowntree Foundation

Address: The Homestead, 40 Water End, York, YO26 5SB

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes ✓ No

b) Please give reasons for your answer.

We think that these outcomes would strengthen the rights of vulnerable workers using employment agencies and employment businesses. We are particularly concerned with workers on low incomes, migrant workers and those seeking employment via the recruitment industry as a response to poverty and unemployment. Research undertaken for JRF by NIESR on the business strategies that facilitate forced labour and exploitation points to the role that unscrupulous employment agencies and businesses play in exploitation (<http://www.jrf.org.uk/publications/forced-labour-uk-business-angle>). We welcome outcomes that focus on preventing exploitation of workers and work seekers using employment agencies and businesses.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes ✓ No

b) If yes, please give details on what these are.

JRF evidence suggests that migrant workers in particular are vulnerable to forced labour and extreme exploitation in the UK (<http://www.jrf.org.uk/work/workarea/forced-labour>). We would suggest an outcome that would take account of the vulnerability of migrant workers – particularly of those workers who are recruited overseas to work in the UK – specifically those recruited in other EU states. For example, ‘Work-seekers have the confidence to use the recruitment sector and are able to assert their rights – this includes all workers with the right to work in the UK’.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

A cooling off period provides basic consumer protection for workers using these agencies where fees are charged.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

We agree that lack of clarity in who is responsible for paying a temporary worker can leave them open to exploitation and make it difficult for them to claim unpaid or underpaid wages and assert other labour rights. Our research shows that this is particularly the case where long labour supply chains with sub-contracting between employment businesses occurs (<http://www.jrf.org.uk/publications/forced-labour-uk-business-angle>). We agree with the proposal that the government should continue to ensure that temporary workers get paid for the work they have done and we think the government needs to ensure that sufficient resources are allocated to enforcing this legislation affectively.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

We think greater information for work-seekers on the operation of a particular employment agency or business can only help them make a more informed decision about signing up and thus prevent some exploitation. Equally, better information for hirers will help them (and contractors further up the supply chain) understand more about how the agency or business works. Additional scrutiny from both work-seekers, hirers and competitors could help improve standards in the industry and increase confidence in the industry as a whole.

Question 11: What information do you think would be of most interest to:

a) work-seekers

We think that feedback from work-seekers and hirers, occupational sectors, number of placements/jobs available and equalities policies would be of particular use to work-

seekers (from the list on page 16 of the consultation document). We think that a method for collecting and providing anonymous feedback from work-seekers about the agency would be particularly informative. Information should ideally be provided in a number of languages to help migrant workers with little or no English to be able to access the information – particularly in sectors where recruitment of migrant workers is prevalent. Our research shows that lack of spoken or written English can contribute to workers vulnerability.

b) hirers

All of the information published in the list on page 16 of the consultation should be helpful to hirers. The information should also help primary contractors address exploitation in their labour supply chain. Additional information should be provided about whether the employment business or agency sub-contracts to other employment businesses or agencies and the proportion of their business that undertake in this way.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

We think this is the only way to ensure a level playing field across the sector. By making it compulsory, greater scrutiny can be placed on the agencies that refuse or are unable to publish.

c) If you answered yes, what information do you think it should be compulsory to publish?

- How much of their business is sub-contracted to other employment businesses/agencies – and which ones.
- Occupational sector
- Size of business
- Number of payroll errors
- Equalities policies
- Feedback from work-seekers and hirers

We think that BIS should also consider whether it would be possible to use this legislation to police the relationship with overseas recruiters linked with employment businesses/agencies in the UK. We are particularly concerned about vulnerable migrant workers recruited in their own country having paid a (often excessive) fee to work in the UK (<http://www.jrf.org.uk/publications/forced-labour-uk-food-industry>)

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

We think there is an enhanced role to be played by organisations at the top of labour supply chains (including both public sector organisations and private businesses) to audit and monitor their supply chains. Opportunities to share best practice between and within industrial sectors would help. There needs to be a shift in emphasis so that companies and

organisations who contract out to labour suppliers ensure that workers and work-seekers fairly and legally. The JRF have funded a project delivered by the Institute for Human Rights and Business and Anti-slavery International that works to combat forced forced labour, trafficking and exploitation in the UK hospitality industry. www.staff-wanted.org. This project focuses in particular that the role major hotel chains can have in scrutinising the agencies they use.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes ✓ No

b) Please give reasons for your answer.

Our evidence (<http://www.jrf.org.uk/publications/regulation-and-enforcement-forced-labour>) shows the need for enforcement as well as legislation in addressing forced labour and exploitation – some of which is associated with rogue labour providers and agencies. Without affective and adequately resourced enforcement, agencies and employment businesses that profit from behaving illegally will see this as a low risk crime – making workers more vulnerable and undercutting the majority of the sector who behave legitimately.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes ✓ No

b) Please give reasons for your answer.

We think this will continue to help address the problem of these individuals running employment agencies or businesses.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes ✓ No

b) Please give reasons for your answer.

Our research shows that there is a ‘justice gap’ for workers who experience high levels of exploitation in the workplace. Although recent changes in legislation will make it more difficult for workers to access the employment tribunal, any change which widens the possibility of enforcing their labour rights in the employment tribunal should be welcomed. However, we think that it is also essential that the state via its agencies such as the EAS is able to able to address the conduct of the recruitment sector via a criminal regime and that enforcement should not become a purely civil matter.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

An accessible guide to their rights and how to seek help and advice should be made available to all work-seekers using the recruitment sector. This should be available in different languages to ensure that vulnerable migrant workers and other workers who have difficulty with reading English have access to the same information.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

We think this should not be reliant on FOIA requests but should be published proactively. Increased transparency would act as a deterrent, help all stakeholders in the sector to become aware of the investigations and help improve our collective understanding of the modus operandi of these offenders.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

This needs to form part of an affective enforcement regime and should make inspection easier.

Citizens Advice

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: Richard Dunstan, Employment Policy Officer

Organisation (if applicable): Citizens Advice

Address: 115 Pentonville Road, London N1 9LZ

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe): Third sector legal advice service

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

We broadly support the four outcomes, as summarised in the bullet points above.

However, whilst we agree that greater transparency is always desirable, we do not agree that it should be *compulsory* for employment agencies/businesses to publish prescribed information about their business (see our response to Qs 10-14). And we **strongly oppose** any move away from regulation by the EASI to enforcement only by individual workers through the employment tribunal system (see our response to Qs 15-20).

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

There is a fair competitive environment (or 'level playing field') for legally compliant employment agencies/businesses.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

It appears to be increasingly common for agency workers to have their wages paid to them through so-called umbrella agencies, and for an 'administration fee' to be deducted from their wages by the umbrella agency. For example, a CAB in Norfolk reports being approached in March 2013 by a 23-year-old British woman, working as a bank nursery nurse at a local educational establishment through a large (national) employment agency;

the client reported that, when she is placed in work by this agency, her wages are paid by an umbrella agency (again, a large, national company), and a fee of £14 is deducted from her wages each week (though this is not shown as a deduction on her payslips). The CAB adviser sought clarification of the legality of this practice from Acas, which advised that, so long as the 'administration fee' is disclosed in the terms and conditions signed by the work-seeker prior to taking up employment then it is entirely legal under the current Regulations.

We believe that such administration fees should be prohibited under the new enforcement regime.

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

We have no firm views.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

As noted in our response to Q3, above, we are opposed to any extension of fee-charging. However, should there be any such extension, we would regard a cooling-off period as essential to ensuring the fourth outcome set out in the consultation paper ('work-seekers have the confidence to use the recruitment sector and are able to assert their rights').

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

As noted in our response to Q3, above, we are opposed to any extension of fee-charging. However, should there be any such extension, one standard cooling-off period would be simpler for both workers and businesses to understand (thereby aiding compliance). A period of 30 days (or a near equivalent, such as four weeks) would appear to be sensible.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

In our experience, lack of clarity about who is responsible for the payment of wages is an extremely common factor in cases of unpaid wages (itself the most common single issue among the 'agency worker' cases reported to us by Citizens Advice Bureaux). Indeed, the evidence would suggest that some employment agencies/businesses have deliberately built such uncertainty into their business model.

For example, a CAB in Somerset reports being approached in May 2012 by a 33-year-old British man, who had been working at the local distribution centre of a national supermarket chain for the past ten weeks, through an employment agency sub-contracted by a second employment agency. The client reported that, whilst he had received most of the wages for the long hours that he had been working, he was owed about £500 in wages; however, he was reluctant to complain for "fear that he may not be offered further employment." (The client further reported that he and other workers were being 'laid off' before they had worked at the distribution centre for 12 weeks, and then transferred to work for another 'end user' company). The CAB reports being approached a few days later by a 24-year-old Polish man who had also been working at the supermarket distribution centre, and who had also not been fully paid for hours worked.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

To our mind, the wording of Regulation 6 is robust (as it should be).

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

We have no firm views.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

We agree that it may be *desirable* that employment agencies/businesses publish information about their business that assists both work-seekers and end user businesses to use the recruitment sector with confidence. However, as we do not believe that it is practicable to properly regulate the publishing of such information, we see no point in making the publication of such information compulsory (which would simply create unnecessary 'red tape'). Such matters are best left to businesses themselves to decide.

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

See our response to Q10, above.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

See our response to Q10, above.

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

Codes of Practice are always helpful, but do not by themselves ensure compliance.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

We have no firm views.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

As the recruitment sector is one with a significant proportion of vulnerable workers (“someone working in an environment where the risk of being denied employment rights is high, and who does not have the capacity or means to protect themselves from that abuse”), an effective regulatory and enforcement regime is essential to securing the four outcomes identified in the consultation paper and our suggested fifth outcome of ‘a fair competitive environment for legally compliant employment agencies/businesses’. As with the National Minimum Wage (which is proactively enforced by HMRC), the Employment Agency Standards Inspectorate (EASI) was established because it is not sufficient to rely on individual vulnerable workers taking enforcement action themselves, by means of an employment tribunal (ET) claim, because lack of awareness, intimidation and/or fear of losing their job will often prevent such workers from taking such action. Furthermore, the existence of a pro-active enforcement regime (and the associated risk of reputational damage and adverse business impacts) incentivises self-compliance by businesses.

Whilst individual workers should always be free to assert their rights by means of an ET claim, the EASI enforcement regime provides a more accessible enforcement route for the most vulnerable workers, as well as pro-active enforcement through targeted, intelligence-led investigations and inspections. And the need for such an accessible and pro-active enforcement regime will become even greater with the introduction, in summer 2013, of prohibitively high fees for ET claimants. The most simple claims (e.g. for unpaid wages) will attract issue and hearing fees totaling £390 – approximately two weeks’ wages for a worker on the National Minimum Wage – whilst more complex claims, including discrimination claims, will attract issue and hearing fees totaling £1,200. Such fees will simply further reduce the likelihood of unlawful practice by rogue employment agencies and businesses being addressed through the ET system.

In any case, even with the introduction of claimant fees, ET claims carry a cost to the public purse. That said, we recognise that the financial resources available for State-led enforcement will always be limited, and accordingly that such enforcement should be as cost-effective as possible. We therefore take this opportunity to re-iterate our call for a rationalisation of the various workplace rights enforcement bodies, starting with a merger of EASI and the Gangmasters Licensing Authority (GLA). We cannot believe that anyone starting now, with a blank sheet of paper, would design an enforcement architecture in which different parts of the recruitment sector are regulated by two separate bodies, with different enforcement powers and strategies, and uncoordinated funding arrangements.

This is not to say that we support an extension of the GLA *licensing* regime to the rest of the recruitment sector. To our mind, all such State-led, pro-active enforcement should be targeted and risk-based, in line with the Hampton principles.

We believe that a merger of EASI and the GLA would simplify and enhance the enforcement framework, to the benefit of both workers and the great majority of reputable employment agencies/businesses, and provide better value to the taxpayer.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

We see no reason not to include prohibition orders in the 'new enforcement regime'.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

Individual workers should of course be able to enforce their rights by means of an employment tribunal claim, but this right should be *in addition* to the more accessible and pro-active State enforcement regime (currently, that of EASI).

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

This question appears to assume the cessation of regulation of the sector by the State (currently, by EASI). We would strongly oppose any such move.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

In principle, we strongly support the publication of such regulatory findings. However, experience of the National Minimum Wage 'naming & shaming' scheme to date suggests that, in practice, such regulatory activity is much more difficult and problematic than it sounds. Given these difficulties, there is a risk that such activity would consume a disproportionate amount of the resources available for State regulation of the sector.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

As with the National Minimum Wage enforcement regime, the keeping of adequate (but not unnecessarily burdensome) records would appear to be a prerequisite for compliance.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

- a) work-seekers?
- b) hirers?
- c) other employment agencies/employment businesses?

The Government itself is best placed to answer this question, drawing on the considerable experience of EASI (and the GLA) to date.

Forced Labour Monitoring Group

Organisation (if applicable): Forced Labour Monitoring Group www.forcedlabour.org
Address: contact address: Dr Sam Scott, University of Exeter, Geography, School of Environmental and Life Sciences

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe) - Monitoring Group of academics, researchers, trades unions and NGOs dedicated to research and policy-making in the area of responses to forced labour.

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable.
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No X

b) Please give reasons for your answer.

While we agree that several aspects of aims 1-4 are broadly desirable, particularly the second aim to improve clarity, we are concerned that temp-to-perm fees will further hinder the mobility of temporary workers into permanent positions. As previous research has shown (see for example Forde, Slater and Green (2008) *Agency working in the UK: what do we know?*, Centre for Employment Relations, Innovation and Change) temporary agency work carries a wage penalty and may not be a route into permanent, secure and decently-paid work for many, especially ethnic minority and migrant workers who are over-represented among temporary agency workers.

The proposed recruitment sector legislation has failed to respond to the growing body of research which suggests a link between increasing usage of temporary employment agencies and problematic patterns of exploitation for workers in the UK. See, for example, the TUC Commission on vulnerable workers (COVE 2007) Oxfam's report on the care sector: 'Who Cares' (2009), JRF research on the food industry (2012) (Scott et al., The experience of forced labour) and other JRF research published at www.jrf.org.uk

We would be against any attempt to weaken regulation by EASI to placing the responsibility on individual workers through the tribunal system which would effectively preclude any such action on their parts because of costs.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes X No

b) If yes, please give details on what these are.

We believe that, contrary to the position set out in the consultation paper, that the UK staffing sector is NOT over-regulated and burdened by 'costly and complex' regulation. On the contrary, other than the establishment of the GLA in 2004, there has a constant process in the last several decades of *de-regulation* and/or *re-regulation* in favour of self-regulation and voluntary codes of practice.

The UK labour market is among the most lightly-regulated in Europe and has the highest proportion of temporary workers in the EU. The expansion of the temporary employment sector has played a key role in the development of the UK labour market in the last 20 years. While this affords many benefits to the UK economy, there are also costs. It seems reasonable to expect the government to mitigate these and reduce the risks perhaps unintentionally exacerbated by policies to reduce regulatory burdens on business, or to make labour markets more flexible.

It is instructive to consider the creation of the GLA in this context. The agency was established to combat extreme exploitation among temporary (mostly migrant)

workers, employed through employment agents known as 'gangmasters'. The motivation for the formation of the GLA can be traced directly to the tragic deaths of at least 22 cocklepickers at Morecambe Bay in February 2004. It would be most unfortunate if it would require a similar kind of tragedy to be repeated in order for further political action to be taken to improve regulation of the employment agency sector.

We advocate for, at a minimum, the extension of the licensing provisions set out under the Gangmaster Licensing Act (2004) to *all* providers of temporary labour. We are also extremely concerned about the proposal that redress for temp agency workers should be solely the jurisdiction of the tribunal system, which is being significantly weakened as part of the current deregulation of labour law in the UK. Temporary agency workers are among the most vulnerable and precarious in UK labour markets and need real and robust protections and labour rights to combat exploitation.

At present, the environment for employment agencies and businesses which are legally compliant is not fair.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No – It is also problematic in the entertainment and modelling sector.

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

Generally unsure but would possibly be helpful to include payroll companies within the definition of employment agencies.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

Not only is this important, it is also vital that steps are taken to ensure that workers understand this right. As many temp agency workers are migrants, language barriers and a lack of knowledge of the UK regulatory system means many workers don't understand their rights. The GLA has done good work in tackling this problem

in the agricultural and food processing sectors. The TUC Commission on Vulnerable Employment (COVE) identified that there were temporary agency workers faced numerous difficulties in accessing their employment rights.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

A standard cooling off period would be helpful and transparent: 28 or 30 days would seem to be about right.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

We are concerned about the lack of clarity over who is responsible for paying temporary workers and believe that this is a problem that should be addressed. It is not clear whether this is best done through improved regulation of employment agencies (i.e. greater scrutiny) or new legislation. Increasing levels of complexity in employment practices around agency working, along with the emergence of innovative ‘triangular’ employment relationships incorporating payroll companies have opened up and increased risks for unfair practices, particularly the opportunities for companies to exploit temporary and agency workers. The recent SWI - ‘Staff Wanted Initiative’ (a partnership including Anti-Slavery International and the Institute of Human Rights in Business, among others) provides support for this view. Findings from the SWI were presented in parliament in January 2013 (and also in a Home Office Seminar on human trafficking on March 19, 2013) – the team discovered evidence that the triangular employment relationship allowed for such practices to flourish in the hotel sector in the UK.

Some employment agencies and businesses appear deliberately to generate uncertainty.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

The current wording is appropriately robust but the means of implementing this restriction needs to be clarified, and the actions taken to enforce it should be made clearer.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

Generally unsure but we think that temp-to-perm fees should be discouraged as they are often another reason for contracting firms not to make temp workers permanent. Agencies already make a profit on the contracting of labour.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

This will only be effective if it is not voluntary, and will only help workers if it is part of a general licensing scheme for employment agencies. This will help workers and employment partners to use such agencies and the sector as whole with appropriate information available.

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

Appropriate levels of information about practices, financial regulation, attitudes to trades unions, compliance with all appropriate legislative requirements. The more transparency there is, the better it will be to ensure fair practices.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

The compulsory publication of information about their business would be a good first step in addressing some of the opacity in the employment agency sector, promoting good practice, allowing for fairer competition between businesses/agencies, and also enabling workers and those using such businesses to make more informed choices. Also see above.

c) If you answered yes, what information do you think it should be compulsory to publish?

- 1) The system of fees should be clearly explained (although to allow competition not the actual levels of fees) and how these conform with regulation.
- 2) How workers and clients should address problems, or make complaints about the business – i.e. internal complaints systems and also the contact numbers for appropriate regulatory authorities.
- 3) Information about what code of conduct (if any) the business has signed up to – e.g. through trade associations. The government recently asked UK industry to sign up to a code of conduct to combat trafficking in human beings, for example (announced in March 19 seminar ‘Trafficking and UK Business’ organised by Home Office). Ideally all employment agencies would be encouraged to adopt this code of conduct but in the absence of legislation compelling them to do so, it might be reasonable to ask them to publish what actions they are taking to avoid exploitation. Also see above.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

This depends on the extent to which these codes of practice actually address problematic practices in the sector. It is possible that they help in a marginal way, but as membership of trade associations is not mandatory, and as there is not licensing regime, this does not prevent exploitation by unscrupulous agents who operate ‘under the radar’. The existence of multiple codes also allows for ambiguity. A better solution would be for the government to demand that a single code of practice be adopted, or to work with partners across the sector to enable the drawing up of a cross-sector code of practice. Basically codes of practice are only useful if they ensure compliance.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

A higher minimum wage, set at the JRF’s published living wage.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Without enforcement, legislation does not serve to protect workers’ rights or prevent exploitation. A key deficit in the UK regulatory system is the lack of resources within regulatory bodies actually to enforce the rules which already exist. The main emphasis since the Hampton report has been for ‘intelligent, risk-based’

enforcement allowing for a less burdensome inspection regime, but there is increasing evidence that this approach is very seriously flawed and allows disreputable business practices to survive unpunished, especially where regulatory agencies are poorly resourced (and indeed now suffering cuts). Work conducted on behalf of the Joseph Rowntree Foundation (Balch 2012; Scott et al. 2012) found numerous gaps in enforcement practices and concluded that the relationship between the legislative system and the organisational field is too loose and complex. In other words, there are areas of UK employment which largely escape inspection regimes, and this can provide a context where disreputable and highly exploitative businesses can continue to flout legislation without fear of identification or punishment. The experience of the national minimum wage is a useful model as it shows how leaving individuals to police regulation is ineffective and needs the back up of an effective and high profile regulatory body, appropriately resourced. There may be a case for the merger of the functions of the GLA and EASI into a single agency, well-resourced and able to work in partnership with other appropriate agencies including HMRC, police and local agencies.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

They would be an appropriate tool for regulation and enforcement.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

But ETs need to be made accessible: the recent changes erect significant barriers for poorly paid or ill-informed workers. These changes need to be reversed.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Full details of workers' rights and mechanisms of enforcement and redress should be published, in relevant languages, and made available through multiple delivery channels including government websites and JobCentres *but also* through public campaigns. All employment agencies and businesses should publish a link to this information on their websites. We assume the government has no intention of removing existing means of gaining information subject to our comments about the proposed GLA/EASI merger above.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each

employment agency/business, and listing the infringements to the legislation?

Yes X No

b) Please give reasons for your answer.

Without this information it is impossible for workers *and* contracting businesses who are genuine about wanting to respect workers' rights to feel confident about the sector. The experience of the GLA has been that one of the most effective weapons for regulators is the ability to publicise wrongdoing and 'name and shame' those businesses that are engaging in illegal practices. This provides a real incentive for businesses to comply with legislation but also to cooperate with regulators and investigators.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes X No

b) Please give reasons for your answer.

This should be a basic requirement of businesses, not least for reasons of an audit trail in relation to investigations and for the company's ethical profile in general, and would be of benefit to them in order for them to prove that they are operating legally and properly. This would also help regulators/investigators when exploring claims of malpractice that are historical.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

Perhaps businesses should be required to keep the same records as those who directly employ – i.e. harmonise standards, rather than allowing employment agencies to operate to lower standards (presumably this is the current situation?).

InterQuest Group PLC

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: **Gavin Tagg**

Organisation (if applicable): **Interquest Group PLC**

Address: **16-18 Kirby Street, London, EC1N 8TS**

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

Outcome 1: Interquest Group PLC (“IQ”) believes that there is no reason to change the status quo. In the IT recruitment industry, there is no charging of fees to work-seekers; the only fees charged are the end user clients. There is likely to be considerable resistance from candidates if employment bureaux were permitted to charge fees to candidates for work-seeking activities; we anticipate that most would continue to operate without charging fees to candidates in any case, which would put those agencies that did seek to charge fees at an immediate commercial disadvantage, except in highly niche areas.

IQ would however welcome clarity on what is encompassed by ‘work-seeking services’. For example, our clients will very often insist that candidates must clear certain hurdles in order to secure a permanent role or temporary assignment, which will have a third party cost attached to them (e.g. psychometric tests, pre-employment screening checks). Such third party costs should, under the new regime, be capable of being passed on to a candidate - for whose ultimate benefit the tests are conducted. Such third party costs should not be regarded as ‘work-finding services’ and therefore incapable of being recovered from the candidate. ‘Work-finding services’ needs to be clearly defined as relating to the actual professional service carried out by the employment bureau staff in matching candidates to roles.

Outcome 2: IQ believes that in the IT recruitment industry there is actually very little confusion in this area. Our contractors know exactly where to come if they have not been paid – this is because they are, in the vast majority of cases, highly skilled specialists running their own businesses. Such a principle of clarity is to be welcomed; however the thrust of this should be to ensure that contracts issued to temporary workers are legally required AND make it clear who is responsible for payment (always the employment business) and on what terms. There should not be any new legal fetters imposed upon what payment terms can be agreed between employment business and temporary worker, save for a prohibition on ‘paid when paid’ for PAYE temps.

The Consultation document states at Paragraph 7.10 the following: *“Under our proposal, we will continue to regulate to ensure that temporary workers get paid for the work they have done, even if the employment business has not received payment from the hirer. Employment businesses would be required to agree terms relating to pay with work-seekers, including rate of pay and clarification on how and when the work-seeker will be paid and who is responsible for paying them”*. This paragraph suggests that the new regime will seek to do much more than identify which party in the tri-partite arrangement is legally responsible for making payment to the contractor/temporary worker, but that there will also be rules imposed on when the agency can withhold payment. We will give a more detailed response to this issue in the response to Question 7 below.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

The time is right to consider a change in the law regarding limited company contractors.

As things stand, the vast majority of limited company contractors opt out of the Conduct Regulations, and they are willing and happy to do so. There are two categories of limited company contractors: personal service company contractors (“PSC contractors”) and umbrella company contractors. PSC contractors own and operate their limited companies which are used as a payment vehicle for maximise tax efficiency. Under IR35 rules, it is generally considered that being regarded as ‘opted in’ to the Regs is damaging to the company’s tax position. Umbrella company contractors do not get the same tax benefits as PSC contractors however they do benefit from tax efficiencies in respect of HMRC-approved travel and subsistence schemes operated by all umbrella companies.

It is therefore a nonsense to suggest that limited company contractors and PAYE temps are equivalent in terms of tax treatment. It is also a nonsense to suggest that the types of individual who typically are engaged directly by the employment business on a PAYE basis are the same as those who choose to use a limited company. The former category (unskilled, low pay rates) are the vulnerable individuals for whom regulatory legislation is designed to chiefly benefit. The latter category (high pay rates, skilled, professional freelancers) simply do not want or need a set of ‘nannyng’ regulations applying to their assignments.

The current system of ‘opting out’ under Regulation 32 is a ‘nod’ towards the two-tier system that exists in reality, but it does not go far enough. IQ propose that the current system of opting out be scrapped, and instead there be a general rule that if a worker provides his services via a limited company (be it PSC or umbrella company) then the various protections afforded to workers by the Conduct Regs do not apply.

To ensure that temporary workers are not railroaded through umbrella companies in order to completely avoid liability under the legislation, there must be a clear prohibition upon an employment business requiring, either directly or indirectly, a worker to use a limited company in order to be given the assignment. All employment bureaux must give the temporary worker a clear choice to go PAYE if they so wish (something which is already done by IQ, although most of our contractors rarely even consider PAYE as an option because they can always get a better take-home pay rate by at least using an umbrella company).

The current opt-out system is fraught with difficulties. It has never been 100% clear at what point an opt-out notice must be obtained in order for it to be valid; is this before the assignment commences, or before the CV is even submitted to the client? Also, due to the nature of IT recruitment, it is very often the case that a client will want a contractor to start the assignment before all the necessary paperwork is executed between the contractor and his employment business. Whereas ‘high-street recruitment’ will usually involve a temp going into an office, having ID checked and approved, references taken, often certain tests performed (e.g. typing) BEFORE that temp is even accepted onto that agency’s books – IT recruitment does not work like that. It is all done over the internet, with contractors being placed far from home and not just in their local area, often with same day telephone interviews with the client. As a result, it is inevitable that many of IQ’s contractors – who have very willingly opted out to protect their IR35 tax status – are actually legally ‘opted in’ because they do not get the opt-out notice executed in time before the assignment commences.

IQ would invite BIS to more closely examine the different types of recruitment and recognise the inherent difficulties in the opt out process. If the aim is to make things easier and clearer to understand, why not simply create a clear two-tier system of PAYE v Limited Company and have different rules applicable to both.

It appears to IQ, following recent meetings with BIS, that it is proposed to completely abandon any two-tier system, and to treat all temporary workers and contractors exactly the same. If this is correct, all types of temporary worker/contractor will have the same regulations applied to them – including those designed to ensure payment is made properly, and to ensure that recruitment companies do not hinder movement between jobs. This is a huge mistake, because it presumes that all temporary workers are essentially the same, and all temporary work assignments are essentially the same. A good example of this is the issue around termination of assignments. Low-skilled temporary workers generally expect that their contracts will give all parties the right to terminate the assignment immediately. This is because for the types of roles filled by such workers, there are always plenty of immediate replacements to fill the gap, with the same basic skills. For high-level freelance contractors with skills in short supply, this is not the case. There may not be a ready replacement, and the success of a client project will often be dependent upon a contractor fulfilling his assignment until the stated end date. Therefore, any all-encompassing regulation that states that any temporary worker/contractor shall have the right to give notice to terminate his assignment will be unworkable in practice. If this principle is to work, then it will be necessary to impose regulations not just upon recruitment companies, but also upon end user clients, to prohibit such end users from imposing a no-termination clause upon the recruitment company. However, it is our understanding that BIS only intends that regulation will apply to the recruitment industry.

This is just one example of where an exceptions policy will need to be brought into play, to create an exception to the general rule for ‘high-level’ contractors with scarce skills, simply in order to work in practice. We would argue that, instead of an exceptions policy for specific issues, it is easier to simply exclude a category of contractors from regulations altogether – the category of contractors that are not looking for a route into employment, or wage payment protection, and who effectively already ‘call the shots’ to the recruitment industry, rather than the other way around.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

We do not think that candidates should be charged, however there should be clarity in the new Regulations which make it clear that certain third party costs associated with recruitment, but are not actually the professional services of the agency (such as PES checks, CRB check fees etc) may be passed on to the candidate at cost.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

The current definition is: *'.....the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them'*. The use of the word "employment" is confusing as it suggests that all employment agencies' clients must permanently employ the candidate.

There is also the possibility that internet job sites, and even websites such as LinkedIn, could be regarded as employment agencies under this definition (because there is a clear business purpose in such sites to find suitable candidates for roles, even where the website does not actually make a direct profit from such services). This definition was created in the early 1970s before the internet was invented – it is time to recognise the changes in the last 40 years.

IQ believe that a better definition would be to state that an employment agency carries on a business of providing services for the purpose of finding and placing individuals into roles at end user clients, where such clients employ or engage such individuals directly and such individuals are not supplied by the employment agency as a principal.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

This should already be very clear (there is never any confusion in IQ's industry) however a general rule which makes it mandatory for employment businesses to issue a contract for services with clear and fair payment rules is to be welcomed.

Our chief concern in this area is that the proposed new regulation in this area will not only identify the party responsible for payment, but also impose rules on the manner and process of the payment. This is due to the Consultation document stating at Paragraph 7.10 the following: *"Under our proposal, we will continue to regulate to ensure*

that temporary workers get paid for the work they have done, even if the employment business has not received payment from the hirer. Employment businesses would be required to agree terms relating to pay with work-seekers, including rate of pay and clarification on how and when the work-seeker will be paid and who is responsible for paying them”.

The only way that a recruitment company can know if a day’s work has been performed is if there is a time sheet/record signed or otherwise authorised by the end user. Currently, legislation states that all temps/contractors (who have not opted out) merely need to provide a time record in order to be entitled to payment, and this need not be signed/authorised by the end user; however there is a concession to allow the recruitment company additional time to make the necessary enquiries to verify if the day was worked or not.

As a bare minimum, this situation needs to continue. However, in working practice, all temps/contractors understand and accept that they will not be paid without signed timesheets. The industry regulates itself in this respect and there is no need for any intervention that gives temps the right to be paid without bothering to get a timesheet signed. It would not be just or correct to impose increased risk on the recruitment industry, to oblige payment to be made to the temp regardless of whether there is proof that work was done, and let the recruitment company chase the client for payment (which they are unlikely to succeed in, if the temp was absent). There will often be disputes between end user and contractor in the IT recruitment industry which result in the contractor claiming payment for a certain number of days, but the end user disputing this and refusing to sign the timesheet. Again, it would not be fair (nor in the spirit of the regulations) to impose rules which means that the agency, often the only innocent party in a tug-of-war between end user and contractor, is ultimately forced to bear the cost in dispute.

We would welcome a relaxing of the rules to allow the contract to dictate what is required for payment – i.e. a signed timesheet.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

Regulation 6 is clearly intended to ensure that ‘traditional’ temporary workers, i.e. those engaged and paid directly on a PAYE basis, can exercise a general right to cut short their temporary assignment and either be taken on permanently or work elsewhere. This is in order to bolster the principle that ‘temporary work is merely a conduit to a permanent position’, that it is only a means to an end, and that there are no people out there that actually want to work on a series of fixed term assignments because of the increased remuneration this brings.

IQ accepts the general principle that freedom and flexibility of the temporary workforce is an important public interest, and there should never be any ‘ownership’ of candidates or any clauses which allude to that.

That said – limited company contractors are not in the same boat as PAYE temps, who can often be immediately swapped in and out of roles with plenty of available replacements for lower-skilled roles. Limited company contractors with rare/niche skills can NOT be simply swapped in and out. Projects can be damaged if a limited company contractor was to walk off site because he had a better paid job elsewhere to start immediately. For this reason, clients make it very clear in their contracts with the employment business that the employment business does not have the right to terminate the

assignment without cause – and this must be ‘mirrored’ to the contractor in each case, otherwise the employment agency will be legally exposed in the middle.

It is standard in IQ’s industry that the contractor contract will not automatically give the contractor a right to terminate without cause. This may be negotiated between client and contractor, but it is not automatic. There is rarely an issue raised with Regulation 6, because the general perception is that having opting out, a ‘want-away’ contractor can not raise Regulation 6 as justification for walking off site (never mind the reputational damage this would cause to the contractor). However, if BIS intends to do away with an opt out, this becomes a very real and very risk-laden issue.

If there is to be a replacement for Regulation 6, it should recognise that where the contract does not give the contractor a right to terminate the contract without cause – instead obliging the contractor to fulfil the assignment up to completion – then this does not offend Regulation 6. Regulation 6 should only have force where the contract DOES give both parties the right to terminate, as is standard for PAYE temps – so that this right can not be fettered by another clause.

If (as previously suggested) BIS concludes that a two-tier system is the most sensible in all the circumstances, there will be no issue because the rules will not apply to limited company contractors.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

The word “unreasonable” is not actually used in the current Regulation 10. This is no bad thing.

What must be avoided here is some sort of creeping shift into prohibiting temp-to-perm fees. This may occur if there is some sort of statutory prohibition upon “unreasonable T2P fees” – how can this possibly be defined? The legitimate business interests of the employment business, who have invested significant up-front effort, cost and expense into sourcing and placing a worker, must be appreciated and recognised. There can not be a statutory framework that allows an end user client to have a cheap alternative to permanent recruitment, by hiring a temporary worker for a role that they are looking to fill permanently, converting that temp into a perm employee after only a few weeks, and avoiding a transfer fee on the grounds that it is “unreasonable”.

What represents a “reasonable” fee will differ from sector to sector, depending upon the niche skills of the worker and difficulty and expertise required in matching people to roles. Whilst IQ believe that the generality of an “unreasonable fee” prohibition should be avoided at all costs, there may be scope for a cap upon fees that may be charged but these should adequately reflect lost future margin and be fair upon the employment business. Perhaps one way to achieve this is a ‘one clause fits all’ way is to have a maximum multiple of the weekly rate e.g. T2P fee capped at 26 weeks. However, in most circumstances the contract itself is perfect testament to what the end user and the employment business deem to be reasonable. There will always be a transfer fee clause in the contract, and both parties have the opportunity to negotiate and change. Where the contract is on the end user’s terms the transfer fee clause will always be very client friendly and reduce the fees payable to zero on a sliding scale, as the temporary assignment continues (a typical clause of this nature will reduce the fee to zero after six months and the employment business will have no choice but to agree to this, if they want the opportunity to recruit for that client).

Regulation 10 is now firmly entrenched as law and IQ does not believe that any tinkering to the time periods in the “relevant period” will necessarily create any benefit, even though the recruitment industry will inevitably call for these to be extended. The simple fact is that all IQ’s contractors are opted-out limited company contractors, and as such, there is a general perception that Regulation 10 will not apply to them. If, however, this is to become a thing of the past, then the issue of transfer fee regulation becomes very serious and potentially very damaging, an open to abuse by end user clients.

The 'option to extend' in Regulation 10(1) is never taken up by any of IQ's clients (for the above reasons) however we would repeat the general misgivings of how this could be exploited by unscrupulous clients who were looking for a cheaper method of perm recruitment at the employment business' expense: (1) hire a temp on a very short term assignment, e.g. 1 month (2) give an option to extend for a further month (3) take on the worker free of charge after only 2 months on assignment. Most employment businesses would stop dealing with clients that actually did this. Just how necessary is the option to extend? A simple transfer fee system, with clear caps in terms of when they can be charged and how much could be charged (based on a maximum weekly multiple) would make things much clearer and easier to understand without upsetting clients (who are used to paying transfer fees) and candidates (who don't have to pay anything).

An alternative approach would be to completely deregulate in respect of 'temp to temp' fees, and only impose regulations on scenarios where the client proposes to take on the temp directly (i.e. where the contract is settled between the end user and the individual without the presence of an employment business. One of the biggest threats to an employment business' interests is the prospect of 'contractor migration'. This will be where an end user client seeks to take all the contractors currently supplied by an employment business (on full margin) and have them supplied by either a Managed Service Provider (MSP) or Preferred Supplier List (PSL) Agency on a much reduced 'payroll' margin, cutting the current supplier out of the loop entirely. The reason for such a move is not to improve the chances of a temporary worker's ability to find permanent work; it is purely for the economic interests of the end user client. In IQ's industry, temp to perm situations are actually very rare because we deal with 'career contractors' who earn much more on fixed term assignments via their limited companies, and have no interest in taking up a perm role. However we are constantly fighting off attempts by end users to save money in the future by having 'migration clauses' allowing the wholesale transfer of an entire contractor base, which can be disastrous to the profit of the employment business. It is imperative that there are no new regulations which unwittingly or intentionally assist the end user clients in this regard, by imposing a ban on 'unreasonable' temp to temp clauses. IQ would suggest that this is self-regulated and should rightly be left to be negotiated by the employment business and client, without being affected by regulation. If the intent of the new regulation is truly to facilitate the transition from temporary work to permanent employment, then there should be no objection to this in principle.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

IQ believes that there should be no statutory rules requiring publishing information about the business. There simply isn't any requirement for this. The industry is hugely fragmented and this would cause a serious issue to start-up recruitment businesses, who already have no trading history to point to, and would be even less impressive to potential clients if they were forced by law to publish information which clearly demonstrated the company's weaknesses in comparison to larger competitors.

Any information publishing should be voluntary and/or self-regulated by trade associations. Bigger companies that wish to use their impressive business record as a marketing tool can therefore do so, but smaller recruitment businesses can build up their practice without being exposed.

No other industry would have the same sort of transparency requirements and there arguably far more 'cowboys' in different industries (e.g. construction) that would benefit better from this sort of process. Why should recruitment be the only industry regulated in such a way?

Finally, the information of the likes suggested by the Consultation document (number of placements, number of work seekers etc) is always a very moveable feast and the administration involved in accurate reporting would be cumbersome and expensive if it were an obligation instead of a right.

This suggestion goes entirely against the ‘red tape challenge’ by introducing new regulations where none existed before and none were needed before.

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

See response to Question 12 below.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

IQ do not think that any information should be disclosed on a mandatory basis. They would no doubt want as much information as possible. Hirers would be most interested in information such as average margin on placements, or time to hire, or CVs to interview ratio (just like a demanding SLA, but business-wide instead of client-specific); candidates would probably be most interested in number of payroll errors.

If hirers want this kind of information, all they have to do is put in place an SLA with their recruitment companies, which very many hirers will do in any case.

c) If you answered yes, what information do you think it should be compulsory to publish?

Not applicable

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

This should be the way forward if there is a government drive towards transparency.

The likes of APSCo and REC are well-positioned to put in place an information transparency charter which their members can voluntarily subscribe to, should they so wish. This can be used as a ‘kitemark’ for mature recruitment businesses, that are justifiably proud of their numbers and wish to proclaim them to the market at large. However, smaller fledgling recruitment businesses can wait until such point that they feel that they are ready to publish this information.

There is no place in legislation for any of this, however BIS could and should consult with the likes of APSCo and REC to help draw up approved charter terms.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

See response to Question 13 above.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

We believe it is desirable that the new Regulations should continue to be enforced by Government.

There would be considerable potential for abuse if individuals were permitted to make complaints directly to the courts or tribunals. Many claims would be for nuisance value only, but the courts would find themselves required to examine recruitment company practices, with judges being non-experts in actual process and practice in the real world.

EAS' inspectors, on the other hand, ARE experts at determining whether an employment bureau is truly culpable under the Regulations and this is a much cheaper and efficient alternative to putting this in the hands on non-experts and putting a massive extra burden on the judicial system.

There is a very real risk that individuals, if given the opportunity to enforce directly, will abuse the system and enter claims that are either spurious or trivial, in the full knowledge that there may be swift payout because the alternative is expensive litigation.

All enforcement of the Regs should be conducted by EAS inspectors who have the real-world sense to dispense justice and appropriate sanctions in a considered and even-handed manner. A good example of how this works well is the Information Commissioner's office, who deal with data protection complaints in such a manner that puts the transgressor on the straight and narrow without imposing a burden on the judicial system.

The AWR comparison is not a useful one, because this is very limited and relates to an individual's right to get paid fairly. The new Regulations will contain many more provisions of a much wider scope, many of which have no direct application to the individual or breach of which are likely to cause the individual direct loss or damage.

There is, and always has been, an ability to assert rights for the most important issue for temporary workers and contractors – issuing proceedings in the county court or employment tribunal (as appropriate).

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

This would be the ultimate sanction for a repeatedly non-complying employment bureau. Bad recruitment companies that give the industry a poor reputation and image should, quite rightly, first be given the chance by EAS to improve and comply; if they fail, they must be weeded out and eradicated.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

The Conduct Regulations are imposed by Government for the purpose of ensuring that recruitment companies conduct themselves in a proper and fair manner. They are not there to provide a method to enrich the individual. If the slightest transgression by an agency (which does not cause any real harm) could lead to an expensive tribunal claim, this simply increases the chances that there will be serial litigants who pounce on minor breaches in order to encourage the offending agency to pay the claimant off, instead of spending time and money on lawyers to fight the claim.

Employment tribunals, although styled as 'quasi-legal', are in fact just as adversarial as the courts in terms of process. In our experience, a claim in the small claims court is dealt with in a much more user-friendly manner, with the judge taking a more proactive position to get to the heart of the dispute and dispensing with the need for formal rules, cross-examination, and so on. Employment Tribunals tend to rely heavily on process. There is no real justification to change the current system, if for no other reason that the tribunal system will struggle to cope. Recourse to the county court is always available and most claims (for non-payment) will be small claims under £5000.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Not applicable.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

This is a good idea. There will be many examples of employment businesses that have been the subject of complaint (often frivolously or vexatiously). It would be due reward for an agency that goes through the rigour and process of an EAS inspection to have the results of that inspection published, especially where they are exonerated with a clean bill of health.

Such information about EAS inspections is presumably already accessible to the public under the Freedom of Information Act.

A system like this would drive greater compliance by the industry as a whole – no company would want to have a black mark against their name, and if they receive one, then this will drive that company to do better in the future.

As a responsible business that takes its legal obligations seriously (versus many competitors who willingly flout the law), IQ would welcome such an initiative.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the

regulatory requirements?

Yes No

b) Please give reasons for your answer.

Well-run employment bureaux already do this, not least for the fact that they are often required to do so by the terms of the hirer's contract.

Whilst not exactly 'necessary' to legislate specifically upon this, accurate record keeping is the only way to prove compliance to an EAS inspector, therefore it is common practice by responsible recruitment companies to keep such records, whether statutorily required or otherwise.

IQ would not object to new regulations on record keeping, providing these are proportional and reasonable, though this is not necessary due to company self-regulation.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

This could include: up to date CV; copy of passport or other similar document to confirm ID and right to work; copies of any work references actually received (NB there should not be a mandatory requirement to take a certain number of references, this should be hirer-driven); copies of any PES check documents required by the hirer and obtained by the employment bureau; notes made by the employment bureau in respect of the candidate; copy of signed contract; copies of timesheets and invoices; copy of Certificate of Incorporation and VAT certificate (for limited company contractors where applicable); copy of opt-out notice (though IQ urge the Government to reform the law to automatically exclude limited company contractors).

b) hirers?

Copy of signed contract; copy of credit check documentation; copies of timesheets and invoices.

c) other employment agencies/employment businesses?

These should be already kept by the other employment bureau in question therefore there is no need for these to be also retained by other third parties. However where a third party employment business is in the supply chain either as hirer or supplier, then the same records and apply to hirers and work seekers (as noted above) should apply.

Note – the above types of documents should ordinarily be kept as a matter of best practice anyway. Any record keeping requirements should be similar in principle to data protection. There should be no obligation upon employment bureaux to keep each and every single email that passes between them and a hirer/work seeker, but relate to specific documents only.

Employment Lawyers Association

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

No, I don't want you to publish or release my response

Your details

Name:

Organisation (if applicable): The Employment Lawyers Association

Address:

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association

X Other (please describe)

The Employment Lawyers Association (“ELA”) is a non-political group of specialists in the field of employment law and includes those who represent Applicants and Respondents in the Courts and Employment Tribunals. It is therefore not ELA’s role to comment on the political merits or otherwise of proposed legislation, rather to make observations from a legal standpoint. ELA’s Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

A sub-committee was set up by the Legislative and Policy Committee of ELA under the joint chairmanship of Robert Davies of Dundas & Wilson LLP and Trevor Bettany of Speechly Bircham LLP to consider and comment on the Department for Business, Innovation & Skills (“BIS”) “Reforming the regulatory framework for employment agencies and employment businesses” consultation paper (the “Consultation Paper”). Its response is set out below. A full list of the members of the sub-committee is:

Anne-Marie Balfour	Speechly Bircham LLP
Phillippa Canavan	Squire Sanders (UK) LLP
Susan Fanning	DLA Piper UK LLP
Emma Harvey	Gorvins Solicitors
John Hayes	Irwin Mitchell LLP
Louise Lightfoot	Eversheds LLP
David Ludlow	Barlow Robbins LLP

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes X No

b) Please give reasons for your answer.

- 1.1 Generally, we agree with these four outcomes, but note that these outcomes are largely already achieved by the existing regulatory framework. We are not aware of significant dissatisfaction with the status quo in this area amongst employment agencies/businesses, hirers or work seekers, save for the point raised in response to question 2, below. Paragraph 6.1 of the Consultation Paper suggests that the sector is currently operating efficiently and providing a reliable and trustworthy service to businesses and people seeking work. It is not clear why that would change if the current framework were to remain in place without amendment.
- 1.2 We accept that the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Regulations") can, in places, be complicated and difficult to understand at first sight - for example Regulation 10. However, agencies and hirers have become used to the current framework, and on the whole it is our experience that agencies and hirers alike understand it and accept it. We are not aware of a specific appetite amongst businesses for reducing the regulatory burden, as referred to in paragraph 6.10 of the Consultation Paper. Dissatisfaction appears to relate more to the administrative burden of adapting to the Agency Workers Regulations 2010 ("AWR"), which are outside the scope of this consultation. Therefore, the argument can readily be made that the existing regulatory framework is not broken and does not need fixing, whereas having to acclimatise to a new regulatory framework would add to that administrative burden.
- 1.3 We consider that the objective of new, streamlined legislation which is easier for businesses and individuals to understand could perhaps alternatively be achieved through clear and accessible explanatory guidance to support the existing regulatory framework.
- 1.4 We agree that complete deregulation of the recruitment sector is not viable or desirable.
- 1.5 We note the objective of focusing, for the most part, where work-seekers are most at risk of exploitation (paragraph 6.10 of the Consultation Paper). Regulation in this sector was originally introduced to address the 'rogue elements' within the industry. It is entirely possible that what may be viewed as 'bad' agencies will fail to comply with regulatory

obligations, no matter what those requirements are. Effective enforcement will be important if the most vulnerable work seekers are to be protected.

1.6 The Consultation Paper does not confirm exactly which issues covered by the current legislative provisions would be dropped. It can be implied that anything falling outside the four outcomes would cease.

1.7 In respect of the third outcome (ie contracts people have with recruitment firms should not hinder their movement between jobs) it would be neither logical nor reasonable for new legislation to prohibit the inclusion in contracts of notice periods and post termination restrictive covenants, to the extent already permitted by law for ordinary employees. Any new regulation should be clear about this issue to avoid confusion.

2. **Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?**

Yes No

b) If yes, please give details on what these are.

- 2.1 **Suggested outcome: recognise and take into account the commercial reality that these relationships often are NOT tri-partite**
- 2.2 We consider it helpful that any new legislation in this area should specifically and clearly address the commercial reality of recruitment sector arrangements. New legislation should deal with not only the simple tri-partite ‘work seeker - agency - hirer’ commercial relationship, but also the following, which are, in the experience of the Working Party, very frequently used:
- (a) Umbrella companies - an umbrella company employs the work seeker and also contracts with the hirer for the supply of that work-seeker’s services;
 - (b) Neutral vendors – where a hirer deals with one ‘Neutral Vendor’ business, which may fill the vacancies itself or, alternatively, in turn deal with many different recruitment businesses (there are variations to the exact business model);
 - (c) Personal service companies - individual work seekers supply their services to a recruitment business through their own limited companies, rather than in their personal capacities.
- 2.3 Any new legislation should clarify how that new legislation applies to the more complex types of engagement, in respect of not only payment but also the relationship the work seeker has with each of the other entities involved in the supply of their work to the end user. Under the present legislation, identifying the entity with which the work seeker has the contract of employment/engagement can be very complicated. Getting to grips with what is actually happening ‘on the ground’ would be an important priority for the proposed new legislation.
- 2.4 We are aware from the experience of one member of our sub-committee that the EAS Inspectorate has also found this issue confusing. For example, two Inspectors formed different and opposite views on whether the same particular umbrella company was, or was not, covered by the current recruitment sector legislation. It would clearly be preferable if this inconsistency could be clarified and removed. Further, if the government consider that umbrella companies should not be covered by the main recruitment sector legislation, the additional question arises as to what, if any, regulation should be imposed on them. We are aware that other jurisdictions have specific regulation for umbrella companies (for example *portage salarial* in France).
- 2.5 **Possible additional outcome: Minimise administration**
- 2.6 The recruitment sector already has a significant volume of administration to deal with. One suggested outcome would be to minimise as far as possible the administration required by the sector. This is in line with Vince Cable’s speech to the Engineering Employment Confederation of 23 November 2011, in which he is reported to have said he “would be simplifying and streamlining the UK’s recruitment sector by addressing unnecessarily complex rules on employment businesses and employment agencies”.
- 2.7 **Possible additional outcome: Maintain the opt-out for personal service companies**

- 2.8 Another outcome could be to maintain a genuinely self-employed individual's right to decide whether or not he/she wishes for his/her business arrangements to be covered by this legislation (Regulation 32). The Consultation Paper does not make the government's intentions clear in this regard.
- 2.9 **Possible additional outcome: Extend the second outcome beyond pay, to cover all principle rights of work seekers**
- 2.10 If the intention is to protect often relatively unsophisticated and vulnerable temporary workers, this would be supported by extending the second outcome beyond pay alone, so that there is clarity on who is responsible for other principle rights too.
- 2.11 **Possible additional outcome: retain and clarify the prohibition on the supply of replacement agency workers during a strike**
- 2.12 The focus on the four outcomes implies the proposed discontinuance of the current prohibition on employment businesses supplying employers with temporary agency workers to perform the duties normally performed by a worker participating in official strike or industrial action, or the duties normally performed by any other worker who has been assigned to cover the work of such worker. The current prohibition is set out in Regulation 7.
- 2.13 The issue of whether or not there should be such a prohibition is a policy decision for the government and falls outside of ELA's response. It is, however, a significant provision. In this regard, the following points are relevant:
- a) Breach of Regulation 7 is currently a criminal offence.
 - b) The current prohibition could be viewed as unfair to employment businesses. Whilst the provision exists to protect workers on official strikes, it does not provide total protection for those workers. For example, the employer may still hire replacement labour directly, or could recruit through an employment *agency* (as distinct from an employment *business*). Whilst an employer would face a greater administrative burden in hiring labour directly than procuring the supply of temporary agency workers, that additional burden is manageable. The current prohibition is, arguably, disproportionate, and this should be addressed if the prohibition is to be retained.
 - c) If the prohibition is to be retained, it would be helpful to include clarification on whether an employer may be liable for aiding and abetting the offence. This issue has not been determined by the courts.

2.14 **Possible additional outcome: address current National insurance/expenses issues**

2.15 For the protection of work-seekers, another outcome could be to clarify and properly enforce rules on tax relief for expenses. We are aware that currently, widespread abuse of the rules relating to national insurance and expenses is being reported in the press, with allegations being made that certain agencies and umbrella companies may be profiting from paying wages as travel and food expenses that are not genuinely incurred. Currently the work-seeker may not understand what is happening, but can be penalised later.

3. **DO YOU THINK THERE ARE CIRCUMSTANCES, OUTSIDE OF THE ENTERTAINMENT AND MODELLING SECTOR, WHERE AGENCIES SHOULD BE ALLOWED TO CHARGE FEES?**

YES NO

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

3.1 The question of whether or not agencies should be able to charge fees is a policy decision for the government and falls outside the scope of ELA's response.

3.2 There may be areas where this is possible, but we anticipate that such areas would be limited to sectors in which a greater degree of marketing of candidates to hirers is required, which incurs up front expenditure on the part of the agency; and sectors with relatively higher earning, sophisticated work seekers, rather than low paid temporary workers at greater risk of exploitation. A potential example would be (very-) targeted executive search services.

3.3 We note, however, that non-entertainment/modelling agencies do not generally appear to consider it necessary to be able to charge fees. There seems to be a feeling that it is 'not the done thing' to be seen to be charging work seekers and also charging hirers.

3.4 We are aware that some agencies feel that job websites and newspapers have an unfair advantage as they are allowed to charge work seekers for 'situations wanted' postings.

4. **QUESTION 4: A) DO YOU THINK THE CURRENT DEFINITION OF "EMPLOYMENT AGENCY" AS SET OUT IN SECTION 13 OF THE EMPLOYMENT AGENCIES ACT 1973 COULD BE IMPROVED?**

YES X NO

b) Please give reasons for your answer.

- 4.1 It would be helpful for the entire definition to be all in one place, to save cross referring from the Regulations, to the Act and then back to the Regulations.
- 4.2 The defined terms of 'Employment Agency' and 'Employment Business' could be clearer. It is not immediately clear what each refers to. This could be remedied by using different defined terms for the same concepts, for example 'Permanent Placement Agency' and 'Temporary Placement Agency'.
- 4.3 Consideration should be given to whether online job boards should be brought within the definition.
- 4.4 A condensed version of the current wording could be formulated as:

“Permanent Placement Agency” means the business (whether or not carried on for profit or in conjunction with any other person) of finding work-seekers employment with employers and/or of supplying work-seekers to employers for employment by them. This does not apply to the Excluded Services [the definition would include the contents of Reg13(7) of the Act]. Where a person carries on both a Permanent Placement Agency and a Temporary Placement Agency, it is a Permanent Placement Agency when it acts in the capacity as a Permanent Placement Agency.”

- 4.5 We suggest further clarity be provided as to whether an umbrella company falls within the definition of “Employment Business/Temporary Placement Agency”.
- 5. **QUESTION 5: A) DO YOU THINK LEGISLATION SHOULD REQUIRE EMPLOYMENT AGENCIES TO ALLOW WORK-SEEKERS A COOLING OFF PERIOD IN SITUATIONS WHERE FEES CAN BE CHARGED?**

YES NO

b) Please give reasons for your answer

- 5.1 This policy issue is beyond ELA's remit . However, we observe that a cooling off period may be argued to help to protect vulnerable and/or unsophisticated work seekers

- 6. **QUESTION 6: A) IF YOU ANSWERED YES TO QUESTION 5, DO YOU THINK THERE SHOULD BE ONE STANDARD COOLING OFF PERIOD?**

YES X NO

b) What do you think the cooling off period should be?

6.1 One standard statutory cooling off period, rather than the two current different cooling off periods, would be preferable, for clarity, consistency and simplicity in the legislation.

6.2 In order to be effective, a cooling off period should:

- allow work seekers a proper opportunity to reflect, to take advice and to observe the quality of the work finding services for which they would be required to pay a fee; but
- not be so long as to enable the work seeker to derive valuable benefit from the agency's investment in him or her, for which the agency will not be paid.

6.3 Bearing in mind that fees are only chargeable where a work seeker is actually paid for an assignment, instead of having a cooling off period that is a fixed number of days or weeks from signing up with an agency, it may be fairer to consider linking the cooling off period to the first assignment secured for the work seeker.

7. **QUESTION 7: A) DO YOU THINK IT IS NECESSARY TO LEGISLATE TO ENSURE THAT THERE IS CLARITY ON WHO IS RESPONSIBLE FOR PAYING A TEMPORARY WORKER FOR THE WORK THEY HAVE DONE?**

YES NO

b) Please give reasons for your answer.

7.1 In many cases it will be obvious where the responsibility for paying lies, for example where this is clear in a contract between agency and work-seeker. It is less clear in the case of umbrella arrangements and gross pay schemes. As these arrangements can be very complicated in practice this is an aspect where specific clarification would be advisable.

7.2 Legislation is not strictly necessary, as it will be open to a work seeker to bring an individual claim if he or she has not been paid. However, problems associated with this are:

- The work seeker may feel compelled to list multiple Respondents if it is not clear to him/her who is responsible for paying, and liability can be established in the course of those proceedings. This increases the burden on the Tribunals.
- The work seeker may be unaware of the identity of one or more entities in the supply chain.

8. QUESTION 8: A) REGULATION 6 RESTRICTS EMPLOYMENT AGENCIES AND BUSINESSES FROM PENALISING A WORK-SEEKER FOR TERMINATING OR GIVING NOTICE TO TERMINATE A CONTRACT. DO YOU THINK THAT THE TEXT OF REGULATION 6 COULD BE IMPROVED?

YES X NO

b) Please give reasons for your answer.

- 8.1 The protection of Regulation 6(1)(a)(i) could be expanded to protect a work seeker who has indicated an intention to terminate a contract, without actually terminating or giving notice to terminate.
- 8.2 It would be helpful for any formal guidance accompanying any new legislation to give examples of what constitutes a detriment. We understand that a typical detriment is a work seeker being 'blacklisted' and not offered further work.
- 8.3 Regulation 6(b) appears to be of limited protective value to work seekers, and there are circumstances in which an agency has proper reason to know the identity of a future employer - for example, to establish whether a transfer fee is payable.
- 8.4 The exemptions under Regulation 6(3) (work seekers employed under a contract of service or apprenticeship) could result in unfairness and therefore could be removed. For example, work seekers on 'zero hours' employment contracts could fall outside the protection.

9. QUESTION 9: A) REGULATION 10 HAS THE EFFECT OF RESTRICTING EMPLOYMENT BUSINESSES FROM CHARGING UNREASONABLE TRANSFER FEES TO HIRERS. DO YOU THINK THAT THE TEXT OF REGULATION 10 COULD BE IMPROVED?

YES X NO

b) Please give reasons for your answer.

- 9.1 It is insufficiently clear.
- 9.2 It could be improved by:
- Separating the different scenarios within Regulation 10(4), so that it is clearer and easier to follow and understand, even if this also makes the drafting slightly repetitive and lengthier;
 - Defining 'period of hire', rather than referring the reader back to the description in paragraph (1) when interpreting Regulation 10 (3);

- Including more clarity on the work seeker's original relationship with the agency and hirer .

9.3 We also suggest guidance be issued with examples of reasonable/unreasonable transfer fees in various circumstances. Some reference could be made to a permanent placement fee where the employment business also operates as an employment agency.

10. QUESTION 10: A) DO YOU THINK EMPLOYMENT AGENCIES AND BUSINESSES SHOULD PUBLISH INFORMATION ABOUT THEIR BUSINESS?

YES **NO**

b) Please give reasons for your answer

10.1 ELA does not have a view on whether employment agencies and businesses should be obliged to publish information about their businesses. It is unclear the extent to which such information would in fact be relied upon by potential hirers and individual work-seekers.

11. QUESTION 11: WHAT INFORMATION DO YOU THINK WOULD BE OF MOST INTEREST TO:

A) WORK-SEEKERS **HIRERS**

The sub-committee considers that work-seekers would be most interested in the following information (starting with topic of most interest): type of occupational sector that the agency/business operates in; number of placements available; average length of placements; number of payroll errors; equalities policies; and feedback/reviews from work-seekers

11.1 We consider that hirers would be most interested in the following information (starting with the topic of most interest): type of occupational sector that the agency/business operates in; length of time it takes to fill a vacant post; feedback/reviews from hirers; number of work-seekers available.

11.2 Although not on the Government's proposed list of information, ELA considers that many hirers would be interested in an employment business' ratio of temporary to permanent placement conversions.

12. QUESTION 12: A) DO YOU THINK IT SHOULD BE COMPULSORY FOR EMPLOYMENT AGENCIES AND BUSINESSES TO PUBLISH INFORMATION ABOUT THEIR BUSINESS?

YES NO

12.1 ELA does not have a view on whether it should be compulsory for employment agencies and businesses to publish information about their business. However we note that these are not obligations placed on ordinary employers.

b) Please give reasons for your answer.

The following points are relevant:

12.2 We question whether it would be feasible in practice to verify, police or enforce the accuracy of any information published.

12.3 This step would therefore have limited protective value for work seekers.

12.4 This requirement would mean imposing obligations on agencies/businesses that go beyond the obligations of ordinary employers.

12.5 "Bad" agencies may be inclined simply to make up the information, which may lead to workers being misled to a greater extent than might otherwise be the case.

12.6 A "good" agency will build a good reputation, and would be expected already to be publishing some of this information.

12.7 Many employment agencies and businesses are very small businesses and a compulsory requirement could be a considerable drain on resources.

12.8 Feedback reviews from work seekers/hirers could be helpful if genuine, but may not always be genuine! In addition, the agency/business could selectively pick which reviews to publish, which will reduce the likelihood of the reviews being an accurate reflection of the agency/business. Commercially, good agencies will want to do this without it being

compulsory. There could also be potential here for breaches of the Data Protection Act 1998. For example, where an agency is required to publish feedback of its hirers and work-seekers, but for which it has not obtained their consent. In addition, certain hirers may contractually prohibit an agency/business from publishing any feedback concerning assignments to them.

- 12.9 Agencies will generally publish the type of occupational sector in which they operate anyway. Making this compulsory is not necessary.
- 12.10 Requiring agencies to publish up to date information on the number of jobs/placements available, the number of work seekers available, the average length of time it takes to fill a vacant post and the average length of placements could be onerous, particularly if a high degree of accuracy is required, or if the information has to be kept absolutely up to date as it is the experience of members of the Working party that this is data that can change considerably day to day . The cost of compliance would be an issue, and this appears to undermine one of the underlying reasons for this review of legislation – namely to invigorate the market and reduce burdens on businesses.
- 12.11 In the event that employment businesses are required to publish information about their business, we question the usefulness of some of the suggestions included in the consultation document as a meaningful piece of data. For example, the “average length of placements” - the data provided by a business which works in a sector where the majority of its assignments last for one week, would be significantly skewed due to its inclusion of a small number of long-term sickness assignments. The median figure would, therefore, be more appropriate than the average. In addition, this would not be a useful way for a work-seeker to compare two employment businesses that work in different sectors. .
- 12.12 It could be open for start-up agencies to seek to create an impression of being ‘bigger than they are’ in order to improve the perception of them position in the market. The requirement to give specific information on staff and vacancies could prevent such approach – but, please refer to 12.5 which will remain a concern given the challenges in verifying such information..
- 12.13 Work seekers may respond to specific advertised vacancies, rather than to a particular agency per se, or general information about an agency. If so it is unlikely that the size of the business, staff numbers and locations of the employment business or agency will be of interest to either party.
- 12.14 If payroll errors are to be published it will be important that ‘payroll error’ is clearly defined. Some errors will be far more serious than others. We understand that a relatively high percentage of EAS Inspectorate issues are payroll ones and the requirement to publish this information could reduce non-compliance. However, it is questionable how genuine this information about payroll errors would be and (as referred to above) query how this would be policed.
- 12.15 A requirement to publish equalities policies would bring the issue of equality into recruiters’ mindsets. In the experience of our Working Party, elements of the recruitment industry is comparatively lacking in awareness of its obligations, and could improve on

equality issues. We are aware of a prevailing perception in some quarters that it may be easier for agencies to ignore equality issues such as disability and pregnancy than it is for ordinary employers. The process is also different for an agency, which will have to 'sell' the concept of reasonable adjustments for a particular candidate, and without incentives and reminders not to, may ignore a disabled candidate in favour of a candidate perceived as easier to 'sell' to prospective end-users. Having said that it is questionable whether having an equality policy would be sufficient to address these concerns. An alternative could be to publish certain equality statistics in their last three months' placements - although it is also noted that this is a step beyond what ordinary employers are required to do (with an associated additional level of administrative burden).

c) If you answered yes, what information do you think it should be compulsory to publish?

12.16 It may be argued that if the publication of equalities policies was made compulsory that should help the recruitment sector to understand and comply with its equality obligations.

13. QUESTION 13: A) DO YOU THINK TRADE ASSOCIATION CODES OF PRACTICE HELP TO MAINTAIN STANDARDS IN THE SECTOR?

YES X **NO**

b) Please give reasons for your answer.

13.1 Agencies/businesses often want to be members of trade associations for commercial reasons, for example:

- it suggests that they are of good repute, which gives comfort to hirers and commercial advantage to agencies;
- hirers will sometimes make membership a prerequisite for an agency to be on their preferred supplier list.

- 13.2 Trade association codes of practice tend to encompass legislative compliance obligations, as well as adding helpful guidance on best practice. Compliance with a trade association's code of practice is usually a condition of membership. Membership can be withdrawn on account of breach. Therefore these codes help to maintain standards.
- 13.3 In litigation involving rival agencies, reference is often made to, and emphasis is often placed on, compliance with, for example, the REC code of practice.
- 13.4 Trade Associations also provide and give access to cost effective training on the law and regulatory enforcement.
- 13.5 A caveat, however, to the above is that the members are reliant on the trade association operating, and exercising its powers, in a fair and appropriate manner.

14. QUESTION 14: WHAT OTHER NON-REGULATORY TOOLS COULD BE USED TO MAINTAIN STANDARDS IN THE RECRUITMENT SECTOR? PLEASE BE AS SPECIFIC AS YOU CAN IN YOUR RESPONSE.

- 14.1 We observe, but do not advocate, the model in other European countries such as Germany of mandatory trade association or chamber of commerce membership.
- 14.2 ACAS guidance for agencies/businesses could be used, perhaps with penalties for non-compliance similar to those for non-compliance with the ACAS Code on Discipline and Grievance.
- 14.3 We consider that there is potential for BIS to issue updated and more focused guidance for agencies, for hirers and for workseekers. In this regard we note that 2010 Regulations were borne out of the wider EU social partnership agreement and that this stakeholder approach was adopted in the UK prior to the adoption of those regulations. Therefore future Guidance could be devised via the input of (and potentially agreed with) stakeholders such as REC, TEAM, the CBI and TUC.
- 14.4 Employment Tribunals sharing information with the EAS where it appears from an individual claim that there may be an infringement of interest to the EAS.

15. QUESTION 15: DO YOU THINK THAT THE GOVERNMENT SHOULD ENFORCE THE RECRUITMENT SECTOR LEGISLATION?

YES X NO

b) Please give reasons for your answer.

- 15.1 Government enforcement can be very effective, and we understand that, for example 70% of unpaid wages complaints end up paid relatively quickly. However, it can only be truly effective if properly resourced (and we question whether such resourcing is realistic in the

current economic climate) and if work seekers are aware of the appropriate contacts for reporting infringements.

15.2 Work seekers are often unsophisticated, without the means or know how to pursue infringements of their rights, and relatively vulnerable. They are relatively unlikely to commence litigation. Government enforcement assists them.

15.3 Government enforcement is available (sometimes alongside the option for individuals to bring claims) in relation to other labour law obligations, for example, the national minimum wage, data protection, equality and health and safety.

15.4 Perceived problems with the current government enforcement regime are that:

- There appear to be relatively few inspectors to police these matters;
- the existing rules have not been widely enforced and nothing is done about many "bad" operators:
- the EAS is not particularly vigilant at prosecuting shadow directors of phoenix companies.

15.5 More effective enforcement could be achieved by closer liaison between the enforcement agencies i.e. the Employment Tribunals and EAS as suggested in the answer to question 14.

16. QUESTION 16: A) DO YOU THINK THAT PROHIBITION ORDERS SHOULD BE INCLUDED IN THE NEW ENFORCEMENT REGIME?

YES NO

b) Please give reasons for your answer.

16.1 Their existence provides teeth for the legislation and a "reality check" for agencies. This encourages compliance.

17. QUESTION 17: A) DO YOU THINK INDIVIDUALS SHOULD BE ABLE TO ENFORCE THEIR RIGHTS AT AN EMPLOYMENT TRIBUNAL?

YES X NO

b) Please give reasons for your answer.

17.1 Individual work seekers should not be worse off than ordinary workers and employees in terms of their enforcement options.

17.2 This can operate in parallel with, rather than instead of, government enforcement.

18. QUESTION 18: WHAT GUIDANCE DO YOU THINK INDIVIDUALS WOULD NEED TO BE FULLY AWARE OF THEIR RIGHTS AND HOW TO ENFORCE THEM?

18.1 An explanation that the relationship is not always a simple tri-partite one between agency, employer and workseeker.

18.2 A statement setting out their rights in respect of terms and conditions - perhaps a universally accepted statement, available on ACAS and/or BIS websites.

19. QUESTION 19: A) DO YOU THINK THAT THE GOVERNMENT SHOULD PROACTIVELY PUBLISH THE FINDINGS OF INVESTIGATIONS THAT HAVE BEEN CARRIED OUT, INCLUDING THE TRADING NAME OF EACH EMPLOYMENT AGENCY/BUSINESS, AND LISTING THE INFRINGEMENTS TO THE LEGISLATION?

YES X NO

b) Please give reasons for your answer.

19.1 This action should:

- Improve compliance and act as a deterrent to what might be described as “bad” agencies;
- Provide a useful resource for workseekers and hirers,

19.2 There is a concern that flagging any minor infringement would be unfair particularly when other employers are not "named and shamed" in this way. It is also likely to be administratively burdensome to publish every minor infringement in a clear and fair way.

19.3 This suggests that there is an argument that only material/serious infringements should be published;

19.4 For fairness, agencies/businesses should be afforded the opportunity to be able demonstrably to remedy infringements, where possible and appropriate, and this noted on the publication. Alternatively, if infringements have been remedied, there may not need to be publication in all instances.

19.5 It is the experience of members of the Working Party that investigations are patchy, in that agencies/businesses are investigated only in relation to a reported complaint, or if they fall within a sector or business type that is the focus of concern at a particular time.

Publishing the results of investigations would be more meaningful if inspections were more widespread, but we recognise that resources are unlikely to be available for this.

- 19.6 The length of time for which published information would remain available should be considered. If it is substantial, then the date of the infringement should be clear. The agency/business should have the opportunity to have subsequent improvements noted alongside publication of the infringement.

20. QUESTION 20: A) DO YOU THINK IT IS NECESSARY TO LEGISLATE TO REQUIRE EMPLOYMENT AGENCIES AND BUSINESSES TO KEEP RECORDS TO DEMONSTRATE THAT THEY HAVE COMPLIED WITH THE REGULATORY REQUIREMENTS?

YES NO X

b) Please give reasons for your answer.

- 20.1 It is sufficient for agencies and businesses to decide whether to keep records to enable them to demonstrate compliance and to defend claims, to function effectively, to meet HMRC requirements and to comply with the AWR.

21. QUESTION 21: WHAT RECORDS DO YOU THINK EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES SHOULD BE REQUIRED TO KEEP RELATING TO:

a) work-seekers?

- 21.1 Those records that are required in order to comply properly with:

- The Agency Workers Regulations 2010;
- The Data Protection Act 1998;
- The Immigration and Nationality Act 2006;
- Existing Regulation 29 of the Regulations.

- 21.2 Records relating, where appropriate for the type of work sought, to an applicant's suitability for working with children and vulnerable adults.

- 21.3 Records of evidence that a work seeker meets the regulatory, qualification or other requirements for the type of role sought. For example, in relation to work seekers in the medical sector, evidence of qualifications, inoculations, annual appraisals would be appropriate.

b) hirers?

21.4 Records of the information an agency needs in order to comply properly with:

- the AWR;
- Regulation 29 of the Regulations.

c) other employment agencies/employment businesses?

21.5 Clear and transparent records of other agencies or businesses eg. Umbrella companies operating as principals in a supply chain, including payment history and split fee networks.

The Association of Model Agents

April 10th 2013

Caroline Daly
Employment Agencies Standards Inspectorate
1. Victoria St
London SW1H 0ET

Dear Caroline

I am writing on behalf of members of the AMA (list enclosed/attached) in response to the Recruitment Sector Legislation - Consultation on reforming the regulatory framework for employment agencies and employment businesses.

We are confident that AMA agencies are professionally run – which is why we do not find the present regulations particularly burdensome – but we are of course pleased that they are to be reviewed and simplified. We would like to make the following points:

1. Charging fees:

Model agencies are at present permitted to charge fees either to the model or to the model's client: we are anxious that this should continue to be the case.

2. Rogue Agencies

The exploitation of young people with stars in their eyes is evermore widespread. Online 'model platforms' proliferate. Young people, and often their parents, are travelling hundreds of miles and incurring enormous expense for travel, accommodation and hopeless photographs, having been convinced on the telephone that they have a bright future as a model. A cooling-off period might give them a chance to think again (although having got this far, they probably won't!) but even a genuinely potential models who joins a reputable agency may well have to wait weeks, or even months for the first job.

If you Google 'be a model' etc. many websites come up of which only one or two are genuine model agencies: it is no wonder that people are misled. The AMA will take steps to put itself at the top of the list and we would be happy to co-operate with any website, chat room etc which might be instigated with a view to its becoming a well-known focus for people interested in modelling where information can be shared. Naming and shaming may be appropriate.

.
Thank you for giving us the opportunity to contribute.

Yours sincerely.

Grace Chorley
General Secretary

Steria Recruitment

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

No, I don't want you to publish or release my response

Your details

Name: Peter Holliday/Joyce Blundell

Organisation (if applicable): Steria Recruitment Limited

Address: 420 Thames Valley Park Drive, Reading RG6 1PU

Please tick the boxes below that best describe you as a respondent to this consultation.

Business representative organisation/trade body

Central government

Charity or social enterprise

Individual

Large business (over 250 staff)

Legal representative

Local government

Medium business (50 to 250 staff)

Micro business (up to 9 staff)

Small business (10 to 49 staff)

Trade union or staff association

Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

Yes, we agree with the four outcomes above, please see below for more details.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

The regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company contractors and the lower-paid temporary staffing sector. The relationship between individuals in the lower-paid temporary staffing sector and end-user clients is one of employer and employee, whereas the relationship between limited company contractors and end-user clients is best defined as 'business-to-business'. As such limited company contractors neither want nor need the protections that the Government is seeking to introduce for "work-seekers".

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

Current definition of Employment Agency is permanent and Employment Business Contractor and Temp. This needs to be revised given that BIS are trying to simplify the regulations.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This suggestion is not relevant to the business undertaken by Steria Recruitment

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No N/A

b) What do you think the cooling off period should be?

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

It is important that in the business to business contract between a staffing company and a limited company contractor, that the staffing company has the right to withhold payment where the limited company is in breach of the contractual terms, or where no proof is provided of satisfactory services undertaken

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

Limited company contractors with rare/niche skills cannot be simply swapped in and out. A project could be damaged if a limited company contractor was to walk off site because he had a better paid job elsewhere to start immediately. For this reason, it is essential that the right to termination must be in line with the commercial requirements of the client.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

Transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to legislation. Any fees should be transparent and stated in contracts.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

We do not believe the kind of information suggested in the consultation would be of much use to a contractor looking for his/her next assignment. In the professional sector, contractors usually source assignments from job board adverts, or via networking. The sort of information suggested in the consultation would not be accurate for any reasonable length of time, and would be of little benefit to contractors. We would be extremely cautious about requiring transparency of commercial data in the public domain, and we're particularly concerned about the detrimental effect this would have on start ups and SMEs.

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

N/A – See above

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No N/A

b) Please give reasons for your answer.

See above

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

As members of APSCo, we believe that working with trade associations should be the way forward if there is a drive towards transparency. There are many ways in which trade bodies can help and encourage their members to increase their levels of professionalism. APSCo members are subject to a strict vetting process and are committed to maintaining high standards of practice.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

We are also regularly audited both by DNV and our internal auditors on all aspects of recruitment and specifically the processes within the Conduct Regulations. We also believe a "Charter" rubber stamped by BIS would help maintain standards.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

If Government did not enforce legislation in the recruitment sector, non-compliant businesses would have an advantage over compliant, professional businesses.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

Unprofessional recruitment companies give the industry a poor reputation. Therefore, prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

We are unconvinced that legislation set out to regulate the conduct of recruitment companies is an appropriate vehicle for workers to enforce their rights.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Agencies should publicise their terms of engagement demonstrating.

- How they will treat a work seekers registration, which includes protecting their data and informing them that the agency will be in regular contact throughout the recruitment process.
- Information that describes, generically, the broad range of roles and industries that the agency operate within, so that they understand what type of call or contact they will subsequently receive
- Give them the option to declare information to help the agency record diversity information, which is required by clients and by law
- An explanation that, should the agency subsequently identify a suitable role for them, they will be provided with Terms and Conditions of Contract that are relevant to the client where the assignment would be

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

Standards of record keeping in the industry are already excellent.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

Recruitment businesses already collect the following:

- CV
- ID documents
- Right to Work in UK confirmation
- PES check docs
- Relevant phone/email logs
- Contracts
- Contacts details

- Actual refs received, no requirement to take out references
- Company docs if applicable
- Opt outs
- Timesheets/invoices

a) From hirers:

Recruitment businesses already collect the following:

- Contracts
- Relevant phone/email logs
- Contacts details
- Invoices/timesheets
- Comparable employee information if the work-seeker is within scope of the AWR

c) other employment agencies/employment businesses?

Recruitment businesses already collect the following:

- Third party Managed Service Provider our Recruitment Process Outsourcing documentation.

The Agents' Association

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

YES, I would like you to publish or release my response

No, I don't want you to publish or release my response

Your details

Name: Bob James

Organisation (if applicable): The Agents' Association (GB)

Address: 54 Keyes House, Dolphin Square, London, SW1V 3NA

Please tick the boxes below that best describe you as a respondent to this consultation.

YES Business representative organisation/trade body

- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

NO

b) Please give reasons for your answer.

We believe that the existing Conduct Regulations & Employment Agencies Act 1973 should remain in force with greater enforcement powers given to EASI with more stringent penalties for transgression.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

YES

b) If yes, please give details on what these are.

Greater enforcement powers be given to EASI with more stringent penalties for transgression.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

NO

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

YES

b) Please give reasons for your answer.

Currently PR Companies/Event Managers etc who broker entertainers for hire, appear to think that they are not under any obligation to adhere to the Conduct Regulations.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

YES

b) Please give reasons for your answer

The current system appears to work well with legitimate Employment Agencies and Employment Businesses providing the fees relate to advertising and not commission.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

YES

b) What do you think the cooling off period should be?

30 Days

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

NO

b) Please give reasons for your answer.

We feel it is clear with regard to the Entertainment Industry

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

NO

b) Please give reasons for your answer.

The situation rarely occurs in the Entertainment Industry

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

NO

b) Please give reasons for your answer.

Current Conduct Regulations work well for legitimate Entertainment Businesses

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

NO

b) Please give reasons for your answer

Only voluntarily

Question 11: What information do you think would be of most interest to:

a) work-seekers **YES** hirers **YES**

Honesty, capability, reliability and visibility

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

NO

b) Please give reasons for your answer.

The Conduct Regulations already calls for Terms of Business to be issued by all Employment Agencies and Employment Businesses

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

YES

b) Please give reasons for your answer.

The Agents' Association has a broad Code of Conduct for its Members and provides practical advice and assistance in maintaining standards amongst its Members

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

Greater liaison between Employment Agency Standards Inspectorate and Trade Associations, Trade Unions and other bodies

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

YES

b) Please give reasons for your answer.

It acts as a deterrent for all legitimate Employment Agencies and Employment Businesses – and hopefully the non-compliant agencies

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes

b) Please give reasons for your answer.

AS 15

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

YES

BUT - the ACAS website clearly states: **The regulations don't cover the genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.**

b) Please give reasons for your answer.

ACAS is perfect for the recruitment industry 'temp' or 'perm', but totally useless for entertainers.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Greater visibility of Conduct Regulations and Employment Agency Standards Inspectorate

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

YES

b) Please give reasons for your answer.

Greater visibility which will serve as a deterrent to other transgressors and act as an advisory tool for us.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

YES

b) Please give reasons for your answer.

It is the basis of the current Conduct Regulations and it provides clarity to both EASI and the work seeker that the Employment Agency/Employment Business is reliable, visible and compliant with the legislation

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

As per the current Conduct Regulations

CBI

From: Matthew Percival
Sent: 11 April 2013 22:03
To: Recruitment Sector Consultation

Subject: CBI response to conduct regs review

Dear Caroline

I welcome this opportunity to respond to the consultation on reform of the regulatory framework governing the recruitment sector on behalf of the CBI. The recruitment sector plays an important role in matching work-seekers to work opportunities, improving the UK's labour market performance. The CBI's members believe that the Conduct Regulations ensure a minimum level of protection for individual workers and work-seekers which is important. On the whole the Regulations remain fit for purpose, but this review is an opportunity to update the regulations so that they take account of the diversity of supply models which are used in the sector today. We agree that work seekers should not be charged fees, that clarity about who will be paying workers is important and that work seekers should be given the confidence to use the recruitment sector in the knowledge that they can enforce their rights. But the focus of outcome three on transfer fees is misplaced as it is based an understanding of how transfer fees operate which is out of step with the experience of CBI members.

Protecting work-seekers is an important function of the Regulations...

The recruitment sector is sustainable based on the existing practice of fees for recruitment services being paid by hiring businesses and not by the work-seekers themselves. There is no demand from recruitment businesses that they should be allowed to charge fees of work-seekers where they were previously prevented from doing so.

Employment agencies also recognise that it is important that temporary workers know who will pay them, how much and when. Clarity will come from transparent contractual arrangements and a regulatory framework which recognises the role of intermediaries in supply chains. The Regulations are based on the assumption that there is a tripartite relationship between hirer, agency and work-seeker. But the frequency with which an intermediaries acts between hirer and agency or between agency and temporary worker has increased to the point where a [survey last year by Osborne Clarke](#) found that 49% of respondents' staffing supply chains had two or more intermediaries. Being based on a tripartite relationship, the Regulations identify the agency as always responsible for paying the temporary worker. But where an umbrella company operates between agency and temporary worker, it is the umbrella company and not the agency that should be responsible for paying the temporary worker. Otherwise the situation could arise where the agency pays what it owes to the umbrella company, but is then pursued also by temporary workers who have not been paid by the umbrella company that employed them. If it would be helpful to arrange for you to meet with CBI members to discuss the roles played by intermediaries and how they might be better covered in the new regulatory framework then we would be happy to facilitate this.

...but transfer fees are not an obstacle to temporary workers' transition into permanent employment

Transparency is also the key to the operation of transfer fees. CBI members in the recruitment sector welcome the government's commitment to a regulatory framework which permits transfer fees because they are essential to agencies ability to do business. But the CBI is not aware of any evidence of unreasonable transfer fees preventing workers from moving onto contracts of indefinite duration. Rather than more heavily regulating these fees by introducing a 'reasonableness' test, the

CBI believes that the only rationale for legislation covering transfer fees at all is that the EU Temporary Agency Work Directive requires permissive legislation before hirers and agencies can agree transfer fees.

The transition from a temporary contract to one of indefinite duration is a path which many workers benefit from each year. The level and structure of this fee, far from being set by the agency to prevent workers from taking up permanent employment, are determined in conjunction with the hiring firm – one CBI member reported that 70% of the transfer fees in their business are set by hirers. As it is just one element of the commercial arrangement between hiring firm and agency, altering the transfer fee will impact on other elements of pricing. This could be to the detriment of temporary workers if, for example, a lower and more regulated transfer fee meant that the basic rate at which an agency will supply a temporary worker increases to a level above what the hiring firm is willing to pay. The consequences of a more regulated transfer fee would vary from case to case, but could lead to a reduction in the number of work opportunities available to work-seekers.

The EASI has an important role to play but could be better targeted by adopting a transparent risk-based approach

Temporary workers can already go to employment tribunal to enforce the employment rights that apply to them, so it would not be true to suggest that they cannot already enforce their rights in this way. But the Employment Agency Standards inspectorate (EASI) is valued by recruitment businesses and has an important role to play because the Regulations govern more than just the relationship between the agency and the temporary worker. The employment tribunal is not set up to perform this wider function. Given the constraints on the funding of EASI, it could become a more cost-effective organisation by adopting a more targeted and risk-based approach to enforcement.

Mandatory information sharing will not help work-seekers or hirers make informed choices

Recruitment businesses are confident that their customers are happy with the service that they receive and that they would recommend them to others. This confidence is based on the fact that the recruitment sector is such a competitive marketplace that an unhappy customer could easily go to an alternative recruiter. The expansion of social media in recent years has further enhanced customers' ability to give public feedback on the service that they receive.

Recruiters are positive about sharing appropriate information and the experiences of previous customers. But the CBI doubts that there is a role for regulation in improving these flows of information. Being required to publish real time information on the number of work-seekers or the number of placements available would add to the cost of doing business, but would not provide any insight into the quality of the service being offered. Similarly, publishing the average length of placements would not contribute to a more informed decision because so many factors influence this figure – for example, an agency has a higher average length of placement, but is this because there is less chance of transferring to a permanent job? It will always remain most informative for individual work-seekers and prospective hirers to speak to an agency about their situation. Then they can be given information which would help them make an informed decision because it is in a context which is relevant to their preferences.

Kind Regards,
Matthew Percival
Senior Policy Adviser
CBI Employment & Skills

Foresight Law Consultancy Ltd

Reforming the Regulatory Framework for Employment Agencies and Employment Businesses

A response by Foresight Law April 2013

Introduction

Foresight Law (FL) is the trading name of Foresight Law Consultancy Limited, an independently owned business providing legal advice, support and training to businesses within the recruitment sector. It is owned by Fiona Coombe, a non-practising solicitor and former Director of Professional Services at the Recruitment and Employment Confederation (REC) with responsibility for the legal advisory services for members and the compliance team from 1998 to 2010.

In this response FL offers both the views of Fiona Coombe drawn from 14 years' experience of advising recruiters on the 1976 and 2003 Conduct of Employment Agencies and Employment Businesses Regulations, and also those of some of her clients in the recruitment sector. FL is a service provider to TEAM and has acted in the past two years for over 20 employment agencies and/or businesses involved in the IT, education, hospitality, technical and engineering sectors as well as an umbrella supplier. Clients' views were obtained by telephone or face to face meetings in which businesses were asked for their views:

- In general terms, when it is appropriate for Government to impose rules on the recruitment sector and when it is more appropriate for the sector and marketplace to decide the rules for themselves;
- On ways in which a regulatory framework may achieve the four stated outcomes in the consultation; and
- Specifically, for their views on the questions posed by the consultation document.

Response on the appropriateness of Government regulation

Whilst the regulatory regime in respect of the recruitment sector in the UK may be relatively light touch, the legislative framework in which recruitment businesses operate is highly complex. Recruitment businesses are sales-driven but need to comply with a vast array of legal obligations enforced in various ways relating to pay, health & safety, employment rights, immigration rules as well as regulatory requirements pertaining to the sector or sectors to which they provide services. They operate in a very competitive market, dictated by cost and the ability to build personal relationships, two things which cannot easily be regulated.

We support the repeal of the existing Regulations, due to their poor drafting, and also for some form of regulation by Government. The purpose of regulation should be to even the balance of power for those less able to negotiate a fair deal and to promote standards where self-regulation is unrealistic or impossible. In the case of the recruitment sector, regulations should protect those seeking work opportunities who are unable to dictate terms and those hirers who are in some way vulnerable and open to exploitation.

Experience of advising recruitment businesses in their dealings with clients suggests that the business to business relationship is not enhanced by the current Regulations and may in fact be hindered by confusing obligations such as those relating to temp to perm fees. Furthermore the current right of a limited company contractor to opt out and thereby rob the hirer of any protections afforded by the Regulations renders the regime of little value to hirers in sectors where limited company contractors predominate. Large corporate hirers are in any event well able to dictate their own terms and frequently impose one-sided obligations on recruitment businesses that circumvent the hirer's own obligations imposed by law.

The recruitment sector is no longer made up of businesses which easily fall into the definitions of *employment agency* and *employment business*, as the supply of labour also involves recruitment

process outsourcing, managed service suppliers, master and neutral vendor management, umbrella and personal service company suppliers, job boards and outplacement agencies. Wherever work-seekers are involved in this complex mix there is potential for exploitation.

The regulatory regime should focus on direct or indirect business to consumer relationships and should be sufficiently flexible to reflect the fact that the tripartite relationship is but one of many arrangements under which labour can be supplied. A regime based on the rights and protection of workers gives an opportunity to extend regulation in areas where there is a risk to workers while removing unnecessary burdens placed on businesses simply because they operate a certain type of business.

The consultation suggests that self-regulation could perhaps be an option. It is the view of FL and many in the sector that externally set standards are necessary to prevent bad or unprofessional practice and that self-regulation will not work. Reflecting the competitiveness of the recruitment industry there are now at least 4 trade bodies purporting to represent the sector and further bodies affiliated or separate to these which represent specialist industry sectors. There will always be those businesses that refuse to join one or all of the trade bodies and without compulsion to adhere to certain standards there will be no clear consensus or arbiter as to what are the correct and proper standards.

Self-regulation has already been shown to be inadequate to protect workers. For example an issue that those involved in the recruitment sector have tried to regulate is the prevalence of 'pay when paid' clauses in vendor managed arrangements. The hirer (H) contracts with a 'vendor' (V) who supplies labour (L) using the services of an employment business (EB). The contract between H and V provides for 60 day payment terms; V's contract with EB states they will pay EB when paid by H; EB is bound by the Conduct Regulations to pay L on presentation of a timesheet at the end of the period in which the work is done, usually weekly. This means that there may be a 7 week gap in which EB is waiting to recover the pay given to L. In order to manage its cashflow EB often obtains finance from factoring companies but the vendor-managed arrangement means that EB, to whom L looks for payment, is extremely vulnerable financially. There is nothing to protect EB in this scenario and while industry bodies have attempted through codes of practice to address this by permitting EB to go direct for payment to H, without the co-operation of H there is no legal right for EB to recover payment from H.

If the regulation moves to a rights-based regime this situation could be addressed by recognizing that the money involved in the supply chain is ultimately wages and, following the example of the Agency Workers Regulations providing recourse for L who has not been paid by EB in a situation where they are unable to meet their legal obligation to pay wages, to recover the funds from H. This may provide a compelling reason for hirers to agree more favourable payment terms where wages are the bulk of the payment.

Response to the Consultation Questions

Consultation questions on changes to the regulatory framework

Q1. a) Do you agree with the four outcomes that the Government believes should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the sector and are able to assert their rights

Yes

b) Please give reasons for your answer.

Charging fees to work-seekers

It is right that work-finding services remain free to work-seekers and that hiring businesses be charged. Our clients do not envisage any scenario in which they would consider charging the work-seeker for finding them work though they would want to have the ability to continue charging for services such as work-related training and products such as non-reusable personal protective equipment.

Clarity as to liability for payment

Clarity as to liability for payment should be stated in documentation provided to the work-seeker. So we support a continuing obligation to provide a work-seeker with terms but require clarification about the various roles of those involved in the supply chain.

Hindrance to free movement

Except in contracts of employment where there is an on-going obligation on the employing business to provide work and a mutual obligation on the part of the worker to do the work there should not be any hindrance to moving jobs. In contracts of employment it is acceptable to have periods of notice and restrictive covenants and employers should be free to use such contractual terms as appropriate.

Reasonable temp to perm fees

The regulation of temp to perm fees has always been justified by the argument that the Agency Workers Directive (Art. 6.2) required Member States to take action in respect of any clauses "prohibiting or having the effect of preventing the conclusion of a contract of employment or employment relationship between the user-undertaking and the temporary agency worker after his assignment". However the Article expressly excludes the right of temporary agencies to receive a reasonable level of recompense for services rendered.

Temp to perm fees are not a hindrance to free movement between jobs. They neither prohibit nor prevent a hirer from employing a worker and are solely intended to provide for compensation for the services of the employment business in the "assignment and recruitment" of the agency worker.

Payment for recruitment services is contingent upon engagement and the formula for charging a 'success fee' based on a percentage of salary is simple, clear and effective. Clients understand this and are often in a strong position to negotiate where there is a competitive recruitment market. It is a fallacy to suggest that the margin fee charged by the employment business during an assignment compensates the employment business in any way for the cost of sourcing suitable candidates and work opportunities. At best the margin fee covers the administration costs of maintaining the worker in the assignment.

The only occasion when the temp to perm fee becomes a hindrance to employment is when a client fails to read or negotiate terms at the outset and later realises there is a contractual obligation to pay a fee; and to get out of it decides not to recruit the work-seeker. The effect of the client's refusal to pay a fee may mean that the work-seeker does not receive an offer of employment but provided all parties involved understand that the recruitment business has a right to charge for its services, it should not be restricted or prevented from doing so simply because they are facilitating employment.

In any event the common law assumes that the parties to a contract operating in a business capacity are on an equal footing. Only if the fee is a penalty or unconscionable does it become

null and void. The existing regulations place employment businesses at a disadvantage in a commercial context. The key to achieving fairness and ensuring that employers do not refuse employment because of the fee is in clear communication between the recruitment business, its clients and the work-seekers and transparency as to the amount of the fee at the outset.

The existing Regulation 10 is far too complex and leads to confusion on the part of clients and even some employment businesses who believe that it means they are prevented from charging once a worker has worked for 14 weeks in an assignment. The alternative of an extended period of hire does not provide an alternative of equal value to the employment business and is frequently used by large corporations and some public bodies such as the NHS as a means of recruiting workers free after giving only a short period of notice.

We therefore support the removal of the existing restrictions and if any regulation is considered necessary, that employment businesses have an obligation to bring such fees to the attention of the client, not just in terms of the percentage fee but an estimate of the actual sum this would equate to, depending on the salary to be charged.

Confidence in the sector

We agree with the proposal that work-seekers are able to assert their rights but are puzzled by the notion that there is insufficient transparency resulting in a lack of confidence in using the sector. Certainly we do not feel that publication of the information suggested will achieve this outcome. We will deal with this specifically under Questions 10-12.

Q2. a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

We believe consideration should be given to expanding the definition of “employment business” to incorporate those businesses that employ workers purely for the purpose of supplying them to work for a hirer where they are under the supervision and direction of the hirer. It is illogical to have the Agency Workers Regulations (AWR) applying to all organisations within the labour supply chain but to exclude such organisations when imposing regulation to ‘protect’ work-seekers and other vulnerable groups in finding work through recruitment businesses. With the inexorable increase in the numbers of umbrella companies and other vehicles for dealing with the supply of labour employment agencies and businesses are but one link in the chain and problems arise when loopholes exist. The whole industry embraced the AWR and have made it work. There is no reason why this regulation should be any different.

We also believe that with the removal of the Department for Education Quality Mark greater emphasis should be given to the part recruitment and other businesses involved in recruitment and supply of staff have in relation to safeguarding vulnerable groups.

Q3. a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Q4. a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

b) Please give reasons for your answer.

The current definition is misleading and has not kept pace with the way in which work-finding services are provided. It was written at a time when the means of finding a job involved either

going to a recruitment agency or reading the advertisements in a newspaper. However the only purpose of defining an employment agency is if there is some regulation pertaining to it. Assuming the only rules concerning employment agencies under any future regulation will relate to the charging of fees, and possibly handling of client money we suggest the following definition:

“...the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services for the purpose of facilitating the process of persons finding employment with employers or employers finding persons to employ.”

Q5. a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

b) Please give reasons for your answer

We do not work in the entertainment and modelling sector but the purpose of a cooling off period is to allow an individual to contemplate the suitability or otherwise of their decision. This should be permitted to ensure that work-seekers have a real opportunity to consider whether the service they are being offered is the right one for them or could be purchased elsewhere.

Q6. a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

b) What do you think the cooling off period should be?

2-7 days

Q7. a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

b) Please give reasons for your answer.

It may be necessary to legislate to ensure that a worker is given clear information as to who is paying him and against whom he should make a claim if he is not paid. However this does not mean that the worker will necessarily understand the way in which he is supplied if he receives all communication about his work from an employment business, but receives a pay slip from an umbrella company or a payroll company. This is not something that regulation can achieve.

Q8. a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

b) Please give reasons for your answer.

Q9. a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved? **Yes**

b) Please give reasons for your answer.

In our response to Q1 we outlined our views in relation to temp to perm fees. For the avoidance of doubt we do not consider that it is necessary to restrict the use of temp to perm fees in order to comply with the Agency Workers Directive. Such fees must be reasonable and under the principles of common law must not constitute a penalty. In the absence of agreement, under section 15 of the Supply of Goods and Services Act 1982 there is an implied term that “the party contracting with the supplier will pay a reasonable charge”. What is a reasonable charge is a “question of fact”. The circumstances will be different in every case and it should be open to the parties in a business to business arrangement to negotiate the payment of charges for the services rendered. If any regulation is considered necessary, it

should be no more than that employment businesses have an obligation to bring such fees to the attention of the client, and the work-seeker, not just in terms of the percentage fee but an estimate of the actual sum this would equate to, depending on the salary to be charged.

Consultation questions on publishing management information and self-regulation

Q10. a) Do you think employment agencies and businesses should publish information about their business?

Yes

b) Please give reasons for your answer

We support a culture of transparency and clarity for work-seekers and hirers but we do not believe that the publication of the sort of information set out in paragraph 7.17 of the Consultation document, or indeed any information, will achieve the outcome sought by the Government.

Work-seekers use the services of a recruitment business because they have the sort of jobs they are looking for; hirers use a recruitment business because they consider that business to be a good fit with their own. These decisions are not based on previous performance of the recruitment business for other clients or candidates.

In particular:

- feedback/ reviews can be manipulated and do not provide anything other than a subjective view
- Number of jobs/temporary placements changes by the hour in some cases so data will rapidly be out of date
- Average time to fill a vacant post is not an indication of the level of service provided by the recruitment business but may simply be down to the fact a suitable candidate presented at the right time
- Average length of placements is something which a recruitment business has little control over as it will often depend on the client's requirements
- Number of payroll errors may be the fault of the software used by the recruitment business or data received from timesheets

Q11. If you answered yes, what information do you think would be of most interest to:

a) work-seekers? b) hirers?

The only data that we support for publication is the type of occupational sector and roles (but then why would they not state this in order to attract the right clients and candidates); various services offered and charges for those services; size of business and locations (ditto); and the existence of equalities and other customer service policies or charters.

Q12. a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

b) Please give reasons for your answer.

The reason for stating No is that we do not see the value in the publication of information of the type suggested by the consultation. Please see our answer to Q.10. The reasons people use recruitment agencies tend to be far more personal and subjective and often rely on the rapport built between the consultant and client or candidate; as well as the access to specific roles.

c) If you answered yes, what information do you think it should be compulsory to publish?

Q13. a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes

b) Please give reasons for your answer

They help to maintain standards but without a dominant well-respected trade association covering the sector they will no longer become the norm in the same way as the REC's predecessor FRES (Federation of Recruitment and Employment Services) template documents used to represent the benchmark in the industry by which all others were measured.

Q14. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

The tools which have been successfully embraced by parts of the industry to maintain standards are qualifications and audit standards. However the industry bodies that provide these tools are only successful if they can achieve recognition of such standards by the clients and work-seekers, the users of the industry, and when such standards provide a real differentiation in the marketplace.

Consultation questions on enforcing the proposed new regulations

Q15. a) Do you think that the Government should enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

For the reasons already given we do not believe there is sufficient goodwill behind a single trade body for it to be the arbiter and enforcer of standards. A voluntary regime will always ensure that those who are professional and care about standards abide by it and those that don't remain outside and unregulated. As it is many recruiters openly admit they join a trade body merely for the 'badge' and the fact that in certain industries this enables the 'foot in the door'.

However we also believe that Government regulation should not interfere with commercial matters in a business to business relationship where both parties are equal, such as the negotiation of fees for providing a professional service.

Q16. a) Do you think that prohibition orders should be included in the new enforcement regime? **Yes**

b) Please give reasons for your answer.

It is necessary to protect the public, however few are issued, against unscrupulous gangmasters or traffickers and those whose simple motivation is the exploitation of workers and easy money.

Q17. a)) Do you think individuals should be able to enforce their rights at an Employment Tribunal? **Yes**

b) Please give reasons for your answer.

It makes sense for individuals to be able to enforce rights that are similar to those in other areas of employment law, such as non-payment of wages although in essence this already exists as a breach of contract claim or unlawful deduction of wages. However as in the Agency Worker Regulations there should be a process to permit settlement without recourse to the Tribunal by approaching the 'temporary work agency' and the client first.

Q18. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

As long as there is information on www.direct.gov.uk this should be sufficient.

Q19. a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation? **No**

b) Please give reasons for your answer

There is an issue here as to rights and the rule of law. If a matter has gone through a process where there has been a 'fair trial' and a testing of the evidence, appeal and the subject is still found to be at fault then this may be acceptable but in cases where the subject has simply failed to co-operate this could be prejudicial. However it would give carte blanche to rogue operators simply to fail to co-operate. So in order to be fair to all there should be no publication of such infringements.

Consultation questions on record keeping by employment agencies and businesses

Q20. a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements? **Yes**

b) Please give reasons for your answer

To the extent that there is a need to demonstrate compliance with regulations there should be a requirement to keep records to evidence this.

Q21. What records do you think that employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

- Personal details to confirm their suitability: Name, address, immigration status, qualifications, training, experience; DBS checks, occupational health checks (where applicable); (if disabled) need for reasonable adjustments

b) hirers?

- If there is little regulation in relation to hirers then only records that apply to the areas of regulation. If the emphasis is on safeguarding vulnerable groups in relation to the hirers businesses then suitable records about the requirements of those groups should be retained.

c) other employment agencies/employment businesses?

- Due diligence checks should be carried out and records should be kept of the matters that are regulated.

Fiona Coombe, on behalf of Foresight Law is happy for a copy of this response to be published and would be happy to meet officials to discuss any of the views expressed in this document. Fiona Coombe's contact details are at the foot of this document.

April 2013

tempo (UK) Ltd

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

Yes, I would like you to publish or release my response

No, I don't want you to publish or release my response

Your details

Name: **Keith Faulkner CBE FIEP**

Organisation (if applicable): **tempo (UK) Ltd**

Address: **The Old Shippon
Moseley Hall Farm
Chelford Road
Knutsford
Cheshire WA16 8RB**

Please tick the boxes below that best describe you as a respondent to this consultation.

Other (please describe):

tempo is a membership based alliance of temporary staffing suppliers and user organisations sharing a common commitment to the highest quality of service and the development of best practice in the use of a contingent workforce. The agency commitment to quality is reinforced by membership being subject to a comprehensive and rigorous annual audit.

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes X No

b) Please give reasons for your answer.

It is important to the development of an effective flexible workforce that those working through agencies can be completely confident that they have the benefit of similar rights and employment protection to any other form of paid employment. Temporary working provides excellent opportunities for younger people to gain work experience and for older people to test new avenues for employment and regain confidence after a period out of work. The efficient operation of the UK's flexible labour market therefore also depends on there being no unreasonable constraint on the movement of workers between the contingent and core elements in an employer's workforce.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes X No

b) If yes, please give details on what these are.

While protection of workers is essential and user organisations can generally best govern their relationship with employment agencies through a commercial contract, in practice smaller businesses or less experienced managers in larger organisations can unwittingly accept 'small print' terms without fully understanding the commercial consequences. The employer dimension should not be ignored completely. A fifth output could be that employers have the right to have the main terms of supply of temporary staff set out clearly and in advance of the assignment of staff. This protects both users and workers, as the consequences of misunderstandings and disputes often include a damaging impact on the work opportunities for temporary staff provided by the agency concerned.,

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No **X**

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No **No response, we prefer not to take a position on this.**

b) Please give reasons for your answer.

tempo’s response addresses ways in which we believe standards could be raised and agencies required to accept appropriate responsibility for their conduct, we regard Question 4 as addressing a technical point on which other respondents will be better qualified to comment.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No **Not relevant to tempo member agencies/users so no response.**

b) Please give reasons for your answer

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes **X** No

b) Please give reasons for your answer.

It is generally quite clear but there should be no loopholes allowing agencies to mislead or obscure where responsibility lies. As in other employment related situations the basic terms of engagement, including how, when and by whom the worker will be paid, should be clearly set out in writing at the outset.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a

work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

Regulation 6 is clearly stated and provides necessary protection for work seekers.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

While transfer fees are essentially part of a commercial arrangement between an agency and a user they can, if unreasonable, impact quite seriously on the worker concerned despite them not being party to the agreement of that arrangement. This hinders the contribution that such transfers should otherwise make to workforce mobility and progression. In particular, the definition of 'relevant period' needs to be simpler and more clear cut and a maximum permitted transfer fee should be set using a similarly simple formula. Complexity acts to confuse both workers and hirers and discourages them from challenging unreasonable charges.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

The majority of temporary workers (and users) are quite willing to make an assessment of local agencies through their own experiences when enquiring about work and through word of mouth from others. Responsible agencies will still choose to provide information they deem to be of interest to applicants because it is best if that they can make an informed choice. A temporary worker who chooses an agency that doesn't meet their needs is likely, for example, to leave without notice or express dissatisfaction at their place of work. Such reactions are damaging to the agency's commercial relationship with users.

Question 11: What information do you think would be of most interest to:

a) work-seekers: To know what types of work are available, how far they might have to travel, how likely it is that the work opportunities will match their availability and what rates of pay they can expect. However most of this information is best given on a one to one basis in an initial meeting with the agency staff as otherwise it will be too generalised and less current, given the constantly changing nature of most agency work.

b) hirers: To know what skills are available, how charges are calculated, how quickly and reliably requirements can be met and to be reassured that the temporary workers will be fully vetted and suitable for their requirements. It is clearly in an agency's commercial interest to make this type of information available and for it to be valid.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No X

b) Please give reasons for your answer.

Publication of information as a regulatory requirement is very unlikely to be effective and seeks to address a perceived problem that does not exist to any great extent, the current market generally functions quite effectively in terms of consumer choice. It is easy to manipulate figures for publication or for the published figures to be misleading. Matters such as length of assignment, numbers of vacancies available and numbers of payroll errors are all constantly changing and /or hard to define across the wide variety of operating conditions found in the agency sector. However, were it agreed that a code of practice should include provision of information to work-seekers (see answer to Q13 below) then people could choose to only elect to go to an agency declaring that it conformed to that code and to then report any perceived breach of that code that they subsequently experienced.

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes X No X **NB 'Yes' to the value of a code of practice, but 'No' to that being a trade association code.**

b) Please give reasons for your answer.

A code of practice could play a significant role in both ensuring that minimum standards are met and in raising those standards over time. **tempo**, by virtue of representing both agency and employer views, does not believe that a code of practice agreed and subsequently enforced solely by the several trade associations that represent the agency sector (or parts of it) is as likely to achieve this objective as a more broadly based body. To ensure transparency and confidence such a body would certainly include the trade associations but should also include other interested parties, in particular, employer representation. The body would be led by a respected and independent chair. All agencies would be invited to display that they undertook to adhere to the code of practice, but could also elect not to meet the requirements (this is akin to ABTA in the travel industry where travellers increasingly look to the security of booking only through companies subscribing to ABTA). Those agencies supporting the code would make clearly expressed

statements of the code available to all applicants and users. This statement would include how any serious breach of the code could be reported. The body setting the code or a sub-committee of that body (supported by a small secretariat) would then consider any complaints and decide what action, if any, was appropriate. In the most serious cases the agency concerned could be required to remove all material that stated that they met the code's requirements and notice of that 'expulsion' could be made publically available. This is necessarily a brief outline of the approach Tempo is recommending but we would be pleased to meet with officials to work through the recommendation in more detail.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

tempo, like some other bodies in the agency sector, has an audit programme to evaluate whether members are achieving the declared standards of operation. We believe that as part of self-regulation there should be wider use of such audits and better liaison between the different bodies to establish a more uniform approach to their content, conduct and frequency.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

If 'legislation' in the context of this question refers to the much more focussed and 'light touch' regulations set out in your consultation paper then it is essential that any matter that cannot be addressed through use of employment tribunals can be enforced by other means.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

Setting up and operating an employment agency or employment business continues to have a low cost of entry and no requirement for professional qualifications or even business experience. In such an environment serious failures to meet regulatory requirements will occur and must be subject to equally serious sanctions.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

As stated earlier it is important to the economic and social contribution of temporary work that those engaged through agencies should have very similar rights to other workers and should therefore have recourse to the same remedies. For agencies with strong processes backed by equally strong training for their front line staff we do not anticipate that the number of claims (if any) will prove an unreasonable burden.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

tempo has already recommended that the code of practice is made available to all work-seekers and, as part of this we would expect each agency to have a clear complaints procedure which would confirm that an application to an Employment Tribunal is a 'last resort' part of that procedure when all other steps have been exhausted.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes X No

b) Please give reasons for your answer.

If self-regulation is to be effective transparency is very important, so that all parties can have confidence in the code of practice being observed and all regulatory requirements being met. Therefore the results of any investigation into legislative infringements should be accessible. However some consideration should be given to how a 'right of reply' might be incorporated whereby the agency can, if it wishes, set out the remedial action it has taken to prevent any further infringement.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes X No

b) Please give reasons for your answer.

In the case of any complaint or other evidence of compliance failures it is essential that the necessary records exist to show the extent to which the proper procedures were followed and information checked and recorded.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

No further detailed comments.

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

The Employment Agents Movement (TEAM)

TEAM RESPONSE RE BIS CONSULTATION on the CONDUCT REGULATIONS

In assessing the proposals, 6.11 refers;

“To achieve our vision we would replace the existing provisions in the Employment Agencies Act 1973 and the Conduct Regulations with new legislation which would focus on or otherwise support the four outcomes above”.

This perhaps suggests that both the Act and the Regulations could be repealed and replaced with revised legislation. The proposal does not make clear whether the intention is to remove all other matters within the respective legislation and focus just on the outcomes described or to remove certain elements whilst strengthening and/or introducing the four outcomes. If a “root and branch” review of employment business and agency legislation is to be undertaken then consideration may also need to be given to related legislation (sometimes overlapping and saying the same thing albeit slightly differently in parts) e.g. the Working Time Directive, Agency Workers Regulations and Gangmasters Licensing Act. For clarity, our further discussions with BIS (13/3/13) suggest that the current proposal is not to make Amendments but to repeal the existing Regulations and to replace them with revised primary legislation.

In making our submission we believe it appropriate to state that whilst we have provided “a view” based on comments from members of the TEAM network, it should not necessarily be considered as 100% representative of the TEAM Membership. Certain of our Members may have differing views on specific matters and we have urged them to independently make their own views known direct to BIS.

We had initially felt it appropriate to use this opportunity to provide comment on other related employment Regulations but following our discussions with BIS we have confined ourselves to the specific questions and objectives raised.

Consultation Questions

Q1. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation?

1.1 Employment businesses and employment agencies are restricted from charging fees to work seekers.

We believe to remove any uncertainty there should be no circumstances where recruitment/employment businesses should charge fees to work seekers. “Grey areas” where certain businesses for example seek to charge for CV preparation, interview coaching, skills training, etc. should be challenged and any such “consultancy” practices removed from that of a recruitment and employment business. They could of course be offered by a separate business, so clients of that business knew exactly what services were being offered and on what terms. (see also response to Q3)

1.2 There is clarity on who is responsible for paying temporary workers for the work they have done.

In our opinion the responsibility for paying the worker lies with the business that has the agreed contractual arrangement with the worker. The consultation refers to the tripartite

arrangement between the temp, the agency and the Hirer but perhaps this needs to go further to also include relationships with Master Vendors , Umbrella's and similar RPO businesses. Unfortunately for the worker this is not always made clear, particularly if they first started working under a **contract for services** with an agency and were later introduced to a third party who they have never met, who expects them to enter into **contract of service** albeit still "deal" on day to day matters with the original agency. This scenario may be repeated time and time again as the worker is "bounced" between different parties and often little or no effort is made to explain and agree relevant contract and payroll details with the worker. We suggest there should be clarification with regard to there having to be clear contractual documentation that has to be **discussed, agreed and signed by all relevant parties.**

1.3 The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable.

We disagree with the comments surrounding "temp to perm transfer fees should be reasonable", quite apart from anything else who is able to define what is "reasonable" or "unreasonable". We also disagreed with the original premise that temp to perm fees "hindered" individuals gaining direct employment with a hirer. The vast majority of recruiter and hirers were perfectly able to agree sensible fee scales to accommodate a "try before you buy" process prior to the Conduct Regulations and its introduction has done nothing to improve a flexible labour market. In our opinion the whole of Section 10 should be removed in particular the convoluted rules regarding 8/14 weeks. **Government should not attempt to involve themselves in commercial contractual matters between businesses.** No sensible recruiter would expect to provide uncommercial terms to a client and no sensible client will deal with a recruiter trying to do so. Professionally sourcing the right candidate for a client whether for a temporary, contract or permanent position warrants a fee appropriate to the circumstances and recruiters and their respective clients are the best arbiters for what that fee should be. There has been a suggestion as to whether an alternative time scale (in line with the AWR) should be introduced e.g. no charge if a temp went perm after 12 weeks. Such a proposal would potentially in our opinion be disastrous for the industry and lead to agencies either substantially having to "front load" their margins during this period (which Hirers would not accept) or moving out of the temporary worker supply chain altogether. We would respectfully refer you to the answer above. If however such a proposal unfortunately gained any traction then we believe it could only be justified by at least a 52 week period on assignment.

1.4 Work seekers have the confidence to use the recruitment sector and are able to assert their rights.

The proposal to provide regulations for recruiters to provide certain prescribed standard information and statistics about their business activities is fundamentally flawed. It is suggested there are currently some 19,000 recruitment/employment agencies in the UK and the suggestion that such information will be accessed by workers and Hirers "... to make informed choices about the agency that best suits their needs" is an entirely erroneous assumption. Workers in particular respond in the main part to an agency because of a specific advertised vacancy or because they have been referred or because they know that agency deals with the sector and jobs they want ... work seekers usually want that job opportunity rather than choosing an agency because it has more or less offices or staff than any other! We would also question as to how the veracity of such published information would ever be achieved and who would police it? We believe such a proposal would lead to a plethora of unsubstantiated claims and assertions which would if anything leave work seekers and Hirers more confused than before.

- 1.4.1 We do not necessarily disagree with the right of any worker to be able to assert their rights and seek personal redress in an Employment Tribunal however the process of such Tribunals is also the subject of a consultation (Early Consultation) together with new processes and application charges being implemented later this year. Given the current level of individual Tribunal claims relating to AWR one wonders whether this might be a proverbial “sledge hammer nut” scenario.
- 1.4.2 There is also reference as to whether “... trade association codes of practise help to maintain standards in the sector” This is also referenced to a proposal that the industry could or should be regulated by a trade association. Whilst any and all efforts to improve standards must help, they are still “codes” and whilst they may or may not have a bearing on membership of that particular association they are less likely to be observed /enforced unless backed by statute. There is a growing comment that the industry and those affected by it would be better served with a return to licensing but that such a licensing process should come at an appropriate cost to recruitment/employment businesses and a robust and thorough audit process with the ability to remove owners/directors/businesses from trading in the sector in the event of transgression, together with published disclosure.

Q2 Are there any other outcomes that you think should be achieved by the new legislation?

2.1 The four “outcomes” we do not believe go far enough. We are concerned that there is no mention of safeguards or special provisions for how the young and vulnerable work seekers should be treated.

2.2 We are also concerned with regard to the processes that agencies should implement with Hirers as to Health and Safety issues at the place of work.

Q3 Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

3.1 Our contributors do not have experience in the entertainment and modelling sectors so we would not seek to offer any specific advice. However their operation does appear to an outsider as having been allowed to develop by custom and practise. In theory anyone engaged in the process of finding work for an individual is acting as a recruitment or employment business. Why then should such businesses be allowed special dispensation to charge an upfront and often speculative fee to the prospective worker e.g. arranging a photo portfolio, etc.? Why shouldn't their fee earning potential be based on the same basis of “No Placement ... No Fee” and be paid by the eventual end user within whatever fee is being charged by the agency? The definition of “employment agency” perhaps could be widened and such businesses are regulated in the same way as the rest of the sector alleviating the need for special and contradictory Regulations.

3.2 We are aware of other “grey areas” areas where workers have/are being charged fees which needs some clarification. As an example a client’s requirement may be that any workers supplied must wear particular apparel (e.g. catering/events) or possibly protective clothing (e.g. steel toe cap shoes, hi-viz vest). If the Hirer doesn’t supply the items then the onus is on the agency that in turn will make the enquiry of the worker. If the worker does not have the required item, the agency supplies it at a cost which is usually recovered by deduction from weekly pay. We are aware that in some instances the cost per item is artificially inflated i.e. the agency makes a profit on the mark up, and the deduction from wage reduces pay below the NMW. A similar situation can exist where the agency insists on the workers being transported to the Hirer’s site by the agency’s transport at a daily cost again deducted from the workers wage. If it is a client/agency requirement, for example to ensure appropriate number of workers all turn up for a shift pattern, then in our opinion it should not be at a cost to the worker, who may have adequate and cheaper/free alternatives available. We believe that whilst it is understood that appropriate apparel etc. should be worn and it is accepted that there is no reason why an agency shouldn’t be a provider, there should be transparency in the arrangement. The worker should not be “forced” into using an agency’s supplied goods or services

in order to undertake the work. If they can source the item elsewhere and supply it themselves then so be it. Any financial arrangement would be better supplied as an agreed separate loan arrangement between the agency and the worker with an appropriate repayment schedule rather than a verbal arrangement with regard to deduction from wages or an upfront charge.

Q4 Do you think the current definition of “employment agency” could be improved?

It is possible that the antiquated legalistic language used in Section 13 of the EA ACT (and elsewhere) could be better referenced so it didn't require a lawyer to understand the definition! The vast majority of workers and Hirers know what a traditional employment/recruitment agency does. However in recent years the addition of other businesses into the supply chain can lead to confusion. Additionally we have seen traditional media groups begin to involve themselves in recruitment e.g. newspapers with new online “employment” services, where work seekers are invited to join an “exclusive” register, for an upfront fee, as are Hirers. The service suggests that a matching programme will then be initiated with relevant parties being remotely and automatically introduced to each other. No checks or balances take place (as with traditional recruiters) and the combined fees are often not based on a successful hiring and overall such services are deemed to not be classified as being subject to employment agency/business legislation. There has also been a recent case (EAS v Johnson/Clark) where work seekers applying for bogus vacancies were ringing premium rate numbers and charged for career packs and admin fees.

Q5 Do you think there should be a cooling off period in situations where fees can be charged?

Given our response to Q3 and the fact that work seekers should not be charged then the introduction of a cooling off period is irrelevant.

Q6 Should there be a standard cooling off period?

Answer as in Q3/Q5. Additionally, recruiters will usually attempt to respond to providing workers immediately. Any “cooling off” period would seriously delay the process until such a period had expired.

Q7 Is it necessary to legislate to ensure clarity on who is responsible for paying a temporary worker for the work they have done.

This is responded to in answer to Q1 (Outcomes) in particular in 1.2.

Q8 Regulation 6 restricts employment agencies and businesses from penalising a work seeker for terminating or giving notice to terminate a contract. Could this be improved?

Regulation 6 appears to be adequate.

Q9 Regulation 10 with regard to restrictions on charging unreasonable transfer fees. Could the text be improved?

This is responded to in Q1 (Outcomes) in particular in 1.3.

Q10/11/12 These questions are all similar and relate to the proposal that employment agencies and businesses should publish information about their business.

This is responded to in Q1 (Outcomes) in particular in 1.4.

Q13/14/15 These questions are similar and linked with regard to standards and enforcement of legislation.

This is responded to in Q1 (Outcomes) in particular in 1.4.2. and yes we do believe the Government through legislation should provide clear and robust enforcement of the recruitment and employment process.

Q16 Do you think Prohibition Orders should be included and published?

We do believe that Prohibition Orders should be included and published.

Q17/18 These questions relate to an individual's right to enforce their rights and appropriate guidance.

This is responded to in Q1 (Outcomes) in particular in 1.4.1. Worker's rights of redress should be included within their terms even though we are aware they risk becoming "small print". Otherwise, and as with a host of other matters, workers can access Government agency web sites.

Q19 Should the Government proactively publish the findings of investigations and listing such infringements

We do not believe that the findings of adhoc or specific investigations of individual businesses should be published where perhaps an infringement/s were apparent but subsequently corrected. Certainly such findings could be aggregated anonymously in a report, for example for the purposes of assisting all parties to recognise that in the course of a reporting year there were certain matters that were of continuing concern.

Q20/21 These questions relate to records and record keeping.

Section 29 of the Conduct Regulations seems appropriate. Given that we advocate Regulation of the sector then common-sense dictates that records of compliance need and should be kept. If the other agencies/businesses are acting as a principal within the service supply chain then again appropriate records should be kept.

Association of Professional Staffing Companies (APSCo)

Recruitment Sector Legislation - Consultation on reforming the regulatory framework for employment agencies and employment businesses:
Response form

Our Details:

Name: Samantha Hurley
Organisation: Association of Professional Staffing Companies ("APSCo")
Address: 167 Tower Bridge Road, London SE1 3LN
Date: 11th April 2013
Responding as: Business representative organisation/trade body

We have included at the beginning of our response a summary of APSCo's views on the consultation, and a brief description of APSCo and who we represent. This is followed by our response to the consultation in the format requested.

APSCo has engaged extensively with its membership in preparing this consultation response. We set up a working group of recruitment company members and affiliates, which had considerable input in shaping APSCo's opinions and suggestions contained within this document. We also gained input from the wider membership community through electronic and face to face communication.

Executive Summary

APSCo, the trade association for the professional recruitment industry, welcomes this consultation to review the effectiveness and appropriateness of the Employment Agencies Act 1973 ("EAA") and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("the Conduct Regulations"). APSCo also welcomes the Government's acknowledgement of the vital role that the recruitment sector plays in the economy. We are encouraged by the Minister's commitment to ensuring that employment law supports and maintains the UK's flexible labour market.

APSCo recognises a role for Government and supports legislation that protects work-seekers at risk of exploitation by unscrupulous staffing companies. It is also, however, important that legislation does not act as a barrier to economic growth by imposing unnecessary burdens on recruitment businesses that do not pose a risk to work-seekers.

APSCo hopes to see a new regulatory framework that protects the vulnerable sectors of the labour market while recognising a distinct professional sector where work seekers are not at threat. We would like to see this distinction clearly reflected in a move away from the "one size fits all"

legislation, which has been a feature of regulation in the staffing industry over the past 13 years, and from which our members' businesses have suffered as collateral damage.

The highly-paid business professionals who use professional recruitment businesses neither want nor need the protections of such legislation, and habitually opt out of the Conduct Regulations. The current opt-out system is fraught with difficulties. It has never been clear at what point an opt-out notice must be obtained in order for it to be valid: before the assignment commences, or before the CV is even submitted to the client. Also, due to the nature of contract recruitment, it is very often the case that a client will want a contractor to start the assignment before all the necessary paperwork is executed between the contractor, the company supplying the contractor, and the employment business.

Ideally, we would propose that arrangements between client businesses, recruitment businesses, and professional business consultants working via limited companies should be considered 'business to business' relationships and should therefore be out of scope of any future regulations, in a similar manner to many professional business consultants being out of scope of the Agency Workers Regulations. Alternatively, we would expect a minimum standard to be spelt out that protects the vulnerable but does not impact upon these business to business relationships.

About APSCo

The Association of Professional Staffing Companies (APSCo) is the UK's leading industry body representing the Professional Recruitment Sector. APSCo members are recruitment organisations engaged in the acquisition of business professionals on behalf of client companies either on a permanent or flexible basis.

Through recognising, supporting and promoting excellence within the Professional Recruitment Sector, APSCo provides client organisations, candidates and Government with a recognised stamp of quality assurance, and affords its members business intelligence, industry solidarity and a clear commercial advantage. APSCo's mission is to ensure that its members offer the highest possible standards of trading practice and that it promotes excellence throughout the Professional Recruitment Sector.

The sectors in which APSCo members operate consist of IT, Engineering, Executive Assistants/Multilingual, Accountancy, Finance/Banking, HR, Insurance, Interim, Legal, Media/Marketing/Communications, Pharmaceutical and Scientific, Property, Purchasing/Supply Chain, and Sales. These are highly-skilled, highly-paid professions representing the top-end of the UK recruitment market.

Response to Consultation

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done

- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

b) Please give reasons for your answer.

In principle we agree with the four outcomes above. We discuss each outcome in more detail in the following questions.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

APSCo would like to see a clear distinction in the new regulatory framework between highly-paid, highly-skilled professional business consultants providing their services through limited companies to end-user clients who do not have day to day supervision, direction or control over the method by which they provide the required service, and lower-paid, often unskilled and vulnerable individuals who work under the supervision, direction, and control of the end-user client.

APSCo would like to put forward for consideration the proposal that all limited company contractors (whether working through a personal service company or an umbrella company) are automatically considered outside of the scope of the new regulatory framework, because there is a genuine business to business relationship between the parties, rather than a relationship similar to that of employer and employee.

The highly-paid individuals (known in the industry usually as "limited company contractors"), which our members generally place are business consultants either running their own personal service companies or for convenience working through umbrella companies, and use recruitment firms only as a conduit to the end-user client. *These are not the "work-seekers" that the Government aims to protect.*

The vast majority of limited company contractors neither want nor need the protections afforded by the current Conduct Regulations, which is borne out by the number that opt out via Regulation 32. We thought it would be helpful to illustrate this point with real life examples. The following statistics have been provided by members of varying sizes, and are typical of the professional sector:

Total Number of Contractors on Assignment	Number of Opted Out Contractors	Percentage Opted Out
1,300	1,270	98%
387	387	100%
93	90	96.8
400	400	100%
98	96	97%
1,431	1,430	99.9%

We would like to be clear, that when we talk about limited company contractors in this document, we mean those working through their own personal service company and those working through an umbrella company.

There is already precedent in UK legislation regarding this issue. The Agency Workers Regulations (“AWR”) acknowledge the professional, self-employed nature of consultants engaged in business to business relationships with staffing companies and end-user clients, and allow such individuals to be considered outside of the scope of those regulations. Unfortunately, the AWR made a differentiation between the type of limited company through which a contractor provides its services, forcing all umbrella company contractors to be within scope. We do not believe that the differentiation between umbrella companies and personal service companies is relevant – what is relevant is the genuine business to business relationship.

It is also important to recognise that the different treatment within the AWR of those working through umbrellas to those working through PSCs did have a detrimental effect on the umbrella industry, as many professional business consultants moved into PSC models instead.

APSCo appreciates the need for safeguards to prevent unscrupulous firms, with lower standards, from using limited companies (either PSCs or umbrellas) simply to avoid complying with legislation. We have considered this issue in depth and we propose some safeguards:

1. To ensure that only those individuals who are truly business consultants, and not vulnerable workers be considered outside of scope, one option may be a pay rate (i.e. the gross amount paid to the limited company by the employment business) threshold under which limited company contractors would automatically be considered within scope of the regulations. Precedent for this exists in the Treasury’s review of the tax arrangements of public sector appointees in May 2012, which set a precedent regarding the threshold of what might be considered a senior, and highly-paid individual.
2. We would propose that all limited company contractors have the right to avail themselves of the rights and protections contained within the new regulations if they wish, by way of an opt in process. This opt in would be similar in operation to the current opt out of the Conduct Regulations, but the mechanics would be simplified to avoid the problems inherent in the current system.

The current opt-out system is fraught with difficulties. It has never been clear at what point an opt-out notice must be obtained in order for it to be valid: before the assignment commences, or before the CV is even submitted to the client. Also, due to the nature of contract recruitment, it is very often the case that a client will want a contractor to start the assignment before all the necessary paperwork is executed between the contractor, the company supplying the contractor, and the employment business.

Unlike in the lower-paid temporary staffing sector, where a work-seeker would normally go into a “high street” branch office of the staffing company, and provide all the required documentation before being accepted onto the company’s books, in the professional sector communication is usually by telephone and email, under extreme pressure of time. Professional contractors are often working away from home, and it’s not uncommon for the recruitment process, from CV sent to start date to take no longer than a day or so. As a result, it is inevitable that many contractors – who have willingly opted out of the conduct regulations – are actually legally within the regulations because neither they, nor the company supplying the contractor get the opt-out notice executed in time before the assignment commences.

For recruitment firms, having to gain opt out forms from limited company contractors who opt out as a matter of course, adds a layer of unnecessary and burdensome administration to the recruitment process. Having instead an automatic opt out for only these highly-paid, highly-skilled business professionals in business to business relationships will ease the regulatory burden upon the professional staffing industry, and allow the Government to focus the legislation on those more vulnerable work-seekers who require protection.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

b) Please give reasons for your answer.

The use of the word “employment” in the current definition is confusing as it suggests that all employment agencies’ clients must permanently employ candidates.

The current definition could be improved so as to clearly exclude businesses providing ancillary services connected with the recruitment process that are not in a position to influence the employment decision between the end-user client, the staffing company and work-seeker. Currently, it’s possible that internet job sites, and even websites such as LinkedIn, could be regarded as employment agencies under this definition (because there is a clear business purpose in such sites to find suitable candidates for roles, even where the website does not actually make a direct profit from such services). This definition was created in the early 1970s before the internet was invented – it is time to recognise the changes in the last 40 years.

Our suggested definition would be that an employment agency provides services for the purpose of finding and placing individuals into roles at end-user clients, where such clients employ or

engage such individuals directly and such individuals are not supplied by the employment agency as a principal.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question is not relevant to the business undertaken by APSCo members.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

N/A

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

b) Please give reasons for your answer.

Having consulted with our membership we do not believe that ambiguity regarding who is responsible for paying the temporary worker is common within the professional staffing sector. This is because payment provisions and responsibilities are made clear in the contract between the staffing company and the limited company contractor, and generally speaking experienced limited company contractors are very familiar with their modus operandi.

However, APSCo agrees that a statutory obligation for a contract to exist between the parties that clearly sets out payment terms and conditions is necessary, including for business to business relationships. However, the requirement for such a contract should be at the point the assignment is agreed, not before the staffing company provides CVs, as is currently the case.

APSCo's Professional Development division provides specialist training to recruitment firms, for consultants with varying levels of experience, and we would welcome the opportunity to work with BIS to improve on the clarity of statements made to contractors regarding this issue.

APSCo would not wish to see any new legal fetters imposed upon what payment terms can be agreed between the employment business and limited company contractor. For example it is important that in the business to business contract between a staffing company and a limited company contractor, that the staffing company has the right to withhold payment where the limited company is in breach of the contractual terms, or where no proof is provided of satisfactory services undertaken. Contracts should include a clear definition of services to be performed, which in practice would mean that the client would confirm their approval of the quality of the services performed, probably by signing timesheets.

If client confirmation of the quality or satisfactory nature of the work undertaken is not a requirement before payment is made to the limited company contractor, then it is likely that the staffing company will find themselves having to pay a contractor for incomplete or unsatisfactory work, and yet they will be unable to require payment from the end-user client. This would be very damaging to an industry that already has to finance a significant delay between payment to contractors (for satisfactory work) and receiving payment from the client.

APSCo would support the continued prohibition on "pay when paid" for PAYE temps, where they work under the supervision and direction of the end-user client. However, we understand from our members that not being able to require the completion of timesheets can be operationally problematic.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

b) Please give reasons for your answer.

Regulation 6 is clearly intended to ensure that lower-paid temporary workers, i.e. those engaged and paid directly on a PAYE basis, can exercise a general right to cut short their temporary assignment and either be taken on permanently or work elsewhere.

With regard to the movement of temporary workers within the labour market, this is an area where the needs of the professional recruitment sector are different to those working with lower-paid, more vulnerable work-seekers. APSCo supports the restriction on employment businesses from penalising lower-paid and vulnerable work-seekers for terminating or giving notice to the recruitment firm. In the professional sector, however, there is a commercial, business to business contract in place between the recruitment firm and a limited company, and in such situations any termination should remain in line with the terms of the commercial agreement in place. This contract should be clear and transparent to all parties involved, allowing them to make informed choices.

Replacing a professional limited company contractor is not as easy as replacing a less skilled temporary worker, who can often be immediately swapped in and out of roles with plenty of available replacements. Limited company contractors with rare/niche skills cannot be simply swapped in and out. A project could be damaged if a limited company contractor was to walk off site because he had a better paid job elsewhere to start immediately. For this reason, it is essential that the right to termination must be in line with the commercial requirements of the client.

Regulation 6 should recognise that where the contract does not give the contractor a right to terminate the contract without cause this does not offend Regulation 6.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

b) Please give reasons for your answer.

This question relates to the third suggested outcome in the consultation document, which is that: **the contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable.**

The reasoning behind this is in part because the Government believes that temporary work is an important route into permanent work, and this could be hindered by unreasonable temp-to-perm transfer fees. We believe that in the lower-paid, lower-skilled sectors of the staffing industry temporary work is a route into permanent employment, however, this is not the case in the professional contracting industry. Most professional limited company contractors are “career contractors”, who make a life choice to move into the contracting market. This is borne out by the experience of our members:.

Contractors on Assignment in Last Year	Contractors Employed Permanently by End-User Client in Last Year	Percentage of Contractors Employed Permanently in Last Year
90	2	2%
1200	12	1%
650	20	3%

The current wording of regulation 10 is incomprehensible to the majority of end-user clients, and many people within the staffing industry.

While unreasonably large transfer fees are clearly an example of bad practice, we believe that transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to prescriptive legislation. A requirement for a clear and transparent contract agreed in advance of the supply between both the employment business and the end-user client, and the employment business and the contractor would allow both the end-user client and the professional contractor to make an informed decision about transfer fees.

There is a general opinion among our members that end-user clients do not, in general, understand the point of the extended hire period, and almost never avail themselves of it. We would therefore suggest that the regulation could be simplified by the removal of this option.

We would not want to see any creep towards the prohibition of temp-to-perm fees. The legitimate business interests of the employment business that has invested significant up-front effort, cost and expense into sourcing and placing a contractor, and the on-going cost of maintaining contractors in assignments must be appreciated and recognised.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

No

b) Please give reasons for your answer

Firstly, we do not believe that there is a problem within the professional sector with clients and contractors lacking confidence in the industry. One of APSCO's main aims is to raise standards of professionalism within the professional staffing industry. Our members have access to a wealth of information, advice, and training, and are required to adhere to a code of conduct, which requires transparency, honesty and integrity. APSCO is passionate about raising standards within the industry, and wants all recruitment consultants to be seen as professionals.

We would welcome the opportunity of working with BIS and other industry stakeholders to put in place other initiatives, which will help to increase professionalism within the staffing sector.

However, we do not believe that publishing the sort of information the consultation suggests would have any positive effect on the levels of professionalism. We would be extremely cautious about requiring transparency of commercial data in the public domain, and we're particularly concerned about the detrimental effect this would have on start ups and SMEs.

The industry is hugely fragmented and this would cause a serious issue to start up recruitment businesses that do not have a trading history to point to, and would be less impressive to potential

end-user clients if they were forced by law to publish information, which clearly demonstrated the company's weakness in this area in comparison to larger competitors.

A clear and transparent contract should provide all the information necessary, and any further information can be requested by the informed professionals entering into these business to business relationships.

We do not believe the kind of information suggested in the consultation would be of much use to a contractor looking for his/her next assignment. In the professional sector, contractors usually source assignments from job board adverts, or via networking. The sort of information suggested in the consultation would not be accurate for any reasonable length of time, and would be of little benefit to contractors. We would also question the validity of the information, without enforcement, unscrupulous employment businesses could make unfounded claims. Therefore, we believe requiring staffing companies to publish such information would only accomplish a league table of sorts, which could only be of benefit to larger more established companies, but would provide no advantage to work-seekers or clients.

Question 11: What information do you think would be of most interest to:

- a) work-seekers
- b) hirers

N/A, see above.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

b) Please give reasons for your answer.

We consider that compulsory publication of information will place an additional administrative burden on businesses, in particular smaller businesses and this seems to run counter to the intention of the government to reduce red tape. In addition it may serve as a barrier to entry to new businesses thereby reducing the level of competition in the market.

We genuinely do not believe that publishing what would in effect be a league table of information would be useful to work-seekers or end-user clients, but would undoubtedly be detrimental to smaller, and less established recruitment firms.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes

b) Please give reasons for your answer

Our members overwhelmingly feel that trade association codes of practice are effective in driving up standards within the industry.

We consider that trade association codes of practice help to maintain standards in the sector by providing a visible representation to the market of best practice, which goes beyond that of legislated provisions, and which is enforced by the trade association.

APSCo believes that working with trade associations should be the way forward if there is a drive towards transparency. There are many ways in which trade bodies can help and encourage their members to increase their levels of professionalism. APSCo members are subject to a strict vetting process and are committed to maintaining high standards of practice.

Our members believe that APSCo membership provides a source of competitive advantage, and helps to improve quality of both individual industry participants and the industry as a whole.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

Trade associations such as APSCo play an important role in driving up standards. In addition, if clear and transparent contracts are required for business to business relationships, market forces will ensure that the informed professionals entering in to these relationships are well served.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

Staffing companies that are not compliant with current legislation have an advantage over compliant businesses, because of the extra administration and resource needed to comply. If the Government did not enforce legislation in the recruitment sector, these non-compliant businesses would have a greater advantage, to the detriment of compliant, professional businesses, such as APSCo's members.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes

b) Please give reasons for your answer.

There is general agreement that prohibition orders should be included as an ultimate sanction for a repeatedly non-complying staffing company. Bad recruitment companies that give the industry a poor reputation and image should be eradicated.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No.

b) Please give reasons for your answer.

APSCo is unconvinced that legislation set out to regulate the conduct of recruitment companies is an appropriate vehicle for workers to enforce their rights.

We believe that enforcement of such regulations should be conducted by EAS inspectors who have the real-world sense to dispense justice and appropriate sanctions in a considered and even-

handed manner. A good example of how this works well is the Information Commissioner's office, which deals with data protection complaints in such a manner that puts the transgressor on the straight and narrow without imposing a burden on the judicial system. We propose that a middle ground, or safe harbour be established for EAS inspectors to offer advice, guidance or considered opinions without prejudice to its enforcement role.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The Government should provide adequate information and guidance in relation to a worker's rights on their web site. We believe it would be more helpful to temporary workers if there was a specific site, or area of a site which related to their rights, as opposed to those of employees. It is often difficult to pinpoint the rights of temporary workers.

APSCo would be very pleased to provide information about Government guidance, and links from its website to the appropriate site.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

b) Please give reasons for your answer.

The outcome of investigations should be published. Example test cases would be informative and helpful to all parties. It would not be helpful, however for trading names to be published. It is not clear whose interests this would serve, and this could be used as a tool for competitors to deter potential clients and candidates.

We agree that Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice where no infringements have been found. In order to make this readily understandable to work-seekers we suggest consideration of a rating system to encapsulate the overall finding of the inspection, rather than a detailed report into any infringements identified. We are aware that such a system is in use in other sectors e.g. the Food Standards Agency.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

b) Please give reasons for your answer.

This is an area where we would strongly urge BIS to work with APSCo and other trade bodies and stakeholders to agree best practice and embed it within their membership codes.

We do not believe that the industry needs complicated and in-depth legal requirements on record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice

by professional recruitment companies to keep such records, whether statutorily required or otherwise.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

We do not think that recruitment businesses should be required by additional legislation to keep further information, which is not already required by law. Recruitment businesses already collect the following:

a) From work-seekers:

- CV
- ID documents
- Right to Work in UK confirmation
- PES check docs
- Relevant phone/email logs
- Contracts
- Contacts details
- Actual refs received, no requirement to take out references
- Company docs if applicable
- Opt outs
- Timesheets/invoices

b) From hirers:

- Contracts
- Relevant phone/email logs
- Contacts details
- Invoices/timesheets
- Comparable employee information if the work-seeker is within scope of the AWR

c) other employment agencies/employment businesses?

- Third party Managed Service Provider or Recruitment Process Outsourcing documentation.

Building Engineering Services Employment Agency Alliance

RECRUITMENT SECTOR LEGISLATION: CONSULTATION ON REFORMING THE REGULATORY FRAMEWORK FOR EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES

RESPONSE TO THE DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS CONSULTATION DOCUMENT

FROM THE BUILDING ENGINEERING SERVICES EMPLOYMENT AGENCY ALLIANCE

Your details

Name: **Peter Rimmer**

Organisation (if applicable): **Building Engineering Services Employment Agency Alliance (administered by the Building & Engineering Services Association)***

Please tick the boxes below that best describe you as a respondent to this consultation.

* Business representative organisation/trade body

***See: Who we are, below**

Central government

Charity or social enterprise

Individual

Large business (over 250 staff)

Legal representative

Local government

Medium business (50 to 250 staff)

Micro business (up to 9 staff)

Small business (10 to 49 staff)

***Who we are**

The Building Services Engineering Employment Agency Alliance (“the Alliance”) was established by the Building & Engineering Services Association (B&ES) as a voluntary grouping of employment businesses which supply skilled personnel to businesses across the building services engineering industry – construction industry-related specialist electrical, plumbing, heating, mechanical

services, ventilating, air conditioning and refrigeration design, installation and maintenance contracting and service provision. (Although they are customarily referred to in the industry as “agencies”, members of the Alliance operate principally as employment businesses, while several Alliance members also provide permanent placement services to their clients, thus operating also as employment agencies, as defined in the 1973 Act.)

The Alliance was formed at the instigation of its founding trade association – now, B&ES – five years ago specifically to recognise both the increasingly important role employment businesses are now playing in the sector’s supply chain and the need for clear standards by which their performance can be objectively judged by their client contractors. Importantly, the Alliance also facilitates strategic dialogue between contractors and their manpower suppliers on a range of key issues. These include education and training, health and safety, workforce competence and relevant legislation.

Compliance with recognised industry standards is a fundamental condition of Alliance membership. Verification of such compliance involves regular auditing of an employment business’s activities and this is undertaken by an independent auditor, with Alliance members currently subject to an audit every three years and an annual compliance inspection in each intervening year.

The standards employed for this purpose – which were developed jointly by B&ES and the employment business community – are referred to as the Alliance’s *Key Commitments*, a copy of which is attached to the covering e-mail. The *Key Commitments* can be used to establish whether an employment business operates on a sound commercial footing, is appropriately regulated and can demonstrate a commitment to the building services engineering sector. The *Key Commitments* also provide reassurance to actual and potential contractor clients that the employment businesses in membership of the Alliance whose services they might use are professional, reputable and trustworthy organisations.

The Alliance is, therefore, we believe, a unique model of employment business self-regulation. The Alliance sets standards of business conduct; it enforces those standards through a rigorous audit process; and it works closely in conjunction with representatives of the client contractors served by the employment businesses concerned.

A Summary of Our Views

The Building Services Engineering Employment Agency Alliance and the Building and Engineering Services Association (B&ES) support the need identified by the Government for modernisation of the existing regulatory regime applying to employment businesses and employment agencies.

There is a strong case for allowing a significant degree of self-regulation, but this will need to be based on firmer foundations than simply voluntary adherence to a trade association code of practice. We believe that this can be achieved more effectively and more robustly by means of independent, objective auditing of employment businesses/agencies against strict criteria. In a tiered approach, sector-relevant schemes could be approved or licensed by Government on a “deemed to satisfy” basis, thus bringing a number of employment businesses/agencies within the scope of one of a number of accredited schemes.

The Government should avoid over-elaborating the legislative requirements on what employment businesses and employment agencies should do by means of record-keeping, since much of this will be driven by business and operational imperatives in any event.

We are concerned that the Government’s vision for the sector has overlooked an important aspect of managing an employment business or employment agency – security of cash flow from client users into the business. This is a significant omission in the Government’s thinking and the proposal to revise the underpinning legislation is a significant opportunity to address this issue, which should not be overlooked.

Our detailed answers to the points raised in the Consultation Document are as follows:

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

Employment businesses and employment agencies are restricted from charging fees to work-seekers

There is clarity on who is responsible for paying temporary workers for the work they have done

The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable

Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

b) Please give reasons for your answer.

As indicated above, the Alliance already willingly adopts a voluntary approach to self-regulation, which supplements the existing settled basis of the statutory regulation of employment businesses and agencies. The four key Outcomes identified by the Government are incontrovertible as far as they go and reflect the important role played by the employment business sector in maintaining the kind of flexible labour market critical to economic success.

As the Government moves forward with potential changes to the regulatory framework for employment businesses and agencies, it is important that the 1973 Act and the Conduct Regulations are appropriately modernised.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

There is no mention in the four Outcomes of the need to ensure that employment businesses themselves are given the opportunity to thrive. While there is a need to protect vulnerable workers, by no means all workers who obtain work through employment businesses can be regarded as vulnerable. Government thinking, therefore, should focus also on ensuring that the needs of individuals are duly balanced with the needs of the employment businesses/agencies which procure work for them and reflect the problems these businesses face in the commercial environment they inhabit.

The position of employment businesses in the payment chain is not always a dominant one and an employment business can itself be vulnerable in a commercial sense. It is a matter of regret therefore that Government thinking as set out in the consultation document seems set to overlook this side of the payment equation. Without legislation aimed at ensuring prompt payment by user clients, payment flow problems – such as those which are characteristic of the construction and construction industry-related specialist engineering sectors – will continue to exist and the actions

the Government has in mind with regard to the operation of the recruitment sector will address only one end of this problem. So, we believe there should be a fifth Outcome: Ensuring employment businesses and agencies are paid.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

There are circumstances where employment businesses provide training at their cost which renders the individual work-seekers concerned eligible to work at particular locations and/or for particular user clients and, often, will qualify them for a higher rate of pay. While this enables the employment business to meet the specification laid down by the user client for the skills and competences of the personnel they require, it also has the effect of increasing the employability of the individual concerned. So, being able to charge a fee in this particular respect would be compatible with the economic advantage gained by that individual through the training received.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

b) Please give reasons for your answer.

Generally, the legislation is in need of modernization and needs to reflect developments in the manpower supply marketplace involving, for example, the emergence of master vendor arrangements and umbrella companies.

Sub-section (7) of S.13 refers to a range of outplacement services which are exempted – such as those applying to members of the armed forces, offenders, nurses, seamen, etc. While the rationale for this is perfectly understandable, it seems odd to omit from this exclusion the standard form of outplacement services sometimes used by employers more generally when making redundancies.

In particular, we felt sub-section (7)(g) was in need of clearer definition and consideration should be given to this in any revised form of it.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

We have not considered this question in detail because it does not reflect current practice in our sector of industry.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

We have not considered this question in detail because it does not reflect current practice in our sector of industry.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

b) Please give reasons for your answer.

As we have said above in relation to your Q.3, generally, the legislation is in need of modernization and, in this particular regard, should be amended to reflect developments in the manpower supply marketplace involving, for example, the emergence of master vendor arrangements and umbrella companies. Changes aimed at reflecting these developments should also bring about a degree of clarity in this regard, too.

We believe, however, that this needs to be balanced with the interests of the employment business/agency, so they are protected from fraudulent claims for payment, and with the need to ensure claims for payment are made within the timescale set out in the employment business's/agency's contractual timeframe.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No

b) Please give reasons for your answer.

We fully support the intention behind Regulation 6, but believe that it adequately fulfils the purpose it is designed to achieve.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

b) Please give reasons for your answer.

We fully support the intention behind Regulation 10, but believe that it adequately fulfils the

purpose it is designed to achieve.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes

b) Please give reasons for your answer

This is a matter for individual employment businesses/agencies.

Employment businesses in our sector do publish information about their businesses, usually through their websites – in particular, about the services they provide, the trade disciplines in which they provide manpower, the trade qualifications individuals would be expected to have in order to be placed satisfactorily with a hirer and the locations of the country in which they operate. Several go beyond this and indicate the identity of the user clients for which they operate, by providing client testimonials; some indicate the turn-around times they aim to deliver in finding a suitable opening for individual work-seekers; others also publish testimonials from individual work-seekers who have been particularly pleased with the service they have received from the employment business. The provision of this kind of information is self-evidently central to the operation of the business.

Alliance members are able to display the Alliance logo – and many do so. This would alert work-seekers to the existence of the Alliance and a quick visit to the Alliance's website would enable work-seekers to satisfy themselves as to the credentials of the employment business which they might be contemplating using.

Question 11: What information do you think would be of most interest to:

a) work-seekers

- the speed with which a suitable placement can be identified;
- the likely duration of a given placement; and
- re-assurance that a placement is not likely to be cut prematurely short.

b) hirers

- the competence, skills and attitude of the manpower supplied by the employment business – which are critical to ensuring that the hirer is going to get value for money;
 - the speed with which unsatisfactory workers can be replaced;
 - evidence of a sense that the employment business and its representatives understand the nature of the hirer's business and the commercial environment in which the hirer is having to operate.
-

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

b) Please give reasons for your answer.

As indicated in our response to Q.10, we believe that these are essentially matters about what differentiates one manpower supplier from the next and are thus, essentially, about competition. It is not necessary, therefore, for regulation in this area.

c) If you answered yes, what information do you think it should be compulsory to publish?

We have responded “no” to this.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

No

b) Please give reasons for your answer.

Generally, trade association codes of practice are helpful in codifying the standards to which trade association members seek to aspire, but their usefulness and effectiveness in practice can, therefore, often be limited. There is also a danger that, as trade association codes of practice are produced by the members of the trade association concerned, they could reflect simply the vested interests of the trade association in question and those of its members. There is also the risk that such codes of practice reflect, at worst, a lowest common denominator position or, at best, a position which is not much better than the mean. In any event, trade association membership is voluntary.

The approach the Alliance has adopted is outlined in the section of this submission headed “Who we are”. This approach has been developed working through the relevant trade association for the building services engineering industry. The standards to which Alliance members are expected to operate as businesses are set out in the *Key Commitments* referred to earlier, but the key thing is that employment businesses are independently audited by a third party against the *Key Commitments*, before they are eligible for membership of the Alliance. This is where many trade association codes of practice fall short: they set standards, often in a purely aspirational way, and little, if anything, is done to enforce them. This is not the case in relation to Alliance membership, because enforcement of the relevant standard is effected through the independent auditing and annual compliance checking process, which Alliance members are required to satisfy for membership, and to retain their membership of the Alliance.

Another key factor in the way the Alliance operates is that the *Key Commitments* were developed jointly by the employment business community and a representative cross-section of hirers. This ensures the relevance of the *Key Commitments* to the business-to-business service requirements demanded by hirers. A number of the *Key Commitments* relate to the treatment of individual work-seekers: equal opportunities, health and safety management, data protection, terms of engagement, grievance procedure and matters related to other employment.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

Please see answer to Q.13 above. We believe it should be possible for arrangements of the kind described above to be given “deemed to satisfy” status in any revised legislation/regulation, such that the “*Key Commitments* scheme” such as that operated in this sector provided employment businesses with either a lawful exemption from appropriate sections of the legislation/regulation

or, at least, some measure of easement from them.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

The Government should be the ultimate enforcer of the legislation which it devises. But, this can be achieved through a tiered approach. We believe that the approach that could be adopted should be a light-touch one, and this can be achieved by adopting the kind of approach described in our answer to Q.14. If voluntary self-regulation could be enshrined in the legislation/regulation, this would ease the burden on the Employment Agency Standards Inspectorate. Under such a model, EASI would retain overall responsibility for regulation of the sector and upholding standards through a network of centrally approved or licensed “*Key Commitments*” style of operations such as that which we have devised for our sector. We accept that this will require the drawing up of criteria, against which such schemes might be “deemed to satisfy”, and possibly some adaptation of existing schemes.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes

b) Please give reasons for your answer.

Under any revised scheme that might eventually be adopted towards regulation of the sector, it is inevitable that those guilty of significant malpractice should be excluded from practicing further in the sector.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

b) Please give reasons for your answer.

We go along with the brief analysis in the Government’s consultation document. There are a number of duties placed on employment businesses/agencies in the current Regulations which operate at a corporate level and concern the business-to-business aspects of operating an employment business/agency. These are, principally, those aspects of running an employment business/agency which would lend themselves to the kind of self-regulation approach we have described above. These are therefore matters which ultimately should be enforced under the existing criminal regime and which could still, ultimately, be enforced in this way under the approach we have described.

Matters concerning individual rights – such as those at Regulations 5, 6 and 12 – lend themselves to be enforced through the employment tribunal. This would be consistent with the approach

taken in respect of the Agency Workers Regulations and would, in effect, apply only to personnel supplied through employment businesses. Care would need to be taken to ensure that none of this were to have the effect of giving personnel supplied through employment businesses the same statutory employment protections rights – such as protection against unfair dismissal, the right to redundancy payments, etc. – as apply to directly employed personnel.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

BIS or EASI should produce relevant guidance reflecting the new regulatory regime (and devolved “deemed to satisfy” schemes of the kind we have described in our answers to earlier questions), so that individual work seekers were aware of the protections they enjoy. Respectable employment businesses/agencies would make copies of this available to work-seekers, either directly or through their website – or could be required to do so.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

b) Please give reasons for your answer.

This would root out bad practice and force up standards.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

b) Please give reasons for your answer.

This would help underpin good practice and force up standards, in the way that the Alliance seeks to do in the sector in which it operates. Such a requirement could easily be incorporated into a self-regulation regime of the kind described in the answers we have given above.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

These would include:

- National Insurance number;
- right to work in the UK;
- current medical declaration of health and/or notification of medical restrictions on activities

- the individual may not undertake;
- summary of occupational skills and competences.

b) hirers?

These would include:

- point(s) of contact within the hirer's organization;
- health and safety management arrangements at the hirer's workplaces;
- skills and competences required to undertake the duties the hirer requires;
- terms of each engagement.

c) other employment agencies/employment businesses?

We thought that this would be unnecessary as, in a fiercely competitive marketplace, employment businesses/agencies keep whatever records they feel they need on the activities of their competitors.

The Law Society of Scotland

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

The Employment Law sub-committee has considered the Department for Business Innovation & Skills consultation on reforming the regulatory framework for employment agencies and employment businesses and has the following comments to make.

Comments

Question 1:

a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- **Employment businesses and employment agencies are restricted from charging fees to work-seekers**
- **There is clarity on who is responsible for paying temporary workers for the work they have done**
- **The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable**
- **Work-seekers have the confidence to use the recruitment sector and are able to assert their rights**

b) Please give reasons for your answer.

Yes. A clear set of regulations would assist in bringing clarity to the market which has become confusing by differing regulation/legislation providing potential contradictions. One set of clear regulations which help determine who may properly be described as an agency or employment business and employee/worker/work seeker.

Question 2:

a) Are there any other outcomes that you think should be achieved by the new legislation?

b) If yes, please give details on what these are.

Yes. New legislation would be an opportunity to provide clear guidance on the distinction between being employed or self-employed avoiding potential conflict and different approaches being adopted by the Courts and HMRC.

Question 3:

a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

No.

Question 4:

a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

b) Please give reasons for your answer.

No

Question 5:

a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

b) Please give reasons for your answer

Yes. A cooling off period would help avoid potential exploitation of certain individuals.

Allowing time for work seekers to assess the agency and verify its credentials would be of benefit to such work seekers and not allow unscrupulous agencies to play on the ego of work seekers.

Question 6:

a) If you answered yes to question 5, do you think there should be one standard cooling off period?

b) What do you think the cooling off period should be?

Yes. 30 days but obviously that would have to be subject to variation where work has commenced or completed before then.

Question 7:

a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

b) Please give reasons for your answer.

Yes. Often there is confusion about who is the responsible payer but in the short term as long as pay is being received work seekers do not bother. However, when problems occur, the work seeker is often confused about who is responsible and who should be paying them. Work seekers often do not have the resources to establish who the responsible party is if there is a dispute and further clarity would assist in that regard.

Question 8:

a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

b) Please give reasons for your answer.

No.

Question 9:

a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

b) Please give reasons for your answer.

Yes. Regulation 10 is not an effective deterrent to the use of draconian transfer fees. It simply allows for the employment business to specify the option of a transfer fee or an additional period of hire. There is no control over the size of the transfer fee or over the length of the additional period of hire. An unscrupulous employment business could specify an exorbitant transfer fee or an extremely lengthy period of hire. It would be better to restrict the additional period of hire to some maximum such as 3 months.

Question 10:

a) Do you think employment agencies and businesses should publish information about their business?

b) Please give reasons for your answer

Yes. Transparency regarding certain information would potentially assist work seekers in determining what particular agencies are recommended for as well as being able to identify those who are not strictly accurate with their claims of placements etc.

Question 11: What information do you think would be of most interest to:

a) work-seekers

b) hirers

a)

We suggest that the following would be of particular interest to work-seekers:

- Expertise of particular agencies.
- Accurate placement numbers and frequency of work.
- Clients (subject to confidentiality on certain occasions).
- Financial security of the agency

b)

We suggest that the following would be of particular interest to hirers:

- Financial security of the agency.
- Any regulatory issues or concerns.

Question 12:

a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

b) Please give reasons for your answer.

No. Market forces determine what information companies will or will not disclose. Provided that the legislation exists and that a proper regulatory body monitors the performance of agencies/employment businesses and ensures compliance with the Regulations, there should be no compulsion to publish information relating to the business except perhaps for those who are involved in administering Government backed recruitment campaigns or back to work programmes.

Question 13:

a) Do you think trade association codes of practice help to maintain standards in the sector?

b) Please give reasons for your answer.

Yes. In general standards of most agencies have improved in recent years. The codes of practice have become a means of judging agencies by comparison with each other and therefore lead to agencies attempting to improve their standards.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

No comment.

Question 15:

a) Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

b) Please give reasons for your answer.

Yes. At present there are certain ways of enforcing the legislation. Remove these and protection is gone. The majority of agencies operate properly but the few exceptions should be monitored and encouraged to improve. If we have legislation, there should be some method of ensuring compliance with it.

Question 16:

a) Do you think that prohibition orders should be included in the new enforcement regime?

b) Please give reasons for your answer.

Yes. Prohibition orders are rare but there should be some mechanism of forcing/encouraging agencies to comply with the legislation and ensure propriety in dealing with work seekers.

Question 17:

a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

b) Please give reasons for your answer.

Yes. Employment tribunals offer relatively easy access for individuals to enforce their rights. Where employees and workers have the ability to seek recompense when their rights are abused, work seekers have difficulty in obtaining redress if they are treated unfairly. It is still in the realm of "employment" and therefore employment tribunals would seem to be the most appropriate and obvious place for any dispute to be resolved.

Employment judges have extensive experience in employment related matters and in work situations in general and therefore would be best suited to deal with such issues.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Literature similar to those issued by employment tribunals but also requiring agencies to include information outlining these rights in their terms and conditions for work seekers.

Question 19:

a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

b) Please give reasons for your answer.

Open publication of infringements would encourage agencies to better comply with the legislation.

Question 20:

a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

b) Please give reasons for your answer.

Yes. If regulations are in place, it makes sense to require agencies/employment businesses to keep records to enable them to demonstrate that they have complied with the rules. Agencies and employment businesses are often the first point of contact for work seekers and ensuring that they are treated properly requires records to be kept. Such records would also help with equality information, immigration and provide other statistical information on employment seekers.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) Hirers?

c) Other employment agencies/employment businesses?

a)

Numbers of applicants.

Equality information.

Full/part time placements.

Payment arrangements.

b)

Tax/payment obligations.

Any adverse treatment of work seekers and regulatory sanctions.

c) Other employment agencies/employment businesses?

Obligation sharing.

Any adverse regulatory issues.

Lewis Silkin LLP

Response to Government consultation on reforming the regulatory framework for employment agencies and employment businesses

From:

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Lewis Silkin LLP is a commercial law firm with approximately 60 partners. Our main office is in London with smaller offices in Oxford and Cardiff. Our Employment, Reward and Immigration department is one of the largest and most highly rated in London. We act mainly for medium to large-sized employers, across a variety of industry sectors. This consultation response is submitted on behalf of Lewis Silkin LLP, rather than our clients, based on our experiences in practice.

Please note our response does not cover every question in the consultation. We have set out the questions below which we are specifically responding to.

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

We agree that these outcomes should be achieved by the legislation. However, we think that the introduction of 'reasonable' temp to perm fees does not go far enough to remove the barriers to permanent employment. This requirement may just increase the existing confusion on when hirers may be charged fees and how much these fees should be. We think that the current drafting of Regulation 10 regarding transfer fees is much too complicated and needs attention. In addition, although we think that work-seekers should be able to enforce their rights in the Employment Tribunal, we need to make sure that these rights are specifically limited to those contained in the recruitment sector legislation to avoid overlap with existing rights.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

b) Please give reasons for your answer.

There are a lot of businesses, particularly online businesses and managed service providers, who provide similar services to employment agencies, who are unclear on whether they fall within the current definition. This grey area is growing and it is difficult for hirers to understand which suppliers have, for example, conducted some amount of background checking and which have done none at all. It would be helpful for the definition to be clear on whether job boards are included or not, and whether allowing work-seekers to post their own CVs amounts to ‘provision of information’.

We also consider the definition of ‘employment business’ under s.13 (3) of the Act to be problematic for similar reasons. There are online businesses who offer ‘matching’ and ‘payroll’ services, yet do not comply with the requirements of the existing legislation – not least not charging work-seekers for their service. The definition of ‘employment business’ is also problematic for other businesses, such as law firms, who may send workers to their clients as secondees. We think that it should be possible to tighten this definition to address these problems, even allowing for situations where there may be a chain of intermediaries.

Finally, the definitions could be improved by bringing consistency across all recruitment legislation. The Agency Workers Regulations 2010 use different terms and this causes lots of confusion to different types of businesses who are trying to comply with the legislation.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a work seeker for the work they have done?

Yes

b) Please give reasons for your answer.

The growth of intermediary bodies in the recruitment industry has muddied the waters significantly and it is not often clear who is responsible. An express obligation on the employment business to ensure payment is made to the individual would clarify the issue, but could be very hard for the employment business to enforce. We do not consider there to be an issue regarding whether the hirer or the employment business is responsible. We suggest that a requirement could be included as part of Regulation 18 to require the employment business to confirm the name of entity responsible for paying the work-seeker as part of the specific details for each assignment.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

b) Please give reasons for your answer.

It would be helpful to have clarity on whether this provision just relates to the overall agreement between the work seeker and the employment business, or whether this also applies to individual assignments.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

b) Please give reasons for your answer.

Overall we consider the aim of the regulation to make transfer fee provisions void, unless certain criteria are met, the correct approach. However, the definition of 'relevant period' is overly complicated and leads to confusion. In addition, the option to elect a hire period instead of paying a transfer fee is very complex and not readily understood by hirers engaging work seekers. It would be preferable instead to be clear about when employment businesses are permitted to charge fees, and what constitutes a 'reasonable fee'.

We have seen cases where employment businesses have attempted to charge fees based on a large multiplier of the total amount payable per week by the hirer for the work seeker, taking no account of the reality that the employment business' margin on that rate may be less than 5%. We do not consider this type of calculation to be reasonable or to reflect in any way the commercial loss the employment business may suffer.

Further, transfer fees should be restricted to temp-to-perm transfers only. Temp-to-third party transfers are extremely rare and a fee in this situation would be an even greater barrier to permanent work as hirers are being penalised for assisting work seekers. Also, temp-to-temp transfer fees are highly undesirable as restrictions on hirers having free choice over which employment businesses to use. Where an employment business loses a work seeker to a rival the hirer should not be penalised.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes

b) Please give reasons for your answer

Due to the vast variety of employment agencies and businesses with all sorts of structures it might be quite useful for information to be published which would allow hirers and work seekers to assess whether they are legitimate and understand how they work. The basic information suggested in para 7.17 of the consultation sounds sensible.

This obligation to provide information could also link with temp to perm fees and one way to make sure that reasonable fees are charged would be to require that the employment agencies and businesses publish the structure or amounts or range of the temp to perm fees they charge.

**Question 11: What information do you think would be of most interest to: a) work-seekers
b) hirers**

See answer to question 10 above

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes

b) Please give reasons for your answer.

To ensure that hirers and work seekers can easily compare between different options, this publication should be made compulsory.

c) If you answered yes, what information do you think it should be compulsory to publish?

See the answer to question 10 above

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes

b) Please give reasons for your answer.

It is helpful that hirers can refer complaints to a trade body, where there have been breaches of the codes. However, those employment agencies and employment businesses who present the greatest risk in terms of breaching regulation in this area are unlikely to be members of a voluntary trade body.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

If hirers as well as individuals have an accessible route to recourse when employment agencies and employment businesses breach legislation, government enforcement may not be necessary. However, unlike most of our international counterparts, in the UK employment agencies and employment businesses are not licensed. When things go wrong, unlike many other suppliers of professional business services (e.g. accountants) hirers cannot seek recourse from a governing body or ombudsman and instead have only the courts and the Employment Agencies Standards Inspectorate.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

b) Please give reasons for your answer.

At present there is little incentive on employment agencies and employment businesses to comply with the most burdensome elements of existing law as the chances of any penalty being brought by the Employment Agencies Standards Inspectorate is so low. The risk of claims being brought in the

Employment Tribunal may focus employment agencies and employment businesses on the benefits of compliance. In addition, this change will put employment agencies and employment businesses on a similar footing to clients who have their own bank staff.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

b) Please give reasons for your answer.

This information may be particularly useful for other employment agencies and businesses as guidance on how the legislation is interpreted. It may also be useful to work seekers and/or hirers who raise initial complaints, but never find out the outcome.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

b) Please give reasons for your answer.

If employment agencies and employment businesses are required to keep track of their compliance many investigations by the EAS and potential future Employment Tribunal claims will be easier to investigate/determine. This is also standard practice in many other sectors and is not going to make a significant difference on the records employment agencies and employment businesses would keep for commercial reasons, or due to other regulatory requirements.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

The existing legislation is sufficient to cover appropriate record keeping requirements.

Lewis Silkin LLP

10 April 2013

Introduction

The Trades Union Congress (TUC) is the national centre for Britain's trade unions. The TUC has 53 affiliated trade unions, representing a membership of almost 6 million people. TUC affiliates organise and represent agency workers in a wide range of sectors and occupations, including the entertainment, construction, telecommunications, food processing, manufacturing and public services.

Whilst some agency workers are highly skilled and benefit from the flexibility offered by agency working; many work in insecure and low paid jobs. Independent research¹ reveals that non-compliance with minimum legal standards and the mistreatment of workers is prevalent in the UK agency sector. The EHRC Inquiry² into the meat processing sector in 2010 found evidence of widespread mistreatment of agency workers, particularly migrant and pregnant workers. Agency workers often failed to receive holiday pay and some were coerced to do double shifts when they are tired or ill. Recent research commissioned by Joseph Rowntree Foundation³ also found widespread exploitation of agency workers in the UK food industry, including the regular underpayment of wages. Workers were threatened and bullied. Racist or sexist language was sometimes used in the workplace, underpinning a climate of fear. The most notable and unexpected forced labour practice was the 'underwork scam' - recruiting too many workers and then giving them just enough employment to meet their debt.

In the light of this evidence, the TUC is seriously concerned that the government is even contemplating weakening the system of statutory regulation in the agency sector. If the plans outlined in the consultation document were to proceed, this would lead to the increased exploitation of agency workers. It will also encourage unfair competition, with reputable businesses being undercut by rogue agencies.

Rather the TUC believes there is a compelling case for the introduction of extended rights for agency workers in the UK and more robust enforcement in the agency sector. In our opinion, licensing should be introduced and the remit of the Gangmasters' Licensing Authority should to be extended across the agency sector, and in particular in high risk sectors including hospitality, social care and construction.

¹ Wilkinson et al (2010) *'Forced Labour in the UK and the Gangmasters Licensing Authority'* The WilberforceInstitute for the study of Slavery and Emancipation, University of Hull

² *Inquiry into recruitment and employment in the meat and poultry processing sector -* Equality & Human Rights Commission - March 2010

³ Sam Scott et al (2012) *Experiences of forced labour in the UK Food Industry* Joseph Rowntree Foundation.

Responses to consultation questions

Question 1:

a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

The TUC agrees that the four stated objectives are important. However, in our opinion, they do not form the basis for an adequate regulatory framework for the agency sector in the UK. These principles are no substitute for the current provisions contained in the Employment Agencies Act 1973 and the accompanying Conduct of Employment Agencies and Employment Businesses 2004.

b) Please give reasons for your answer.

There is extensive evidence that the mistreatment of agency workers remains prevalent in the UK. This often takes the form of the regular under-payment of wages, the victimisation and bullying of agency workers, the provision of substandard housing, breaches of health and safety standards and the use tax avoidance schemes.

In the light of this evidence, the TUC believes that the proposals to dismantle the existing regulations cannot be justified. Rather there is a compelling case for introducing a fuller framework of rights for agency workers and more robust enforcement.

Question 2:

a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

The TUC does not support the proposal that the current provisions of the Employment Agencies Act 1973 and the accompanying Conduct of Employment Agencies and Employment Businesses Regulations 1993 should be repealed and replaced with a narrower framework of regulation. In our opinion, the 1993 Regulations should be extended to provide improved safeguards for agency workers and to ensure that agencies fully comply with their employment and tax related obligations.

In addition to the four outcomes set out above and comments made elsewhere in this response, it will be important for any revised legislation to contain the following standards and outcomes.

Firstly, individuals must be fully informed about the nature of any agreement with the agency. It is important that work seekers are provided with a written copy of the contract before agreeing to sign up with an agency. The written contract should specify the terms on which the agency is seeking work for them, including whether the individual is seeking temporary or permanent work and the type of work being sought; the rates of pay or minimum rates of pay the agency reasonably expects to achieve for the agency worker; how often the employee will be paid, e.g. weekly or monthly; paid holiday entitlement; a guarantee that the agency will pay the individual on time and in full regardless of whether the hirer pays the agency; and any notice period for terminating the contract.

The individual should also be informed in writing of the agency's commission rates and any fees which may be charged for services. The contract must make clear that the use of any services is purely optional.

Secondly, the individual must also be informed in writing whether they will be an 'employee' or 'worker' of the agency. Where an agency is proposing to use a pay between assignment contracts (as provided for in Regulation 10 of the Agency Worker Regulations 2010), the agency should be under an obligation to explain the implications of the contract to the individual, in particular that they will be contracting out of their rights to equal pay. The Regulations should also specify that worker seekers cannot be refused an assignment or suffer any other detriment where they refuse to agree to a pay between assignment contract.

Thirdly, before starting work with a hirer, agency workers must be provided with a written statement providing full details of their assignment. As a minimum the written statement must specify the name of the hirer and the type of work they do; the pay rate for work on the assignment and the hours of work; the proposed start date and proposed duration of the assignment; the job position, the type of work to be done on the assignment; the location of work; the experience, training and qualifications required to be done on the assignment and any expenses which will be payable to the agency worker.

The provision of such information will ensure that agency workers receive equivalent information to that received by employees under section 1 of the Employment Rights Act 1996. It will also assist individuals to assess whether the hirer and agency are complying with their wider employment law obligations.

It is also important that agency workers are informed in writing of any variations to their terms and conditions which take place during an assignment or at the start of a fresh assignment with a hirer, for example where the individual qualifies for equal treatment under the Agency Worker Regulations 2010.

Fourthly, the health and safety of agency workers must be protected. Any revised legislation must make clear that both the hirer and the agency have responsibility for the health and safety of agency workers whilst on any assignment. The agency worker should receive a copy of the hirers' health and safety assessment and what actions have been taken to prevent risks. The agency must also be required to assess the suitability of the workers for the particular assignment. These requirements will not only assist the hirer and agency to comply with their obligations under health and safety law; they will also help to prevent deaths and injuries at work.

Fifthly, work seekers must not be penalised for refusing or opting out from a service provided by an agency. The TUC believes that the Regulations should be amended to provide that where agency workers suffers a detriment as a result of refusing or opting out of a service they will be entitled to a minimum of two weeks' pay in compensation.

Sixthly, where agency workers are required to travel significant distances to work or to work away from home, agencies should be required to provide free transport and to cover accommodation costs.

Seventhly, a robust enforcement system should be put in place. This will assist in raising standards in the sector, in protecting agency workers from mistreatment and in providing a level playing field, ensuring that reputable agencies are not undercut by the rogue operators.

Eighthly, it is important that the prohibition on the supply of agency workers to replace workers participating in industrial action is retained. It is welcome that the government has confirmed that Regulation falls outside of the current consultation. It will be critical that any revised legislation contained an equivalent provision.

Question 3:

- a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?**
- b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?**

No. The TUC believes that the use of upfront fees should be banned in all sectors.

In our opinion, the current exception, which applies to the entertainment and modelling sectors, should be repealed. The TUC is concerned that fees are used by entertainment agencies to exploit vulnerable individuals who are attracted by the prospects of fame and fortune, even though they have little or no prospect of finding work through the agency.

The TUC believes that entertainment and modelling agencies should only be permitted to deduct commissions from the earnings, where the agent has been successful in finding their client work. This business model has proved successful for agencies operating in other parts of the economy. We can see no reason for why the current exception should be retained in the entertainment and modelling sectors.

Question 4:

a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

b) Please give reasons for your answer.

The TUC believes that it is essential that the legislation uses a very broad definition for an 'employment agency' which encompasses all forms of agencies, including those which operate online and businesses which develop online or paper directories listing job opportunities or CVs of work seekers.

The use of a broad definition will help to prevent agencies from devising business models designed to avoid obligations under the Conduct Regulations, thereby helping to prevent the increased mistreatment of agency workers. It will also ensure that all agencies operate on a level playing field and that reputable businesses which comply with the Conduct Regulations do not face unfair competition from unscrupulous firms.

In general the TUC believes that the existing definition of an 'employment agency' should be retained. Amending the legislation would generate uncertainty, lead to litigation and could give rise to unforeseen gaps in protection for work seekers.

The TUC however recognises that there may be a case for making a special exception for the actors' Spotlight directory. This Directory does not maintain any on-going relationship with actors and has operated in the entertainment sector for many years. There may be a case for amending the regulations to confirm that the Conduct Regulations do not apply to this publication. However the TUC would not support the adoption of a general exception which applied to other directories.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

b) Please give reasons for your answer

The cooling off period provides important protection for work seekers.

Question 6:

a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes.

b) What do you think the cooling off period should be?

The cooling off period should be harmonised to 30 days.

Question 7:

a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

b) Please give reasons for your answer.

The legislation should be clarified. This would assist work seekers to recover unpaid wages and holiday pay.

The legislation should make clear that where an agency is acting as an employment agency then responsibility for paying wages should rest with the hirer. This reflects the on-going employment relationship between the employee and their employer.

In the case of employment businesses, the legislation should specify that the agency is responsible for paying the worker fully and on time. The regulations should confirm that the agency worker must be paid regardless of whether the hirer has paid the agency. One exception should be made to this principle. Where an employment business goes into administration, becomes insolvent or ceases to operate then the worker should be able to recover any outstanding remuneration direct from the hirer.

Question 8:

a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

b) Please give reasons for your answer.

The TUC believes that Regulation 6 should be revised to provide that agency workers who suffer a detriment for giving notice to terminate a contract will be guaranteed a minimum of two weeks' pay in compensation. Currently, an agency worker can only recover any loss they may have incurred as a result of the detriment. In most instances this will involve the loss of prospective earnings. However, agency workers who are employed on zero hours contracts do not have any legal entitlement to future work from the agency. As a result they may receive no and nugatory compensation even though an agency has acted unlawfully. Requiring an agency to pay a minimum of two weeks' pay would mirror the approach taken in Regulation 18 of the Agency Workers Regulations 2010.

Question 9:

a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

b) Please give reasons for your answer.

The TUC believes that the current provisions contained in the Conduct Regulations do not meet the requirements of the Directive, Article 6.2 of which requires that:

'Member States shall take any action required to ensure that any clauses prohibiting or having the effect of prohibiting the conclusion of a contract of employment or an employment relationship between the user undertaking and the agency worker after his / her assignment are null and void or may be declared null and void.'

The TUC believes that the current provisions on temp-to-perm fees act as a significant barrier to permanent employment for agency workers. While there are limits on the time period over which temp to perm fees can be levied by agencies, there are currently no limits on the amount that can be charged.

If agency work is to function genuinely as a stepping stone for individuals from unemployment or labour market inactivity to more secure form of employment then barriers such as these, need to be more effectively addressed. This will work to benefit hirers too, who genuinely want to offer more secure forms of employment to workers who they have effectively given a 'trial run' through assignment and know that the worker will be of benefit to their organisation.

The TUC believes that agency workers should only be required to give the same period of notice as employees. The notice provisions in the Conduct Regulations should therefore be brought into line with the notice provisions of the Employment Rights Act 1996. In addition, a statutory cap of 1 month should be placed on the amount of notice which agency workers can be required to give agencies before transferring to permanent contracts.

Questions 10, 11 & 12:

a) Do you think employment agencies and businesses should publish information about their business?

What information do you think would be of most interest to:

a) work-seekers

b) hirers

Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes the TUC believes that employment agencies and employment businesses should be required to publish information about their businesses in an easily accessible format. This would increase transparency, improve

workers' confidence in the industry and provide important protection for work seekers.

The current Regulations provide that work seekers should receive written details of the contract which will apply if they sign up to the agency. This obligation however is rarely complied with. Agencies should be required to publish standard terms and conditions. Agencies should also be required to publish their commission rates and any charges.

Work seekers should also be entitled to know how many others are registered with the agency, how many placements have been assigned over the last 3 months and year; and the types of work involved.

Agencies should also be encouraged to publish a list of clients. This would increase work seekers' confidence in the business and would enable them to assess if the agency is reputable and successful.

The TUC also believes that agencies should be required to publish if they operate travel and subsistence schemes. The TUC is increasingly concerned that such schemes are being used by agencies to reduce their costs and avoid their tax and national insurance obligations. These policies also have serious implications for agency workers. Agencies operating such schemes often fail to pay workers the National Minimum Wage. The failure by agencies to pay full national insurance contributions also means that workers can lose out on basic benefits, including pensions and maternity and paternity pay.

Requiring agencies to publicise whether they operate such schemes would help to increase transparency and accountability in the sector.

Question 13:

a) Do you think trade association codes of practice help to maintain standards in the sector?

b) Please give reasons for your answer.

The TUC believes that it is good practice for trade associations to develop codes of practice and to promote good standards in the sector. However such voluntary codes are no replacement for statutory regulation and effective enforcement by the State.

There is clear evidence that voluntary codes of practice have proved ineffectual in raising standards, improving legal compliance and protecting agency workers from exploitation. This is largely because trade associations do not have the same investigatory powers as statutory agencies and cannot access relevant information, including bank accounts.

Auditing processes undertaken by trade associations are also unlikely to uncover issues such as harassment and bullying which frequently accompany the other common illegal abuses related to underpayment of wages, or even human trafficking.

Question 14:

What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

The TUC believes that BIS should take steps to increase the profile of the Employment Agencies Standards Inspectorate and of the legislative standards which agencies are required to comply with.

Question 15:

Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

Due to the transient nature of their work and their uncertain employment status, agency workers are often amongst the most vulnerable workers within the UK labour market. Independent evidence also confirms that the mistreatment of agency workers remains widespread in the UK.

The TUC believes that effective enforcement activity by the government is the only effective deterrent to prevent rogue agencies from operating in the UK. It is important however that the EAS is adequately resourced to undertake both responsive and proactive enforcement action.

For many years that TUC has argued that a licensing system should be introduced across the agency sector in the UK and that the remit of the Gangmasters' Licensing Authority (GLA) should be extended. There is clear evidence that the GLA has played an important role in raising standards, increasing compliance with basic legal standards and in reducing the exploitation of workers in agriculture and food processing sectors.⁴ The GLA has also gained and maintained the support of all the key stakeholders, including retailers, food industry representatives, labour providers, NGOs and trade unions. Extending licensing to other agency sectors, in particular high risk sectors, including construction, social care and hospitality, would help to protect vulnerable workers, increase compliance with employment standards and prevent tax avoidance.

Question 16:

a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes

b) Please give reasons for your answer.

⁴ Wilkinson et al (2010) '*Forced Labour in the UK and the Gangmasters Licensing Authority* The Wilberforce Institute for the study of Slavery and Emancipation, University of Hull; Gangmasters Licensing Authority: A Hampton Implementation Review Report - September 2009; *Inquiry into recruitment and employment in the meat and poultry processing sector* - Equality & Human Rights Commission - March 2010, p.1.

Whilst it is important that the Employment Agency Standards Inspectorate (EAS) retain the power to prosecute rogue agencies, prosecutions are both costly and protracted.

Permitting the EAS to impose prohibition orders would enable the inspectorate to act more swiftly to tackle breaches of the Conduct Regulations. The TUC also believes that the EAS should have the power to recover unpaid wages for agency workers.

Question 17:

a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

b) Please give reasons for your answer.

The TUC believes that a dual system of enforcement should operate, with agency workers being able to rely on a properly resourced EAS to take enforcement action or to take a complaint to an employment tribunal.

However we would be firmly opposed to any proposals which abolished the EAS and meant that agency workers were only able to enforce their rights via an employment tribunal.

Taking a complaint to an employment tribunal will not be a viable option for most agency workers. Many agency workers are amongst the lowest paid and most vulnerable workers in the UK economy. The introduction of employment tribunal fees will mean that the vast majority of agency workers are simply priced out of justice. Taking a claim to a tribunal is also a highly stressful experience for any individual and usually results in the individual losing their employment and finding it difficult to secure future work. Most individuals will therefore be deterred from pursuing merited claims.

Question 18:

What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

The recent removal of legal aid for employment rights advice means that many agency workers will find it difficult if not impossible to access clear and reliable advice on how to enforce their rights.

The TUC believes that the government should reverse these cuts and should also ensure that the Acas helpline is adequately resourced to provide advice to agency workers.

The government should also seek to raise awareness of the Pay and Work Rights Helpline and to provide clear accessible advice on the rights of agency workers.

Question 19:

a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes.

b) Please give reasons for your answer.

The publication of the findings from investigations, prosecutions and prohibition orders will act as deterrent against unlawful practices by agencies. It will assist hirers and work seekers assess whether agencies are reputable or rogue operators.

Question 20:

a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

b) Please give reasons for your answer.

Yes. The retention of relevant documentation will assist the EAS in its enforcement activities.

Question 21:

What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

The TUC also believes that agencies should be required to keep detailed records of their terms and conditions, any fees and commissions. They should also retain records relating to the use of any transport and subsistence scheme.

Agencies should also be required to publish the names of the principal officers who have responsibility for running the agency and any business relationships with associated companies, other agencies and umbrella companies.

National Union of Rail, Maritime and Transport Workers (RMT)

Introduction

The National Union of Rail, Maritime and Transport Workers (RMT) welcome the opportunity to submit our views on the future regulatory framework for employment agencies and employment businesses which the government is seeking to reform.

RMT is the largest of the rail unions and organises 80,000 members across all sectors of the transport industry, including maritime, offshore, bus and road transport sectors. We negotiate on behalf of our members with some 150 employers, organising thousands of temporary and agency workers, largely in the industrial cleaning, catering or security sectors.

Main points

We will develop our arguments in response to the government's four preferred outcomes but RMT's key points on what the future regulatory framework for the sector should contain are as follows:

- RMT opposes up-front payments or charges as it imposes a cost on the worker for their labour and would make it cheaper for employers to use agency staff.
- The sector should not be de-regulated and the system of state regulation through the Employment Agency Standards Inspectorate (EASI) should be reinforced.
- Transparency from the industry should be achieved without a trade off over increased self-regulation – RMT strongly opposes self-regulation for EAs and EBs.
- Online recruitment agencies should be covered by industry regulations and should feature in an amended statutory definition of recruitment agency.
- Access to Employment Tribunals, including in the maritime sector, is a step forward but should not be accompanied by wider de-regulation of the recruitment industry.
- Seafarers working for EAs or EBs should be afforded the same level of protection and entitlements under the new regulations as land based temporary and agency workers.
- New regulatory framework should monitor EAs and EBs use of subsistence payments to employees and use of umbrella companies, to prevent tax avoidance or evasion by the employer.
- Amend the Agency Workers Regulations 2010 to apply equal pay principles to employees of employment agencies or employment businesses who are placed in temporary work in all industries, including maritime.
- Abolish and outlaw zero hours contracts in the domestic labour market.

Consultation outcomes

We do not believe that these four outcomes should be the full extent of a reformed regulatory framework for the sector. RMT's comments and position on each outcome outlined by the government are as follow:

Outcome 1: Employment businesses (EBs) and employment agencies (EAs) are restricted from charging fees to work-seekers

RMT is opposed to such charges and would be against the extension of any existing up-front charging arrangements, in the entertainment industry for example, to other sectors. RMT support the abolition of up-front fees for agency or temporary workers in all sectors of the economy. We believe that this would be best achieved through a statutory system of licensing for EAs and EBs that outlaws such up-front charges on a worker for providing their labour.

Accommodation charges, clothing charges and transport charges

In the maritime industry, the ‘accommodation offset’ is a daily levy on the pay of agency workers who are paid the National Minimum Wage. The current rate is £4.82 per day. The RMT launched a court case in 2008 against an agency, Clyde Marine for levying this charge for accommodation on two RMT members being paid the National Minimum Wage and this was settled out of court. We note that the Low Pay Commission is currently consulting on the accommodation offset and await with interest the government’s response and policy on its continuation. RMT support the abolition of the accommodation offset and subsequent enforcement of this through the regulatory framework for the recruitment sector.

In the rail industry, a number of recruitment companies charge agency workers up-front for the cost of their uniform. We believe that these sorts of up-front charges penalise the lowest paid workers and should also be abolished and outlawed, with responsibility for enforcement resting with the Employment Agency Standards Inspectorate.

Furthermore, RMT opposes the present charges that are levied on temporary and agency workers by EAs and EBs for transport to the workplace. We support a regulatory system that outlaws these charges and is effectively enforced by the state regulator.

As stated previously, the creation of a statutory licensing regime for recruitment agencies and recruitment businesses, across all sectors of the economy, including maritime, could eradicate up-front charges completely.

Charges and subsistence payments to agency or temp staff

RMT strongly believe that the regulatory framework for the sector should actively prevent EAs or EBs from exploiting travel or subsistence payments to employees. A number of cases have recently been brought by HMRC in the upper tax tribunal against employers who have exploited transport or subsistence schemes to over claim tax relief on the payments. Essentially, the amount the company claims tax relief on is significantly larger than the total amount paid to employees or agency staff for travel or subsistence. Not only is this against the spirit of tax law, it is probably illegal and also exposes employees to gaps or shortfalls in their National Insurance contributions due to the confusion that these activities introduce in to the tax system.

RMT strongly support the eradication of this form of tax avoidance. The regulatory framework that is introduced as a result of this consultation should be the means of both closing the loophole in legislation and enforcing the new regime over EAs and EBs use of employee travel and subsistence payments in the tax system.

Umbrella companies

RMT also seek a new regulatory framework that specifically outlaws the use of umbrella companies by Employment Businesses to avoid or reduce National Insurance payments on behalf of employees. This has come to light in the construction sector where employers engage payroll companies in order to maximise profits at the expense of their employees.

Two methods are used by the payroll companies in order to achieve this:

1. Switching PAYE employees to self-employed workers engaged by the payroll company.

2. Transferring PAYE employees to an umbrella company operated by the payroll company. In this instance the worker remains a PAYE employee but with a different employer.

Switching PAYE employees to self-employed workers engaged by the payroll company

The worker needs to “freely choose” to switch from the EB to self-employed status (but engaged by the payroll company) by signing a contract, for which the employer often offers a small incentive (such as a small increase in hourly rate).

However, once the contract is signed the worker is then self-employed and no longer entitled to sick pay, holiday pay, employer pension contributions or the national minimum wage.

The newly self-employed worker is then invited to apply for a Unique Tax Reference Number under the Construction Industry Scheme (CIS) and the company can then make deductions for tax from the pay of self-employed sub-contractors at source. This allows the fee charged by the payroll companies to the original employer to be offset for tax purposes against the worker’s earnings.

Transferring PAYE employees to an umbrella company operated by the payroll company

Using umbrella companies to allow construction firms to avoid paying Employers’ National Insurance by switching their workers to employment by an “umbrella company” operated by a payroll company. The worker remains a PAYE employee but with a different employer.

RMT strongly support actions through the regulatory framework to prevent and penalise recruitment companies found to have engaged in this activity.

Definition of “employment agency” in the Employment Agencies Act 1973

RMT would support changes to the definition of Employment Agency, as currently set out in Section 13(2) of the 1973 Act:

‘For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them’

We request that the government look to amend the current definition by including explicit reference to online recruitment agencies.

We welcome government support for restricting charging fees to work-seekers but note that this, like the three other outcomes, is loosely worded and could be used to extend charging to industries where it is not currently permitted. RMT re-iterate our opposition to such a move.

Outcome 2: There is clarity on who is responsible for paying temporary workers for the work they have done

This is clearly a desirable outcome for the regulatory framework to achieve and RMT agree that it is necessary for the government to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done, although we believe that this problem also affects employment agencies as well as employment businesses.

RMT and other trade unions regularly encounter cases where members working for EAs or EBs receive wages earned either late or not until after the union has intervened on behalf of our members. Whilst most of these cases are settled fairly quickly it is clearly an area where the recruitment industry needs to improve its performance.

We support this outcome and propose a statutory system of licensing EAs and EBs as the most effective means of both preventing and eradicating problems with payment when liability between hirer and employer for payment of wages to temporary or agency staff is unclear.

Outcome 3: The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable

Temp-to-perm transfer fees

We believe that the current wording of Regulation 6 in the Conduct of Employment Agencies and Employment Businesses Regulations 2003 provides sufficient safeguard against employers levying illegal charges. However, included within regulations on this subject should be a description of the financial and other penalties that infringement by employers will incur.

On Regulation 10 in the Conduct of Employment Agencies and Employment Businesses Regulations 2003 which sets out the statutory restrictions on charges to hirers by employment businesses, this could be re-drafted to restrict or cap the fee that a hirer pays an employment business for directly employing a temporary worker.

Effect of the 'Swedish Derogation' in the rail industry

At present, the Swedish Derogation permits the employer to pay agency workers on continuing contracts lower rates than a directly employed person doing the same job. This is an incentive to employers to recruit agency staff on lower rates of pay for the maximum period permissible under the current law (the Temporary and Agency Workers Directive).

We are concerned at the growing practice of employers in the rail, cleaning, catering and maritime sectors whereby agency or employment business staff are recruited to undertake duties that were previously performed by existing contracted staff that are covered by a collective bargaining agreement.

Our members on Arriva Trains Wales have experienced this, where the company is using an agency to recruit staff to undertake core contractual duties carried out by directly employed ATW station staff. Arriva are also using agency staff in this way on Grand Central Trains.

Use of agency staff is widespread amongst train operating companies, including London Underground, Serco-Abelio (on Northern Rail and Greater Anglia), Virgin West Coast, DB Regio (Chiltern), Go-Ahead-Keolis (London Midland), Stagecoach (East Midlands Trains) and First Hull Trains. We believe that many recruitment companies (in particular Trainpeople) providing labour to train operating companies are exploiting the Swedish Derogation to their financial benefit and that of the contracting companies.

The problems caused for our members and the workforce in other industries by the Swedish Derogation from the Temporary and Agency Workers Directive should be solved by government. RMT seek regulatory reform of the recruitment sector that abolishes this damaging and corrosive derogation. This could easily be done by government amendment to the transposing legislation, namely the Agency Workers Regulations 2010 which would have the effect of applying the Directive's equal treatment principles to employees of employment agencies who are placed in temporary jobs.

To further support our argument for this reform, it is worth outlining the terms of RMT's current dispute with the recruitment company Trainpeople. London Underground inherited a contract with the Trainpeople recruitment agency from Silverlink in 2007. For five years in breach of its agreements with RMT, London Underground used this agency to provide uniformed staff. Trainpeople staff joined RMT, so they could organise for equal rights with permanent staff as stipulated under the 2010 Agency Worker Regulations. The agency paid them as little as £6.75 per hour.

In January this year, London Underground terminated this contract, leaving RMT members and their colleagues in Trainpeople facing the immediate prospect of losing their livelihoods. We firmly believe that these workers should have been taken on by London Underground in accordance with the Agency Worker Regulations. To date London Underground has refused this request and Trainpeople have even refused to pass on to the staff back pay which London Underground deposited with the company for Trainpeople to pass to the workers.

RMT continues to call for permanent and direct employment for these low paid workers with London Underground and we believe that this case highlights the increased casualisation in the rail industry and exploitation of temporary and agency workers that is happening as a direct result of the Swedish Derogation.

RMT support the end of the Swedish Derogation in the manner outlined above and call on the government to include appropriate reform of the Agency Workers Regulations 2010 in the new regulatory framework for the recruitment agency.

Zero hours contracts

The increase in the use of zero hours contracts in the wider economy is a barrier to temp-to-perm transfers, as well as a deeply insecure form of contractual employment. According to answers to parliamentary questions, in the second quarter of 2012 alone the number of workers on zero hours contracts went up over 10% from 106,000 to 117,000.⁵

The abolition of zero hours contracts would assist in stable growth for recruitment agencies and recruitment businesses, which would be to the benefit of individual workers, who are currently exploited when directly employed on a zero hours contract.

RMT therefore do not accept that outcome 3 is desirable as it is too loosely worded. There are also circumstances where RMT believe that there should be restrictions on the use of agency or temp staff, particularly where in-house staff are covered by a collective bargaining agreement.

Outcome 4: Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Information sharing

RMT believe that EAs and EBS should be legally required to regularly publish information about their business, particularly:

- Equalities policy
- Client list and industry sectors
- Average length of time taken to find a job for a temp or agency worker
- Average length of work placements (EAs and EBs)
- Current rates of pay for temporary and agency workers in placement
- Number of temporary and agency staff in placements and those waiting for placement
- Notice of any Employment Tribunal or other cases lost against former employees
- Any prosecutions for problems with payroll services
- Any prosecutions for non or late payment of wages

RMT believe that this information would be of most use to people looking for temporary or agency work.

In addition, whilst greater transparency from the industry would provide greater confidence to people looking for work via this route that any problems will be easily and successfully addressed, we do not think that increased transparency should be at the expense of state regulation of the

⁵ Hansard col. 989W, 18th Jan 2013.

sector. RMT is also opposed to the increased use of trade association codes of practice or other self regulation introduced at the expense of state regulation or the state enforcement of regulations for the sector.

Prohibition Orders

Prohibition Orders under the current regulations should be maintained in the new regulatory framework and should be enforced by the government. This should not prevent individuals from pursuing claims in the Employment Tribunal and should allow individuals to assert their employment rights more effectively.

Employment Tribunals

We support the inclusion of access to Employment Tribunals in the new regulatory framework. However, we are concerned that the government is proposing to provide access to Employment Tribunals whilst simultaneously de-regulating the sector in other ways, through the abolition of EASI and the introduction of self-regulation, for example.

In addition, the impending fees structure applying to ETs will severely restrict access to justice, particularly for the lowest paid workers in the sector.

At present it is unclear whether or not the government is proposing ETs as the only way of resolving disputes between EAs and EBs and temporary and agency workers. This obviously needs clarifying before the government publishes its final proposals for regulating the recruitment industry.

Furthermore, RMT also seek clarity on how the proposals for extending to individual temporary and agency workers access to an Employment Tribunal will affect those workers in the maritime sector. As mentioned elsewhere in our response, the Maritime Labour Convention, when ratified by the government and implemented into UK law, will contain regulations for RBs and RAs in the maritime industry.

It is therefore imperative that the government clarify how the new regulatory framework for the recruitment sector (and the extension of access to Employment Tribunals in particular) will affect temporary and agency workers in the maritime industry.

RMT also believe that Government should proactively publish the findings of investigations and Employment Tribunal decisions with regard to companies who have broken the law. This should include naming and shaming EAs and EBs guilty of infringing the legislation.

Records

We think it will be necessary to legislate to require employers to maintain records of work-seekers, hirers and other EAs and EBs.

In terms of work-seekers, RMT support EAs and EBs being legally required to keep the work record (inc. periods of work, wages earned and taxes paid), subject to the relevant Data Protection legislation.

Definition of seafarers and maritime recruitment agencies and recruitment businesses

We are also concerned about what, if any definition the government may use in the regulatory framework to replace that currently used in the 1973 Act for seafarers. At present, the Act states at section 13(1)(f):

““seaman” has the same meaning as in the Merchant Shipping Act 1894.’

RMT believe that the meaning of seaman cited in the 1973 Act is out of date. We suggest that the government use the definition of 'seafarer' under the Maritime Labour Convention (MLC) 2006, although this has yet to be agreed for the purposes of UK law.

It is also important to note that the regulation of recruitment and placement businesses in the maritime sector is covered by Regulation 1.4, Standard A1.4 and Guideline B1.4 of the MLC which we expect to come into force in the UK in August 2014. Once it comes into force in the UK, the MLC requires establishment of a 'System of Protection' (SoP) for:

'... a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.' MLC Standard A1.4.5 (a)(vi)

At present, there is no insurance product that RAs or RBs can use to establish this system of protection in the UK. An interim SoP has been agreed between the Maritime and Coastguard Agency, maritime trade unions including RMT and the employers but until the UK government can assess what can be insured and what other countries propose to do in order to comply with the MLC, this aspect of the regulations covering RAs and RBs in the maritime sector will remain unclear.

RMT is concerned that BIS and the Department for Transport, specifically the Maritime and Coastguard Agency, are potentially working at cross purposes in the regulation of recruitment agencies and recruitment businesses. We therefore request that the new regulatory framework indicate where the MLC regulations applying to temporary and agency workers in the maritime sector and which override those covering the domestic recruitment sector for other industries. Perhaps most importantly, RMT believe that the government should use this consultation exercise to ensure that seafarers working for EAs or EBs are afforded the same level of regulatory protection under the new framework as their land based colleagues.

Licensing system

RMT support the introduction of a statutory system of licensing for recruitment agencies and recruitment businesses. This is the only regulatory framework in which agency and temporary workers could have real confidence in and in which they would be able to effectively assert their employment rights.

RMT support outcome 4, subject to the proposals for achieving it which we have set out above.

NES Global Talent

Department for Business Innovation & Skills: Consultation on reforming the regulatory framework for employment agencies and employment businesses

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Responding as: Manpower solutions provider

About NES Global Talent:

Established in 1978, NES Global Talent supplies technical and engineering experts to the oil and gas, power, infrastructure, rail, life sciences and IT sectors worldwide.

Our network of 35 offices spans UK and Europe, Africa, the Americas, Asia, Australia and the Middle East and we offer a range of additional services to support our contractors in their assignments including global healthcare insurance, visas, security and travel and mobilisation support as well as payroll guarantees to our candidates and quality guarantees to our clients.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

NES Global Talent believes that the regulatory framework should be designed to properly reflect the distinction that exists in the recruitment market between highly-paid, highly-skilled limited company contractors and the lower-paid temporary staffing sector.

Limited company contractors, who either work through their own personal service company (PSC) or umbrella company, are not at risk of exploitation like the often unskilled and vulnerable individuals in the lower-paid temporary staffing sector. The legislation should be appropriately devised to avoid burdening the professional end of the market with unnecessary regulation and limited company contractors should be automatically considered outside the scope of the new regulatory framework.

These highly-paid individuals are not the “work-seekers” that the Government aims to protect. The vast majority of limited company contractors neither want nor need the protections afforded by the current Conduct Regulations, which is borne out by the number that opt out via Regulation 32. **In fact, 98% of the 1,300 contractors we work with opt out of Regulation 32.**

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No

b) Please give reasons for your answer.

NES Global Talent does not believe that ambiguity regarding who is responsible for paying the temporary worker is common within the professional staffing sector. This is because payment provisions and responsibilities are made clear in the contract between the staffing company and the limited company contractor.

We would not wish to see any new legal fetters imposed upon what payment terms can be agreed between the employment business and limited company contractor. For example it is important that in the business to business contract between a staffing company and a limited company contractor, that the staffing company has the right to withhold payment where the limited company is in breach of the contractual terms, or where no proof is provided of satisfactory services undertaken. Contracts should include a clear definition of services to be performed, which in practice would mean that the client would confirm their approval of the quality of the services performed, probably by signing timesheets.

If client confirmation of the quality or satisfactory nature of the work undertaken is not a requirement before payment is made to the limited company contractor, then it is likely that the staffing company will find themselves having to pay a contractor for incomplete or unsatisfactory work, and yet they will be unable to require payment from the end-user client. This would be very damaging to an industry that already has to finance a significant delay between payment to contractors (for satisfactory work) and receiving payment from the client. In addition, NES Global Talent believes that professional staffing providers should not be left to pay the limited company contractor if the client becomes insolvent.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

b) Please give reasons for your answer.

Regulation 6 is clearly intended to ensure that lower-paid temporary workers, i.e. those engaged and paid directly on a PAYE basis, can exercise a general right to cut short their temporary assignment and either be taken on permanently or work elsewhere.

Limited company contractors with rare/niche skills cannot be simply swapped in and out. A project could be damaged if a limited company contractor was to walk off site because he had a better paid job elsewhere to start

In the professional sector, there is a commercial, business to business contract in place between the recruitment firm and a limited company and in such situations any termination should remain in line with the terms of the commercial agreement in place. This contract should be clear and transparent to all parties involved, allowing them to make informed choices.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

b) Please give reasons for your answer.

NES Global Talent recognises that in the lower-aid, lower-skilled sectors of the staffing industry, temporary work is an important route into permanent work and this could be hindered by unreasonable temp-to-perm transfer fees. However, this is not the case in the professional contracting industry. Most professional limited company contractors are “career contractors”, who make a life choice to move into the contracting market. In our company, only 1%, which equates to about 12, of the contractor placements we make in a year are temp to permanent deals.

While unreasonably large transfer fees are clearly an example of bad practice, we believe that transfer fees are part of the commercial agreement between the end-user client and the staffing company, and therefore should not be subject to prescriptive legislation.

NES Global Talent would not want to see any creep towards the prohibition of temp-to-perm fees. The legitimate business interests of the employment business that has invested significant up-front effort, cost and expense into sourcing and placing a contractor, and the on-going cost of maintaining contractors in assignments must be appreciated and recognised.

The Newspaper Society

Consultation on Regulatory Framework for Employment Agencies and Employment Businesses

The Newspaper Society is the voice of the UK's local and regional media. Our members publish some 1100 newspapers, dailies and weeklies, paid-for and free, circulating throughout the UK and read by 30.9 million people every week. They also publish 1600 associated websites, which attract 62 million unique users a month. The industry employs 30,000 people, including 10,000 journalists.

Local and regional newspapers and their websites are of course a foremost platform for recruitment advertising.

We have no comments on the substantive matters raised in the consultation paper, save that we wish to take the opportunity to raise an issue touching upon your Question 4 – the definition of an “employment agency” in Section 13 of the Employment Agencies Act 1973.

Online recruitment advertising is carried not only within websites which comprise online editions of the print offering, but, increasingly, our members also offer dedicated websites which are devoted entirely to job advertisements. These advertisements may be direct from would be employers, and from employment agencies/businesses. Frequently these job advertisement websites will offer a facility whereby jobseekers can upload their CV or similar services.

The definition of “employment agency” in Section 13 of the 1973 Act excludes from the scope of relevant services in subsection (2) that of “publishing a newspaper or other publication unless it is published wholly or mainly for the purpose mentioned in that subsection”. The following points arise:

- a) Although the 1973 Act clearly preceded the development of the internet, it has always been accepted that “other publication” would encompass online publications ie websites.
- b) Online websites of local and regional newspapers, not being published wholly or mainly for the purposes of subsection (2) services, are clearly outside the definition of employment agency services.
- c) In relation to specific “job board” type websites, the distinction between these and employment agencies was recognised in *Reed Executive plc and Reed Solutions plc V Reed Business Information Ltd, Reed Elsevier (UK) Ltd and totaljobs.com Ltd* [2004] EWCA (Civ) 159. The court held that “*The core of an employment agency service lies not merely in the fact that job-seeker and employer can be matched. Matches can be made in a variety of ways: for instance the job-seeker may read an advertisement placed by an employer and respond to it directly. No-one would call the publisher of the advertisement an agent in those circumstances, even though he has played a part in the matching. Playing any sort of part in the matching process is not enough. The key core elements of the service of an employment agent are, it seems to me that the agent: i) has control over the introduction between employer and job-seeker; and ii) has a direct interest in the match being made...It is this interest,* which gives the employment agent a real incentive to supply only good people to employers” (emphasis added).
- d) The DTI 2003 guidance on the Regulations stated that an employment agency “introduces work-seekers to client employers for direct employment by those employers” , and this emphasis on the distinguishing feature of an employment agency as that of “making introductions” is on all fours with the Reed judgment. It is also consistent with the distinction made in the Regulations and in the guidance between the core functions of an agency and “ancillary services” eg CV writing, for which a charge may be made.
- e) Thus typical “job board” type websites published by newspaper companies are also outside the scope of the definition of “employment agency” services for the purposes of the Act.

Of course, it remains the case that individual advertisements from employment agencies which are posted on job board websites or on newspaper title websites must comply with the requirements of Regulation 27(1) of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) and such advertisements must therefore carry the name of the agency and state whether the job advertised is for

temporary or permanent work and, if a rate of pay is stated, the additional details required by Regulation 27(3).

We would like to suggest that the opportunity is taken to state explicitly , whether by means of amending the primary legislation or via the Regulations, that:

- "publication" includes a publication in any medium;
- the reference in Section 13(2) to providing services does not include a publication which consists of or includes advertisements from employers, hirers, work seekers or other third parties where the publisher does not exercise any control in relation to introductions between the parties and has no direct interest in any employment arising directly or indirectly as a result of such advertisements.

This clarification would simply reflect the legal position as it currently stands but would have the virtue of enabling there to be clarity on the matter on the face of the legislation itself. Alternately, perhaps the matter could be addressed in any revised guidance.

Please do not hesitate to contact us if we can provide any further information. We look forward to hearing the Government's response to our suggestion.

Yours sincerely

SUE OAKE
Senior Legal Advisor
Political Editorial and Regulatory Affairs Department

Maritime and Coastguard Agency

Maritime and Coastguard Agency comments on the BIS Consultation on reforming the regulatory framework for employment agencies and employment businesses

The Maritime Labour Convention, 2006 (MLC) will come into force internationally on 20 August 2013. Most parts of the Convention fall under the Department for Transport (DfT) through the Maritime and Coastguard Agency (MCA), with the exception of Social Security, which falls under the Department for Work and Pensions (DWP) policy area, and Recruitment and Placement, which falls under the policy area of the Department for Business, Innovation and Skills (BIS).

Ratification of the MLC is pivotal to the well-being of the UK shipping industry, and that part of the Recruitment and Placement industry which has seafarer work seekers, whose profitability depend on it. This is because unless the UK ratifies the Convention - and is therefore in a position to issue certificates of compliance against it – UK shipowners will face delays in foreign ports, and UK based recruitment and placement services will struggle to demonstrate compliance, which is vital for their continued trading. It is therefore considered essential for the good of UK businesses that the MLC be implemented in UK law.

Question 1: Do you agree with the four outcomes that the Government believe should be achieved by new recruitment sector legislation?

It is agreed that the four Outcomes outlined in the proposal are desirable. Of particular interest to the MCA is the Outcome relating to focussing attention on the most vulnerable work seekers. The MCA believe seafarers fall into this category for the reasons outlined in the response to question 15. The proposal itself falls short of achieving all the desired outcomes. In particular, most seafarers will be unable to assert their rights under the recruitment industry “self regulatory” approach proposed in Option 2, the preferred Option in the Impact Assessment. Vulnerable seafarers are less likely to have the confidence, wherewithal and language skills to pursue claims, in addition to the fact that they are very unlikely to be geographically placed to pursue such a claim.

Seafarers will not be able to assert their rights if they are compelled to do this by conciliation, Employment Tribunals and the courts, as many of the seafarers concerned are rarely, if ever, physically present in the UK, and anyway the right to take a case to an Employment Tribunal afforded to most employees by the Employment Rights Act 1996 is dis-applied to many mariners. In addition to this, as highlighted in the Impact Assessment, there is a high risk that, even if able to do all of the above and having won the case, the seafarer will not be paid.

Also, standards which are contained in Codes of Practice and other self-regulatory documents will not be binding in law and therefore will not be compliant with the Maritime Labour Convention, 2006, or the EU Directive which is expected on the subject shortly. It is also expected that non-compliant recruiters will suffer a severe loss of business leading up to and after the MLC comes into force internationally, so this does not make good sense for the prosperity of UK businesses.

Question 2: Are there any other outcomes that you think should be achieved by the new legislation?

Yes. An additional outcome should therefore be included, to achieve full compliance with the Recruitment and Placement obligations of the MLC.

The proposal does not take into account the UK government's obligations to meet the UK government's aim of achieving full compliance with the Maritime Labour Convention, 2006 (MLC) and ratifying that Convention. The implications of these proposals on UK MLC implementation has been completely overlooked in the Impact Assessment, which is a serious omission. This is despite BIS and its predecessor Departments since 2006 being made aware through meetings with the Department for Transport (DfT) and the Maritime and Coastguard Agency (MCA) of the MLC and its implications for seafarer Employment Businesses and Agencies.

The European Commission has also indicated that it expects a Directive on the Recruitment and Placement aspect of the MLC will be forthcoming in due course. This would make most or all of the MLC Recruitment and Placement title mandatory for member states regardless of whether they have ratified the MLC or not. The ILO work in fishing Convention also has implications for the Recruitment and Placement industry which are expected to be enshrined in EU law before too long. It therefore seems short sighted to introduce changes to legislation which it is expected will have to be reversed within a relatively short space of time, with the resource costs involved with that and the risk of infraction fines for the UK exchequer.

Most of the MLC requirements are already covered in the existing Conduct Regulations 2003 and Employment Agencies Act 1973 – although some gaps have to be bridged. The few additional obligations on Recruitment and Placement Services introduced by the MLC are not expected to be onerous – in fact that are considered to be significantly less onerous than the information sharing proposals contained in this consultation (paragraph 7.17 of the proposal). The removal of existing provisions from UK law which correspond with MLC requirements would result in UK law diverging from MLC compliance, instead of moving closer. Such corresponding provisions should therefore be retained – albeit only to the extent they apply to seafarers.

UK obligations under the MLC

Under MLC Standard A1.4.5.2, member states are required to ensure recruitment and placement services are “... *operated only in conformity with a standardized system of licensing or certification or other form of regulation*”.

Under MLC Standard A1.4.5.6, “*The competent authority shall closely supervise and control all seafarer recruitment and placement services operating in the territory of the Member concerned.*”

Under MLC Standard A1.4.5.9, “*Each Member which has ratified this Convention shall require that shipowners of ships that fly its flag, who use seafarer recruitment and placement services based in countries or territories in which this Convention does not apply, ensure, as far as practicable, that those services meet the requirements of this Standard.*”

EU dimension

Furthermore, those aspects of the MLC which fall within EU competence are expected to become the subject of EU Directives in due course. Already Directive 2009/13/EC had incorporated the Social Partner's Agreement on the MLC into the EU Acquis, and a draft Directive implementing the enforcement of Directive 2009/13/EC, and another implementing those aspects of the Convention within EU competence into the port State Control regime, are in the pipeline.

The EU Commission has indicated that yet another proposal, to implement the Recruitment and Placement aspect of the MLC into EU law, will be forthcoming. Thus these matters are expected to be mandatory in EU law before long, making the UK subject to potentially costly infraction proceedings if they are not transposed into domestic law. It therefore seems sensible that, even if it were not so vital to keep the costs of the UK shipping industry down, it would still be efficient to deal with this requirement within this project rather than have to embark on another costly project in the near future.

Question 3: Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees? If yes, in what circumstances do you think agencies should be able to charge fees?

No, the practice of fee charging should not be extended. This would contravene the MLC.

Question 4: Do you think that the current definition of 'employment agency' as set out in section 13 of the Employment Agencies Act 1973 could be improved?

It is unclear whether the definition of 'employment agency' as set out in section 13 of the Employment Agencies Act 1973 applies only the companies registered in the UK or to any company which has any part of its operation on UK soil. The MCA would welcome amplification of this definition to ensure that it applies to any employment agency which has any part of its operation in the UK, regardless of its state of registration.

This comment is also applicable for the definition of 'employment business'.

Question 5: Do you think legislation should require employment agencies to give work-seekers a cooling off period in situations where fees can be charged?

No comment.

Question 6: Do you think there should be one standard cooling off period? What do you think the cooling off period should be?

No comment.

Question 7: Do you think that it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Clarity regarding who is responsible for payment of temporary workers is to be welcomed, provided any provisions do not prejudice/ contradict the implementation of the MLC, which itself brings clarity to the question of who is accountable for ensuring seafarers' receive their entitlements – including pay.

Question 8: Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No comment.

Question 9: Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that regulation 10 could be improved?

No comment.

Question 10: Do you think employment agencies and businesses should publish information about their business?

No comment.

Question 11: What information do you think would be of most interest to: a) hirers and b) work-seekers?

No comment.

Question 12: Do you think it should be compulsory for employment agencies and businesses to publish information about their business? If you answered yes, what information do you think it should be compulsory to publish?

No comment.

Question 13: Do you think trade association codes of practice help to maintain standards in the sector?

No comment.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

No comment.

Question 15: Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes. This is particularly true for seafarers who do not have proper access to systems enabling them to enforce their own rights, given that, by the nature of their jobs, most of the time they are outside the UK. Also, the balance of power between a shipowner and a seafarer is weighted towards the shipowner, as the vulnerable seafarer is isolated on a ship at sea. For the reasons given above, and to fulfil the MLC compliance requirements, it is vital for seafarers and other vulnerable workers to enjoy the protection afforded by government enforcement.

Option 2 in the Impact Assessment seems to indicate that BIS considers the protection of vulnerable workers is desirable – we agree with that – but the “do it yourself” approach which appears to be advocated in the proposals militate against this. Option 2 also refers to BIS’s own document, “*Flexible, effective, fair: promoting economic growth through a strong and efficient labour market – October 2011*”, which contains the statements:

“It is essential that the most vulnerable workers, those most likely to be exploited by unscrupulous employers, are effectively protected.” (paragraph 19)

“We believe that government enforcement should focus on protecting the most vulnerable workers who are unable to assert their own rights for themselves, while leaving those who are better able to look after themselves to seek redress through the employment tribunal system.” (paragraph 23)

It is therefore in keeping with BIS’s own declared objectives to afford such protection to seafarers.

Another reason that the government should enforce the legislation is that, even if there are non-seafarers who are able to enforce their rights through civil channels, it is observed that this would result in an increase in cases going through the courts, putting more strain on an already overstretched system.

Question 16: Do you think that Prohibition Orders should be included in the new enforcement regime?

Yes, in situations where their use is appropriate and effective.

Question 17: Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes. However, it must be borne in mind that this option is not practical for a large number of seafarers due to the peripatetic nature of their occupation.

Access to justice and confidence to use UK based recruitment and placement services

In respect of seafarers, this proposal does not achieve one of the main aims – namely that work-seekers should have the confidence to use the recruitment sector and are able to assert their rights (fourth bullet point of paragraph 6.11 of the proposal).

There are two main barriers to seafarers accessing justice through their own action:

- a) the legal barriers; and
- b) the physical barriers.

If anything, the physical barriers are more significant than the legal ones, but both are significant.

Legal Barriers

The right of a seafarer to take a case to an Employment Tribunal is limited by dis-applications in section 199 of the Employment Rights Act 1999 to certain seafarers in certain circumstances. This means for a large number of seafarers on UK ships, this course of action is not available to them. This has not been taken into account in the Impact Assessment.

It can also be argued that placing additional burdens on seafarers who are not UK nationals, but have been recruited through UK based recruiters and/or are serving on UK

ships, when they are seeking to enforce their rights, is indirect discrimination based on race. Racial discrimination is prohibited by the Equality Act 2010.

Physical barriers

More significant is the geographical limitation on seafarers which limits access to the UK justice system and therefore effectively prevents a seafarer from bringing their own case to court. Both UK and non-UK nationals on UK ships are likely to be outside the UK for long periods of time, and in fact some UK registered ships are operating on the other side of the world and never visit a UK port. Communication with, and attendance at, UK courts, solicitors' offices and, where permitted, Employment Tribunals is made difficult, protracted or impossible. Under the new proposals, there is a serious concern that most seafarers will not have the ability to assert their rights.

Seafarers would therefore encounter great physical obstacles, and also cost barriers, to asserting their rights against a UK company which has exploited them.

It is therefore necessary to have a regime in which the UK government can enforce the necessary provisions directly against the responsible organisation. This seems to have been overlooked in the proposals.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

A full list of all their rights and how they can be enforced.

Question 19: Do you think that the Government should proactively publish the findings of investigations that have been carried out including the trading name of each employment agency/business and listing the infringements to the legislation?

Yes – this would encourage compliance.

Question 20: Do you think it is necessary to legislate to require employment agencies and businesses to keep records?

Yes – it is otherwise not possible for them to evidence their compliance in many areas.

Question 21: What records do you think that employment agencies and employment businesses should be required to keep relating to:

a) work-seekers? *Identity, qualifications relevant to posts for which they are put forward, documents sighted, record of placements with dates, etc., sums charged to work seekers (with description of charges), employment agreements, complaints raised by the work seeker against the Employment Agency or employing client, details of all insurances in place, records to evidence that the work seeker had had opportunity to review their terms and conditions of service prior to signing the employment agreement.*

b) hirers? *No comment.*

c) other employment agencies/employment businesses? *Their dealings with exchange/transfer of personnel between them, and associated administration.*

Summary

The Maritime and Coastguard Agency (MCA) is seriously concerned about the lack of consultation on the implications of these proposals for UK based Recruitment and Placement Services (both the Employment Agencies and Employment Businesses) which recruit and place seafarers, given that the viability of these Services are expected to be threatened by the proposals.

Despite the discussions between MCA and BIS (and its previous incarnations) which have taken place over the last six plus years, no mention at all is made in the consultation of the MLC or the forthcoming DfT/MCA consultations on it. In particular, the MCA's concerns, which have been expressed to BIS on a number of occasions, should have been included in the consultation to give consultees the opportunity to comment on them. To do otherwise is likely to leave HMG open to the criticism that it has not been fully open with the public.

The MCA therefore believes the consultation is incomplete as it does not address the full picture of the potential effects of these proposals.

Corby Employment Agencies Summit

From the Corby Employment Agencies' Summit led by Andy Sawford, MP for Corby and Tom Beattie, Leader Corby Borough Council

Introduction

This response has been prepared following the holding of the Corby Employment Agencies' Summit on 5th April 2013. The event was jointly hosted by Tom Beattie, Leader of Corby Borough Council, and Andy Sawford, MP for Corby and was attended by local representatives from employment agencies, employers, trades unions, BIS (including Steve Keeler, Head of the Employment Standards Inspectorate) and DWP as well as people who had direct experience of working for agencies.

As a result, this submission has been drafted to respond to the questions raised by BIS in the consultation, reflecting the spirit of the Summit and in line with the intention to establish a local forum for promoting good practice in the use and operation of employment agencies.

Context

The use of employment agencies as a mechanism for filling the demand for labour has become a well-established phenomenon in Corby. The town has c.43 employment agencies, compared with c.20 in Northampton, despite the latter having three times the population of Corby.

Agency working is particularly strong in the distribution and food sectors which have grown in Corby over the last two decades. Most current employment opportunities promoted by Jobcentre Plus relate to vacancies filled via employment agencies.

Issues of poor employment practices and exploitation of temporary workers led to the launch of a 'Fairness & Respect for Temporary Workers' Campaign in 2008, led by Phil Hope, the Corby MP at that time. As a result, 16 employment agencies – together with a similar number of the town's principal employers – signed up to a pledges to adopt an agreed set of working practices, in that agencies would:

Work wholly within the law and abide by all relevant regulations, including the National Minimum Wage, the Working Time Directive and the Employment Agencies Act;

Pay all monies owing to people promptly, including holiday pay, lunch breaks where relevant, sick pay and other legal entitlements, as appropriate;

Ensure any deductions from remuneration are reasonable and fair, fully understood and agreed in advance by the individual, cover only welfare costs such as food or accommodation and only if requested by the temporary worker

Allow companies to audit fully the remuneration and deductions of their temporary workers on request;

Ensure individuals know and understand their rights at work from the start of their contract, including the right to join a trade union and to access support from a trade union representative in matters of dispute, should they wish to;

Respond promptly, reasonably and openly to complaints of unfair treatment by temporary workers;

Ensure these commitments apply equally to foreign temporary workers, particularly those who are citizens of the EU and the recent accession countries (e.g. Poland) who choose to work in Corby;

Take active steps to ensure we do not engage illegal immigrants as temporary workers;

Make public our commitment to this pledge;

Monitor and report publicly our compliance with this pledge.

Whilst this campaign represented a significant achievement in seeking to establish common good practice in this area, the forum has decided that it is time to review and revive shared commitment to these principles. The employment landscape has changed with a sustained period of low or negative economic growth and there have been new entrants to the employment agencies' marketplace – in terms of agencies, business customers and people seeking employment. Consequently, the forum intends to develop, agree and promote a new set of practices, as a voluntary basis for operating fair employment conditions in the town.

Response to Consultation Questions

We have provided below responses to the questions raised in the consultation paper.

Your details

Name: Andy Sawford, MP for Corby, and Tom Beattie, Leader of Corby Borough Council

Organisation (if applicable): As above

Address: Andy Sawford MP Constituency Office, Grosvenor House, George Street, Corby NN17 1QB

Tom Beattie, Corby Borough Council, The Corby Cube, George Street Corby NN17 1QG

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- X Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- X Other (please describe): Member of Parliament

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

Employment businesses and employment agencies are restricted from charging fees to work-seekers

There is clarity on who is responsible for paying temporary workers for the work they have done

The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable

Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Response: Yes

b) Please give reasons for your answer.

Response:

These outcomes represent a minimum of what needs to be achieved. In particular, going beyond the stated third outcome, greater emphasis is required on temporary employment being used as a pathway to permanent employment and this should be supported by both statutory requirements to recognise 'permanence' and enabling agencies to be incentivised financially to achieve this.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Response: Yes

b) If yes, please give details on what these are.

Response:

New legislation should eliminate the ability of employment agencies and employers to collude to circumvent the legislative intent, for example by using the Swedish Derogation to prevent equivalence of employment conditions between permanent and temporary staff with an employer after 12 weeks.

Consideration should be given to establishing common good practice across the employment agency industry through the introduction of licensing of agencies in a similar manner to that provided for under the Gangmasters (Licensing) Act of 2004. We believe that establishing this kind of framework with appropriate enforcement mechanisms would deter illegal and unacceptable practices in the industry by setting clear expectations of behaviour and making any non-compliance more visible.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Response: No (assuming that this refers to the client who is seeking work)

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Response: *Not applicable*

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Response: *We have not formed a view on this question.*

b) Please give reasons for your answer.

Response: *Not applicable*

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Response:
We do not believe that employment agencies should be allowed to charge work-seekers, with the exception of the entertainment and modelling sectors, so the question is not applicable.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Response: *Not applicable*

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Response: *Yes*

b) Please give reasons for your answer.

Response:
Our forum has had numerous examples reported to it where temporary workers have received conflicting advice concerning whether responsibility lies with the agency or the employer for payment. There should be a requirement for these responsibilities to be specified clearly to the worker from the outset.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Response: *No*

b) Please give reasons for your answer.

Response:

Work-seekers must retain the contractual freedom to respond to new employment opportunities or changes in their personal circumstances.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Response: **No**

b) Please give reasons for your answer.

Response:

Given that we regard the move from temporary to permanent employment as a desirable outcome, we believe that these protections for hirers are important.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Response: **Yes**

b) Please give reasons for your answer

Response:

All parties involved in temporary working need to have an informed understanding to enable them to make appropriate choices in the selection of agencies and employers.

Question 11: What information do you think would be of most interest to:

a) work-seekers

Response:

Nature of jobs provided by an agency/employer and associated contracts and conditions (e.g. whether or not there is certainty of work being offered if the worker attends the workplace at the appropriate time). In our experience, work-seekers are particularly concerned about the insecurity and unpredictability of 'zero hours' contracts that may be offered through agencies

Where responsibility for payment lies and how payment will be made

Proportion of workers achieving permanent employment status through the agency/with the employer

Average length of work assignments through the agency/with the employer

Proportion of workers reaching the 12 week 'equivalence' point through the agency/with the employer

Length of time for which the agency has been operating

b) hirers

Response:

Whether or not the agency is licensed/has a record of compliance with legislative requirements

Where responsibility for payment lies and how payment will be made

Length of time for which the agency has been operating

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Response: *Yes*

b) Please give reasons for your answer.

Response:

This is essential to operate a fair employment marketplace.

c) If you answered yes, what information do you think it should be compulsory to publish?

Response:

The areas of information set out in the response to Question 11.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector? **Yes No**

Response: *To a limited extent*

b) Please give reasons for your answer.

Response:

We experience too many cases of poor practice and exploitation of temporary workers to conclude that trade association codes of practice are effective. We believe that further statutory protection for temporary workers is required.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

Response:

We are developing a local employment forum in Corby to raise standards within the industry. By engaging employment agencies, employers, trades unions and temporary workers in a dialogue about desired practices, we aim to build a consensus in relation to standards.

We further believe that the local authority has an important role on facilitating and promoting this agreement. It will be as important for the forum to recognise and encourage the replication of good practice as its role in drawing attention to where the voluntary local code has been breached.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Response: *Yes*

b) Please give reasons for your answer.

Response:

Whilst voluntary enforcement by trade associations and by local forums like that developed in Corby have a place, we believe that the threat of legal sanctions is

required in order to achieve compliance. In our experience, whilst there are many reputable employment agencies, there are too many instances of agencies operating in wholly unacceptable ways. Given the ease with which an agency can be set up and commence trading, there is little basis for confidence that voluntary and self-regulation will be sufficient to achieve the outcomes required within the industry.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Response: Yes

b) Please give reasons for your answer.

Response:

This has to be the ultimate sanction for persistent non-compliance. If an agency or employer is demonstrably operating in a manner that is contrary to the legislation, then a prohibition order should be issued if the organisation refuses or is unable to change its practices.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal? **Yes No**

Response: Yes

b) Please give reasons for your answer.

Response:

Individuals need an appropriate means of redress if their rights are infringed. The Employment Tribunal service has been one important way of seeking redress in the past, however we are concerned about changes to tribunals, particularly the introduction of fees. Other means of seeking redress do not appear to be readily available or publicised. We believe that there is a need to significantly strengthen the rights and ability of people to seek redress where they believe they have been unfairly treated when working through an employment agency. The Employment Agency Standards Inspectorate has a potentially important role and we believe that options for strengthening and promoting the role of EASI should be considered.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Response:

*Employment agencies should be legally obliged to provide temporary workers with:
A statement covering the nature of the agreement between the agency and the individual*

The relative responsibilities of the agency and the employer for each work assignment concerning:

Payment arrangements

Provision of any work-related uniform or equipment

Relevant health & safety provisions

A statement concerning their rights to:

Terminate the agreement

Join a trade union

Details of:

How any temporary worker grievances will be handled

How the temporary worker is able to raise issues with the Employment Agencies Standards Inspectorate.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation? **Yes No**

Response: **Yes**

b) Please give reasons for your answer.

Response:

Publication of investigative findings and names of offending organisations is a key part of establishing an informed marketplace and discouraging illegal practices

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Response: **Yes**

b) Please give reasons for your answer.

Response:

This is part of building quality standards within the industry. Records will not only provide an audit trail for compliance but their completion will help to embed sound practices within the industry and ensure that the legislation is enacted effectively.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

Response: ***We have not formed a view on this question.***

b) hirers?

Response: ***We have not formed a view on this question.***

c) other employment agencies/employment businesses?

Response: ***We have not formed a view on this question.***

Thompsons

About Thompsons

Thompsons is the most experienced trade union, employment rights and personal injury law firm in the country with 29 offices across the UK. On employment and industrial relations issues, it acts only for trade unions and their members.

Thompsons represents the majority of UK trade unions and advises on the full range of employment rights issues through its specialist employment rights department.

Question 1: Do you agree with the four outcomes that the Government believe should be achieved by new recruitment sector legislation?

- **Employment businesses and employment agencies are restricted from charging fees to work-seekers**
- **There is clarity on who is responsible for paying temporary workers for the work they have done**
- **The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable**
- **Work-seekers have the confidence to use the recruitment sector and are able to assert their rights**

a) Yes, but see our reasons below.

b) We agree with the four outcomes sought insofar as they are uncontroversial. But they do nothing but reinforce the status quo.

We do not understand why BIS is conducting a consultation on matters about which the Conduct of Employment Businesses Regulations are already clear: agencies cannot charge fees to work-seekers; clarity exists on responsibility for paying temporary workers; temps can already move between jobs; work-seekers have little choice but to use the recruitment sector.

Instead of giving the impression of strengthening temporary workers' rights where no real improvement is proposed, the government should be seeking to underpin the four outcomes with sanctions with teeth on agencies which breach the regulations.

For example, while temporary workers are free, under the regulations, to move between jobs and from temp-to-perm, the proposals do not include measures to prevent victimisation of workers who do. It is not enough to say that recruitment firms should not hinder such movement, when the reality is that they often do without penalty.

While few could disagree with the aim of giving work-seekers the confidence to use the sector and to be able to assert their rights, the reality in this economic climate is that someone who loses their job is unlikely to consider that they have much choice but to sign up with an employment agency.

Being able to "assert their rights" is a meaningless outcome. Work-seekers can already do so. It is the only way to mitigate their losses. However, most won't because of fear of victimisation or simply because they lack support and advice.

The suggestion would appear to be that civil enforcement such as employment tribunal rights would be more effective than the current criminal enforcement regime.

In our view, it is unlikely that an individual whose rights are breached would feel able to assert their rights unless they had the benefit of trade union membership. And even if they did feel able to pursue a claim – even after the government has introduced fees in employment tribunals which will

severely reduce access to justice in tribunals - is it really for individuals to be responsible for ensuring that government regulations on a sector are enforced?

At a time when the government is reforming employment laws to reduce tribunal claims, including introducing deterrent fees for claimants, it makes little sense to us that BIS appears to be trying to encourage greater assertion of rights through employment tribunal claims rather than seeking to prevent breaches of the regulations by agencies.

Question 2: Are there any other outcomes that you think should be achieved by the new legislation?

New legislation should at the very least provide sanctions with teeth against agencies which breach the regulations, so that work-seekers are not entirely reliant on the courts and tribunals to enforce their rights, particularly at a time when other employment law reforms, including the imposition of fees, will discourage claims.

This is not a time to dismantle the regulatory system.

Outcomes should include:

- Prevention of victimisation of workers who move between jobs through tough sanctions on agencies which breach the Conduct of Employment Agencies Regulations including fines and striking off.
- Strengthening of the powers of the Employment Agency Standards Inspectorate (EASI), which is currently a toothless body, to ensure that the regulations are enforced and breaches effectively penalised.
- Strong and effective action against agencies which breach the rules about providing labour to break strikes. In addition to the regulatory penalty in this regard, there should be a civil remedy so that unions and workers can pursue an effective remedy, including an injunction and a tribunal award.

Question 3: Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees? If yes, in what circumstances do you think agencies should be able to charge fees?

No. The experience of workers in the entertainment and modelling sectors, and the lessons learned from them, lead us to the conclusion that no agencies, including those in the entertainment and modelling, should be allowed to charge.

We refer specifically to agencies for actors. The fee charging exemption was introduced because the 1973 Act aligned employment agencies with directories such as Spotlight. There was an argument that Spotlight, which does not mediate between employers and work-seekers, would fold if it could not charge up-front fees to those wanting a listing.

The exemption has led to the creation of a great number of agencies in the sector, many of which demand up-front fees from “extras” for the promise of work which never materialises. Such workers are often exploited by multiple agencies. BIS should take the opportunity of this review to end such practices, rather than considering extending the ability of agencies to charge fees.

Question 4: Do you think that the current definition of ‘employment agency’ as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No. The current definition is clear. BIS offers no explanation as to why it is considering amending it. Any attempt to change it will lead to uncertainty and may encourage attempts to circumvent the regulations.

Question 5: Do you think legislation should require employment agencies to give work-seekers a cooling off period in situations where fees can be charged?

We believe that agencies should not be allowed to charge fees. However, if they are, there should be a significant cooling off period – at least as long as that provided under the current legislation (30 days).

Question 6: Do you think there should be one standard cooling off period? What do you think the cooling off period should be?

Yes. See our response to Q5 above. .

Question 7: Do you think that it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes. It is necessary to legislate because it is essential to know who to seek remedy against for a failure. The position is currently uncertain as it is based on common law and contract. Legislating would provide an agencies equivalent of Section 1 of the Employment Rights Act 1996.

Where there is an employment business, the business should have responsibility for paying the temporary worker and they should recoup any outlays from the end user. In the event that the employment business is insolvent, the end user should retain an obligation to pay.

Question 8: Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes. Regulation 6 should be strengthened, not diluted. Currently it is for the work-seeker to prove loss. In our view there should be a minimum award of at least two week's pay.

The regulator should also be able to impose a fixed penalty.

Question 9: Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that regulation 10 could be improved?

Yes. Again, the concept should be retained and not diluted, and can be improved. Transfer fees constitute a restriction on employment, which is contrary to government policy. Any transfer fee greater than the notice provision within the contract should be considered unreasonable.

Question 10: Do you think employment agencies and businesses should publish information about their business?

Yes. In order to be consistent with outcome 4, agencies and businesses should be transparent and publish information about their success rates, worker and end user satisfaction, and complaints.

Question 11: What information do you think would be of most interest to: a) hirers and b) work-seekers?

We refer to our response to Q10. In addition, hirers should have to be very clear about the detail of any charges. Work-seekers also require information about any "salary sacrifice" arrangements, such as charges for ancillary services.

Question 12: Do you think it should be compulsory for employment agencies and businesses to publish information about their business? If you answered yes, what information do you think it should be compulsory to publish?

Yes. See answer to questions 10 and 11.

Question 13: Do you think trade association codes of practice help to maintain standards in the sector?

Yes, but this is no substitute for statutory regulation. Complaints should be published, in addition to effective fines and other sanctions.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

There are no non-regulatory tools that would be effective, other than readily available civil remedy in conjunction with clear regulation. We believe that EASI should have the same powers as the Gangmasters' Licensing Authority and HMRC.

Question 15: Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes. It is never appropriate for an industry to be self-regulated. This is particularly so given that some of the legislation imposes criminal sanctions. Who but the state is supposed to enforce those sanctions?

Reputable businesses have nothing to fear from regulation.

The ban on agencies providing labour to break strikes can only be enforced by EASI. In our experience, and in that of the trade unions which instruct us, the Inspectorate rarely uses its powers to enforce standards. It is not clear whether this is due to lack of resources or inclination, but clearly the government needs to act to ensure that EASI enforces the legislation and regulations.

There should be a remedy that can be sought by trade unions and workers, including injunction and a financial award.

It is not clear how, without government enforcement, agencies will be required to comply. Self-regulation is not appropriate for the recruitment sector and would inevitably lead to a reduction in individual rights.

Question 16: Do you think that Prohibition Orders should be included in the new enforcement regime?

Yes. This would provide the necessary sanctions on agencies which breach the regulations..

Question 17: Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes. Individuals should be able to enforce their rights and there should be a minimum award of at least two week's pay. Civil remedies alone are no substitute for effective regulation.

That said, individuals can already enforce their rights. But as we point out in our response to Q1, more often than not they feel unable to unless they are in a trade union. They lack information, support and resources and may fear victimisation.

At a time when the government is reforming employment laws to reduce tribunal claims, including by introducing fees, it makes little sense to us that BIS appears to be trying to encourage greater assertion of rights through employment tribunal claims, effectively making individuals responsible for enforcing government legislation on the sector.

We would also point out that where the breach has been the provision of labour to break a strike, the victim is not just the individual workers, but their trade union. If EASI is not able or prepared to act then unions should be able to sue the agency that provided the labour, such as by seeking a protective award against it.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Guidance will never enable individuals to be fully aware of their rights and how to enforce them. Guidance can only be an aid to improving awareness.

If draft guidance was prepared by BIS we would be happy to be consulted in relation to its content.

Question 19: Do you think that the Government should proactively publish the findings of investigations that have been carried out including the trading name of each employment agency/business and listing the infringements to the legislation?

Yes. How else will enforcement have teeth? The government should publish the names of all agencies that have been referred for investigation, just as the Solicitors Regulatory Authority publishes the names of all law firms referred to it.

By being able to identify which agencies are being regularly referred and investigated it will be possible to see which breaches are being dealt with and if there is a backlog.

This is consistent with the need for greater transparency. If findings of infringements of the legislation are not published, there is no reputational risk for rogue agencies.

Question 20: Do you think it is necessary to legislate to require employment agencies and businesses to keep records?

Yes.

Question 21: What records do you think that employment agencies and employment businesses should be required to keep relating to:

- a) work-seekers?
- b) hirers?
- c) other employment agencies/employment businesses?

There should be an obligation on employment agencies to keep records consistent with good business practice and for the purposes of investigation of legislative infringement and to facilitate enforcement and civil remedy.

**Further information:
Thompsons Solicitors
Congress House
Great Russell Street
London
WC1B 3LW**

Odgers Berndtson

Dear Sir/Madam

We are writing in connection with the consultation on reforming the regulatory framework for employment agencies and employment businesses, published in January 2013.

We welcome this consultation and support the need for legislation which protects vulnerable work seekers. We also recognise that you propose that the legislation should be minimised. In turn this will enable government to direct resources for enforcement of the regulations to those parts of the recruitment industry where enforcement is most likely to be needed.

We also welcome your vision to free employment agencies and businesses from unnecessary regulation, in line with the Red Tape Challenge.

Background

Odgers Berndtson's business is that of executive search. Our role is to place highly skilled and experienced professionals into senior executive positions at the top of British business as well as high profile roles in the Public and Third sectors.

The work-seekers we engage with as potential candidates for the positions we are seeking to fill, are sophisticated, experienced individuals who are not at risk of exploitation.

Response to the consultation

General view on the consultation

We consider that along with other executive search firms, the legislation in this area, as envisaged in the consultation, is inappropriate. This is on the basis that the work-seekers we engage with are not vulnerable to exploitation by us. They are experienced senior managers seeking permanent roles or professional interim contractors.

We believe that the regulations should be based on the characteristics of the roles the employment agency is seeking to fill as this will determine whether the candidate sought is likely to be vulnerable to exploitation.

Where such roles have one or more of the following characteristics we suggest that the candidates likely to be seeking, or suitable for, such roles will not be vulnerable to exploitation by the employment agency:

- The role pays a rate which is greater than the national average wage either on a full time / pro rata or interim basis; or
- The role is for a statutory company director, trustee, or partner

We also believe for interim/contractor roles, where the candidate operates via a personal service company, the regulations should not apply as this is indicative of a level of sophistication of the individual which makes them unlikely to be vulnerable to exploitation.

Where these characteristics are present we consider that the agency should not be subject to the provisions of the current or proposed revised legislation or regulations.

Specific views on the questions posed by the consultation

In the appendix to this letter we have provided our views on each of the specific questions posed by the consultation.

We would be delighted to discuss our views with you or other representatives of the Department for Business Innovation and Skills should you wish to do so.

Yours faithfully

David Peters

Designated Member – IRG Advisors LLP t/a Odgers Berndtson

Appendix

In this appendix we provide our response to specific questions posed by the consultation.

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- **Employment businesses and employment agencies are restricted from charging fees to work-seekers**
- **There is clarity on who is responsible for paying temporary workers for the work they have done**
- **The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable**
- **Work-seekers have the confidence to use the recruitment sector and are able to assert their rights**

Response: Yes

b) Please give reasons for your answer.

Our commercial return is based on fees payable by organisations seeking the best candidate for the role. To receive a fee from a prospective candidate would give rise to a conflict of interest between us and the hiring organisation and therefore we would not consider charging a fee to candidates as part of the search process. We therefore are ambivalent to whether regulations exist regarding the charging of fees to work-seekers as commercially we would not seek to charge such a fee.

We do not consider there to be an issue as regards who is responsible for paying temporary workers/contactors for the roles we fulfil.

We agree that movement between jobs should not be hindered. However, it is a commercial imperative for the recruitment industry that where an interim worker is moved into a permanent role with the hirer a commercial rate of compensation should be payable to the agency who introduced the candidate. We believe that the applicable rate for any such transfer fee should be left to the market to decide through contractual negotiation and does not need regulation.

We do not believe there is a lack of confidence, in work-seekers who are appropriate to the services we provide, to use our services.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

No

b) If yes, please give details on what these are.

N/a

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

The definition is:

13 (2) For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.

Yes

b) Please give reasons for your answer.

We consider that most people believe that the definition above covers the mass high street agencies and not the executive search sector. Accordingly people are surprised to find that the same legislation extends to the executive search sector as well.

We would like to see the definition clarified to exclude the executive search sector.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

N/a

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

N/a

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No, there is no ambiguity for interim roles arranged by our business

b) Please give reasons for your answer.

See above.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No, we consider the provisions of regulation 6 to be fairly drafted such as to afford reasonable redress to employment agencies for non-performance of contracted actions and/or adherence to reasonable notice periods.

b) Please give reasons for your answer.

See above

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

b) Please give reasons for your answer.

We believe the regulation should be removed in its entirety and refer you to our comments above under our response to Question 1.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

No

b) Please give reasons for your answer

We believe that comparisons between such wide ranging businesses in the industry would be misleading.

Information published about our business should be left to our own judgement as to what is required in the competitive market in which we operate in order to attract the sophisticated clients and candidates which underpin our business.

This should be driven by competitive market forces and not by regulation.

We take particular exception to the suggestion of a regulatory provision which would require publication of the items listed in para 7.17 of the consultation document. Our exception to this relates to the fact that many of the items listed are of no relevance whatsoever to our business, our clients or our candidates. To force publication of such information would add to unnecessary bureaucracy for our business and runs counter to the Government's Red Tape Challenge cited as one of the reasons for this consultation.

By way of example time to placement is completely misleading in our sector of the industry. A law firm seeking to solicit a candidate to move from one firm to another may well see that this move could take a year, or possibly more. This would look extremely poor when comparing one firm with say another that is placing temporary PA's for instance.

Question 11: What information do you think would be of most interest to:

a) work-seekers

b) hirers

Work-seekers and hirers seeking to avail themselves of our services will wish to know our expertise in the sector or management strata they are seeking to fill/secure a position. We already publish this information. We see no regulatory need to require us to publish this or any other information about our business. Should clients or candidates wish to receive further information from us we will provide this to them, as appropriate, in each individual circumstance.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

b) Please give reasons for your answer.

We refer you to our responses to Questions 10 & 11 above.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes – in limited circumstances.

b) Please give reasons for your answer

The AESC, (Association of Executive Search Consultants) publishes a code of practice which we adhere to. However this is not necessarily relevant to all firm and at all times.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

None. We refer to our comments in Question 13 (b) above.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

To the extent that the legislation implemented as a result of this consultation applies to relevant businesses we do think the government should enforce the legislation. However, we refer you to our comments under the section of the letter entitled 'General view on the consultation' as to the applicability of the legislation to our business.

b) Please give reasons for your answer.

Where legislation is on the statute books it should be enforced. Not to do so undermines the rule of law.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

We have no particular view on this – as previously stated our business is founded on our reputation for quality. There is no need for prohibition orders in the executive search market as clients and candidates simply would not engage our services should our quality of service fall below the consistently high levels expected.

b) Please give reasons for your answer.

See above.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

We refer to our response given to Question 16 above.

b) Please give reasons for your answer.

See above.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

We refer to our response given to Question 16 above.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

We refer to our response given to Question 16 above.

b) Please give reasons for your answer.

See above.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

We refer you to our comments under the section of the letter entitled 'General view on the consultation' as to the applicability of the legislation to our business. As such we have no particular view on this.

b) Please give reasons for your answer.

See above.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

We already have a slew of legislation which requires us to demonstrate that we have not discriminated against candidates. The Data Protection Act also prescribes what information we need to keep and the form of such data. Finally when working in the Public Sector OCPA rules clearly set out the need to demonstrate fairness in everything we do.

Shirley Brookner

Benefits: work-seekers

The reduction in regulations should enable employment businesses and agencies to operate more flexibly and efficiently, enabling them to provide a better service to work-seekers as well as hirers. Option 2 may therefore lead to improved options and opportunities available for work-seekers.

A) In an ideal world this may be the case where there is good will and the presence of fair play. However, you are talking about the workplace where there exists competitors amongst agents and amongst workers. Some agents advertise work that does not exist so that they can continue to have workseekers details on a database to offer future clients. This is the easiest way of building up a labour pool, but this leaves the workseeker waiting for work that does not actually exist. In some cases this can leave workseekers open for exploitation i.e selling your details on, or even using them for identity theft.

The Entertainment Agencies takes on as many workseekers as possible in order to accrue large amounts of registration fees, they have found a loop hole to virtually print money. Where money changes hands there needs to be more regulations not less. Here you are dealing with peoples livelihoods and there needs to be accountability and a Government who seeks care for the needs of vulnerable workers not just for the viability of businesses. Good business practices should be encouraged and if this is found to not be the case there should be regulations in place such as a warnings, fines, or in serious cases a means to close them down.

Costs and benefits: Exchequer

The reduction in regulations proposed under option 2 should not lead to any ongoing costs or benefits to the Exchequer. However, some transition costs are expected, resulting from drafting guidance for and publicising the new regulatory framework.

Government encouragement of employment agencies and businesses to self-regulate may involve some costs (for instance in terms of provision of guidance). The extent of any cost is related to how the Government decides to promote self-regulation to the recruitment sector. This is one of the areas being consulted on. **A) Bring back LICENSING OF ALL AGENCIES then you can charge a licensing fee that will more than pay for these costs.**

Consultation questions on changes to the regulatory framework

The consultation asks an number of question relating to the proposed reduced regulatory framework, and these are listed below?

Q1a) do you agree with the four outcomes that the Government believes should be achieved by the recruitment sector legislation (outomes are listed below).

- a* Employmen businesses and employment agencies are restricted from charging fees to work-seekers.
- b* There is clarity on who is responsible for paying temporary workers for the work they have done.
- c* The contacts people have with recruitment firms should not hinder their movement between jobs and temp-to perm transfer fees are reasonable.
- d* Work-seekers hae the confidence to use the sector and are able to assert their rights.

A) Yes Employment businesses and employment agencies should be restricted from charging fees to work-seekers, because they do not have the finances in place for this. This is why they are seeking work in the first place. In joining an agency they are providing the said agency with their details which enables the agency to create a database with full details that they can offer to would be clients seeking workers. This then is the basis for creating their business, and in itself is invaluable to Employment Businesses and Agencies.

Whereas, businesses that seek workers to fill open positions, are likely to have a budget set up to pay for the services provided from an agency with a database full of workseekers. This can possibly be offset in their tax returns. This payment would be for services rendered and would create a v.a.t payment.)

Currently this is needed in the entertainment agencies that employ background/supporting artists (Extras) because the agencies have offered production companies a free service in supplying ad hoc workseekers. They have agreed to do all the financial paperwork that this entails. This means that since production companies do not pay any service charges they then do not pay v.a.t for this service that these type of agencies supply. Yet these agents say that they are not our employers even though they hold all our personal and financial details on a database and have a bac system set up paying our N.I., V.A,T and wages for any work that we do. The agents say that it is the Production Companies that are our employers yet the production companies have no details about us? This needs immediate government clarification.

Ac) The recruitment firms should not seek to inhibit or restrict workers from registering with other firms/companies. Nor restrict workers changing from temp-to-perm This should be clearly set out in an agencies agreement with the work-seeker and in a companies code of practise. If it should not be the case then proper enforcements should be in place to protect the worker.

Ad) They should ensure against discrimination in the provision of work finding services to workseekers and that equal access to employment opportunities should be encouraged for all, regardless of gender, age, disability, sexual orientation, race or union membership. These firms should encourage their clients to adopt similar standards as part of their code of practise. when considering who they want to deal with. It is here that Tribunal facilities should be available to insure that fair play is in place and rogue agents are not a law unto themselves. However, this should not be the only way that workers are able to enforce their right.

Q2) Are there any other outcomes that you think should be achieved by the new legislation?

A2) Licensing of all entertainment agencies with the jurisdiction to warn, fine, or revoke licenses for mal practise. Which should include the entertainment production companies. The Gangmaster Licensing Standards has this already in place and could be easily adjusted to serve the entertainment businesses as has been pointed out to the the EASI dept. of Bis

Q3. a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

A3). No, I do not believe that other type of Agencies should charge fees to workseeker because in my experience this can lead to exploitation on a large scale much as it has in the entertainment agencies where we are unfairly charged a fee simply to register our details in the hope of getting work.

However, I do know that other workseeking agencies charge employers seeking workers a fee for their services of finding workers to fill their needs, they term this as a service charge, but do not charge the workseeker.

Q4. a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved? **Yes**

A) First of all 1973 is some 40yrs ago and is way overdue for updating in forty years much has changed in the workplace. So this is a resounding YES.

B) Dedicated directories which serve mainly actors and Models provide a service in promoting there clients profiles on a website. These clients expect to pay a fee for this service. This is also true of photographic studios for providing promotional photographs for their clients.

C) The above type of business differs from that of a background/supporting agencies who builds a website in order to supply production companies with AD HOC people on a temporary basis at regular intervals. They are currently charging a registration fee to their workseekers and giving the production companies a free service even though these production companies could offset the cost of this within their given budgets.

Q5. a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

A5) A COOLING OFF period is useful in retail businesses and dedicated Directories and even photographic businesses. However it is of no use in Agencies supplying background/supporting artists who may have to wait for a longer period of time to gain work. The very nature of this work is supply and demand that means that you have to be what the production company is looking for in looks or ability or both. Putting a time limit on this does not work.

Rogue agents will simply say that you have not been chosen yet, and keep your money. This is one more reason why registration fees should not have to be paid by the workseeker if anything is should be paid by private businesses and production companies as a service charge. rogue agents would then not be able to exploit would be wannabe's

A6). Yes 30 days seems reasonable for Retail businesses,dedicated Directories and Photographic businesses But of no use to Background/Supporting Artists

A7). Yes, it should be necessary to legislate to ensure that there is both

clarity and transparency on who is responsible for paying temporary workers for the work that they have done. This should be set out in a contract of employment and given to the worker to ensure no ambiguity.

8. a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved? **No**

A) In such a case the workseeker could be open to blacklisting or given a bad recommendation preventing them from successfully finding future work.

Q9. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be **improved?**

A9) NO, this should stand. Good practises do not rip off their clients.They practise strict ethical standards for future good will.

Consultation questions on publishing management information and self-regulation.The consultation also asks some questions (listed below) about employment agencies and businesses publishing management information, and self-regulation more widely.

Q10.) Do you think employment agencies and businesses should publish information about their business?

A10) YES I see no reason why employment business and agencies should not be able to publish information about their businesses in order to advertise who they are, what they are about, and their contact details. What they must not do is give out personal details of their clients or workseekers

Q11). If you answered yes, what information do you think would be of most interest to:a) work-seekers? b) hirers?

A11)This gives Work-seekers and Hirers information as to what is available to them, how to contact them, and to see how many choices they have at their disposal.

Q12) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

A12) NO, Not if you bring back licensing because they would be known to the government body that regulates them. And could be accessed through them.

Q13) Do you think trade association codes of practice help to maintain standards in **the sector**

YES, a code of practice defines what is expected from employers and employees it gives works well with the good will of both parties however, there must still be regulations to stem any liklihood of exploitation or mal practice in

place as a deterrent, and the means to prosecute if necessary. There has to be a guiding framework on which to work with. This accountability for wrong doing.

Q14) What other non-regulatory tools could be used to maintain standards in the recruitment sector?

A14) Bring back licensing of agencies once set up this will create a proper lawful standard in which business can adhere to. For Entertainment Agencies the Gangmaster Licensing Standard could easily be adjusted to serve these businesses. I have already given a draft copy of the wording of this to the EASI dept of the Bis. Licensing would come with a fee that would more than cover the cost of running this, It is already set up with the full jurisdictions in place.

Q15) Do you think that it is necessary for the Government to enforce the recruitment sector legislation.

A15) Yes. because of the amount of vulnerable workers that now exist, an enforcement system must be put in place to act at least as a deterrent or to have proper jurisdiction facilities in place if this should necessary.

Q16) do you think prohibition orders should be included in the new enforcement regime?

A16) Yes, because at the moment the EASI Cannot levy fines or financial penalties to agencies that clearly break the law. their hands are tied. Rogue agents have been getting away with being a law unto themselves for years.

Q17) do you think individuals should be able to enforce their rights at an Employment Tribunal?

A17) Yes. as long as this did not become a long and costly business with which they could not get any other help and advice.

Q18) What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

A18) A television campaign Could serve to alert people of the advice that could be available when set up on the Gov.com website much like they have on the money advice website. Or the citizens advice services.

Q19) do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listin the infringements to the legislation.

A19) Yes, this would serve as a very useful assest to any agency worker looking to sign up with a ligitimate agency because they would be alerted to any rogue element and this would probably serve as a deterrent to all agencies to keep within lawful practises.

Q20) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have comlied with the regulatory requirements?

A20) Yes, this would help to maintain the transparancy of agencies if and when they were being inspected this would be a quick assessment of all their records.

Q21) What records do you think employment agencies and employment businesses should be required to keep relating to work-seekers, hirers and other employment businesses agencies/businesses?

A21) A full illustrated account system which would be accessible to the inspectorate officials of the EAS where they could clearly see if there was a separate client account in place and payments of NI were actually being paid to HRMC, and the correct vat,tax and commission was being taken and that payments conformed to at least the minimum wage.

UNISON

Introduction

UNISON is the UK's largest public service trade union with 1.3 million members. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector. We deal with employment agencies in all these sectors.

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- **Employment businesses and employment agencies are restricted from charging fees to work-seekers**
- **There is clarity on who is responsible for paying temporary workers for the work they have done**
- **The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable**
- **Work-seekers have the confidence to use the recruitment sector and are able to assert their rights**

Yes.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes.

b) If yes, please give details on what these are.

UNISON believes agencies and businesses should be well regulated and that additional outcome should be added: Vulnerable and migrant workers should not be exploited by employment agencies and businesses.

Furthermore, that agencies do not seek to collude with employers to avoid employee rights under the agency worker regulations.

Finally, for agency workers who are professionally registered, such as nurses, that agencies are required with client employers to give appropriate paid leave to ensure the necessary continuous professional development (CPD) takes place to maintain registration.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No. We believe that fees are unnecessary and can be misused to exploit vulnerable workers.

Q4. Do you think that the current definition of 'employment agency' as set out in s13 of the *Employment Agencies Act 1973* could be improved?

Yes. UNISON believes the definition of ‘employment agency’ should be broadened to explicitly include reference to online employment agencies and ‘head-hunters’.

At present it is unclear whether the definition of ‘employment agency’ includes online agencies and ‘head-hunters’.

Due to the pervasive nature of online agencies in sectors such as cleaning where workers are generally low paid and more vulnerable to exploitation it is crucial that they are regulated.

Q5. Do you think legislation should require employment agencies to give work-seekers a cooling-off period in situations where fees can be charged?

Yes. While UNISON strongly opposes the charging of fees for all work-seekers, in the event there is an exception for the entertainment and modelling industry, UNISON believes the current regulation should be retained giving work seekers a cooling-off period.

A cooling-off period is good regulation for several reasons, but primarily it safeguards job seekers in a highly competitive industry, such as the entertainment sector, from being subjected to unreasonable fees thus avoiding being overcharged. In particular, it gives less experienced or vulnerable workers an opportunity to seek advice from a legal representative or someone, for example, more experienced in the industry.

The cooling-off period allows workers with tight budgets the opportunity to consider their personal financial situation to avoid personal financial ruin after an impulse agreement to accept a role or position, which financially they cannot sustain. This is particularly prevalent in the entertainment sector where workers view experience or association with a certain brand, company or organisation as overriding any financial imperatives.

Q6. Do you think there should be one standard cooling off period? What do you think the cooling off period should be?

No. UNISON supports the current regulation as to ‘cooling-off periods’, namely a 30-day period for non-entertainment workers and a seven-day period for all other workers.

The current regulation strikes the right balance between affording workers the right to withdraw from an arrangement without suffering any financial detriment and providing certainty to employment agencies and employers that job-seekers cannot withdraw after lengthy periods in a position once substantial training may have been undertaken.

Q7. Do you think that it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes. UNISON considers clarity as to the responsibility of the payment of wages as being a crucial element of the regulation of employment agencies to provide certainty to workers in the sector. At present the legislation ineffectively attaches particular obligations (e.g. payment of wages) to either the principal or agent, but the flaw in this system is that some of responsibilities of which are ordinarily taken up by the employer may fall to neither party. At the time of writing the *National Minimum Wage Act 1998* (s 34) and *Working Time Regulations* (reg 36) state that the national minimum wage and working time controls must be adhered to either the principal or agent who responsible for paying the agency worker.

The importance of this legislative provision is emphasised by the vulnerability of temporary workers including language barriers, low skills and lack of job security. In addition, the lack of a strong regulator of employment agencies from years of insufficient resources has meant that individuals are often left to make a complaint to the Employment Tribunal, but often a regulatory breach will go undetected.

By creating a system that removes the ambiguity about the responsibility for paying a temporary worker it also provides greater certainty about the employment relationship enabling temporary workers to access further rights under employment legislation.

Q8. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes. But UNISON thinks any changes should be built upon the existing regulation. To avoid doubt, UNISON strongly supports the continuation of the protection afforded to workers in regulation 6, including but not limited to, neither an employment agency or employment business may subject a work-seeker to any detriment because they have terminated or given notice to terminate any contract between the agency and the work-seeker etc.

Where UNISON considers improvement could be made is in relation to the penalties imposed for a breach of regulation 6. At present there is no ability to claim an award of wages for breaches of regulation 6. UNISON believes similarly to the Agency Workers Regulations 2010 there should be a minimum award to act as a deterrent to rogue agencies. UNISON believes the minimum award should be two weeks' pay.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

We believe businesses should continue to be prevented from charging unreasonable transfer fees and indeed would like to see them phased out over time. Workers should be able to easily access an employee contract with the hirer where there is sufficient regular work and not be kept on agency contracts for years at a time.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes.

b) Please give reasons for your answer

Trade unions and workers should be able to check employment agency credentials and establish that they are bona-fide and that the directors are reputable. Often rogue employment agencies can quickly fold, with unpaid wages, and set up shop again with a slightly different name.

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

Both work seekers and hirers need to know basic company information about the location of the business, its areas of operations, accounts, company policies, fee and payment structures and the directors (and any other employment agencies they have been associated with in the past).

This is useful to establish potential claims if a problem and to complain about conduct issues to the Employment Agency Standards Inspectorate.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes.

b) Please give reasons for your answer.

There should be transparency and a level playing field for agencies. Reputable employment agencies have nothing to fear and this measure will help reveal rogue agencies and directors.

c) If you answered yes, what information do you think it should be compulsory to publish? There needs to be basic company information about the location of the business, its areas of operations, accounts, company policies, fee and payment structures and the directors (and any other employment agencies they have been associated with in the past).

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes, partially.

b) Please give reasons for your answer.

Voluntary codes of practise are never substitutes for decent and fair regulations.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

As well as transparency about the agency, the recognition of trade unions and the granting of facility time under the ACAS Code can help maintain standards in the agency sector. Improving the quality of pay slips, particularly in the area of hours worked, pay rates and accrued paid annual leave can help prevent problems of underpayment.

Q15. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes. UNISON acknowledges that while individuals with the assistance of trade unions will be the main source of litigation to enforce recruitment sector legislation the Government should also play a role in some of egregious abuses of regulation where vulnerable workers are unlikely to seek redress in fear of the possible repercussions. The Government may also be able to join in proceedings to add pressure on rogues that are having a widespread detrimental effect on a particular sector.

However, UNISON emphasises that in order for the government to play a greater role in the regulation of the recruitment sector its inspectorate must be better resourced to deal with the enormity of this sector. Otherwise it runs the risk of losing any remaining credibility and will serve as no deterrent to offending agencies.

Q16. Do you think that Prohibition Orders should be included in the new enforcement regime?

Yes. Prohibition Orders serve as a disincentive to agencies to be used in the most egregious cases where there has been a blatant contravention of the regulations. It is key that Prohibition Orders become a visible part of any guidance to agencies on the regulations to educate the sector of the potential damage to a business should a Prohibition Order be imposed.

Q17. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes, absolutely. It would be a travesty of justice if beleaguered workers were not able to enforce their rights in the Employment Tribunal. It is the cornerstone of regulation and accountability of the recruitment sector that individuals be able to make a complaint against an offending agency. Without this right, confidence would drain out of the recruitment industry and it would become a broken system that would permit 'cowboys' and outlaws to run roughshod over the vulnerable.

Q18. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

UNISON regards the following guidance to be essential for individuals to be properly informed of their rights when dealing with the recruitment sector:

1. Who is responsible for paying their wages;
2. The difference between an employment agency and business and who they include?
3. Recruitment sector legislation and regulations;
4. The right to a cooling-off period;
5. The prohibition on charging fees to work-seekers for finding work;
6. Work-seekers cannot be punished for moving between jobs or terminating their contract with an agency;
7. Agencies cannot withhold payments or wages due or make someone tell them the name of any future employer
8. The meaning of regulation 6 and any amendments to such;
9. What their enforcement rights are should they reasonably suspect that an employment agency or business has contravened the regulations (eg EASI, trade union rights or individual rights);
10. What the time limits are for enforcement of rights;
11. The remedies available to individuals;
12. The restriction on agencies supplying a temporary worker to replace someone taking part in industrial action;
13. Agencies and/or businesses cannot charge for a uniform without telling the worker in advance;
14. Agencies and/or businesses cannot make unlawful deductions from pay;
15. That Employment agencies and/or businesses must:
 - a. Provide paid holidays
 - b. Not force workers to work longer than 48 hours a week;
 - c. Ensure workers are paid at least the National Minimum Wage;
 - d. Ensure workers are protected under health and safety laws; and
 - e. Give written terms of employment.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

b) Please give reasons for your answer.

We believe this measure will be a deterrent and help clean up rogue elements in the recruitment sector. It will be helpful to workers and the sector as a whole.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes.

b) Please give reasons for your answer.

The importance of keeping records will make it clear that at least one named manager has to be responsible for the proper conduct of the agency.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

Assignments

Pay rates

Hours worked

Deductions from wages

Home addresses

Payment details

Income tax and national insurance deductions

Holiday pay entitlements

Weeks worked for agency worker regulation requirements.

b) hirers?

Name

Location

Companies House registration

HMRC references

Human Resources named contact

Agency Worker compliance records

c) other employment agencies/employment businesses?

Similar details to hirers if work is subcontracted to other agencies

For more information contact:

Timothy Wetherell

Legal Officer

UNISON

130 Euston Road

London NW1 2AY

Kenny Donaldson

Dear Sirs

As long standing members of the Agents' Association (Great Britain), we wish to express our full support and agreement of our Association's recommendations which have recently been discussed with your department (BIS).

We deplore the proposed minimisation and closure of the EASI, requesting that both the Employment Agencies Act 1973 and the Conduct Regulations remain in force, with a much firmer response by the Inspectorate towards any transgressions.

As a former licensed agency of the old Department of Employment. we cannot stress enough the need for the re-introduction of Agency Licensing. We feel it is the only way forward in ensuring complete compliance with industry regulations and we would even consider paying an annual licensing fee to facilitate this.

We have been in business for over 30 years and we have seen many changes. However the biggest problem still remains with 'cowboy' firms who flaunt the laws by disregarding them entirely or being unaware that the industry has any regulations in the first instance. It's quite simple, if you don't have a license, you can't do business and if you do, you will be prosecuted.

The BIS proposals are just going to put artists at greater risk from firms, which continue to operate in our industry and have no regard to the current regulations in force.

Kind Regards
Kenny Donaldson

[Celebrity Entertainment Ltd](#) & [SpeakOut Celebrities & Presenters Ltd](#)

Terms of Business are available to view online at www.speakoutuk.com

Freelancer and Contractor Services Association (FCSA)

Response to Consultation

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

b) Please give reasons for your answer.

FCSA strongly supports the four outcomes above. We believe that the Government aim of removing the bureaucracy and red tape created by the current legislation is the right aim. We are of the view that the current legislative framework is out of date, confusing, in large parts unnecessary and ineffective and we strongly support a blanket repealing of this legislation and its replacement with a much more targeted, clearly focussed and simpler regulatory framework based upon the four targeted outcomes identified by DBIS. We think that the four outcomes identified are the right 'fundamentals' for the new regulatory framework to deliver.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

At this overall aim level, FCSA is of the view that as our umbrella members and accountancy service provider limited company clients have business to business (B2B) relationships with recruitment businesses/employment agencies they should not be part of or provided for within the new regulatory framework that will deliver the proposed outcomes. Existing legislation (WTR, NMW, MSC, IR35, employment rights legislation etc) is already in place which, if enforced properly, ensures appropriate standards of compliance within the umbrella business and accountancy services industry. Including these types of business within the new framework will run completely contrary to the overall 'reduction of red tape' aim, create more confusion and bureaucracy and constrain both individual businesses and the flexible workforce more generally at a time when this element of our UK workforce is key to supporting the required economic growth for the country. We are also of the opinion that using the different ways of working via limited companies (umbrella employer or personal service companies) is not an appropriate approach to be taken to determine whether workers are covered by the regulatory framework or not.

Please note almost 100% of workers employed by FCSA member umbrella companies and workers with their own limited companies (in aggregate c.34,000 workers), when given the choice, elect to opt out of the existing Regulations.

In our view, any new regulatory framework should be limited to the key elements of the relationships between the hirer and the recruitment business/employment agency and between the recruitment business/employment agency and the worker (where the recruitment business/employment agency engages the worker directly) and should be aimed at protecting the vulnerable rather than trying to regulate the industry more broadly.

We also believe that consideration should be given to different terminology within the new regulatory framework, particularly in relation to the use of the term 'employment businesses'. This term is used to describe a recruitment business that finds workers for an end hirer and then supplies these workers on an ongoing basis directly to the hirer where the ongoing contractual relationship is between the hirer and the recruitment business and not between the hirer and the worker. In such relationships, invariably, the recruitment business is not (indeed works very hard not to be) an employer of the worker. They pay the worker on a PAYE basis AS IF they were an employee but the worker does not get any of the key benefits of an employment relationship. Our umbrella business members are genuine employers of workers supplied in such circumstances (we are in the business of employing workers) and yet we are not 'employment businesses' as defined by the current legislation because we don't find individuals for hirers. Consequently, in our view, the use of the 'employment business' term is confusing and unhelpful. We would be happy to make specific suggestions in terminology if DBIS were open to / interested in this.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

FCSA supports the need for this regulatory restriction on employment businesses and agencies in terms of charging fees for work finding services. FCSA businesses are neither employment businesses nor agencies as defined under the current legislation (please see terminology point below) and do not charge workers fees for work seeking services. Our umbrella businesses make a margin on the provision of services *into* employment businesses and our accountancy service providers charge fees for the provision of accountancy and other professional services to the personal service companies of self-employed workers. FCSA businesses have no role to play in this targeted outcome. Please note the umbrella businesses will help their employees obtain another assignment when an existing assignment has finished by looking for suitable assignments for them via job boards and agencies.

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

b) Please give reasons for your answer.

We believe that consideration should be given to different terminology within the new regulatory framework, particularly in relation to the use of the term 'employment businesses'. This term is used to describe a recruitment business that finds workers for an end hirer and then supplies these workers on an ongoing basis directly to the hirer where the ongoing contractual relationship is between the hirer and the recruitment business and not between the hirer and the worker. In such relationships, invariably, the recruitment business is not (indeed works very hard not to be) an employer of the worker. They pay the worker on a PAYE basis AS IF they were an employee but the worker does not get any of the key benefits of an employment relationship. Our umbrella business members are genuine employers of workers supplied in such circumstances (we are in the business of employing workers) and yet we are not 'employment businesses' as defined by the current legislation because we don't find individuals for hirers. Consequently, in our view, the use of the 'employment business' term is confusing and unhelpful. We would be happy to make specific suggestions in terminology if DBIS were open to / interested in this.

The use of the word "employment" in the current definition is confusing as it suggests that all employment agencies' clients must permanently employ candidates.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

We do not have a view on this issue as our members are not recruitment agencies and are not involved in these activities.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

We do not have a view on this issue as our members are not recruitment agencies and are not involved in these activities.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

b) Please give reasons for your answer.

FCSA agrees that there needs to be clarity on who is responsible for paying all workers. This responsibility should sit firmly with the 'employer' of the worker. The employer will vary depending upon the way the worker chooses to work. If the worker is engaged directly by the employment business (as currently defined), the employment business should be 'deemed' as the employer and hold responsibility for pay and this obligation on employment businesses should be enshrined within the new regulatory framework. If the worker is not working directly for an employment business, the employment business should not have responsibility for pay in such circumstances.

The other 'alternative' ways of working for the workers are typically either through an umbrella business or working in business on their own account (when the worker is genuinely self-employed) either through their own limited company or on an unincorporated basis (in partnership or as a sole trader). In such circumstances, the existing legislation outside of the EEA and Conduct regulations framework already exists to deliver the required responsibility for pay. If the worker is an employee of an umbrella business, the umbrella business is responsible for paying the worker. If the worker chooses to work via their own business (personal service company or on an unincorporated basis) that business is the employer and should be responsible for paying the worker. This approach properly reflects the ways of working chosen by the worker and provides appropriate pay protection depending upon the chosen approach. For example, a self-employed worker who chooses to be in business on their own account foregoes the protections of a more secure 'employer' – this additional financial risk is part of the 'risk vs. reward' decision to work in business rather than be employed. Equally, if a worker chooses to work via an umbrella business, he/she will be entitled to the required pay protection (and employment rights and protections) from that employing, third party organisation. No 'new' legislation is required to deliver these rights and protections. Additionally, in practice now the umbrella business will always pay the worker and often not recover the money from the agency even if the worker had opted 'in' to the existing Regulations.

Any new regulatory framework simply needs to ensure that if an employment business (as defined currently) engages a worker directly, it then is responsible for pay for that worker.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

We do not have a view on this issue as our members are not recruitment agencies and are not involved in these activities.

b) Please give reasons for your answer.

The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees should be reasonable - FCSA supports this targeted outcome. However, FCSA member businesses do not provide employment business services of matching hirers to workers as such, will not hinder the movement of workers between assignments and will not charge workers temp to perm transfer fees. FCSA member businesses have no role to play in this targeted outcome.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

We do not have a view on this issue as our members are not recruitment agencies and are not involved in these activities.

b) Please give reasons for your answer.

The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees should be reasonable - FCSA supports this targeted outcome. FCSA member businesses do not provide employment business services of matching hirers to workers as such, will not hinder the movement of workers between assignments and will not charge workers temp to perm transfer fees. FCSA member businesses have no role to play in this targeted outcome.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

We do not have a view on this issue as our members are not recruitment agencies.

b) Please give reasons for your answer

Question 11: What information do you think would be of most interest to:

- a) work-seekers
- b) hirers

We do not have a view on this issue as our members are not recruitment agencies.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

We do not have a view on this issue as our members are not recruitment agencies.

b) Please give reasons for your answer.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes.

b) Please give reasons for your answer

As a trade association with a market leading code of practice aimed at maintaining standards in our sector, FCSA strongly believes that robust codes of practice, rigorously enforced are the most effective way of identifying and exposing industry bad practice.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

We do not have a view on this issue as our members are not recruitment agencies.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

In FCSA's view, the 'right answer' in regulatory framework terms for any sector is a combination of clear, targeted, focussed legislation (rather than vague, 'one size fits all, imprecise legislation) which is then rigorously and consistently enforced by the relevant authorities. This consultation is a great opportunity put in place much more targeted, clearly focussed and simpler legislation based upon the four targeted outcomes identified by DBIS but this improved legislation will be ineffective without robust and consistent enforcement.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes

b) Please give reasons for your answer.

FCSA can see a role for prohibition orders as an ultimate sanction for repeated non compliance in any industry.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

b) Please give reasons for your answer.

FCSA believes that employees of any organisations currently can and should continue to be able to enforce their employment rights through the Employment Tribunal process. Our umbrella business employees currently have this recourse and we are of the view that they should retain these remedies (which all employees have).

We also believe that enforcement of the new regulatory framework should continue to be delivered by the EASI body.

We would also suggest that a positive additional element would be an arbitration service (along the lines of the ACAS model) also being provided, possibly by the EASI, in order to try to provide mediation and settlement services ahead of any formal action through the EASI process. Such an arbitration option could save significant time and cost on all sides, ensuring only valid, substantive claims need to use the formal process.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

FCSA has no comment to make on this question.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

b) Please give reasons for your answer.

FCSA strongly believes that rigorous enforcement of the new regulatory framework is key to delivering wide scale industry compliance. We would support openness and transparency in this enforcement activity, including details of infringements and naming of persistent non compliant businesses.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

FCSA has no comment to make on this question.

b) Please give reasons for your answer.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

FCSA has no comment to make on this question.

Brookson Group Limited

Response to Consultation

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

b) Please give reasons for your answer.

Brookson supports the four outcomes above. We support the Government aim of removing the bureaucracy and red tape created by the current legislation. We think the current legislation needs replacing with a more clearly focussed and simpler regulatory framework and the four outcomes above are, in our view, the right foundation for this new framework.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

In our view, umbrella businesses which employ highly paid, highly skilled contractors and the personal service companies used by these types of workers should both be excluded from this new regulatory framework. We believe that the required legislation already exists that can, if properly enforced, ensure appropriate standards of compliance in terms of these higher skilled, higher paid workers.

We also believe that consideration should be given to different terminology within the new regulatory framework, particularly in relation to the use of the term 'employment businesses'. This term is used to describe a recruitment business that finds workers for an end hirer and then supplies these workers on an on-going basis directly to the hirer where the on-going contractual relationship is between the hirer and the recruitment business and not between the hirer and the worker. In such relationships, invariably, the recruitment business is not (indeed works very hard not to be) an employer of the worker. They pay the worker on a PAYE basis AS IF they were an employee but the worker does not get any of the key benefits of an employment relationship. Umbrella businesses are more clearly employment businesses but not as defined in the existing legislation. It would be sensible to use this opportunity to address the issue of terminology.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Brookson supports the general need for this regulatory restriction on employment businesses and agencies in terms of charging fees for work finding services. However, none of our clients work in these sectors and so we don't have any specific comment to make on this question.

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

b) Please give reasons for your answer.

As outlined above, we believe that consideration should be given to different terminology within the new regulatory framework, particularly in relation to the use of the term 'employment businesses'. This term is used to describe a recruitment business that finds workers for an end hirer and then supplies these workers on an on-going basis directly to the hirer where the on-going contractual relationship is between the hirer and the recruitment business and not between the hirer and the worker. In such relationships, invariably, the recruitment business is not (indeed works very hard not to be) an employer of the worker. They pay the worker on a PAYE basis AS IF they were an employee but the worker does not get any of the key benefits of an employment relationship.

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Brookson does not have a view on this specific question.

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Brookson does not have a view on this specific question.

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b) Please give reasons for your answer.

Brookson agrees that there needs to be clarity on who is responsible for paying all workers. This responsibility should sit firmly with the 'employer' of the worker. The employer will vary depending upon the way the worker chooses to work. If the worker is engaged directly by the employment business (as currently defined), the employment business should be 'deemed' as the employer and hold responsibility for pay and this obligation on employment businesses should be enshrined within the new regulatory framework. If the worker is not working directly for an employment business, the employment business should not have responsibility for pay in such circumstances.

The other 'alternative' ways of working for the workers are typically either through an umbrella business or working in business on their own account (when the worker is genuinely self-employed) either through their own limited company or on an unincorporated basis (in partnership or as a sole trader). In such circumstances, the existing legislation outside of the EEA and Conduct regulations framework already exists to deliver the required responsibility for pay. If the worker is an employee of an umbrella business, the umbrella business is responsible for paying the worker. If the worker chooses to work via their own business (personal service company or on an unincorporated basis), that business is the employer and should be responsible for paying the

worker. This approach properly reflects the ways of working chosen by the worker and provides appropriate pay protection depending upon the chosen approach. For example, a self-employed worker who chooses to be in business on their own account foregoes the protections of a more secure 'employer' – this additional financial risk is part of the 'risk vs. reward' decision to work in business rather than be employed. Equally, if a worker chooses to work via an umbrella business, he/she will be entitled to the required pay protection (and employment rights and protections) from that employing, third party organisation. No 'new' legislation is required to deliver these rights and protections. Additionally, in practice now the umbrella business will always pay the worker and often not recover the money from the agency even if the worker had opted 'in' to the existing Regulations.

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b) Please give reasons for your answer.

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b) Please give reasons for your answer.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

We do not have a view on this issue as we are not a recruitment business.

b) Please give reasons for your answer

Question 11: What information do you think would be of most interest to:

- a) work-seekers
- b) hirers

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b) Please give reasons for your answer.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes.

b) Please give reasons for your answer

As a member of our industry trade association with a market leading code of practice aimed at maintaining standards in our sector, we strongly believe that robust codes of practice, rigorously enforced are the most effective way of identifying and exposing industry bad practice.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

We do not have a view on this issue as we are not a recruitment business.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

In Brookson's view, the 'right answer' in regulatory framework terms for any sector is a combination of clear, targeted, focussed legislation (rather than vague, 'one size fits all, imprecise legislation) which is then rigorously and consistently enforced by the relevant authorities. This consultation is a great opportunity put in place much more targeted, clearly focussed and simpler legislation based upon the four targeted outcomes identified by DBIS but this improved legislation will be ineffective without robust and consistent enforcement.

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Brookson can see a role for prohibition orders as an ultimate sanction for repeated non-compliance in any industry.

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Yes

b) Please give reasons for your answer.

Brookson believes that employees of any organisations currently can and should continue to be able to enforce their employment rights through the Employment Tribunal process. Our umbrella business employees currently have this recourse and we are of the view that they should retain these remedies (which all employees have).

We also believe that enforcement of the new regulatory framework should continue to be delivered by the EASI body.

We would also suggest that a positive additional element would be an arbitration service (along the lines of the ACAS model) also being provided, possibly by the EASI, in order to try to provide mediation and settlement services ahead of any formal action through the EASI process. Such an arbitration option could save significant time and cost on all sides, ensuring only valid, substantive claims need to use the formal process.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Brookson has no comment to make on this question.

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Yes

b) Please give reasons for your answer.

Brookson strongly believes that rigorous enforcement of the new regulatory framework is key to delivering wide scale industry compliance. We would support openness and transparency in this enforcement activity, including details of infringements and naming of persistent non-compliant businesses.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Brookson has no comment to make on this question.

b) Please give reasons for your answer.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

Brookson has no comment to make on this question.

Interimconnect Ltd

Dear Ms Daly

Further to my telephone conversation with your colleague, there at the BIS on Friday 5th, he asked me to provide some further information on the transparency of the Interimconnect business model for professional interim managers.

I'm very concerned that unless innovative business models like Interimconnect are catered for in the revised legislation in your outcome "**Employment businesses and employment agencies are restricted from charging fees to work seekers**" new and much need competition in the recruitment sector will be stifled.

So in answer to the consultation Question 8. **Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?**

The answer is **YES** for Interimconnect and other similar business models. Therefore the equivalent of The Conduct Regulations 2003 26(7a) "The work-seeker in question is a company" should be retained.

Speaking to your colleague on Friday I understood that "vulnerable" was considered to be any person who seeks work through an agency. However I believe the definition should exclude professional interims operating through a company for the reasons explained in the attachments.

I'm attaching:

- 1) "Transparency of the Interimconnect business model
- 2) Latest Survey (December 2012) of where Interimconnect members find their assignments (In particular please see responses to questions 6,7 & 8)
- 3) For completeness the attachment to my e-mail below of 4th April ... from our lawyers Blake Laphorn that there are strong arguments that staffing companies who supply the services of professional interims are not employment businesses and therefore do not fall within the recruitment industry regulatory regime. This should equally apply to employment agencies."

(Please also see my e-mail of 4th April below)

I would be happy to discuss further or meet up if that is helpful to your consultation process.

Regards Mike Measures

[1800+ career interim managers covering all disciplines and sectors](#)

[Rapid free search/selection and short list of available members](#)

Mike Measures FCA - Director

From: Mike Measures
Sent: 04 April 2013 16:32
To: 'recruitment.sector@bis.gsi.gov.uk'
Subject: FW: Consultation on reforming the regulatory framework for employment agencies...

Dear Ms Daly

The on-going consultation has been brought to my attention.

Briefly I founded in 2002 and now manage a network of professional interim managers, some 1800 in total, called [Interimconnect Ltd.](#)

Although we are a network we adhere to the 2003 conduct Regulations (Limited Company Opt outs) and under the 1973 Act we operate as an employment agency.

However we regard ourselves at the vanguard of innovation and transparency in the provision of interim managers mainly because of our business model.

- Being a network we do not charge fees to "hirers" for an interim introduced for an assignment. The interim manager, through their limited company or LLP, contracts directly with the "hirer". The "hirer" saves the normal agency mark up.
- The interim manager, through their limited company, pays a percentage of their fees to Interimconnect **only after** they have been paid by the client. (As we do not charge a fee to the "hirer" we use the existing exemption (The Conduct Regulations 2003 26(7)) to be paid a fee to cover network costs.)
- The "hirer" and interim are all aware and in fact negotiate the fees themselves so there is complete transparency

I am concerned that the first of your four outcomes in the consultation "**Employment businesses and employment agencies are restricted from charging fees to work seekers**" means that the Interimconnect innovative and transparent business model will be banned if any new legislation does not:

- Entirely **exclude professional interim managers**. Interims are independent businesses composed of experienced senior managers operating on their own account and not under "control". They are not vulnerable and do not need the protection of employment legislation. This indicates that the definitions on which **the current legislation** is based may be wrong. Should they include or exclude certain types of people? i.e. interim managers. **
- Include in the scope of new legislation that the **present existing exemption (The Conduct Regulations 2003 26(7))** is carried forward in that legislation as well as the provision for interim managers **to opt out of any new** legislation at present. (Regulation 32(9) of the Conduct Regulations) is carried forward. If a Regulation similar to Regulation 32(9) is retained in the new legislation the terms "**introduce**" and "**supply**" should be defined. The current lack of definitions of these terms means that staffing companies and the like are unsure of when to obtain opt out notices in order to ensure that they are valid

*** I am attaching an extract from a legal opinion of our lawyers Blake Lapthorn that there are strong arguments that staffing companies who supply the services of professional interims are*

not employment businesses and therefore do not fall within the recruitment industry regulatory regime. This should equally apply to employment agencies.

Having reviewed the consultation document I was not sure whether the particular circumstances of Interimconnect would come across strongly enough in that document hence this e-mail.

I was wondering notwithstanding that we have not completed the consultation document, as yet, whether you would take this e mail into consideration for your consultation instead?

Please advise or I would be happy to talk through the issues or complete the consultation attaching this as an Appendix.

I look forward to hearing from you.

Regards Mike Measures

[1800+ career interim managers covering all disciplines and sectors](#)

[Rapid free search/selection and short list of available members](#)

Mike Measures FCA - Director

Ref 1 Transparency of the Interimconnect business model and other matters relevant to your consultation.

Pages 1 of 2

At Interimconnect, founded in 2002, with now a network of 1800 + career interim managers we regard ourselves at the vanguard of innovation, cost effectiveness and transparency in the provision of interim managers mainly because of our business model which is as follows:

- All our members operate through companies and all who have applied for assignments have decided to opt out. (Regulation 32(9) of the Conduct Regulations)
- Being a network we do not charge fees to "hirers" for an interim introduced for an assignment. The interim manager, through their limited company or LLP, contracts directly with the "hirer". The "hirer" therefore **saves the** normal agency mark up.
- The interim manager, through their limited company, pays a percentage of their fees to Interimconnect **only after** they have been paid by the client. If the interim is not paid by the "hirer" he has no obligation to pay Interimconnect's commission. (As we do not charge a fee to the "hirer" we use the existing exemption (The Conduct Regulations 2003 26(7)) to be paid a fee to cover network costs.)
- The "hirer" and interim are all aware and in fact negotiate the fees themselves so there is complete transparency. There are no hidden "mark ups". The "hirer" through our terms and conditions knows before they are introduced to interims that the interim through their company pays a percentage of their fees to the network.
- Contrast that with the current situation where employment agencies put a "mark up" to the interim's day rate but the interim does not know how much his rate is being marked up and the "hirer" does not know what the interim is receiving.

Other matters

As an observation clearly both Regulation 32(9) of the Conduct Regulations and Regulations 2003 26(7) were included in the first place as a recognition that where a work seeker was a company the Conduct Regulations were most probably not appropriate. As mentioned above all members of Interimconnect who have applied for assignments have decided to opt out.

Therefore not to include similar clauses in future legislation seems inconsistent.

Interim Managers are not in our opinion "vulnerable" in the normally accepted definition. They are mature senior business managers and executives who have set themselves as in business on their own account through their own companies. In addition they:

- 1) Pay their own taxes (PAYE, NHI, Corporation Tax from their companies) and pay for the provision of their own pensions.
- 2) Have Professional Indemnity Insurance
- 3) Have the costs of : marketing, administration, transport, offices etc
- 4) Invoice their clients and live with the risk of not getting paid.

- 5) Only get paid for the days they are on assignment
- 6) Live with either Interim "feast and famine" i.e. that is either too many opportunities or potentially long periods when they have no assignments at all.

So in other words by any ones definition they are self-employed and in business on their own account. These are strong arguments that those operating through their own companies are beyond the scope of regulations governing employment agencies or businesses. (see also the view of our Lawyers Blake Laphorn attached)

In addition interim managers find most of their assignments through networking and contacts and **NOT** through agencies. (See our latest survey December 2012 of the 1800 + members of Interimconnect attached. See in particular answers to questions 6, 7 & 8 of that survey)

I hope this is helpful to your consultation and if I can be of further assistance please let me know.

Regards

Mike Measures FCA

Director Interimconnect Ltd

9/4/2013

Ref 3 Extract from legal advice from Blake Laphorn

“Professional interims who contract via their own companies should be excluded from the scope of the recruitment industry regulatory regime. This is recognised by the existing legislation in a number of ways including as follows:

Although it is not relevant to Interimconnect Limited's business model because Interimconnect operates as an "employment agency" or "agency" (as defined in sections 13(1) and 13(2) of the Employment Agencies Act 1973 ("**the Act**") and Regulation 2 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("**the Conduct Regulations**") respectively), the definition of employment business in sections 13(1) and 13(3) of the Employment Agencies Act 1973 (which is also relevant to the Conduct Regulations) is "the business of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity", where "employment" is very broadly defined and includes "employment by way of professional engagement or otherwise under a contract for services". Neither the Act nor the Conduct Regulations provide a definition of "control". A case on the interpretation of section 13(3) of the Act, *R (on the application of Accenture Services Ltd) v Revenue and Customs Comrs*; *R (on the application of Barclays Bank plc) v Revenue and Customs Comrs* [2009] EWHC 857 (Admin), [2009] STC 1503, found that "the control" under the Act requires "some full measure of control" and "predominant practical control".

Professional interims whose services are supplied via staffing companies do not come under the predominant practical control of anyone other than themselves. Control is also an employment indicator, and so employment status case law should also be relevant and show that professional interims are not under the control of staffing companies' clients as such term is interpreted under employment status case law. There are therefore strong arguments that staffing companies who supply the services of professional interims are not employment businesses and therefore do not fall within the recruitment industry regulatory regime. “

28/3/2013

Anti-Slavery International

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

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Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

Employment businesses and employment agencies are restricted from charging fees to work-seekers

This is consistent with International Labour Organisation (ILO) guidance on combating forced labour which states that fees or costs related to recruitment should not borne by workers but by the contracting company. Article 7(1) of [ILO Convention 181 Private Employment Agencies, 1997](#) states that: "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers".

The charging of fees is associated with debt bondage, a modern day form of slavery, as recruitment fees can be treated as loans with high rates of compound interest, leaving workers tied to a job in order to repay the debt, which may never happen. Debt bondage is defined in the UN's Supplementary Convention on the Abolition of Slavery as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".

There is clarity on who is responsible for paying temporary workers for the work they have done

A lack of clarity around the terms and conditions of employment leaves workers vulnerable, particularly when seeking redress. If it is not clear who should be paying a worker, and that worker faces a dispute over non-payment of wages, then the worker faces additional hurdles in seeking resolution and redress.

The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable

Our experience of migrant domestic workers in the UK demonstrates the importance of workers' ability to change employers in order to reduce their risk of exploitation and forced labour. The decision last year to renege on migrant domestic workers' right to change employer, removes an important protection from abuse. Before the right to change employer was introduced, abuse was higher. Tying domestic workers to one employer is tantamount to licensing slavery, allowing employers to bring workers to the UK without providing those same workers any way of challenging or escaping abuse if it occurs. The removal of this right to change employers gives unscrupulous bosses the power to threaten workers with deportation if they do not comply with whatever they demand. Therefore Anti-Slavery strongly believes that workers should have maximum flexibility and this will contribute to a reduction in exploitation.

Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Access to remedy and a worker's ability to assert their rights are essential to reducing exploitation.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

Please refer to our attached proposal for better protection for agency workers employed in sectors outside of the remit of the Gangmasters Licensing Authority.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

The term "employment agency" should be sufficiently broad to include the continually morphing formations of businesses in the industry of recruitment, including but not limited to, umbrella companies and payroll providers which solely handle payments for agency workers to ensure that they are all effectively regulated.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

We do not support the charging of fees.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

Late payments, incorrect payments and missed payments are commonly reported complaints by agency workers. It must be made clear that the ultimate responsibility rests with the organisation holding the direct employment relationship with the worker.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

It is crucial that a worker is able to freely leave employment without menace of penalty to prevent the risk of forced labour; therefore we support the provision in regulation 6, which seems to adequately address this.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

Anti-Slavery does not support the charging of fees.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

Transparency is essential for effective monitoring and enforcing regulations. It is good practice that should be encouraged as it helps to reduce the risk of exploitation as transparency makes it harder for unscrupulous agents to hide. Those employment agencies operating outside of the sectors that fall under the remit of the Gangmasters Licensing Authority, are not licenced. Users of these agencies therefore do not have a simple way to assess the legitimacy and operations of an agency or those offering agency services. Transparency could go some way to addressing this. Reporting is also encouraged under various corporate responsibility frameworks including the Global Compact and in the UN Guiding Principles on

Business and Human Rights, which state that companies need to be prepared to report externally in order to account for how they address their human rights impacts, particularly when concerns are raised by, or on behalf of, affected stakeholders.

Question 11: What information do you think would be of most interest to:

a) **work-seekers** **hirers**

In addition all the information suggested in the government guidance document accompanying this consultation section 7.17:

work-seekers Whilst this is not an exhaustive list, it is likely to include business registration details; full contact address; outstanding or discharged cases against the business; current National Minimum Wage rates.

Hirers Whilst this is not an exhaustive list, it is likely to include the above plus verifiable membership of any trade bodies.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

Requiring transparency will not deter legitimate agencies and will also act to encourage best practice. As well as enabling users to better assess agencies, as described above, it will also allow the relevant authorities and regulators to check on operators and enforce regulations.

c) If you answered yes, what information do you think it should be compulsory to publish?

Information should include, but not be limited to the following:

- Full company address
- Commencement date for trading as an employment agency
- Any action against them

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

Trade association codes alone are not sufficient, particularly since they only apply to members. A very large number of agencies are not members of trade associations, nor ever will be. Many of these agencies are operating on the lowest tiers of employment at minimum wage levels. This is also where workers can be most vulnerable to exploitation and abuse.

Relying solely on trade association codes to uphold ethical standards can put responsible business at a disadvantage since they can be undercut by those who do not, or who are operating outside of a poorly enforced regulatory framework. This impacts on workers' vulnerability since the undercutting may be achieved through making (sometimes illegal) savings on workers' pay, which in some sectors is often already at minimum wage levels.

The UN Guiding Principles for Business and Human Rights require that the state has a duty to protect. This responsibility should not be discharged to any business association.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

The Staff Wanted Initiative, a joint project of Anti-Slavery International and the Institute for Human Rights and Business recommends in its SEE formula, a toolkit for business to reduce the risk of workers' exploitation, that indicative pricing statistics are used to assess quotations and fees from agencies, particularly when offering and charging suspiciously low rates. The government could support this by publishing minimum rates below which no agency could legitimately operate.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Yes legislation should be enforced in order to have any value; this is a role for the government. Please refer to the proposal attached as an appendix on better regulation for worker protection. This explains the need for robust and effective enforcement of all regulations so that companies operating outside of the law and those knowingly or unwittingly using their services are not so easily able to undercut law-abiding business and reduce the risk that agency workers are exposed to exploitation.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

Prohibition orders would be an effective punishment, offer a degree of justice to victims, reduce the risk of unscrupulous agents continuing to exploit workers, and act as an effective deterrent.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

However this should not be enforced at the expense of workers who cannot access employment tribunals because they are employed illegally, for example do not have the right to work in the UK. A mechanism should be included to enable workers in this situation to seek redress.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Reaching the most vulnerable workers who are likely to most need to exercise their rights is a challenge. As well as ensuring that guidance overcomes barriers such as language, literacy, costs, physical location, fear

of reprisal, this can be complimented with activities that sensitise those who are likely to come into contact with workers, such as government agencies, service providers, support groups amongst others.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

Yes, this would contribute to improved transparency, with the benefits that brings as explained above. As well as enabling users to better assess agencies, it will guide business undertaking due diligence on potential agencies. It would also act as an incentive to ensure compliance by agencies with the regulations. The Gangmasters Licensing Authority publish a list of agencies that have had their licences revoked. This practice could be extended across all sectors.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

Whilst in theory legislation may not seem necessary, it would ensure that all agencies, and not just those demonstrating good practice, are complying with regulatory requirements. Such requirements would also act as a deterrent to those who might be tempted to set up or operate outside the law. It will also provide some information for enforcement activity. However the risk that enforcement activity becomes focused on checking paperwork rather than effective, intelligence-led enforcement operations must be addressed.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

This is not an exhaustive list but should include:

a) work-seekers?

Payslips and time records

Contract of employment

Address of residence

b) hirers?

Recruitment policy

c) other employment agencies/employment businesses

The future of the Gangmasters Licensing Authority and the Employment Agencies Standards Inspectorate

Better regulation for worker protection – Proposal for a common position

This paper summarises the critical issues that should be of concern to the Coalition government concerning the regulatory framework for the recruitment and labour supply sector generally. The proposal seeks to establish a common position which has multi-stakeholder support, provides a level, competitive playing field for business, reduces regulatory burdens and exchequer fraud and offers greater protection for vulnerable workers through intelligence led, proportionate enforcement action.

The following factors are significant:

1. The Gangmasters Licensing Authority (GLA) has considerable resources and powers compared with other regulators in the same area, which means that there is differential enforcement between sectors. As a result of this disparity, much employment law and other regulations are enforced effectively only against businesses within the GLA licensed sector. In its report on human trafficking published on 6 May 2009, the Home Affairs Select Committee noted:

“We agree that existing employment law, the National Minimum Wage, regulations on rented accommodation and so on should be sufficient to prevent the sort of abuses highlighted by the Gangmasters Licensing Authority and UCATT – but only if they are enforced. It seems to us that, outside the Gangmasters Licensing Authority’s sectors, enforcement is at best patchy and at worst non existent.”

2. The resources and powers available to the GLA combined with its active, intelligence-led approach contrasts in particular with the Employment Agencies Standards Inspectorate (EAS), which is generally reckoned to be an inefficient regulator relying largely on complaints. This is as brought out in the key findings of the parallel Hampton Implementation Reviews of the two bodies:

The Hampton Implementation Review Report (2009) of the GLA found:

- The GLA’s impact in improving working conditions for some vulnerable workers has been impressive, particularly in view of its relatively small size
- The GLA has a good awareness of the unintended consequences of its operational decisions and takes proactive steps to minimise these
- The GLA has done well in building consensus amongst its diverse stakeholders on the best way forward with regulation
- The GLA has actively sought to minimise any unnecessary additional regulatory burdens that might have followed its licensing regime.

The Hampton Implementation Review Report (2009) of the EAS found:

- EAS’s strategy and operational systems should keep up with changes in the industry.
- Currently sanctioning options are limited. EAS has insufficient powers to address rogue businesses (i.e. no ‘stop now’ orders or administrative penalties available).
- The EAS capacity to store, analyse and share data related to business risk and non-compliance is weak.

3. The Government has stated that an extension of the Gangmasters Licensing Authority scheme is not on its agenda and that it is committed to effective, risk-based enforcement by the EAS and the government’s other workplace enforcement bodies.

4. Extensive evidence demonstrates that exploitation of workers by unregulated labour providers is widespread across a number of sectors, in particular hospitality, care and construction and that further measures are required to strengthen protection of vulnerable workers' rights in these and other sectors. These high-risk sectors have been well-documented by the government, for example by BIS in its 2010 evidence to the Low Pay Commission regarding National Minimum Wage complaints in the hospitality sector, <http://berr.gov.uk/policies/employment-matters/rights/nmw/lpc> ; by Rita Donaghy in her 2009 inquiry report 'One Death is Too Many' looking at fatal accidents in the construction sector <http://www.dwp.gov.uk/publications/policy-publications/fatal-accidents-inquiry.shtml> ; and by the Treasury consultation in 2009 on false self-employment in the construction sector http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/consult_false_selfemployment_construction.htm
5. Legitimate employment businesses and agencies want, and have a right to expect, a "level playing field" in order to compete fairly within the law, as do those using their services. To enable this it is essential that action is taken to prevent rogue businesses from undercutting legitimate labour providers, either through tax evasion, worker exploitation or both. An independent survey of GLA licensed labour providers by the Universities of Sheffield and Liverpool in 2008 found that 79% were in favour of the licensing regime. To this end, the industry clearly supports an intelligence-led, risk-based proportionate enforcement regime that facilitates a fair competitive trading environment.

Proposal

To achieve this fair, competitive trading environment across all sectors, whilst protecting vulnerable workers and reducing the regulatory burden on the taxpayer, the group proposes a staged process the first stage of which would be some administrative measures to make the current legal requirement more effective and during which the scale of exchequer fraud and worker exploitation in the currently unlicensed sectors should be assessed.

Stage 1

1. Functionally merging the EAS into the GLA. GLA would run EAS under its current management and intelligence-led operational processes. This can be achieved by ministerial order and requires no change to legislation.
2. Initial operation of 'GLA / EAS' to come under a Service Level Agreement between BIS and DEFRA.
3. Pay and Work Rights Helpline to come within the remit of the newly merged 'GLA / EAS'.
4. The merged GLA / EAS would continue to apply current GLA licensing and inspection procedures to businesses within the current GLA mandated sector whilst adopting a proactive, intelligence-led, proportionate approach to those employment and labour agency businesses currently working within the remit of the EAS.
5. Governance of the two bodies to be through a smaller, more strategic board, selected to provide the necessary balance of skills and expertise.

The initial stage will allow a period in which the scale of exchequer fraud and worker abuse in other sectors would be assessed.

Stage 2

1. GLA and EAS are merged into one body under the sponsorship of BIS.
2. All employment businesses and agencies not currently falling under the current GLA mandate would be required to register (for a modest annual fee) with inspections led by intelligence and identified risk (in accordance with Hampton Principles). This would require primary legislation. In the interim a voluntary registration system could be introduced, as was done for labour providers prior to the Gangmasters Licensing Act becoming law.

3. The merged body to be responsible for monitoring compliance with the Agency Worker Regulations 2010.
4. Infringements of legal requirements would result in Macrory penalties and ultimately prohibition to trade. Prohibition to be based broadly on the current GLA points-based revocation system, with 'fit and proper' trading bars available.
5. The criminal offences of trading whilst unregistered or using an unregistered employment business or agency should remain.

Advantages

1. Bringing the whole recruitment and labour supply sector currently outside the GLA mandate under a system of mandatory registration and prohibition would help to ensure the necessary conditions for legitimate business to operate and compete fairly from a secure foundation, whilst affording better protection to workers.
2. The staged approach allows a pilot period in which the scale of exchequer fraud and worker abuse in other sectors would be assessed. Sectors shown to harbour exceptional levels of exploitation, such as hospitality, care and construction, would be the first to be brought under a registration system.
3. This approach will lead to financial savings in terms of bureaucratic and administrative harmonisation whilst achieving the Government's commitment to effective, risk-based enforcement.
4. Merging GLA and EAS will reduce bureaucracy and boost efficiency by allowing one board and management team to seek to maintain common standards across the recruitment and labour supply industry.
5. A small registration fee with annual re-registration will not deter legitimate business and will offset the cost of additional enforcement activity.

This position is supported by the following organisations:

Anti-Slavery International

Association of Labour Providers

Ethical Trading Initiative

Ecumenical Council For Corporate Responsibility

Institute for Human Rights and Business

Oxfam GB

We would welcome support for this proposal from all sectors. If you wish to add your organisation to the list of supporters or for further details please email

Neill Wilkins Project Co-ordinator IHRB neill.wilkins@institutehrb.org

Association of Recruitment Consultancies (ARC)



Response to Consultation on reforming the regulatory framework for employment agencies and employment businesses

Introduction:

The Association of Recruitment Consultancies (ARC) is a membership organisation for recruiters, comprising of over 140 companies with a combined turnover in excess of £2 billion per annum.

ARC's members provide services to a broad spectrum of clients in a variety of different sectors and include both employment agencies and employment businesses, these last variously supplying employed agency workers, PAYE agency workers engaged on contracts for services, and limited company contractors (operating either through 'umbrella' companies or personal service companies ('PSC')).

The Association relies on legal support from the recruitment and employment law specialist consultancy Lawspeed, which was involved on behalf of a group of 65 recruitment businesses in all of the consultations with the then Department of Trade and Industry preceding the 2003 regulations. Lawspeed provided input for the DTI in formulating the original regulations, for example in suggesting the basis for a limited company opt out currently found at R.32. As well as relying on contemporary advice, ARC has been able to call upon the historic knowledge in formulating this response.

ARC operates a direct helpline for members and is therefore privy to a wide range of queries concerning the day to day operations of member consultancies, again which we have drawn on.

Finally, this response is further to meetings between ARC officers, members and BIS officials in February and March 2013 for the purpose of discussion and the provision of evidence. ARC attaches to that evidence within this response. ARC members attending those meetings represented a broad spectrum of recruitment businesses providing both employment agency and employment business services and dealing with highest paid executives and white collar workers through to lower paid industrial and blue collar workers.

The unambiguous opinion expressed at both meetings was that there is no real basis for change. However we have prepared this response to provide additional detail on members' views.

It should be noted that ARC represents recruitment consultancies and we have no representative capacity for any other element of the recruitment industry or suppliers.

Finally, although the Consultation asks specific questions, the issues of principle and drivers behind the questions are of great importance. The recruitment industry plays a significant role from a social perspective as well as contributing towards the economy as a whole. It is crucial that any matters capable of changing the industry are fully understood and that any change should only be made if there is real justification. For this reason we have not only considered the specific questions raised but also considered the reasons for any change and whether there are improvements to be made which would provide a positive outcome whilst protecting the role that recruitment plays.

It is critical that the government should be clear if its decisions are based upon representations from any specific quarter, to ensure that the rationale is transparent. As the rationale is not entirely clear at the moment, we have addressed the issues of principle and the broader questions in the executive summary. Those questions are

- Should there be change due to complexity?
- Should there be change due to advances in technology and the increased use of job boards?
- Do the regulations act as a barrier to growth?
- Should there be any change to the regulatory regime?
- Is self-regulation the way forwards?
- Is the current scope satisfactory?
- Should company contractors be excluded from scope?
- Should there be any change at all?

Executive Summary

Should there be change due to complexity?

Although members agree that some improvements could be made through revisions, the suggestion that there needs to be a wholesale review because the Regulations are overly complex is largely rejected. The case for change due to complexity appears to arise because there have been many previous revisions and there have been complaints that the existing terminology can be confusing (in particular since the introduction of the *Agency Workers Regulations 2010* ('AWR') in October 2011). In our view neither case stands to justify comprehensive change.

On the argument that the many existing revisions to the Act and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ('the Regulations') make the rules hard to understand, we accept that it is sensible to consolidate existing changes into one set of regulations, although the task of rewriting into more easily understood language would undoubtedly be onerous bringing with it the risk of raising more problems than it solves. The 2003 Regulations took 3 years to formulate and were predicated on the same basis, namely that regulation should be updated to take into account complexities, innovations (including job boards), the need to address transfer fees, and overall should be made more simpleⁱ. It would be hard to say that the work undertaken then should be abandoned.

On the complexity argument there is a case for saying that it is best to leave well alone, although a pragmatic consolidation which does not involve changing the rules would achieve the objective of unravelling the myths without putting recruitment businesses to further cost.

Whilst terminology is complex in certain areas, this is more likely than not to include a form of words that achieves the desired policy result, and the meaning of the Regulations is generally clear. This is no different from other legislation. Certainly a rewrite using more straightforward language would be helpful (for example a 'work-seeker' could be described as a 'candidate') but in terms of changing the foundation definitions of employment business and employment agency, the current definitions, albeit in existence since the Employment Agencies Act 1973 ('the Act'), do correctly define the two entirely different lines of business operated by recruitment businesses, namely employment agency = introduction (hirer engages the candidate directly) and employment business = supply (the EB engages the candidate and lends the services of the candidate to the hirer).

The question is whether a rewrite on this basis is really necessary against the backdrop in which we believe that all the recruitment trade associations are providing supporting information to their

members. The ARC provides an online manual as well as training webinars free to its members, and indeed BIS itself provides public guidance. The evidence shows that there is good general compliance with existing rules, implying that the complexities of the current regulations are in fact reasonably well understood and are certainly not a barrier either to businesses entering the recruitment sector or to conducting business. New regulations would undoubtedly put businesses to cost, new systems, and retraining not so long after the imposition of the AWR which challenged all businesses in the supply sector.

It is noteworthy that during the meetings which ARC members have had with BIS, attendees stated that in the context of the other legislation that must be navigated and applied by a business, the recruitment legislation is relatively straightforward.

ARC would be willing to assist with any further guidance should on reflection it be felt that this would be a safer course to take.

Should there be change due to advances in technology and the increased use of job boards?

Generally, no. The existing regulations have few rules that now apply to employment *agencies* as to conduct. Job boards are classified as employment agencies since they do not deal in supply but do deal in introductions. As such they are largely unaffected by rules of conduct. The areas of principle that have been retained in current regulations, for example the rule that no one providing a work finding service should charge a fee to a work seeker, are there to protect workers from unscrupulous operators and to ensure that there are no barriers to employment, and it is hard to see that there is any case for relaxing those rules simply because an operator provides its service online.

In addition, were there to be separate rules for online providers, for example by allowing them to charge for work finding services, this would clearly create an anomaly and disadvantage to traditional operators (none of which see the need to raise charges from candidates, with all profits coming from hirers). If online operators could charge that way they may reduce charges to hirers with the consequence that hirers would be deterred from using traditional services which rely on manpower and personal skill rather than logarithms.

In relation to modern communication techniques, smart phones and social and business media sites, the only innovation is ease of communication – for that reason many people now communicate through those media. However, should that mean that the processes relating to the conduct of placements should change? Existing regulations already allow for communication by electronic means.

It is not clear why advances in technology justify any material change to conduct especially when technology allows for all the current steps to be taken. For example it is possible to generate a contract from a smartphone just as easily as it is to provide information. Surely what is important is that the processes, that are necessary to ensure the worker and hirer understand what arrangement they are entering into, are maintained.

Therefore on the technology and the job board argument we see no justification for change.

Do the regulations act as a barrier to growth?

The consultation and impact assessment documents both propose that there is an argument that the Regulations are a barrier to growth. ARC members do not concur with this.

The evidence is that agencies are complying, which clearly in turn implies a widespread understanding of the regulations. Over the last 7 years there have been a vast number of new agency start ups. There is no evidence that any have failed because they did not understand the regulations, any more than there is evidence that businesses fail because they do not understand employment law. One member commented that if someone who wants to start a recruitment business cannot understand the regulations and thus is deterred from setting up, that person should not be setting up a business in the first place! This view is certainly shared by this association.

Do the Regulations otherwise deter hirers from using recruitment businesses and thus block growth?

We have seen no evidence of this. There are no regulations that require hirers to use recruitment businesses, or that require hirers to contract with recruitment businesses in any specific way. There is absolute freedom of choice as to how to recruit.

We therefore can see no basis for change on this ground.

Should there be any change to the regulatory regime?

Overall, the general view amongst ARC members is that there are no major and significant issues with the current regulatory regime that justify a wholesale change. Indeed the combination of rules of principle and rules relating to conduct enforced through the EAS combined with civil liability and criminal consequences in severe cases has worked well over the 9 years in its current format.

The impact assessment shows that the majority of complaints are resolved quickly and effectively, employment businesses in the main reacting rapidly and positively whenever the EASI becomes involved. The evidence also shows that within the context of a sector that annually contributes some £24bn to the UK economy, making up to 1.5 million placements, the number of complaints is a tiny

proportion, and that few actually require critical investigation and enforcement.ⁱⁱ This demonstrates a successful system, well designed and effectively operated – a credit to the department, and a significant support for consistent professional standards within the industry. Against that background it has been hard to ascertain any genuine advantage to any party from the kind of changes to the regime considered in the consultation.

Members are unanimously against transposing any revised Regulations into legislation that can be enforced at the Employment Tribunal ('ET'). At the first BIS meeting one member summarised member views on this idea by saying it 'filled her with horror'. The evidence from the impact assessment does not demonstrate any advantage whatsoever save the cost of running the EASI (£0.7m p.a.) leaving agencies fearful of claims, claimants having to attend court and wait up to 33 weeks for a Tribunal hearingⁱⁱⁱ, significant costs incurred by all parties including the Courts system. This must be balanced against the fact that vast majority of current genuine complaints are resolved by the EASI within 6 weeks.

We also question the extent to which enforcement by the ET would be possible and the efficacy of the proposal within the context of the stated objective, to reduce regulation and introduce simplicity. The Regulations provide a framework to bring about a standard in *behaviour/conduct* (towards clients and candidates) and imposes restrictions that could not be enforced by an ET, whilst the ET is better placed to ensure that an individual is afforded their *rights*, giving entitlement to compensation or other relief. Can conduct matters be transposed into rights? We think this would be hard to achieve.

Currently work seekers have no entitlement to compensation under the regulations. A transposition and so a switch to enforcement through the ET would require a whole raft of new regulations creating specific rights with appropriate entitlement to compensation in the event of breach. This appears to run counter to government policy, and would undoubtedly be opposed by hirers and recruitment businesses alike, in addition arguably to being detrimental to work seekers and the flexibility of the workforce. Further more surely there would be a cost to the Ministry of Justice in relation to the transposition, which does not appear to have been factored in on our reading of the Impact Assessment, the cost allocated so far being based on existing rights and not any new ones.

On the issue of costs, on our reading the Impact Assessment also fails to correctly identify the full cost to HMCTS and ACAS of dealing with the complaints, but after analysis suggest that annual overall cost to all of enforcement through an Employment Tribunal will be £1,073,708 without taking into account the likelihood of an increase in claims.^{iv} Against this an outcome that could take up to 33 weeks plus time for payment (this may require the claimant to enforce via the Courts which could

take several more months). These calculations do not take into account the cost of appeals or for time relating to appeals or requests for time to pay when automatic payment is usually 6 weeks after judgment, compared to an existing outcome through the EASI of 6 weeks. The outcomes may be slightly different but most workers probably receive what they are owed under the current scheme.

A change would appear neither to save money nor speed up process!

Is self regulation the way forwards?

The consultation asks whether, as an alternative to regulatory enforcement, standards in the recruitment sector could be maintained through self-regulation and the enforcement of trade bodies' own codes of conduct or similar.

Whilst the ARC would encourage the application of such codes, as it does its own, there is little appetite for self-regulation. Members have stated that this would be likely to bring standards down to the lowest common denominator, as some seek to cut corners outside of the influence of a trade body with only immediate commercial imperatives in mind, having little regard for the sector as a whole and its reputation.

As such the concept of self regulation within an industry that is driven by speed of placement for success is guaranteed to bring the industry into disrepute, as unscrupulous operators send out spam c.vs, advertise jobs that do not exist, mis-state rates of pay, force workers to take up other services that they do not necessarily want, and fail to adequately check suitability. Even reputable organisations are likely to be pressured to drop standards if business is lost to unscrupulous traders.

Trade bodies are conflicted and could not genuinely enforce breaches with real effect, and in any event have no track record establishing a safe and fair enforcement platform, this point was recognised by the DTI in their May 1999 consultation into the 'Regulation of the Private Recruitment Industry' at paragraph 4.11^v. The ARC's view is that where the principle is the protection of workers who are seeking employment there is little case for weakening the rules by setting up self regulation.

There are two overriding realities – job seekers follow the job not the agency, and hirers want workers often regardless of which agency introduces or supplies them. It is important therefore that there is a common set of conduct standards that apply to all, and that there is no fragmentation leaving those who adopt standards at the mercy of those that do not.

Is the current scope satisfactory?

The consultation documents discuss whether the scope of the current regime is satisfactory and includes questions regarding the revision of definitions and in respect of extending their scope to include other types of business that were not as prevalent when the current law was drafted a decade ago. We have set out the ARC's position on this in our responses below at the appropriate juncture, however in summary the association's position is as follows:

- Recruitment Process Outsourcing organisations, which currently fall outside the scope of the Regulations (on the basis that they do not have a direct contract with a work-seeker and as such do not meet the definition of an employment business in the *Employment Agencies Act 1973*) should be brought into the Regulations' scope, these entities are clearly offering and are part of a 'work-finding service'; See more in the RPO section on the ARC website;
- By contrast the ARC believes there is nothing to be gained by bringing umbrella companies into the scope of any new Regulations, as these organisations **do not** provide work finding services to work-seekers;
- There is some debate as to whether online jobs boards are or should be caught within the scope of the regulations and the question is asked whether they should be permitted to charge a fee (unlike the current regime). As already indicated, ARC members are of the view that the online status of such entities should not preclude them from being subject to the same laws as recruiters operating outside of the virtual world.
- Social and business media sites that permit or promote job seeking are another means of providing work finding services and/or advertising of jobs. Simply because these sites are so successful, and they no doubt can generate influence, should not justify a change to the rules to accommodate their business plans. Indeed there is a significant question mark as to whether these sites operate legitimately in a number of different areas (for example in relation to data protection) and a change to rules which allow a further incursion into fundamental areas such as employment could prove disastrous to current government policy which it is understood is based upon the protection of rights rather than the opposite.
- The ARC has already informed the Department of Business Innovation and Skills, of an example of rule flouting by a popular online business networking tool which is charging work-seekers for its hirer locating services, which appear to fall into being work finding services. We understand that it cannot be investigated because it is operating from a jurisdiction outside of the UK (Ireland) and therefore outside the jurisdiction of the EASI. This would appear to indicate that where online providers who operate outside of the

jurisdiction wish to charge fees they could very well do so under the current regime, yet most have chosen not to operate in this way. This to some extent obviates the argument for revision of the Regulations on the basis of accommodating online job boards.

Should company contractors be excluded from scope?

In formulating this response we have approached issues from the perspective that any new regulations will apply generally. No questions have been asked in the consultation about any distinction for company or umbrella workers. However the Impact Assessment considers that R.32 will not be retained, and so this is an issue.

In terms of existing R.32, we have the following comments:

This allows for an opt out for a company where the individual and the work seeker company agree to opt out. In order for this opt out to be valid the hirer must be informed of this agreement before the supply commences. The ARC believes that this is an unnecessary restriction and questions what purpose this notification to the hirer actually serves. There is much evidence that agencies obtain valid opt outs yet may miss the deadline in notifying the hirer – this can subsequently lead to dispute despite the clear intention of the worker being to opt out. We would recommend that this requirement, to notify before supply commences, is removed.

Also on R.32 as it currently stands it is not wholly clear which of the Regulations do not apply if the opt out is provided and the regulation could be tidied up for clarity. We believe the intention is that where an individual operates through a company and both the individual and the company agree to opt out, the Regulations in their entirety do not apply. This is not clear from current wording, we believe as a result of confusing drafting rather than intent, since a person who is intended to be supplied by a company must also usually be a work seeker. Thus we ask that the wording be changed so that where a work seeker is a company, the individual offered by the company should not be a work seeker also and R.32 (1) should make that clear.

In terms of the principle of an opt out our comments are as follows:

We continue to believe that giving certain class of workers operating as businesses choice as to whether they themselves want the protection of the regulations remains important and a critical principle to retain.

Should there be an overall exclusion of companies? It is logical that an overall exclusion of all individuals operating through a company may result in an over emphasis on using company vehicles. There is a distinction between those operating through umbrellas, who clearly do not wish to

operate their own businesses and who can fall into the low paid category as much as the higher paid) and those operating through Personal Service Companies. Also umbrellas do not distinguish between low and high paid workers.

Should there be different rules for higher paid ‘professionals’? The evidence from the EASI discussed during our meetings is that complaints also arise from higher paid workers and that not all higher paid want to opt out of the Regulations. In addition the idea that there should be a greater focus on lower paid workers in terms of protection, in other words regulation, is discriminatory. In the absence of evidence that the cost of compliance for those supplying higher paid is a real burden, when the objective is that there should be consistent conduct standards for the whole industry, and of course those supplying the higher paid no doubt receive higher gross fees, there seems to be little to promote the need to split the industry. Many operators provide workers across a spectrum of pay arrangements and it is hard to see what the advantage would be in separating rules by pay rate or profession and indeed it is hard to see how this result could be achieved in practice in any event.

The conclusion we have reached is that the current opt out arrangements work well for everyone, subject only to the points we have made about details of wording.

Which regulations should not apply if there is an opt out? This is an entirely different question. If the government is minded to include the protections we have suggested in respect of RPO models it will be important that the employment business to employment business protections remain in force howsoever the agency worker operates and thus not be affected by any opt out or exclusion (although the wording we have suggested contemplates an AWR exclusion from the definition of an ‘agency worker’ we do not think that works and could result in confusion and argument).

Should there be any change at all?

Yes, but in our view it is not essential although we urge change to address issues arising from RPOs (See more in RPO section on the ARC website).

There is a lot to be said for carving out the rules that apply to entertainment and modelling agencies (“EMAs”) which are operating in a very distinct and separate sector. In addition some rules are overly complex and could be reworded, and some never have been necessary to achieve the primary objective of these regulations, to protect the workers, and thus are inappropriate, for example R.8. There is also a case for adding to the rules where new models have emerged that give rise to a distortion in the market place and a barrier to employment, as indicated above.

Our responses to the specific questions raised in the Consultation are set out below.

Response to Specific Questions in the consultation

Question 1:

a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- I. Employment businesses and employment agencies are restricted from charging fees to work-seekers*
- II. There is clarity on who is responsible for paying temporary workers for the work they have done*
- III. The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable*
- IV. Work-seekers have the confidence to use the recruitment sector and are able to assert their rights*

Yes, but we would comment that these outcomes are currently adequately addressed within the existing Regulations and other supporting legislation.

b) Please give reasons for your answer.

There is near unanimity amongst ARC members that the current Regulations meet these outcomes. However, in respect of each statement we have the following to add:

- I. The status quo is accepted by all members as providing a fair level playing field and represents the basis for the view that there should be no exception introduced for online operators.*
- II. We believe that the current Regulation 12 provides adequate protection to work-seekers to meet this outcome. However we would like this obligation extended to include Recruitment Process Outsourcing companies. See more in RPO section on website.*
- III. Proposals that transfer fees be made 'reasonable' have been rejected on previous occasions, most recently in 2009/2010 on the basis that they are difficult to enforce. The current restriction within R.10 on the period when a transfer fee may be charged to a client provides sufficient clarity to hirers and recruiters alike and we do not believe that there is any evidence to show that it prevents temporary workers from being offered permanent work with a hirer. In fact, we believe that the defined period of time when a fee may be charged, as set out in the Regulations, leads to consistency in the terms that are presented to hirers. This means that work-seekers are not prevented from being offered permanent work. Removal of R.10*

and replacement with a requirement for transfer fees to be 'reasonable' would lead to more onerous terms being sought, which **would** be a deterrent to offering a temporary worker a permanent role. What represents 'reasonable' would also invariably have to be decided by the courts leading to delays and increased costs which may hamper growth and fester inequality in the market place.

- IV. The ARC does not believe that there is any deficit of trust in the recruitment sector. The EASI statistics suggest that complaints are minimal. Workers have recently been afforded greater rights under the AWR. The protection this legislation provides is considerable and the fundamental principles of the Regulations also support this outcome. As a result, the ARC questions whether there needs to be any change to afford work-seekers more protection than that which is already given.

Question 2:

- a) *Are there any other outcomes that you think should be achieved by the new legislation?*

Yes

- b) *If yes, please give details on what these are.*

As has already been noted, the ARC would like to see the obligations of the Regulations, in particular the principle of a restriction on withholding payment set out in R.12, extended to include Recruitment Process Outsourcing companies and other similar intermediary organisations, which enter into contracts with hirers and 'second tier' employment businesses. An analysis of the adverse issues that arise from the RPO model and the method for addressing them is set out in the RPO section on the ARC website.

There are a number of minor administrative obligations within the Regulations which the ARC believe could be removed or relaxed whilst still ensuring that the four outcomes are met and work-seekers and hirers protected as follows.

R. 6 This currently prevents an agency or employment business from requiring a work-seeker to notify them of the identity of a future employer. This could be relaxed so the recruiter could require the work-seeker to notify them if they no longer wish the recruiter to seek work for them due to the work-seeker having found employment elsewhere. This would save the recruiter from submitting a work-seeker's details for vacancies unnecessarily. The restriction on not disclosing the *identity* of a future employer could be retained notwithstanding this.

R.8 We note that R.8 is not identified to be retained. We agree that this provision has always been unnecessary and interferes with entirely legitimate payment arrangements which do not prejudice worker seekers provided that the work seeker knows who is ultimately responsible for payment, namely against whom recourse lies.

R.14 If this is to be retained there is a significant issue which could be improved. Currently it requires terms to be agreed with the work-seeker before first providing any work finding service. We suggest that at the outset this should only be a requirement in respect of work-finding services and terms relating to an actual assignment could be agreed later when the detail is known.

R.15 Currently within the terms which must be agreed there must be the statements that include the length of notice which the work-seeker is required to give the employment business in respect of particular assignments. This period of notice is not necessarily something which an employment business will know at that stage in the process, after all no work finding service will as yet have been provided and the actual hirer or more importantly the specific terms are to be agreed with the hirer relating to the assignment details will not necessarily have been finalised.

R.15 also presents a problem in terms of the AWR. Whilst it's possible to include details of general holiday entitlements and considering what the individual is entitled to under the Working Time Regulations, specific details of holidays may be determined on an assignment by assignment basis depending upon comparator terms in force, to produce this information prior to the work finding service being provided would simply be impossible.

Furthermore, before a work-finding service is provided it is also possible that the work-seeker will not as yet have determined how they will operate or the contracts that are on offer to them. The issuing of more than one contract not only adds to the administrative burden but may also lead to work-seekers' confusion. It may be that the work-seeker deals with the employment business as an individual however then subsequently decides to use an umbrella company or PSC. Since the advent of the AWR many now offer various different models which are often client specific. At this stage, when a contract needs to be in place, i.e. before work finding services are provided, it may be impossible to know exactly how it is this individual will be operating. It is worth noting that under a contract of employment terms must be put in place within 2 months of the engagement. Could the regulations not reflect a similar compliance period with a requirement to simply ensure work-finding terms are in place from the outset of the relationship?

R.19 currently requires identity and right to work checks but it is noted that these requirements are to be dropped. It is not clear whether government policy is to abandon these requirements but it

should be noted that the Nationality, Immigration and Asylum Act^{vi} only applies to employers in the strict sense. A removal of these rules would leave those engaging on contracts for services without any obligation in this area.

R.22 obtaining references where the agency worker is to work with vulnerable persons. We note this is proposed to be dropped. However this is not recommended as it could lead to complaint and could expose vulnerable persons to greater risk. CRB checks will throw up convictions but may not necessarily expose unsuitable behaviour. However the regulation could allow for the requirement to be waived if the hirer agrees to obtain references and make the necessary checks.

Currently, R.29 requires records to be kept for 1 year. In reality a contract has a limitation of 6 years and payroll records need to be retained for an equivalent period for accounts and audit purposes. As such R.29 does not reflect the actuality of a recruiter's record keeping requirements.

Question 3:

a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No. Please see replies given above at page 4.

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

N/A

Question 4:

a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Arguably, it could be extended to make certain that online jobs boards are caught by the definition to remove any doubt in this regard.

b) Please give reasons for your answer.

To remove any doubt or arguments to the contrary which could cause confusion in the market place.

Question 5:

a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question does not apply to any of ARC's members none of which charge fees for work-finding services.

b) Please give reasons for your answer

This question does not apply to any of ARC's members none of which charge fees.

Question 6:

a) If you answered yes to question 5, do you think there should be one standard cooling off period?

This question does not apply to any of ARC's members none of which charge fees.

b) What do you think the cooling off period should be?

This question does not apply to any of ARC's members none of which charge fees.

Question 7:

a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

No.

b) Please give reasons for your answer.

We believe that the current regime is sufficiently robust in this area and commercial imperatives mean that the contracts used by employment businesses with work-seekers make it clear who is obliged to make payment. As has been noted above the restriction on withholding payment should be made to apply to other organisations in the supply chain such as RPO's.

Question 8:

a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes.

b) Please give reasons for your answer.

As has already been stated, the restrictions within R.6 should be made to apply to any organisation that is involved in the provision of 'work-finding services' in the supply of a work-seeker to a hirer.

R.6 goes further than the question actually suggests, R6(1)(b) prevents an employment business from requiring the work seeker to reveal the identity of future employer. EASI historically has not liked and has questioned clauses in contracts which require notification that a work-seeker has taken up an alternative role even if specifically stating that no obligation on the individual to inform the employment business of the identity of that hirer.

From the perspective of an employment business, it is important to know that a work seeker is no longer available for work. This would improve efficiency, avoiding wasted time in contacting the work seeker. It is all also relevant to whether the employment business is entitled to a fee. If the work seeker is working for a hirer to whom he/she has previously been supplied the Regulations permit a fee to be charged and so it is reasonable that the work-seeker should be asked.

Question 9:

a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

The ARC believes that the existing Regulation 10 provides sufficient clarity and certainty to hirers with regards to payment of transfer fees and it is for the parties, employment business and hirer, to agree the level of acceptable transfer fees, this normally being a percentage of the remuneration paid to the work-seeker.

b) Please give reasons for your answer.

Recruitment is a very competitive market and the level of fees that an employment business charges to its clients has to be competitive. In addition the only way that a recruiter can ensure that it can recover a transfer fee is by having strong contract terms agreed with its hirer clients meaning that parties are sufficiently informed of the likely fees that may be charged in the event of a temp to perm or temp to temp transfer.

The ARC's members have indicated that the introduction of a 'reasonableness' requirement in respect of transfer fees would most likely create more disputes than under the current regime as parties seek to establish what a reasonable fee is. One respondent suggested that the introduction of a 'reasonableness' requirement in respect of transfer fees may in fact act as a barrier to

employment and that the existing regulations have led to consistent terms in client side terms which have protected workers and encouraged the offering of permanent work to temporary workers.

We responded to a consultation on the AWR which raised the same issue. The government subsequently rejected the proposal. Please see our response dated 11th December 2009 in Appendix 1, to which we continue to wholeheartedly attach. There remains no evidence to our knowledge that R.10 is onerous for any party. The 8/14 week rule could be reworded for clarity purposes only or the government could publish more guidance, but it does provide certainty for all parties.

The idea that there should be no requirement at all could result in more complaints and abuse by unscrupulous operators possibly resulting in loss of work or employment by the agency worker concerned. R.10 in our view achieves the required balance.

Question 10:

a) Do you think employment agencies and businesses should publish information about their business?

No.

b) Please give reasons for your answer

The type of information referred to in the consultation document may change on a daily, even hourly basis. Therefore the ARC is unsure what the driver for this proposal is. Much of the information that the consultation document suggests is already largely published by a recruiter on its website and promotional material in any event, but the suggestion that this should be made compulsory is wholly rejected. There is no basis in any other sector for such a requirement, which appears only to suit online operators.

It is not thought that the publication of figures in respect of 'average length of time it takes to fill a vacant post' or of the 'average length of placements' would be particularly useful as this will vary depending on a number of factors, not least the sector and the type of role the vacancy is for. It would be near impossible for any meaningful information of this nature to be published and members wholly reject the idea of a 'TripAdvisor' approach which inevitably would lead to unfair comment and unnecessary concern. This is not the way to conduct business.

Members were at some pains to point out that candidates follow job vacancies not turn over rates. Also some agencies may only make 3 placements a year – how would the disclosure service any purpose?

Also, creating an obligation on a recruiter in this regard is generally considered by ARC members to be over-excessive and would not necessarily be of assistance to work-seekers or hirers as statistics can be artificially created and it would be difficult to monitor and enforce their validity. This proposal may also favour established recruiters and be potentially damaging to new starters or organisations moving into new sectors as they will not be able to provide the same degree of information.

Question 11:

What information do you think would be of most interest to: a) work-seekers b) hirers

Background, areas of operation, vacancies and opportunities, accreditations, these all being relevant to hirers and candidates. It is not clear why this idea is being mooted at all! This is clearly a commercial matter for agencies and it is hard to see why there is any basis for regulation in this area since it creates a new strata of regulation, includes concepts never before considered, and counters the objective of the Red Tape Challenge.

Question 12:

a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No.

b) Please give reasons for your answer.

As has already been noted much of the suggested information would be published on websites and promotional material in any event, therefore to make this a regulatory requirement seems excessive and unnecessary.

c) If you answered yes, what information do you think it should be compulsory to publish?

N/A

Question 13:

a) Do you think trade association codes of practice help to maintain standards in the sector?

There is no evidence to suggest otherwise, but codes of practice are entirely different from regulation.

b) Please give reasons for your answer.

The ARC believes that trade associations' codes of conduct can work in conjunction with the existing regulatory regime to ensure that standards are maintained. Generally ARC members believe that the Regulations are successful in providing the framework that ensures standards are maintained across the industry and that the existence of such codes should not preclude there from being government regulation. Not all agencies are members of trade bodies or subject to any code of practice. There needs to be a common set of rules.

However there is a limit as to how far trade bodies can and should enforce standards. Trade bodies are conflicted as they represent their members, they cannot be expected to police them over and above an expectation of compliance with their codes of conduct. Further where some members pay more for membership than others and have greater influence it is hard to accept that a fair system of enforcement could be operated free of conflicting interests. As things stand there is certainly no evidence that any trade body has provided an unambiguously safe and transparent platform for fair enforcement.

Question 14:

What other non-regulatory tools could be used to maintain standards in the recruitment sector?

Please be as specific as you can in your response.

The ARC believes that a combination of the existing regulatory regime, contractual provisions and trade associations' codes of conduct all contribute to the high standards that the UK recruitment industry enjoys. ARC can see no basis for changing this. To do so could easily be a retrograde step, with hard earned standards destroyed for no apparent tangible reason.

Question 15: *Do you think that it is necessary for the Government to enforce the recruitment sector legislation?*

Yes

b) Please give reasons for your answer.

ARC members have indicated that enforcement of the recruitment sector by Government is entirely preferable to individuals enforcing rights through the Employment Tribunal. We have outlined the advantages of the current regime. Notwithstanding the Government's recent changes to the Employment Tribunal process ARC members have indicated that the prospect of further legislation

being enforceable via the ET filled them with dread, citing fears of spurious claims and the 'blackmail effect'. See also the executive summary.

Question 16:

a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes.

b) Please give reasons for your answer.

The current regime has proved to be very effective and having a number of criminal sanctions available to the EASI has provided a useful penalty of last resort.

Question 17:

a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

No.

b) Please give reasons for your answer.

ARC members have been unanimous in calling for the enforcement of the regulatory regime to remain with the EASI and categorically against the rights being enforceable at the Employment Tribunal. The Regulations do not comprise rights for workers but address conduct of agencies. An ET would therefore have no ability to award anything. To create more rights would require an entire raft of new provisions, counter to the objective of the consultation and the Red Tape Challenge.

Question 18:

What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

This question approaches the issue from the wrong perspective. Regulations afford workers protections, not rights. Subject to that overriding and crucial point, guidance for work-seekers when dealing with recruiters could be made available on a government website. The ARC would be happy to contribute to the drafting of this should that be required.

Question 19:

a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No save in the event that a recruiter is found guilty, after prosecution, to have breached the rules after a thorough investigation. There is no reason in principle why a policy of 'naming and shaming' should otherwise be applied – what purpose could it serve and in what other industry does this apply. For example there is no obligation to publish as a name and shame exercise the result of tribunal cases where employers have failed to follow proper procedures.

b) Please give reasons for your answer.

The existing regime has proven to be successful to date.

Question 20:

a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No.

b) Please give reasons for your answer.

Records are normally retained in any event due to administrative and contractual requirements as such it is not believed necessary for the Government to legislate in this area. In addition the advent of the AWR has led to increased information sharing and records being kept.

Question 21:

What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

In response to all the above it is thought that the current provisions are sufficient. In addition, the advent of the AWR has led to increased information sharing and records being kept.

Appendix 1 – Extract ARC Response to 2nd consultation on the AWR – December 2009

Temporary to Permanent status

114. The draft of revised Regulation 10 is not acceptable on any basis and exceeds the requirements of the Directive.

115. The inclusion of a reasonableness test for either/both transfer fees and the extended period of hire creates uncertainty as to the enforceability of terms agreed between the parties relating to either the transfer fees or the extended period of hire. This is highly prejudicial to temporary work agencies and interferes with the temporary work agency's ability to set out fees and terms in a contract (see R.17).

116. Further the Directive at Article 6.2 does not require any such test. The Directive permits provisions under which temporary work agencies receive a reasonable level of recompense for services rendered. Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (Agency Regulations) as current is a provision that permits such a reasonable level of recompense. In particular the arrangement under which a hirer may engage the agency worker under an extended period of hire specifically allows a hirer to overcome the requirement to pay a transfer fee if the hirer wishes to do so, for example if the hirer considers the fee to be unreasonable.

117. In addition the Directive does not extend to fees charged where an agency worker is engaged through supply by another employment business, yet the draft amendment relates to both temporary to permanent and temporary to temporary fees. Further the Directive does not address the issue of an extended period of hire as an option and there is no requirement to ensure that such a period is reasonable.

118. Regulation 10 of the Agency Regulations as current works in conjunction with Regulation 17 of the Agency Regulations which requires temporary work agencies to agree terms in advance of services provided to hirers. Both Regulations were agreed after a 4 year consideration of the issues during which there were three formal consultations. The final consultation took place at a time when the Directive was in draft form and contained the requirement now in Article 6.2 of which the Government was fully aware.

119. The issue of transfer fees charges was first raised in the 1999 Consultation to the Agency Regulations and numerous options were contemplated in order to strike the right balance. After further consultations, one on this particular issue issued on 16th March 2000, that balance was achieved and contained in R.10. It would be wholly wrong for the Regulation now to be changed in impact in the way proposed in the manner suggested.

120. There is no evidence of abuse of Regulation 10 that has been produced during the last 5 years and which justifies a review now. There has also been no consultation on an amendment to Regulation 10 despite several consultations on aspects of the Agency Regulations since 2004 and which have resulted in some changes to different Regulations. Implementation of the Directive is not the appropriate forum for amendment to the Agency Regulations.

ARC Response to consultation on reforming the regulatory framework for employment agencies and employment businesses: Index

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Endnotes

ⁱ One can go as far back as the DTI May 1999 consultation into 'Regulation of the Private Recruitment Industry' which had a stated emphasis on 'simpler and clearer regulation.'

ⁱⁱ P.16 Consultation - Impact Assessment

ⁱⁱⁱ Annual Tribunal Statistics 1 April 2011 to 31 March 2012.


^{iv} The Impact Assessment (IA) states that the annual saving to Exchequer of closing the EASI would be £0.7m, but Exchequer would also face transition costs of switch. However the cost of enforcement through ACAS and Employment Tribunals would be £0.17m p.a. This does not add up when compared with figures on p.30 of the IA. Cost for ACAS £130 (Table 11) plus ET (Table 13) £1293 per case x 156 cases = 1423(£1293+£130) x 156= £221,988. This assumes ACAS only works on the 156 cases that go to the ET but there were 1200 complaints in 2012 (see p.16).

So actual cost assuming ACAS involved in same number of complaints could be £156,000 (130x1200). When added to the estimated ET costs (£201,708) this leaves a total of £357,708. Against that the complainant may have to pay a fee. Businesses and workers will have to meet £716000 (Table 10) so for a saving of £0.7m it will cost the Exchequer £357708, business and workers £716,000 = £1,073,708 plus exchequer transitional costs unspecified.

^v *"Although a number of associations have developed codes of practice or have membership rules which prescribe behaviour, such codes or rules often confine themselves to matters concerning inter-agency dealing or do not go substantially beyond the minimum requirements of the standards established under the Act. Those associations which have disciplinary procedures may issue reprimands against members, or in the most severe cases move to expulsion. Unsurprisingly, many are reluctant to eject members, as even if expelled, such persons remain free to trade."*

^{vi} the Nationality, Immigration, and Asylum Act 2006 (sections 15-25). S.25(b) - a reference to employment is to employment under a **contract of service** or apprenticeship, whether express or implied and whether oral or written.

Recruitment and Employment Confederation (REC)



Consultation on reforming the legislative framework for employment agencies and employment businesses

*Response from the Recruitment and Employment
Confederation*

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Introduction

The Recruitment and Employment Confederation (REC) is the professional body for the UK's £25 billion recruitment industry. We welcome the government's recognition of the important role that the recruitment sector plays in the UK labour market and the opportunity to review the legislative framework that governs it. The recruitment market has undergone significant changes over the last few years. The current consultation is an opportunity to ensure that regulations reflect these changes and enable compliant employment agencies and businesses to thrive.

Background on the REC

The REC has 3,776 corporate members accounting for around 8,000 recruitment company branches. We also represent 6,000 individual members of the Institute of Recruitment Professionals (IRP).

As well as taking forward the views of the recruitment industry as a whole, the REC represents 21 dedicated sector groups. These cover a range of areas including technology, engineering, legal & HR, industrial, drivers, life sciences, office professionals, childcare, sales & retail, interim management, executive search, health & social care, marketing, media and creative industries. A priority during the recent consultation process has been to seek feedback from these specialist groups in order to highlight specific concerns and priority areas within specific sectors.

The REC is in regular dialogue with key government departments and renewed its formal 'Partnership Agreement' with the Department for Work & Pensions (DWP) in 2012. We are represented on official forums and committees such as the Treasury's IR35 Forum and sit on the board of the Gangmaster Licensing Authority (GLA). The REC is also a board member of Eurociett – the representative body for the recruitment industry in Europe, and a member of Ciett – the worldwide representative body. This enables regular exchanges on industry trends as well as on best practice in compliance and professional standards.

The recruitment market

The REC's latest Recruitment Industry Trends Survey shows that the recruitment industry grew by 4.3 percent (to £25.7billion) in the financial year 2011/12 and is predicted to surpass its pre-recession peak of £27billion by the end of 2013/14. However, despite an increase in industry turnover the number of recruitment businesses actually fell by 11 percent between 2010 and 2011 (from 8,395 to 7,435). This is just one indication of the significant changes ahead for the maturing recruitment market. Growth has been driven by the flexible labour market as temporary placements increased by 5.4 percent while the volume of permanent placements fell by 8.9 percent.

The recruitment sector has shown its resilience and has bounced back after suffering a 30% decline at the height of the recession. The industry makes a significant contribution to the UK economy and labour market which is why it is crucial to ensure that any new regulations do not inadvertently hinder future growth.

The recruitment industry is a significant employer in its own right. The last Recruitment Industry Trends survey shows that workforce grew by 1.8 percent in 2011/12 to reach 92,700. Over 12,000 new jobs within the recruitment industry have been created since 2010. Facilitating continued growth in the sector through a streamlined but effective regulatory framework will help to create more job opportunities within the sector.

The same survey confirms that significant market consolidation has taken place within the sector with an 11% decline in the number of recruitment businesses operating in 2011. This is in part attributable to the increased

regulatory burden caused by the Agency Worker Regulations 2010 (AWR). Over 85% of the UK recruitment industry is made up of small businesses and it is crucial to develop a regulatory framework that enables SMEs to survive and grow.

Our most recent monthly data indicates that we are likely to see modest but continued growth within the recruitment sector over the coming year in line with projections. The latest REC/KPMG Report on Jobs show increased numbers of temporary and permanent placements. However, the level of growth appears to be levelling off. Our latest JobsOutlook report shows that over 50% of employers are planning to hire more staff over the coming months. A growing trend is the lack of suitable candidates in many sectors which further underlines the crucial role specialist recruitment agencies and businesses play in sourcing the right staff for hard-to-fill vacancies.

The REC's approach to compliance, standards and industry best practice

Compliance and industry standards are at the heart of the REC's work. All members must sign up to the REC's Code of Professional Practice which is enforced through our professional standards team and our complaints procedure. Serious complaints are escalated to our Professional Standards Committee which is made up of representatives from the TUC and the CBI, as well as industry peers .

The ongoing work of our Institute of Recruitment Professionals (IRP) ensures that we also have a 'bottom-up' approach to standards and professionalising the sector. All IRP members sign-up to a Code of Ethics. The IRP provides qualifications and training and these, together with ongoing updates and professional development, aim to ensure that individual recruitment consultants are meeting the highest standards.

In addition to the above, the REC launched a new Compliance Test that all new members must pass in July 2012. The pass rate for the first attempt at the test for new members is around 70%. The Compliance Test is now also being applied to existing REC members. Feedback from both new and existing members has been extremely positive which confirms that the vast majority of recruitment agencies and businesses are committed to industry standards and compliance.

The REC will continue to drive a pro-active agenda in this area. However, we need government to support us in this mission by not only maintaining but upping the ante on enforcement activities. This is why we are arguing in our response to the consultation for the current Employment Agency Standards Inspectorate (EASI) to be retained.

Current perceptions of the industry

The REC's Industry Research Unit regularly tracks feedback from employers and workers with regards to the recruitment agencies and businesses they use. For example, the REC's monthly JobsOutlook survey – which tracks future hiring intentions and feedback from 600 businesses on a range of employment issues - shows that the satisfaction rate amongst employers for the services provided by recruitment agencies / businesses consistently exceeds 90%.

In 2012, the REC commissioned a TNS OnLineBus survey of 1,024 British adults aged 16-64 to evaluate current perceptions of our industry. This is especially relevant to the current consultation – particularly in relation to the fourth desired outcome ('Work-seekers have the confidence to use the recruitment sector').

The research found that recruiters have a professional image in the eyes of the majority of the British public, and that people's good opinion of recruitment consultants increases further when they turn to them for help with their own search for a job. Key findings from the survey of working age adults were as follows:

- 72 percent of people who have used the services of a recruitment agency felt recruiters project a professional image.
- Over three quarters of jobseekers who have used a recruitment agency (77 percent) think recruiters play an important role in helping people find jobs.
- 72 percent of those who had called on the help of a recruitment agency in the past said they would use a recruiter again.

The survey found that jobseekers from all walks of life called upon the expert help and advice of recruiters when they needed help looking for a new role. When asked to compare recruitment consultants with other occupations, in terms of their perceived professionalism, recruiters ranked more highly than journalists (32 percent), politicians (34 percent) and estate agents (39 percent). The survey revealed that there is still a way to go before recruiters are viewed as professional as lawyers (76 percent) or teachers (78 percent).

The REC will continue to track regular feedback from workers and employers as part of our ongoing work to professionalise and enhance perceptions of the industry. Existing data shows that progress is being made and that there no major 'problem' in terms of the current experiences of the vast majority of employers and workers. This must form the basis for debating some of the proposed measures in the current consultation.

The Regulatory backdrop

The current consultation must be set against the overall legislative backdrop. In recent years, the UK recruitment industry has had to face up to seismic changes to regulations covering the sector. The Agency Workers Regulations 2010 (AWR) which came into force in October 2011 created significant additional cost and bureaucracy as well as a range of implementation challenges for recruiters and their clients. Pensions reform has also created huge complexities in terms of how auto-enrolment measures should apply to temporary staff.

As mentioned above, the last Recruitment Industry Trends Survey showed that the number of businesses in the recruitment sector declined by 11% in 2012. This is in part attributable to increased regulatory obligations in the sector. The cumulative impact of AWR and pensions auto-enrolment – as well as other developments such as 'Real Time Information' and changes to IR35 rules for contractors – means that it is essential for the current consultation to result in a tangible streamlining of the regulatory burden on the industry.

The consultation exercise

The REC's response is based on the practical input of employment agencies and businesses. We also received detailed feedback from individual recruitment professionals within the REC's Institute of Recruitment Professionals (IRP). Our consultation included direct engagement with over 600 REC and IRP members, through members surveys, webinars and meetings. Specific discussions were held at REC Council and Employment Policy Committee meetings, Regional Policy Forums and sectoral events. These sector group meetings enabled us to collate feedback from specialist recruiters in areas such as technology, health & social care, education, engineering, drivers, industrial, childcare, life sciences and interim management.

Summary of key priority areas

The REC is committed to working with government to develop a streamlined but effective regulatory framework for the industry. Recruitment agencies have had to implement the Agency Workers Regulations 2010 (AWR) and pensions reform. The aim now is to ensure that we have the best possible regulatory framework for the recruitment industry to grow and for compliant agencies to thrive.

At the heart of the REC's response are a number of core messages – including the need to lighten the regulatory load on the sector whilst enhancing enforcement activity to ensure that compliant businesses can prosper. Other priorities include providing real clarity in terms who is covered and reflecting the reality of the present day recruitment market through clear definitions of intermediaries, such as umbrella organisations and vendor providers.

In summary, the REC's response argues that the new regulations must:

- Deliver tangible benefits to the recruitment sector in terms of streamlining bureaucracy and administration – especially in light of the additional burden that has been created through AWR implementation and Pensions auto-enrolment.
- Avoid unintended consequences of actually adding red tape and uncertainty – for example, through an unworkable 'reasonableness' test for temp to perm fees and a prescriptive list of information to be included on company websites.
- Ensure that enforcement activities are refocused rather than removed – getting rid of the current inspectorate would be a retrograde step and would jeopardise workers as well as compliant businesses.
- Reflect the reality of the current recruitment market by providing a clear definition of intermediaries such as umbrella organisations and vendor providers – this is central to achieving greater clarity with regards to who is responsible for paying temporary workers.
- Maintain an opt-out for Limited Company Contractors (LCCs) and provide a clear definition of who is in scope.
- Include specific measures for agencies working with children and vulnerable adults.
- Confirm the principle that agencies should not charge job seekers for job seeking services.
- Develop ways of promoting the use of good recruitment agencies by job seekers whilst avoiding the prescriptive approach outlined in the consultation.
- Recognise the role that trade association codes of practice can play in maintaining standards in the sector.

Reforming the legislative framework - REC Response

Question 1: The Four Outcomes

Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- *Employment businesses and employment agencies are restricted from charging fees to work-seekers*
- *There is clarity on who is responsible for paying temporary workers for the work they have done*
- *The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable*
- *Work-seekers have the confidence to use the recruitment sector and are able to assert their rights*

The four outcomes

The two pieces of legislation which are the subject of the Consultation: the Employment Agencies Act 1973 (the Act) and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Regulations), are forty and ten years old, respectively.

The REC welcomes the proposal to reduce the regulation that governs the recruitment sector thus allowing trade bodies to play a more active role in raising and maintaining standards. The REC notes that the Consultation outlines the intention to replace the current legislation (the Act and the Regulations) with a 'new fit for purpose regulatory framework with minimum regulation' which meets the four outcomes set out above.

Our view is that there is significant scope to reduce regulation but it is necessary to maintain some minimum provisions to ensure that there is protection for individuals who utilise the recruitment sector. Any reduction in regulation should be focused on the business to business relationships. For example, it is not necessary to have legislation that dictates the terms and conditions that should apply between an employment agency or employment business and a hirer. These entities are in business of their own account and should be free to negotiate terms as they see fit. This will be consistent with how business is generally conducted in other sectors.

Broadly speaking, there is a great opportunity to bring the recruitment sector in line with other sectors and remove much of the regulation that impose specific requirements on business to business relationships while ensuring that minimum protections remain in place to protect individuals.

Outcome 1

We agree that employment businesses should not be able to charge for providing work finding services. Employment agencies feedback to REC is that employment agencies should not be able to charge fees for providing work finding services. However members feel that they should be able to charge for ancillary services over and above the provision of work-finding services and therefore any changes must preserve this position. It is our view that it would not be helpful for employment agencies to apply charges to both the hirer and work-seeker as this could create a conflict in there being a lack of clarity as to who the agency's client is.

Outcome 2

Broadly speaking we agree that individuals should have clarity as to both the service that is being offered to them, as well as who is responsible for paying them. However we do have concerns about the way in which this may be implemented. See response to question 7 below.

Outcome 3

We recognise that it is necessary for the purpose of compliance with the Agency Workers Directive 2008 (AWD) to retain some provisions to ensure that agency workers (as defined in the AWD) are free to take up permanent roles with a hirer. See response to question 3 below.

Outcome 4

We agree with the principle of this outcome but strongly disagree with the means proposed to achieve it. See response to questions 10, 11 and 12 below.

Question 2: Other Outcomes

Are there any other outcomes that you think should be achieved by the new legislation?

YES

Other outcomes:

- Better analysis of current recruitment/supply activity in the temporary worker market;
- Examination of whether the current definitions (employment business, work-seeker, employment agency) are fit for purpose or need to be amended;
- Scope and extent;
- Safeguards for vulnerable groups;
- Mandatory umbrella/travel & subsistence use; and
- Clarity on the composition of pay.

Better analysis of current recruitment/supply activity & examination of whether the current definitions are fit for purpose

Our view is that, given the extent to which the recruitment sector has evolved since the current legislation was enacted, it is not possible to consider new legislation which will be fit for purpose now and for the foreseeable future without taking into account the way in which employment agencies and employment businesses have changed since 1973 and 2003.

It is disappointing that the Consultation does not appear to acknowledge or address some of the key developments, principally associated with the supply of temporary workers. The references to the 'tripartite relationship' which hitherto existed between a client, employment businesses and 'work-seeker' are prevalent throughout the Consultation document. Yet for those involved in the temporary supply market, it is well understood that the use and presence of other entities such as master and neutral vendors, umbrella companies, managed services companies, personal service companies and other business models means that the simple 'tripartite relationship' is not necessarily the norm. Flowcharts illustrating the different intermediaries involved in the recruitment process are attached as an annex (see Annex 1 on page 30).

Scope and extent

The Consultation document makes no reference to whether the opt out provision in the Regulations will be retained moving forward. This currently allows work-seekers that are incorporated to operate outside the

Regulations. Feedback from members indicates that this is an important provision and indeed comments from other relevant trade bodies that represent the contractor market indicates that professional contractors are opposed to their inclusion in the Regulations and would have the same view moving forward.

The definition of an employment business in section 13 of the Act also needs to be taken into account here:

“An "employment business" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity”

Businesses that engage and supply limited company contractors who do not work under the control of the end user client (i.e. the contractors that operate on a genuinely self-employed basis) technically do not meet the definition of an employment business. At present such businesses and contractors make use of the opt out to clarify the fact that they are out of scope. If the opt out is removed that clarity will be lost. Additionally this will mean that a number of limited company contractors who have clearly operated outside the scope of the legislation will be brought into scope. This is not consistent with the principles of the Red Tape Challenge.

It can be argued that if the new legislation is limited to achieving the four outcomes and the scope of who it applies to is clearly defined, the loss of the opt out will have little impact. However, the feedback from REC members in sectors such as engineering, technology, life sciences and interim management is that the opt out should be retained, as this will provide clarity and reassurance to workers, employers and agencies. This will ensure that regulation is not focused unnecessarily on business to business relationships. Should discussions gravitate towards providing a tight definition rather than an opt out, the key is to ensure that protections are focused on individuals and ensure that employment businesses have a duty to individuals who are ‘agency workers’ in order to comply with the Agency Workers Regulations 2010 (AWR).

Safeguards for vulnerable groups

We note that there is no reference made in the Consultation to the retention of the statutory provisions that require employment agencies and businesses to carry out suitability checks and particularly, the additional checks for those that work with vulnerable adults and children. In our view this is a major concern and it is clear that REC members who operate in relevant sectors involving vulnerable groups feel that it is necessary to retain the obligation to carry out the current suitability checks.

It is also important to note the potential risks of deregulation in this sector. Unacceptable practices would damage the reputation of legitimate employment agencies/ businesses.

We argue that provisions akin to Regulation 22 of the Regulations should be retained and notwithstanding the comments above relating to scope and extent of the new legislation, the requirement to retain the safeguarding provisions should apply to all persons supplied or introduced to work with vulnerable persons regardless of whether they work on a self-employed basis, through a limited company or otherwise. This is extensively supported by REC members.

Mandatory umbrella/travel & subsistence use

The Consultation document also fails to address the growing trend of clients and/or neutral and master vendors mandating the use of a single umbrella company or travel and subsistence scheme operators as a condition of continued supply, and the impact this is having on both workers and agencies.

Where the use of a particular umbrella or travel & subsistence (T&S) operator is made an explicit condition of supply, it is generally because the umbrella/T&S operator offers terms that are disproportionately favourable to the neutral/master vendor and/or client, often because it is a subsidiary company of the neutral/master vendor.

Such a situation can greatly increase the risk and liability for both agencies and workers, and result in reduced income for workers and reduced margin for agencies.

Where the use of the umbrella/T&S operator is a mandatory condition of supply, the agency effectively has a choice between accepting the terms offered by that umbrella, however opaque or unfavourable they might be to both the agency and worker, or face losing the business entirely.

This can result in a situation where an agency has to ask their workers to sign up with a particular umbrella, without the agency or worker having sight of payment or the travel and subsistence model being used, and without any certainty as to the actual compliance of that model.

If workers choose not to sign up with the umbrella, they face losing work themselves, as the agency will be unable to supply them on that contract.

If they do sign up, they could stand to lose money compared to working via a traditional PAYE model, or via another umbrella which offers workers more favourable terms and with which they have a longstanding and trusting working relationship. Workers could also end up being held liable for taxes owed if that umbrella does turn out to be operating a non-compliant model.

Where working for a particular client is conditional on workers agreeing to work through a particular intermediary, **the worker is effectively being forced to pay a fee to such an intermediary for the chance to work** - a practice that would be illegal if it was not for the fact that umbrella companies and other intermediaries are currently deemed to be outside of the scope of the Regulations.

We therefore feel that BIS must seriously consider ways of ending the practice of making the ability to work for any given client conditional on the use of a specific umbrella company or travel and subsistence scheme, and instead should focus on ensuring workers are always offered a genuine choice as to which intermediary they want to work through - for example, through a preferred supplier list of unrelated umbrella companies. Workers should also have a choice as to whether to participate in a travel and subsistence scheme.

Clarity on composition of pay

Furthermore, whilst BIS has focused on the need to establish clarity on who is responsible for paying temporary workers, the Consultation has not touched on the need for clarity on what is actually on the payslip that the worker receives, particularly when those workers are pressured into working through umbrellas or travel and subsistence scheme operators.

The REC has received payslips from both workers and agencies working through such intermediaries that show a lump sum of generic 'expenses' being deducted from each worker's pay without any explanation as to what this is comprised. Those payslips include a written caveat stating that workers must retain all receipts for expenses incurred for tax purposes. This is very difficult for workers to do when those expenses have not been incurred by workers in the first place, yet were HMRC to investigate the umbrella, the workers would be held liable for taxes owed. This is an unreasonable risk to be transferring to what are often low-paid, migrant workers with a poor

command of written English, who cannot understand the small print in the contracts they are given by many intermediaries.

In addition, there is currently no way for workers to get clarity on the proportion of savings generated by any given travel and subsistence scheme that is being retained by the umbrella company or travel and subsistence scheme operator versus the amount being passed on to the worker.

We would strongly advocate making it mandatory for intermediaries to detail fully on each payslip the amount of tax savings being generated by the scheme, the amount being deducted by the scheme operator, and the amount being passed on to the worker. This information should also be detailed clearly in the contracts workers sign when they join any umbrella company or travel and subsistence scheme operator.

Question 3: Charging Fees

Do you think there are circumstances, outside of the entertainment and modelling sectors, where agencies should be allowed to charge fees?

No

The REC does not think that there are circumstances, outside of the entertainment and modelling sectors, where agencies should be allowed to charge fees. (The REC does not represent the entertainment and modelling sectors and so will not comment on issues that specifically relate to these sectors).

The REC has sought views from its members as to whether there are other circumstances where employment agencies could be allowed to charge fees for work-finding services. Specifically, we have asked members whether job boards and any other sectors, such as, executive search should be allowed to charge fees and the response from members has predominantly been that they should not be allowed to charge fees for work-finding services.

The REC believes that there should be free access to jobs particularly in the current difficult economic environment and that the principle of free access to work should be maintained. In the event that the ability to charge fees was extended to the higher end sector, for example, the REC would be concerned that this could open up the possibility of further extensions for charging fees in the future. The REC's specific concern here is that any change in terms of charging fees could impact on the lower end sector where work-seekers may be less able to pay such fees. This could create barriers to accessing employment opportunities.

The principle of not charging for job-seeking services is well established not just in the UK but across the world. The global Code of Conduct developed by CIETT – the representative body for recruitment industry worldwide – has as one of its core principles respect for free-of-charge provision of services to jobseekers. Principle 4 of the CIETT Code of Conduct states:

'Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement'.

Any change in this area would risk creating confusion and potentially weaken what is an established and well respected principle. The REC's overall view is therefore that there should continue to be no circumstances where employment agencies are permitted to charge fees outside of the current arrangements for the entertainment and modelling sectors.

Question 4: Definition of Employment Agency

Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The REC has sought views from its members as to whether the current definition of ‘employment agency’ could be improved and in particular, has asked members whether the definition of ‘employment agency’ could be amended to exclude job boards. The response from members has predominantly been that job boards could be excluded from the current definition.

If job boards are excluded from any new definition, the REC believes that any new legislation would need to have a very clear definition as to what constitutes a job board and/or a much more specific definition of ‘employment agency’ so, that it is clear what is included and what is not.

In addition, the REC believes that the current definition of ‘employment agency’ should be reviewed in light of situations where employment businesses (under the current definition of ‘employment business’) effectively act as an employment agency (under the current definition of ‘employment agency’) by introducing an individual worker to an umbrella company, who then employs that individual.

Therefore, the REC’s overall view is that the current definition of ‘employment agency’ can be improved.

Questions 5 & 6: Cooling off periods for fees

No

The REC’s view is that employment agencies should not charge fees to work-seekers for providing work finding services. There is therefore no need for cooling off periods.

Question 7: Clarity on who is responsible for paying workers

Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

The Consultation refers to a lack of clarity as to who is responsible for paying a temporary worker due to the nature of the traditional tripartite relationship i.e. the worker-employment business-hirer relationship. However, the REC is concerned that this approach fails to recognise the complexity of modern supply chains and the number of different intermediaries that are often involved in the supply of temporary workers e.g. umbrella companies and master/vendor arrangements. The Consultation also refers to the payment of “temporary workers” (i.e. individuals) rather than “work-seekers” (individuals and limited companies) “for the work they have done”.

The REC believes that any new legislation should ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done. However, the REC believes that in order to achieve this outcome, BIS needs to consider:

- how ‘temporary workers’ are defined and whether any new legislation will aim to protect individuals and/or limited companies;
- how intermediaries should be covered by any new legislation given their responsibilities for employing and paying individuals ; and
- if other intermediaries are responsible for employing and paying individuals, employment businesses should not be required to underwrite payment of individuals where those intermediaries have failed to pay those individuals.

The REC has sought views from its members about the responsibility for paying temporary workers and also, about the role of intermediaries in any new legislation. The response from members has predominantly been that within any new legislation, intermediaries e.g. umbrella companies, should have a separate definition to employment businesses and that any new legislation should make clear that the intermediary, as the ‘employer’ for other employment rights (e.g. responsible for holiday pay), should also be responsible for paying the temporary worker.

We believe that it is important that individuals have clarity as to who will pay them for their services. **However, the requirement to provide clarity must not translate into an obligation for an employment agency or an employment business to make payment to individuals who are not their employees or workers.** These are two very different obligations and any new legislation must not confuse the two.

Our view therefore, is that there should be clarity about who is responsible for paying a temporary worker. This also means that there should also be clarity about the service that is being offered to the individual. For example, is the individual being offered a service by which they will be introduced to another party who will engage them and be responsible for paying them (such as another intermediary)? Or is the service offered one where the individual will be engaged directly and paid with no other party involved? Our view is that any new legislation should make clear that when the intermediary is the ‘employer’ for other employment rights, they should be responsible for paying the temporary worker and importantly should not require employment businesses to underwrite payment of temporary workers where other parties have failed to pay those individuals. It would be nonsense to create a statutory regime whereby a party which is not the employer is required to make payment to individuals whose redress in respect of unlawful deductions, national minimum wage and holiday pay claims, lies with another person.

It is important that there is consistency throughout employment law. BIS must have regard to the definition of ‘employer’ which is applied for the purpose of the National Minimum Wage Act 1998 and National Minimum Wage Regulations 1999, the Employment Rights Act 1996 (in particular section 13 which prohibits employers from making unlawful deductions from wages) and the Working Time Regulations 1998, which in particular requires an employer to provide paid holiday pay to its workers.

Question 8: Penalising work-seekers for terminating a contract

Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

This needs to be considered in light of the UK’s obligations under the Agency Workers Directive 2008. Broadly speaking, individuals should not be penalised because they have terminated or because they give notice to terminate a contract with an employment agency or employment business.

However it should be noted that the use of post termination restrictions in employment contracts and commercial contracts is prevalent in other sectors and there may be circumstances where for commercial reasons, hirers may quite legitimately seek to restrict the ability of an individual who has been supplied to them from going to work for a competitor for example. The use of such restrictions is already restricted by common law as they cease to be enforceable where the beneficiary of the restriction is unable to show that there is a legitimate business interest which needs to be protected and that the restriction is reasonable.

Presently the restriction does not apply to individuals who are employees (engaged under a contract of employment) of an employment business, and this is a sensible exception to retain moving forward. The restriction should also not apply to work seekers who are incorporated and in business of their own account and this is an example of why the scope of the new legislation should be limited to exclude such work seekers.

Question 9: Transfer Fees

Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

The REC has sought views from its members and the response from members has predominantly been that any new legislation should retain a provision that is, at least, akin to Regulation 10 of the current Regulations.

Under the Agency Workers Directive 2008 (AWD), the UK is required to ensure that there are no barriers that prevent agency workers from taking up employment with hirers. During the consultation period on the Agency Workers Regulations 2010, a proposal to include a reference to “reasonable” transfer fees was considered. However, the REC successfully argued that Regulation 10 of the Regulations already limited the way in which transfer fees can be charged and therefore, the UK already complied with the AWD and no further action was required.

The REC recognises that Regulation 10 can be complex to understand. However, the REC believes that in addition to ensuring the UK’s continued compliance with the AWD, Regulation 10 also provides a precise outcome in terms of charging a transfer fee. In contrast, any test of reasonableness would be potentially less clear and, in the absence of any clear definition, it would be difficult for employment businesses to recover legitimate fees for the loss of workers.

Therefore, the REC’s overall view is that any new legislation needs to retain a provision that is, at least, akin to Regulation 10 of the current Regulations, which gives a precise outcome as opposed to any test of reasonableness.

Question 10: Publishing management information (MI)

Do you think employment agencies and businesses should publish information about their business?

No (please see below)

Question 11: Identifying useful information for work-seekers and hirers

What information do you think would be of most interest to work-seekers and hirers?

Please see below

Question 12: Making publication of MI compulsory

Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

Many employment agencies/businesses already publish a great deal of information about their business online, including many of the suggested items in the Consultation document. The vast majority of employment agencies/businesses will list some or all of the following on their website:

- Occupational sector in which the employment agency/business operates;
- Branch network locations & contact details;
- Head office location & contact details;
- A centralised jobseeker/general enquires telephone line and/or online enquiry form; and
- A selection or full list of current vacancies.

In addition, where employment agencies/businesses are members of industry trade bodies or have undertaken third party audits, they will tend to display logos demonstrating these affiliations prominently on their websites.

The REC membership database is freely available to all jobseekers and clients on our own website. This database can be searched by company name, town, region, postcode and sector of operation. Our database contains both head office and branch details as provided by members during our application and renewal process.

We maintain a separate public register of those agencies that have undertaken our additional auditing product, REC Audited, again freely accessible by anyone.

We will be updating the functionality and appearance of both databases following the launch of our new website around June of this year.

Our recent submission to the GLA proposed that REC members who voluntarily share the scores they achieve on our mandatory compliance test – an online exam that must be passed before an agency is granted membership, and taken again and passed every two years to remain in membership – gain a form of “earned recognition” for doing so. This is something that could also work in an agency’s favour under BIS promoting the transparency and confidence outcome. If they are happy to share their compliance test score publicly on their website, this could become a useful tool for clients and jobseekers in establishing the relative compliance of that agency.

Mandatory publication

The REC would certainly encourage members to be as transparent as possible in terms of making information about their business available to both potential clients and jobseekers; however our members have made it abundantly clear that mandatory publication of many of the items proposed in the Consultation document would simply not be practically or logistically possible to detail accurately, and furthermore would be open to abuse by less scrupulous agencies. 80% of members we surveyed on this did not believe that compulsory publication of the data proposed in the Consultation would be useful for either work-seekers or hirers.

Our members have given detailed feedback on the challenges to the publication of this data. For larger agencies, the **number of jobs/temporary places available** at any given time changes quite literally on a minute-to-minute

basis. For this reason alone, many agencies are unable to list all their current vacancies online. Such 'live' listings also do not reflect the reality of client demand and supply timescales in the industry.

It is not uncommon for clients in particularly lower paid, high volume sectors to call up an agency looking for a large number of workers (e.g. 40 warehouse operatives) for that same afternoon.

In such a situation, an agency is not going to be able to source that volume the same day by listing the vacancies online, particularly when one considers the extensive checks and processes they must go through to register a candidate compliantly before they can actually send them out on assignment. Their first step will be, therefore, to reach out to their existing database of vetted, registered candidates, and it is highly likely that all 40 positions would be filled from their existing candidate database. This is precisely what the client is paying the agency for: same day, vetted workers with proven experience and skills. If the agency is unable to meet the demands of the client, the client will, in all likelihood, look elsewhere.

Assuming the roles are all filled from the candidate database, at what point then could the agency accurately list the number vacancies on their website? They may have an on-going agreement with the client to supply warehouse operatives, and therefore keep an open listing with details of a particular site, expected shift pattern and pay rate, but the actual volume of placements available varies far too frequently for it to be listed accurately.

Similarly, the **number of work-seekers available** can vary hugely from day-to-day, depending both on the number of workers actually out on assignment versus waiting for new work, and on whether the work-seekers are registered with multiple agencies, as they often are. If one worker is registered with three agencies, can all three agencies claim that worker as a work-seeker that is available?

The **average length of time it takes to fill a vacant post** can again vary significantly depending on the type of post. A large agency covering multiple sectors from high-end engineering to high-volume construction labourers may take months to source an engineer with particular specialist skill set, but minutes to find twenty bricklayers. How does that agency calculate and list its average placement filling time, and how will jobseekers benefit from such averages?

Exactly the same variability parameters apply to **average length of placements**, which vary substantially between sectors, seasons and pay rates. Moreover, this particular item is in no way influenced by the agency, so we see no reason why employment agencies/businesses should be expected to list it publicly and thus be assessed on it. In addition, no other industry is required to provide such information.

We can't see a great deal of value to either jobseekers or clients in making it mandatory to list the **size, staff numbers and locations of an employment agency/business**. Higher staff numbers do not provide a guarantee of better customer service, nor does the fact that an agency has more locations than a competitor mean they are better placed to supply a given client, yet publishing such data might lead to such interpretations. Similarly, a sudden reduction in staff numbers or branch locations by an agency may be interpreted as a negative sign by clients, or spun to clients as such by competitors, when the reality may be that the employment agency/business has actually realised significant efficiency savings and is better placed than ever to supply those clients.

Such a listing also fails to take into account the diverse ways in which many agencies now operate. If, for example, an agency operates an onsite, managed service function for a selection of clients around the country, should those onsite locations be listed, even if they are not walk-in branches?

On **payroll errors**, there is no guarantee that these are the fault of an agency. Again if we look at an example in the lower paid sectors, a new migrant worker with a poor command of written English may simply misspell their name on an application form, which in turn generates a payroll failure down the line. HMRC themselves have relayed to us examples of payroll software programs where the 'name' fields have not been able to process the

length of the names of some migrant workers. Such errors may again lead to payroll failures, but are not the fault of the agency, and should not, therefore, be something they are assessed on publically.

We are also confident that the move to Real Time Information, with its emphasis on data accuracy, should see a dramatic decline in payroll submission errors and failures.

In terms of **equalities policies**, under the REC Code of Professional Practice, all agencies must ensure full compliance with the Equalities Act 2010, and we are confident that the recruitment industry is one of the most forward thinking in the UK when it comes to embracing candidate diversity.

Enforcement issues and potential for abuse

More broadly, were any of these items made mandatory to publish, we cannot see how the government would viably ensure a) that the data published is accurate, and b) enforce sanctions where it is found not to be, particularly bearing in mind that, including microbusinesses, there are 7,435 agencies in the UK with an annual turnover of over £250,000. Almost all of these pieces of information could be easily falsified, and short of the government mandating that all agencies share their candidate and vacancy databases in real time with a dedicated inspectorate (bearing in mind our concerns about publishing such data as listed above), the accuracy of the data could never be verified to the point where it would be of any use to either clients or work seekers.

Consumer feedback and reviews

Obtaining feedback from both candidates and clients is integral to agencies which want to improve their business practices. Many will regularly seek such feedback, and a lot of agencies already feature case studies and testimonials on their websites. However, were such reviews made mandatory, there would again be little to stop less scrupulous agencies from fabricating testimonials – this in turn would undermine the credibility of good agencies who publish genuinely positive feedback.

A “Trip Advisor” agency ratings system has been mooted as an alternative, with the suggestion being that if the information is supplied directly by individuals, be they work-seekers or hirers, to a third party site, the scope for fabrication will be reduced. Whilst this point is true, such a system is still open to both intentional abuse and unintentional negative consequences.

Were such a system to be made mandatory, there is a chance that less scrupulous businesses would deliberately falsify positive reviews to boost their rating, or even falsify negative reviews of competitor agencies to gain an advantage over them.

There is also a reasonable chance that candidates would fall short of true impartiality in their reviews of employment agencies and businesses, particularly in situations where they have not been successful in obtaining a job for which they have applied, even where such hiring decisions are out of the hands of the employment agency/business.

If we consider this sort of response in the context of a typical agency shortlist for a mid-level office administration role, where there may be three to four unsuccessful candidates to a single successful one, we could end up in a situation where agencies receive overwhelmingly negative candidate-side scores simply for doing what they are paid to do by clients: providing a strong, competitive shortlist of candidates where only one can succeed. This in turn could impact on an agency’s future ability to attract strong candidates, and thus on their client-side scores in the long run as well.

There are further complicating factors to such a mandatory ratings system when one considers the size and number of branches of many agencies. Would every individual branch of a large agency be eligible for an

individual profile and rating? Or might poor practice and a series of negative reviews from work seekers using a single branch of a 40-branch national agency impact on the overall score of that agency, even if the poor practice is entirely isolated to that branch? In either scenario, multi-branch agencies would have to put in place new management and administrative processes, and with them significant additional cost for potentially very little return.

It is also worth noting that the lowest paid sectors where work seekers would gain the most benefit from being better able to determine the agencies to avoid, are also the sectors with the highest proportions of migrant workers (whose English language skills may not be good enough for them to derive any benefit from written reviews) and lowest internet and computer access rates (preventing workers from accessing or submitting reviews of their own).

Community Communication

A further point to bear in mind is that natural market forces and word of mouth feedback play a very strong role in the agency sector. Among networks of jobseekers and local communities, the good agencies that pay well, on time and regularly have work available, become known very quickly, and job seekers will naturally apply to these agencies first. Similarly, both agencies and hirers who treat workers badly, quickly develop a reputation as such, and job seekers will by and large avoid them.

The Citizens Advice Bureau (CAB) certainly has a role to play here, as does Jobcentre Plus (JCP). Both are integrated into local communities and should be in a position, therefore, to gather human intelligence as to which are the good and which are the bad agencies. They should then be able to feed this back to new entrants to the community who may not be part of existing social networks, and thus not be privy to this sort of 'common knowledge'.

More formal collaboration between agencies and CAB/JCP is also something which should be strongly promoted. The REC is already leading on this, having renewed our Joint Agreement with Jobcentre Plus last year – an agreement that has data and intelligence sharing and promoting recruitment best practice at its heart. Helping JCP employees understand how best to use agencies and how to identify which are the best agencies is a big part of the collaborative work the REC is currently undertaking.

We believe that developing local preferred supplier lists of agencies, based on shared intelligence with other government departments and agencies (particularly the GLA), recruitment trade bodies and candidate feedback, would be a far more powerful tool in helping CAB and JCP employees recommend good agencies with confidence to local job seekers, and would do far more to ensure those job seekers get into work and avoid exploitation rather than a mandatory online consumer review system or a public dataset that can be easily falsified.

Other means of giving work-seekers confidence to use the recruitment sector

Our response has underlined in some detail the practical reasons why some of the proposed measures outlined in the consultation document are not workable. However, the REC is committed to working with government to explore other ways of achieving the fourth outcome of giving job seekers confidence to use the recruitment sector.

It is important to recognise that on-going progress is being made and that there is not a major 'problem' which needs to be addressed. As mentioned in the introduction, the 2012 TNS OnLineBus survey of British adults aged 16-64 shows that recruiters already have a professional image in the eyes of the majority of the British public with over three quarters of jobseekers who have used a recruitment agency (77 percent) agreeing that recruiters play an important role in helping people find jobs and 72 percent saying that they would use a recruiter again.

The REC will continue to track regular feedback from workers and employers and we are committed to working with government to continue enhancing perceptions and trust. Ensuring that organisations who are in regular contact with work seekers - such as Jobcentre Plus – have the necessary information to help individuals identify good recruitment agencies is one practical way forward. This process is already underway as part of the REC/DWP Partnership Agreement.

We are keen to explore with government other mechanisms for raising awareness amongst job-seekers. There are a number of previous and existing initiatives on which we can build. For example, the REC is regularly invited to speak at various jobs fairs and we have also worked with government to develop specific guidance aimed at overseas workers already in the UK.

Building trust will usually depend on the relationship developed between the individual recruitment consultants and work seekers. This is why the REC's work to professionalise and raise perceptions of the industry through a 'bottom-up' approach can play a pivotal role within this context. As part of this, a major priority for the REC is to continue developing the activities and reach of our Institute of Recruitment Professionals (IRP). This provides a huge opportunity to accelerate the progress that is already being made.

Question 13: Trade association codes of practice

Do you think trade association codes of practice help to maintain standards in the sector?

Yes

The REC firmly believes that trade association codes of practice help to maintain standards in the sector.

On a general note, the pivotal role that trade associations can play was explicitly referred to in the recent 'Heseltine Review' which received broad approval from government in the last Budget. In addition, the benefits of harnessing the contribution of trade associations are at the heart of the REC/DWP Partnership Agreement and were recognised by previous joint initiatives, such as the REC/DfE Quality Mark scheme for supply teaching agencies. This was a tangible example of government and a trade body working together to drive compliance and standards.

With regards to codes of practice, the underlying aim is to ensure that employment agencies/ businesses adhere to principles that promote and demonstrate a high level of ethical and professional standard of practice in the industry. The requirement to comply with a code of practice should result in employment agencies/ businesses conducting themselves in a manner that promotes public trust and confidence as well as compliance with legal and regulatory obligations.

Failure to adhere to a code of practice should result in appropriate disciplinary sanctions which strengthen the effectiveness of the code. For instance, under the REC Code of Professional Practice, any reported breaches of the Code are investigated under our complaints & disciplinary procedure. However serious cases may be referred to the Professional Standards Committee (PSC). The PSC comprises of members of the recruitment industry as well as representatives from the CBI and TUC. The PSC may reprimand or expel members, issue compliance orders or require inspections. Expulsions are publicised in the trade press and on the REC's website.

In addition, there is recognition of trade association codes of practice by the public sector where for instance, the Government Procurement Service makes reference to compliance with trade association codes of practice for vendor managed service providers in some of their medical frame work agreements.

For all the reasons stated above, trade association codes of practice help to maintain standards in the sector.

Question 14: Other non-regulatory tools for maintaining standards

What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

Notwithstanding the vital role codes of practice play in maintaining standards in the recruitment sector, other non-regulatory tools could be used to do the same, such as:

Compliance Tests

This is a means of assessing employment agencies/ businesses knowledge of the relevant industry legislation and the trade association's code of practice. The test must be taken and passed within a set period of time before membership to the trade association is granted or renewed. The REC has introduced a compliance test for all existing and new members.

Inspections carried out by the trade association

Inspections help to raise standards within the industry and promote employment agencies/ businesses as professional recruiters. Inspections are carried out to ensure that employment agencies/ businesses are compliant with legal requirements. Inspections entail reviewing contracts and policies, talking to a managing director and recruitment consultants and also reviewing work seeker and hirer files. The REC carries out inspections on a risk based basis and they give a clear indication of the employment agencies/ businesses' level of compliance. The REC provides support and guidance on areas that need improvement.

Enhanced Audits

An enhanced audit would be more of a detailed assessment of the employment agencies/ businesses processes in order to ensure that they have robust and ethical procedures in place. It is also a way of showing hirers and work seekers that the trade body of the recruitment industry has vetted its members for best practice and the highest professional standards. The employment agency/ business will be in a better position to win tenders with hirers particularly those that have strict policies and this will be more advantageous in heavily regulated sectors, such as healthcare and education.

Accreditation approved by government departments is a central aspect of the audit. It should be identifiable with a distinctive logo which sets them apart from other employment agencies/businesses. The areas in which the employment agency/ business will be inspected will mainly cover equal opportunities, data protection, safe guarding requirements, training and induction, complaints procedure, work seeker registration, overseas workers, temporary and permanent workers, payments to the work seeker, dealing with hirers, and contracts with hirers and work seekers. The REC has a product in place for our members called 'REC Audited' and feedback shows it clearly adds value to our members' businesses.

Using the supply chain to drive standards

An increasingly important part of the REC's work is to raise awareness amongst employers so that they can drive compliance and standards through their supply chain. Ensuring that businesses ask the right questions of their recruitment providers and insist on only working with agencies that can demonstrate a commitment to standards and compliance is one of the most effective 'non-regulatory' ways of maintaining and enhancing standards. This creates the crucial 'push' factor to complement the 'pull' factor that is inherent in the work of trade associations like the REC.

Engaging employers around a 'good recruitment' agenda is something the REC is already discussing with leading business organisations and trade association across a range of sectors. We would welcome the opportunity to discuss ways in which the Department for Business, Innovation & Skills could help support this agenda as part of the non-regulatory approach to raising standards.

Question 15: Government enforcement

Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Yes

REC members have been almost unanimous in their view that the Employment Agency Standards Inspectorate (EASI) should remain as the primary means of enforcing recruitment sector legislation. 88% of members who responded to our survey did not want to see EASI scrapped. Anecdotal feedback from many members in our Drivers and Industrial sectors is that they would actually like to see an increase in the number of EASI inspectors.

There are a number of reasons REC members hold this view. The feedback is that shifting to a system where enforcement is via employment tribunal only will impact negatively on both workers and compliant agencies.

It is important to note that workers can already bring claims in employment tribunals in respect of the Working Time Regulations 1998 (e.g. failure to pay holiday pay), National Minimum Wage legislation, parts of the Employment Rights Act 1996 (e.g. protection from unlawful deduction from wages), unlawful discrimination under the Equality Act 2010 or the Agency Workers Regulations 2010. Temporary workers who are 'employees' on Pay Between Assignments or overarching employment contracts currently have the above rights as well as those that specifically relate to employees. However, despite these existing rights, the number of tribunal claims actually brought by agency workers is low.

Members recognise that the tribunal mechanism can be complex and difficult to navigate, particularly for lower skilled workers, which may serve as a disincentive to bring a tribunal claim in the first place. Where workers are in exploitative situations (perhaps debt bonded or facing physical threats) few are likely to bring a tribunal claim for fear of repercussions, and of losing work altogether. Where cases are brought, tribunals are not always equipped to understand the different employment relationships and supply models that have evolved in the agency sector and are therefore unlikely to deliver swift resolutions and clarity for workers, hirers and agencies. Furthermore, we recognise that the tribunal system is already overstretched and an influx of complex employment law cases may push it to breaking point.

Compliant REC members are clear that where an employment business is found to be breaching National Minimum Wage (NMW) laws, or failing to pay for holidays, they want to see much stronger enforcement action against that non-compliant business than an employment tribunal is likely to bring. There is a fear that businesses which are intentionally using non-compliant supply, tax and payment models would be able to just pay a civil fine and continue trading.

Another risk of shifting to a tribunal only system is that it could see an increase in cases brought by workers who genuinely think they have been wronged, but don't fully understand the supply model under which they have been engaged. If the tribunal finds that the model is fully compliant (as with the recent tribunal on AWR pay between assignments contracts), that worker will end up losing both the case and, once the new charges for employment tribunals are introduced later this year, a significant sum of money. Speculative tribunal claims are also a risk to agencies in terms of increased administrative and cost burden.

Scrapping EASI and moving to a purely civil, employment tribunal enforcement regime would also leave agencies and clients with no recourse to report grievances against other businesses. Currently if a client has a complaint or issue with an agency, or one agency becomes aware of non-compliance at another, they can report these issues to EASI and EASI can take enforcement action as appropriate. Without EASI, there would be no clear mechanism for businesses outside of the GLA regulated sectors to report breaches of recruitment industry regulation.

We therefore strongly advocate preserving the current Employment Agency Standards Inspectorate and consulting further on how to improve its intelligence gathering and enforcement strategy to ensure a focus on the worst breaches of recruitment industry legislation.

Question 16: Prohibition orders

Do you think that prohibition orders should be included in the new enforcement regime?

Yes

The REC's view is that prohibition orders should be included in the new enforcement regime. They are currently used in the most severe cases of non-compliance. The ability to exclude unfit persons who engage in unscrupulous practices which tarnish the reputation of the recruitment sector is a powerful tool.

Question 17: Employment tribunals

Do you think individuals should be able to enforce their rights at an Employment Tribunal?

It is unfortunate that question 17 has been posed in a way which is likely to mislead respondents to this Consultation.

Paragraph 7.22 of the Consultation document sets out the following:

7.22 The recruitment sector currently operates under two enforcement regimes: a criminal, Government enforcement regime under the Employment Agencies Act 1973 and the Conduct Regulations and an individual, civil regime under the Agency Workers Regulations 2010. The two regimes mean that temporary workers can only personally seek redress in Employment Tribunals for those rights that are part of the Agency Workers Regulations and not those in the Conduct Regulations.

7.23

We are seeking views on whether individuals should be able to enforce their own rights at Employment Tribunals, bringing the new recruitment sector legislation in line with the Agency Workers Regulations.

Paragraph 7.22 is incorrect and gives a misleading picture of the current enforcement regime and rights available to individuals.

Firstly it should be noted that the Regulations do provide a specific civil remedy for 'work-seekers' to seek personal redress and indeed for hirers where an employment agency or employment business fails to comply with its obligations under the Regulations:

30 Civil liability

(1) Without prejudice to—

(a) any right of action; and

(b) any defence,

which exists or may be available apart from the provisions of the Act and these Regulations, contravention of, or failure to comply with, any of the provisions of the Act or of these Regulations by an agency or employment business shall, so far as it causes damage, be actionable.

(2) *In this regulation, "damage" includes the death of, or injury to, any person (including any disease and any impairment of that person's physical or mental condition).¹*

The DTI Guidance to the Regulations reflects the fact that individuals can enforce their rights individually:

Regulation 30(1) provides that if an employment agency or employment business fails to comply with any of the provisions of either the Employment Agencies Act 1973 or these Regulations, which causes damage or loss to another person, that person can sue the agency or employment business for damages arising from a breach of the Employment Agencies Act or these Regulations....

It is also important to remember that a breach of these Regulations is also actionable by the Department of Trade and Industry (DTI) as a criminal offence and may be prosecuted by the DTI through the criminal courts.²

So it is not correct to say that temporary workers cannot seek redress in respect of the Regulations.

Secondly it should be noted that where an employment business engages an individual it is required to state whether the individual will be engaged under a contract for services or a contract of employment or contract of apprenticeship. In most cases therefore, temporary workers will have the benefit of 'worker rights' and in some cases full employment rights if they are engaged under a contract of employment.

Worker rights that temporary workers have the benefit of, and which are actionable in an Employment Tribunal include:

- The right to receive National Minimum Wage pursuant to the National Minimum Wage Act 1998 and National Minimum Wage Regulations 1999;
- The right not to suffer unlawful deduction from wages pursuant to the Employment Rights Act 1996;
- Working time rights (including the right to receive paid statutory holiday) pursuant to the Working Time Regulations 1998; and
- Protection from unlawful discrimination pursuant to the Equality Act 2010.

Additionally, agency workers who are engaged under a contract of employment also have the full benefit of employment rights which are actionable in an employment tribunal.

Given that the Consultation is examining ways in which the burden for business can be reduced, it is not necessary to add remedies. The Consultation does not identify why the ability to bring the various claims above does not provide sufficient protection for individuals.

¹ Regulation 30 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003

² DTI Guidance on the Conduct of Employment Agencies and Employment Businesses Regulations 2003

Question 18: Guidance for individuals

What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Individuals need to have guidance made available to them which allows them to understand their rights under this and any other applicable employment legislation. It would also be helpful if government and other consumer resources highlighted the presence of trade bodies such as the REC and encourages individuals to use employment agencies and employment businesses that are members of trade bodies. Individuals would then have the benefit of relying on the codes of practice to which those employment agencies and businesses are subject and access to a separate complaints procedure that individuals can use to resolve issues in the event of non-compliance.

Question 19: Publishing details of enforcement activity

Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

The REC firmly supports this proposal and our recent response to the GLA's consultation on their inspection and application processes advocated a similarly strong stance on publically naming non-compliant businesses. We did include a number of important caveats in our response to the GLA, and they apply equally to this proposal.

1. The first is the 'right to correct'. If BIS does discover non-compliance, the agency in question must be formally presented with all evidence of said non-compliance and given a set period in which to correct it (this could include repaying underpaid or withheld wages in full). If they comply within the set period, the details of the non-compliance should not be published, and the business should be allowed to continue trading. If they fail to make the corrections within the set period, then the full detail of the investigation should be made public, including the name of the employment agency/business in question, and, depending on the severity of the non-compliance, the business owner should be issued with a Prohibition Order.
2. The second caveat is around proactive information sharing on the part of the agency. If, for example, a large multi-branch agency suspects that there is some isolated non-compliance within a single branch of their business and they must have the confidence to proactively approach BIS with this information with a view to collaborating on a targeted enforcement action. An agency can only gain this confidence if they receive assurances that BIS will not take the information on some isolated non-compliance and use it to publicly reprimand the agency as a whole.

We detail in full below our suggested enforcement strategy for BIS and EASI going forward. It is very much aligned with the suggestion we made to the GLA.

Where BIS receives intelligence about non-compliance at an employment business/agency we would advocate the following process:

Following all inspections:

If the inspection does reveal non-compliance, we would expect the employment business/agency to have a chance to explain how the non-compliance may have come about via a formal meeting.

We would generally expect one of two outcomes from such a meeting: either the non-compliance will be demonstrably isolated and correctable and/or unintentional, or it will become apparent that the non-compliance is intentional and systemic across the business (i.e. a business decision to adopt a non-compliance process has been taken). A more detailed spectrum of non-compliance could clearly be developed in future.

Where serious non-compliance is found (e.g. non- or underpayment of wages):

If it is a demonstrably isolated incident in the context of a wider business (e.g. a rogue branch manager or disguised indentured labour relating to a small number of workers), BIS would fully detail the non-compliance and grant a set period in which the labour provider must correct it.

If the corrections are made within the set period, to the satisfaction of BIS, no details should be released publicly, but the employment business/agency should be flagged as high risk, with any future intelligence of further non-compliance prioritised by BIS inspectors.

If the corrections are not made within the set period, the non-compliance and all details of the business should be publicised on a BIS database.

If the non-compliance is found to be serious (equivalent to breaching critical GLA licensing standards) and systemic or clearly intentional across the business, and cannot be satisfactorily explained by the labour provider at a formal meeting with the GLA, the enforcement action and full details of the business should be publicised immediately and permanently by BIS.

Where more minor non-compliance is found (e.g. minor H&S breaches, process errors that do not impact on pay):

In this situation, if the non-compliance is demonstrably isolated or unintentional (e.g. a new business not fully up to speed with all the legislation and regulation in the sector), the emphasis should be on corrective action. A more generous set period should be agreed, with BIS signposting the agency to useful sources and products that could help them improve their compliance. If corrected within a set period, no further action should be taken by BIS.

If the non-compliance is still not corrected within the set period, BIS should then take enforcement action and publish details of the agency /business as before.

Question 20: Record keeping

Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Please see below.

Question 21: Specifics of record keeping

What records do you think employment agencies and employment businesses should be required to keep relating to:

- a) Work seekers?*
- b) Hirers?*
- c) Other employment agencies/employment businesses?*

Yes

In order to allow the Employment Agencies Standards Inspectorate to maintain its function it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements, albeit that those requirements will be limited to the four outcomes identified in the Consultation. The need to retain both work seeker and client records should be limited to no more than what is required to evidence that the employment agency /employment business has complied with the new (slimmed down) legislation.

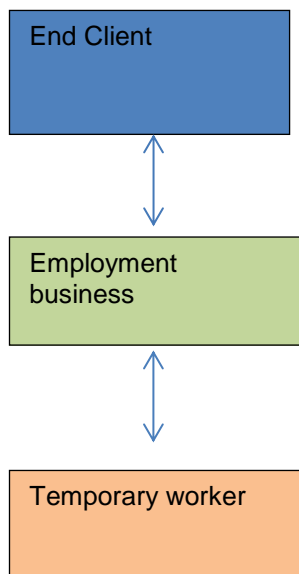
Annex 1

Examples of contractual arrangements in the recruitment supply chain

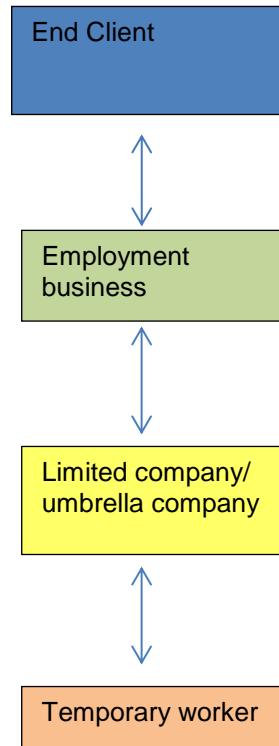
The REC's view is that it is crucial for the new regulations to reflect the reality of the current recruitment market, in particular with regards to the different intermediaries that operate within it.

Example 1 below is the traditional 'tripartite' model. The other three examples illustrate the different supply models that now exist and which need to be taken into account when developing a new regulatory framework for the industry.

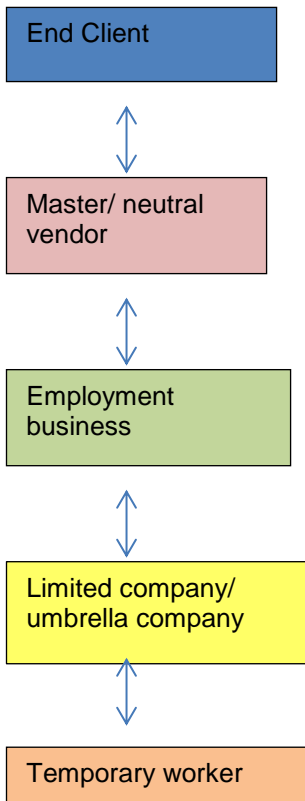
Example 1



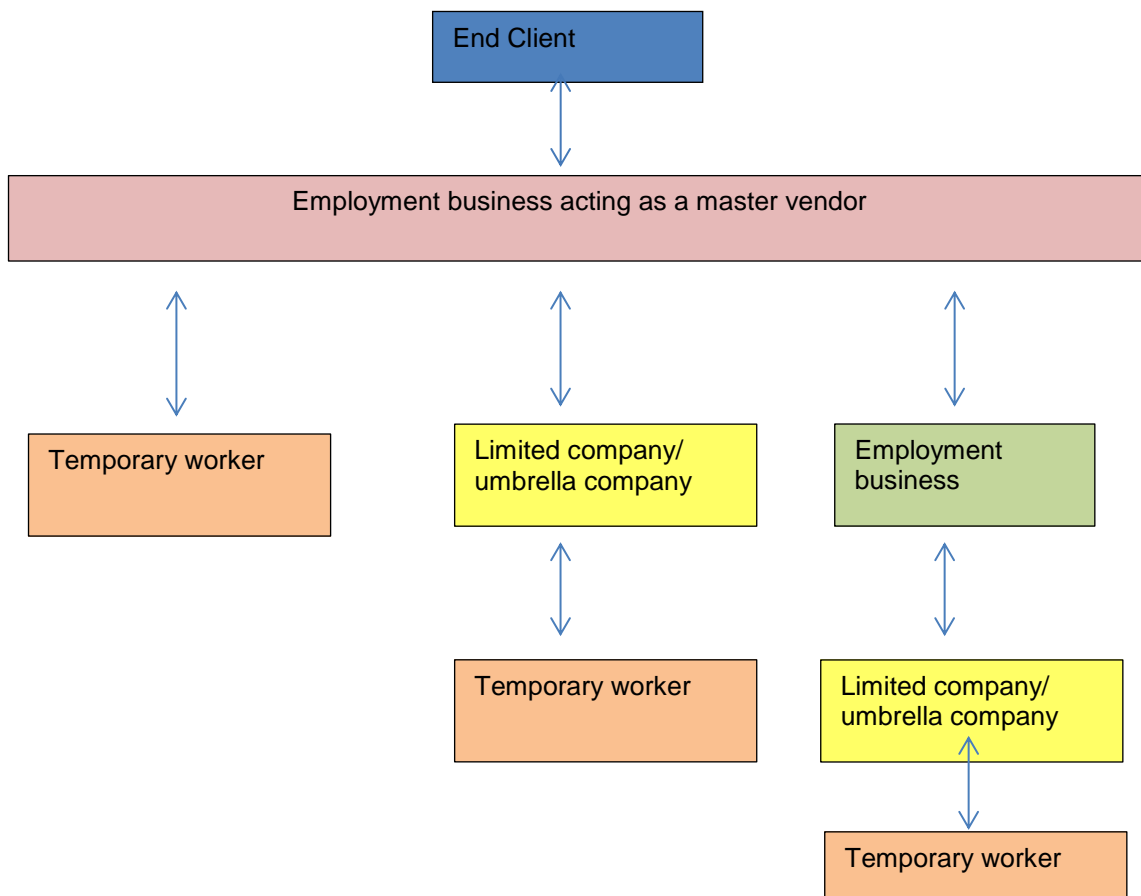
Example 2



Example 3



Example 4



Talent Management

Your details

Name:

Organisation (if applicable):

Address: |

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers

Agencies should be free to charge, market forces determine customer use.

- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No Some 3/4

b) Please give reasons for your answer.

No reason why Employment Businesses should be prevented from charging - they don't HAVE to.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

Reconsidering 'liberation' of service industry as opposed to 'limitation', allow markets decide. Government could use simply "abuse" of freedom legislation, in a free market economy, to maintain order.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

As with all services there is a service charge - employment is no different - why should it be? In all circumstances. If an agency wants to attract more users, they offer themselves at little or no cost. Dating agencies specialise and aim themselves at specific markets and tailor services accordingly.

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

There is acute public confusion over the definition of 'employment agency' and further confusion between 'agency' & 'business'. Subtleties of being able to charge work seekers could be overcome by allowing charges to be made and market forces allow registration a matter of choice.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

I can see no reason for a 'cooling off' period in signing with an agency for work finding services, anymore than any other service. Normal trading legislation applies and there is adequate redress where there's failure to provide what is reasonably expected in terms of service as represented. There has never before been freedom of access to such a wide ranging, vast information resource as now, on the Internet. This enables ample opportunity to make an informed choice and negates the need for legislation to accommodate subsequent change of heart.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

N/A - See above

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

Definitely - stipulation ought and could appear prominently as to who pays who - just as smoking health warnings have a statutory prominence. Standard text in minimum size, format and prominence.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

N/A - we are an 'agency'

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

N/A - As 'agency'

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

There are no valid reasons for publication of commercial data, anymore that for any other business. Estate agents, dating agencies, acting schools, children's stage schools - etc. Who registers and who gets work are not consistent for all age groups or talents. Note, even the BBC don't have open disclosure as to payments.

Question 11: What information do you think would be of most interest to:

a) work-seekers

- detailed knowledge of the effort that is committed in resources toward them finding work. This can be determined in a number of ways. Staff, time established, success stories, visiting in person. Precisely, what effort is being made, ranging from a 'passive do nothing' list on a web site, to a fully staffed office of qualified personnel engaged in successfully finding work. What appears under the mandatory heading 'how we find work'.

b) hirers

As above, Both parties want the same information - as they are looking for eachother via an agent.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

Compulsion by Government is primarily a last resort to preserve the health and safety of it's people. It is a very blunt and inappropriate tool of force, to control interaction by one party offering work finding services to another in a free and open economy. Informed decisions using freely available resources provide for the development of freedom of choice. This surely is the preferred option in developed society.

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

Trade Associations tend to be based on egotistical policy and centred on the interests of members rather than the 'public'. They simply do not work these days and there are many examples. The Association of Model Agents as 16 or so members and there are in excess of 900 model agents in the UK.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response

Clear labelling as to whether an agency or business looks for work on behalf of those it represents. This could be all detailed in a simple 'charter' wherein it is not legal to use the term 'agency' for the first year of business and thereafter, unless there is a consistent and successful effort to find work. Use of this business heading would be subject to BIS, Trading Standards legislation governing business representation supported by penalties of heavy fines.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Excepting non payment of workers. In this instance there should be BIS recourse.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

Unsuitable persons ought to be banned on a scale of time / offence.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Online access - as now.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

Name and shame.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

Regulations exist now.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

As now - there are statutory requirements existing - these are adequate and regularly inspected.

b) hirers?

c) other employment agencies/employment businesses?

Graham Phillips



Recruitment Sector Legislation - Consultation on reforming the regulatory framework for employment agencies and employment businesses: Response form

Alternatively, you can email, post or fax this completed response form to at the Department for Business, Innovation and Skills (BIS)

Postal Address:

Caroline Daly
3rd Floor Abbey 1
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **11 April 2013**

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- X Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: GRAHAM PHILLIPS

Organisation (if applicable):

Address:

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
- Central government
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- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

*The second and fourth outcomes are fine. However, I would amend the first outcome to read "Employment businesses and employment agencies are prohibited from charging fees to work-seekers".
Also, I would amend the third outcome to read "The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are prohibited"*

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

In addition, (as stated in my response to Question 1) to facilitate a consistent approach I do not agree that agencies should be allowed to charge fees in the entertainment and modelling sector.

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

No comment.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

As stated in my responses to Questions 1 and 3 I do not support the charging of fees.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

Self regulation only goes so far and therefore, to be on the safe side, I am in favour of legislation here.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

No comment.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

No comment.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

Having transparency here is helpful.

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

I agree with the ten bullet points contained in paragraph 7.17.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

A voluntary approach only goes so far and therefore, to be on the safe side, I favour a compulsory approach here.

c) If you answered yes, what information do you think it should be compulsory to publish?

The information listed in ten bullet points contained in paragraph 7.17.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

Possibly.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

No comment.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Self regulation only goes so far and therefore, to be on the safe side, I am in favour of legislation here.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

There needs to be cutting edge in the new enforcement regime.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

It seems appropriate to allow this.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

I would support an approach that assumes that individuals already have minimal awareness of their rights. It is better to err on the side of telling people what they may already know, than to omit to tell them what you assume they know (but they may not actually know).

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

It seems sensible to do this.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

It would be surprising if such organisations do not already keep such records. However, to be on the safe side it is appropriate for such organisations to be required to do so.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

No comment.

b) hirers?

No comment.

c) other employment agencies/employment businesses?

No comment.

BECTU



Response to BIS consultation on reforming the regulatory framework for employment agencies and businesses

April 2013

The Broadcasting Entertainment Cinematograph and Theatre Union has almost 25,000 members in the UK working in the media and entertainment sector in a wide range of occupational categories. Amongst these are background artistes in the film, TV, and commercials production sector.

For many years our Film Artistes Association section has been campaigning against the right of agencies and directories catering for background artistes to charge “up-front” fees for their services. This campaign has been prompted by the blatant abuse of the exemption allowed in the entertainment industry (Sched. 3 2003 Regulations) which permits agents to charge fees to a range of specified workers.

This exemption has led to gross exploitation of tens of thousands of members of the public, who are duped into paying up-front fees to agencies that exist solely for the purpose of collecting those fees, with no realistic chance of those paying to register being given any engagements to work.

In the case of our background artiste members, who have the relevant skills and experience to perform the work competently, agencies will often defer taking the fee up-front, and will deduct it from the first payment from any work in addition to standard commission.

Many of our members find that they have to register with multiple agencies, depending on the genres they seek engagements in, but will often be given only one engagement a year by each agency, the payment for which is wholly or partly wiped out by deduction of the registration fee.

In BECTU’s view this practice of allocating each registered work-seeker with just one day per year in order to recover the registration fee is profoundly cynical, and illustrates perfectly why the background artistes’ sector should be treated exactly the same as the rest of the economy, where agencies, directories, and employment businesses are not allowed to levy fees on work-seekers.

We have views on many of the questions posed in the consultation, and believe strongly that proper licensing of agents, employment businesses, and directories is essential. However, the charging of fees is by far the single most important issue for our members who deal with agencies in their capacity as background artistes. It should be noted that we do not represent actors, and defer to our colleagues in British Actors’ Equity in respect of workers defined as such.

However, whilst the problem of up-front fees among our members is currently confined to background artistes, we do not believe that the craft grades in Schedule 3 of the Regulations, many of whom are in membership of BECTU, should be covered by the exemption from a ban on fees for work-seekers either. The guiding rule in the entertainment industry, as elsewhere, should be: “No work, no fee”.

1. Do you agree with the four outcomes that the Government believe should be achieved by the recruitment sector legislation (Employment businesses and employment agencies are restricted from charging fees to work-seekers; there is clarity on who is responsible for paying temporary workers for the work they have done; the contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable ; work-seekers have the confidence to use the recruitment sector and are able to assert their rights.)

Yes we agree with the principles, and would give greatest weight to the first. There is no reason for the sector of the entertainment industry where our members work to be treated differently from the rest of the population by allowing agencies to charge work-seekers fees.

2. Are there any other outcomes that you think should be achieved by the new legislation?

Yes, there are three areas where we would like to see improvements. Firstly, work-seekers should have complete clarity on the contracts and agreements they are asked to enter, as well as terms, conditions, and commission rates.

Secondly, we believe that better enforcement of the statute and regulations should be a crucial outcome of this consultative process. Partly through lack of resources, and partly due to the complexity of the existing regulations, the Employment Agencies Standards Inspectorate appears to struggle with the multitude of disreputable, exploitative, and near-criminal rogue agents in the background artiste sector of the entertainment industry.

Thirdly, in our sector, there should be a clear and well-policed ban on agencies imposing on work-seekers, as a condition of being registered, an obligation to make arrangements with third-party businesses where fees are charged for services like photography, training, or directory listing. Agencies should be obliged to declare any business or ownership link to such third parties to whom work-seekers are referred whether or not this is a condition of registration.

3. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Absolutely not. In the sector of the entertainment industry where we have members, the ability to charge fees, with no guarantee of work, has led to blatant abuse by rogue agents. Dozens of agencies have been established by operators whose business model is based on taking fees from gullible or uninformed members of the public, or from our members who are forced to engage in multiple registrations. There is often no intention on the part of the agency to identify and allocate opportunities for work, and in addition to the up-front fee, individuals registering with agencies are often duped or coerced into buying secondary services, particularly photography, at inflated prices.

Whilst the practice of agencies taking commission from the earnings of workers on their books is long-established in the entertainment industry, we see no reason why this sector cannot function in the same way as the rest of the economy, with agency costs being funded by hirers, not workers.

We support the basic principle that work-seekers should not pay fees, especially in a sector where agencies ostensibly offering opportunities to work in front of camera, are simply exploiting the naivety of vulnerable workers. This should not be allowed in the entertainment sector, and should

not be extended to other industries.

4. Do you think the current definition of ‘employment agency’ as set out in section 13 of the Employment Agencies Act 1973 could be improved?

The experience of our background artiste members suggests that any entity purporting to offer opportunities of work should be defined as an employment agency, licensed, and regulated. Otherwise various forms of abuse and exploitation are inevitable, whether or not fees are charged, and web-based services offering assistance to work-seekers hoping for an entry into the entertainment sector are already a major problem.

In the background artistes’ area of work there is no equivalent to the actors’ Spotlight directory, and therefore no need to differentiate between agencies and employment businesses on one hand, and directories on the other.

Although directories, with no on-going interest in the relationship between worker and engager, appear different from agencies, there is always a possibility that they develop undeclared exclusive relationships with engagers, thus becoming gatekeepers to employment. To obviate the risk of this occurring, directories should continue to be classified as employment agencies.

5 and 6. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Engagements for background artistes are usually short-term, so the existence of a cooling-off period is not as important in that sector, as in others, but the principle is correct, and we believe that there should be a harmonised cooling off period of 30 days.

7. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

It is essential that work-seekers have the clearest information possible about the identity of the party who is due to pay them, and a legally enforceable right to receive the payment. Deductions, for example National Insurance Contributions, should be clearly annotated with a statement as to whether the agency, business, or hirer has made the relevant remittance.

8. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

This situation is uncommon among background artistes, but we agree with the TUC submission on this point.

9. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

This situation is uncommon among background artistes, but we agree with the TUC submission on this point.

10., 11, and 13. Do you think employment agencies and businesses should publish information

about their business? What information do you think would be of most interest to work-seekers and hirers? Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Absolutely. Work seekers should be entitled to know: how many others are registered with a particular agency or business; how much work has been allocated in a given time-frame (a year?) by the entity; the number of separate engagements awarded by the entity; a list of potential hirers who have used the agency in a given time frame; details of fees and commission deductions; any other deductions (if permitted); There should be a legal obligation to provide this information.

13. Do you think trade association codes of practice help to maintain standards in the sector?

In our part of the entertainment industry the trade associations have been completely ineffective in establishing and policing professional and ethical standards. The structures of the two main bodies do not allow for penalties or sanctions to be imposed on members for poor conduct or breaches of standards, and the sector would be incapable of self-regulation if the current regulatory regime were relaxed.

This review of the statute and regulations is an ideal opportunity to introduce a proper legally-based licensing regime, enforced by a government body. Without this, the gross exploitation of thousands of people will continue unabated.

14. What other non-regulatory tools could be used to maintain standards in the recruitment sector?

We would prefer any improved regulation of employment agencies and businesses in our sector to be enacted through statute. However, there may be arrangements to draw on, for instance the Gangmasters' Licensing Authority, and the National Minimum Wage enforcement unit of HMRC.

15. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

Emphatically yes. Rigorous government enforcement is probably the only effective deterrent to rogue operators in a sector where vast earnings can be made from vulnerable workers. The enforcing agency should have the power to recover unpaid fees, and to fine agencies that breach the regulations.

16. Do you think that Prohibition Orders should be included in the new enforcement regime?

Yes, prohibition orders would be a welcome weapon to deal with operators who repeatedly flout the regulations. It is clear that some rogue agencies believe the current enforcer, EAS, is unable to take effective action against them, and operators continue to mislead and exploit work-seekers even after their wayward behaviour is drawn to their attention.

We also believe that there should be a statutory regime of fines which could be imposed on operators who infringe the regulations. Currently, rogue agents tend to shrug off the warnings issued by EASI, and the enforcer needs to have the appropriate statutory status to allow summary imposition of financial penalties.

17. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

With the introduction of fees for Tribunals, and the relatively short-term and low-paid nature of engagements for background artistes, it is unlikely that this right would be invoked. The introduction of this right should not be used as an excuse to further cut the resources of the government enforcer.

18. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Agencies should be legally obliged to issue work-seekers with a government-authored document outlining the basic regulations, and informing them of the channels by which they can seek the support of the government enforcer.

This document should be prominently displayed on the website of any agent, employment business, or directory, together with contact details for the government enforcer. Currently we believe the vast majority of work-seekers registering with agencies are completely unaware of their rights, and the method of redress.

19. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes, every investigation should be documented on a public website, with the name of the entity concerned, and details of any fine, sanction, prohibition order, or guidance, issued by the government enforcer. If access to Employment Tribunals is introduced, there should also be information about successful cases against the agency concerned.

20. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes, in particular, there should be a record of work-seekers being fully informed about terms, conditions, fees, and other aspects of their relationship with the agency, as well as evidence that they have been informed of their rights and ability to complain.

21. What records do you think employment agencies and employment businesses should be required to keep relating to: work-seekers, hirers, other employment agencies/employment businesses?

All data referred to in S.29 and Schedule 4 of the current regulations should be maintained, and be accessible to work-seekers and the government enforcer.

T.Lennon 2013.04.11

Recruitment Sector Legislation - Consultation on reforming the regulatory framework for employment agencies and employment businesses: Response form

A copy of the consultation document can be found at:

<https://www.gov.uk/government/publications/>

You can complete your response online through Survey Monkey:

<https://www.surveymonkey.com/s/9B5BTB2>

Alternatively, you can email, post or fax this completed response form to at the Department for Business, Innovation and Skills (BIS)

Email: recruitment.sector@bis.gsi.gov.uk

Postal Address:

Caroline Daly
3rd Floor Abbey 1
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

Tel: 0207-215 8184

Fax: 0207-215 6414

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The closing date for this consultation is: **11 April 2013**

Confidentiality & Data Protection

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- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name: Dawn Lock

Organisation (if applicable): Volt Europe Limited

Address: Betchworth House, 57 – 65 Station Road, Redhill, Surrey, RH1 1DL

Telephone: 01737 774 100

Fax: 01737 772 949

Please tick the boxes below that best describe you as a respondent to this consultation.

- Business representative organisation/trade body
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- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes No

b) Please give reasons for your answer.

We agree that these are all important matters for the recruitment industry, but we do not wholly agree that all of these are matters which it is necessary for the government to legislate.

Point 1 – We agree that it remains appropriate for employment agencies and businesses to be restricted from charging fees to work-seekers. This is already the position for our sector of the recruitment industry.

Point 2 – We don't disagree that it is important that temporary workers have clarity as to who pays them but in practise we don't see this as an issue. In consultation with our staff, we could not identify a single incident of a temporary worker asking who would pay them or expressing any confusion in this regard. In a point that we will return to later in this document, we recruit principally for professional consultants, many of whom are career contractors. These are highly skilled individuals who are perfectly capable of understanding the payment terms detailed in the contract they agree with the employment agency or business.

Point 3 – While some people undoubtedly use temporary work as a route to finding permanent work, we do not believe this is representative of the professional consultants we work with who are typically career contractors. The people we source are not looking for permanent jobs and our clients are not offering permanent jobs because the nature of their needs are short term and typically project specific. So far in 2013, 0.005% of our temporary workers have taken permanent jobs with the client.

This comment made, we do agree that where people are seeking permanent work, they should not be prevented from doing so. However, the risks and requirements are very different in different parts of the industry. Where skills are in good supply and if one temporary worker leaves they can easily be replaced (such as with low skilled administrative workers), shorter notice periods are appropriate. By contrast, where skills are in very short supply and the worker has been brought in to manage a project on a short term basis, for example, if that temporary worker leaves, not only would that have a serious impact on the client's project, it will also be very

hard and sometimes impossible to find another available temporary worker with the appropriate skill set. In these circumstances, a longer notice period is appropriate and in some cases a fixed term contract without early termination provisions is appropriate. It is of course, appropriate in both cases, that the termination provisions are clearly stated in the contract so that all parties are aware of their rights.

Moving on to temp to perm fees; we are not in favour of any test based upon “reasonableness”. This is a subjective legal test, fraught with uncertainty and likely to mar the industry with more litigation. We would agree that no temp to perm fee should be unfair, but that possibility is already legislated for in the Unfair Contract Terms Act and does not need to be restated here.

We also wish to highlight what this fee represents. From a client perspective, it is easy for there to be a misconception that temporary workers are provided and then paid, and that is all the agency does. It is easy to see how this misconception arises because these are typically the only aspects of agency involvement that the agency sees. But that misconception hides the gamut of work that goes on behind the scenes.

From the agency’s perspective, there is a big investment at the beginning of the process including, shortlisting candidates, contacting candidates to assess their interest, putting forward candidates to the client, arranging interviews, coaching candidates for interviews, conducting client screening and background checks, establishing legality to work, negotiating terms with the client and the successful candidate, communicating with unsuccessful candidates, creating contracts with both client and candidate, executing contracts with both client and candidate, confirming invoicing and bank details and organising any induction processes.

Having placed the candidate the agency then has an ongoing role in ensuring timesheets are submitted and authorised, managing invoicing, payment, credit control, tracking and reporting expenses and ensuring the same are authorised, managing holiday requests and sickness absence, soliciting AWR data where appropriate and updating contracts to reflect any necessary changes, dealing with grievances and disciplinary matters.

If a temporary worker provides services to the client for only a short period and then goes permanent with the client and if the agency is not appropriately recompensed for that, as part of a temp to perm fee, that could result in the agency making a loss on the placement. Temp to perm fees are therefore crucial to the continuing success of recruitment industry.

If the government feels it is necessary to retain some kind of restriction based on the time delivering services, as is currently detailed in Regulation 10 of the Conduct Regulations, we would strongly support a complete overhaul of the language which is verbose, opaque and incomprehensible to most lawyers, let alone lay persons.

In general, however, we feel the market regulates this matter. In our experience most clients are commercially savvy and capable of driving an exceptionally competitive bargain with employment businesses as it is. To the extent we feel regulation is necessary, we believe this should be limited to requiring the parties to

agree such terms in a contract between the parties so that everyone clearly understands their rights and responsibilities.

Point 4 – In general we believe there is confidence in the market sector currently and this is not something that needs to be addressed. We also believe that the current legislative position allows workers to adequately assert their rights and we do not believe there is a case for major change in this area.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes **No**

b) If yes, please give details on what these are.

The current legislation, while flawed, crucially understands (via the opt out process), that there is a difference between a low paid, low skilled worker and a highly paid, highly skilled professional consultant. The latter group are obviously not vulnerable, are engaged in business on their own account and have the option to opt out of the protection of the legislation. Those who opt out will typically be gaining tax efficiencies under the IR35 legislation, so the action does not result in a cessation of rights without other benefits. And in the past year within our company, more than 99% of all those temporary workers who were eligible to opt out, did opt out. It is overwhelmingly the preferred option.

So in the first instance, our position is that the new legislation, as is the case with the current legislation, should not apply to professional consultants.

In our view this can be most easily achieved by excluding professional consultants, wholesale, from the new legislation. The Agency Workers Regulations could be used as a blue print for this exercise given that is legislation already in place within the industry which is now reasonably well embedded and understood. The new legislation could even piggy back off the AWR so that an agency worker would automatically gain the protection of the legislation and a worker who was in business on his or her own account and not an agency worker, would also automatically not gain the protection of the legislation.

Were the government to take the view that this may result in some workers being excluded from appropriate rights, which we do not believe is the case, then a reverse of the current position could be retained – workers that wished to, could opt in. If nothing else this would ensure that the administrative burden and delays caused in executing opt out documents would be almost entirely removed because the numbers who would then need to complete such declarations (based on our current figures) would be 1% of the current quantity.

Separately, it would be useful if the new legislation addressed business sectors that have developed since the 1973 Act. For example, umbrella companies are a concept that have evolved since this time. While the term is in common parlance in the industry, it is not defined in law, with the consequence that a wide variety of companies offering very different services, describe themselves as umbrellas. This creates unwelcome confusion with temporary workers. If a definition were introduced, this would not stifle the development of different services but would

allow temporary workers to know that “umbrella company” always meant the same thing.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

n/a

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

b) Please give reasons for your answer.

In line with our comments above, we feel it would be appropriate to clarify, either within the definition or by exclusion, which types of business were not considered to be employment agencies. As the industry has evolved we have seen the growth (amongst others) of job boards and social media platforms – both of which serve a vital function in the recruitment industry but neither of which were considered when the 1973 Act was introduced. It is important that all parties in the chain understand whether or not these types of service fall inside or outside of this definition and at the moment, there is room for debate on this point.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

Not applicable. Our section of the recruitment industry does not charge fees.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

As outlined above in our answer to Question 1, we don't believe this is necessary because we don't believe there is currently any confusion.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

It should be made clear that requiring a temporary worker to work a contractually agreed notice period is not a penalty.

There should also be express provision for the agreement of fixed term contracts for professional contractors, on the assumption that professional contractors remain within the scope of the new legislation.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

b) Please give reasons for your answer.

We have stated in our answer to Question 1, our reasons for believing that retaining temp to perm fee rights is absolutely vital to the industry and also our reasons for re-drafting this part of the language of Regulation 10.

As well as overhauling the language covering temp to perm fees, we would also recommend a wholesale change to the extended hire period provisions. We have no issue with clients having this option if they wish it, but we are strongly opposed to it being mandatory. In general clients do not understand why the option of an extended hire period must be forced upon them when they don't want it, even when you direct them to the relevant sections of the legislation. And of those that do understand that it is mandatory, a view that has been expressed to us is that if an agency has to offer both an extended period of hire and a temp to perm fee, they will clearly ensure that they gain equal financial benefit from each, effectively meaning that the only difference between them the date on which the temporary worker can start as a permanent employee, which in most cases makes no difference to the client.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

As outlined in our answer to Question 1, we believe that confidence in the industry is robust and thus there is not an existing problem that needs to be addressed.

Aside from the lack of obvious need, we do not believe it would be desirable for the following reasons:

- **Small and medium sized businesses would not have the infrastructure or system to report the kind of data that has been suggested so would incur proportionately greater costs to provide this data. They may also then be disadvantaged by their size, with clients preferentially choosing larger suppliers, which would be detrimental to competition and business growth in the industry.**
- **If this data were published, who would check that the content was accurate? If content was not monitored and scrutinised, this would allow unscrupulous agencies to publish misleading data at the expense of their compliant competitors.**
- **Work seekers are not interested in whether an agency has filled 1 role or 1000. They are interested in whether or not an agency has a vacancy they are interested in.**
- **Clients equally are not interested in whether an agency has filled 1 role or 1000. They are interested in whether the agency can fill that hard to fill role they've had open for four months already.**
- **The growth of social media has, in the main, overtaken the value of this kind of publication in any event. People are driven by peer feedback, blogs and independent reviews – not statistics published on an agency's own website. A temporary worker who has suffered a bad experience with an agency, can publish that more widely and more quickly than any company driven statistics could ever manage.**
- **This would impose an additional administrative burden on companies which would seem to defeat the purpose of the red tape challenge.**

Question 11: What information do you think would be of most interest to:

a) work-seekers hirers

We do not think this would be of interest to either. Please see our answer to Question 10.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

Please see our answer to Question 10.

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

Undoubtedly. Trade Associations such as APSCo, of which we are a member, have codes of conduct and checklists for membership which far exceed what statute requires. Membership is often considered a mark of quality as a consequence.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

We have no suggestions to add, beyond the earlier comments we have made about the use of social media.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

Without effective enforcement unscrupulous companies will always have a competitive advantage over those acting compliantly. We believe that removing enforcement would drive standards down, not up.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

There would be no deterrent to prevent breach of the legislation if prohibition orders were removed.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

The purpose of this legislation is to control the industry. The government is best placed to do that via the Employment Agency Standards Inspectorate or similar organisation.

The EAS is knowledgeable of the industry and capable of ensuring transgressions, minor and accidental or major and purposeful are dealt with appropriately and swiftly.

The use of the Employment Tribunal would add cost and delay to the process without obvious benefit.

By the admission of the EAS, the majority of their complaints relate to lack of payment. This is a matter that temporary workers could already resolve in the courts (either the employment tribunal or the county court, dependent on their worker status) but in many cases, clearly choose the EAS instead. So even currently where employment tribunal options are available, temporary workers are availing themselves of alternative remedies.

It is also unclear what damage or loss a temporary worker might suffer if an employment agency breached the rules and therefore what cause of action they would have to bring in any event.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

While it is generally our experience that temporary workers are well apprised of their rights, one possible area for improvement would be a dedicated government website detailing the rights of workers as opposed to employees. There are very distinct differences between these methods of engagement but there is currently little centrally provided information which covers this and that which is provided is detailed across a variety of websites which is unhelpful to the worker who wants an overall picture.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

We agree that findings should be published but we do not believe that trading names should be included.

Findings are useful to both act as a deterrent to bad behaviour, and as case law does, help us to understand, through the errors of others, how we can do things better.

However, we have concerns that the publication of trading names could be used as a tool by competitors to deter clients and candidates, when we believe the focus of the investigations should be about fixing problems and improving the industry, not naming and shaming. It is also hard to distinguish sometimes, for example in reviewing case law, whether the breaching party was found to have committed a minor technical breach or a gross major breach and these distinctions are key in establishing and building trust in all business sectors.

We also think that if the government elects to publish findings, it should then also publish the positive outcomes – where an investigation was made and no shortcomings were found. While it is right we should learn from mistakes, we should also promote good practise.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes **No**

b) Please give reasons for your answer.

It is hard to give a precise answer to this question because it depends somewhat on the format of the new legislation. If the new legislation is drafted on a prohibition basis, where a breach only occurs if a company does something it is not allowed to do, records would probably not be necessary. By contrast, if the new legislation is drafted on a positive duties basis, where a breach occurs if you fail to do something you are supposed to do, then records probably would be necessary.

As a general comment we would observe that legislation which is based on a prohibition basis is generally less administratively burdensome and therefore generally more efficient for business.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

In general, we do not feel that further legislation is needed in this regard. Many documents are already mandatorily kept as a consequence of other legislation – ID and accounting documents to name two obvious examples.

Business need tends to dictate the retention of most others. For example, whether or not in the future it is mandatory to keep recruitment contracts, it will be necessary to do so in order to understand what business a company is conducting, what they can expect to be paid on what timescales and what other rights and responsibilities they have to the other contracting party.

Therefore we feel that further legislation would add burdens to business without raising standards or proffering any other tangible benefit.

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Aspire Business Partnership LLP

Response to Consultation on reforming the regulatory framework for employment agencies and employment businesses

Name: **Aspire Business Partnership LLP**

Organisation (if applicable): Specialist advisory company specialising in advice to recruitment and umbrella companies

Address: 1st Floor, 80 Hewell Road, Barnt Green, Birmingham. B45 8NF

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Please tick the boxes below that best describe you as a respondent to this consultation.

Business representative organisation/trade body

Central government

Charity or social enterprise

Individual

Large business (over 250 staff)

Legal representative

Local government

Medium business (50 to 250 staff)

Micro business (up to 9 staff)

Small business (10 to 49 staff)

Trade union or staff association

Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Yes

b) Please give reasons for your answer.

We agree that there should be no obligation on the part of job seekers to pay for work finding services. This will ensure that access to available work is not restricted and that a job seeker's personal financial circumstances will not infringe on his capacity to apply for vacancies.

Clarity regarding who is responsible for paying the temporary worker is vital especially when there are a number of parties involved in the supply chain i.e. end user client, employment business and possibly an umbrella company.

Each worker should have the right to secure payment from his/her contractual engager irrespective of whether the engager has received payment for the services from the end user.

Where an umbrella company is involved, and has taken the responsibilities associated with being an employer, the umbrella must assume the responsibility for making payment to the worker irrespective of whether funds have been received from the employment business. This should be clarified in any future guidance.

The provision of compensation for loss of income in situations where a hirer goes on to work permanently for the hirer remains appropriate. Employment businesses incur significant administration costs in sourcing the worker with the aim of covering such costs when hiring the worker out on a temporary basis. The basis on which such costs can be charged should be clarified and set at a level which compensates the employment business whilst not blocking the path to permanent employment.

The temporary labour sector is highly regulated by a number of government bodies who all aim to enforce their particular legislation. This includes the following;

- HMRC – PAYE/NIC/VAT/National Minimum Wage
- Gangmasters Licensing Authority – GLA (Licensing) Act
- BIS/EASI – Employment Agency Standards
- HSE – Health and Safety
- Employment Tribunal – AWR/Holiday Pay

The extent of legislation in this sector is stifling growth. The manner in which the legislation is enforced by the majority of the regulatory authorities is penal rather than educational. This must change. We would add here that the manner in which the Employment Agency Standards Inspectorate enforces the regulations, in our experience, has been educational rather than penal in the first instance which we consider is the appropriate way to approach the industry. Unfortunately, the Conduct Regulations are too complicated to ensure strict compliance and aim to cover too many aspects of the contractual relationship between the parties.

The Conduct Regulations should, therefore, be re-focussed on the key aspects directly affecting temporary workers and to move away from areas which are the responsibility of other Government Departments i.e. Right to Work compliance.

There is also currently a mis-match between the Conduct Regulations and the Gangmasters Licensing Act leading to a duplication of work i.e. an employment business may have workers in the GLA regulated sector and workers who work outside the GLA regulated sector. We have seen inspectors from both departments descend on an employment business at different times causing significant disruption. This aspect should be clarified in order to free employment businesses from unnecessary regulation – one regulator, one set of industry specific regulations.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes

b) If yes, please give details on what these are.

New legislation needs to address the shortcomings of existing legislation in that it is often impossible, given the swift placement of workers, to meet the regulatory requirements in the required timescale. It is often only practical to contact workers by telephone for an immediate start. Any legislation should recognise the flexibility of the sector and to allow a reasonable amount of time for the administration to be completed.

If the new legislation was clear and unambiguous, consideration should be given to devolving responsibility for regulation to the recognised trade bodies that currently produce contractual documentation to satisfy the regulations. New legislation should aim to encourage compliance rather than aim to penalise.

The Construction Industry has a scheme based on compliance, in-business and turnover in order to be accredited for gross payment status. An accreditation test would give clarity for those employment businesses which comply with the regulations so that enforcement could be concentrated on those businesses which operate outside the regulations.

The regulations do not cover specific circumstances where the use of an umbrella company is involved. The use of umbrella companies is increasing and this should be reflected in any new legislation.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Employment businesses can often be included in the CITB Levy which is, in effect, a levy to cover training. Very few employment businesses take account of the grants available to the construction industry for training. If the employment business is required to pay the levy, it should be able to charge the worker a commensurate sum.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

b) Please give reasons for your answer.

“For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.”

We consider that the current definition is adequate. The role of the umbrella company should be clarified as it is not in the business of finding workers employment.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes

b) Please give reasons for your answer

Any arrangement which includes the imposition of a fee should contain a short cooling off period. However, any fee charged to cover the CITB Levy should not be subject to a cooling off period. However, full details should be provided to the worker to explain why his/her role falls within the levy and this should be with agreement with the worker.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes

b) What do you think the cooling off period should be?

14 days

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

b) Please give reasons for your answer.

Legislation should clearly stipulate that a worker has the right to be paid by his contractual engager and must not suffer a detriment should the hirer not pay the employment business on time.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes

b) Please give reasons for your answer.

We agree that temporary workers should be free to move flexibly around the sector. However, the role of the employment business needs to be protected against unscrupulous hirers who may seek to avoid paying temp to perm fees by “poaching” the worker.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

b) Please give reasons for your answer.

The wording of Regulation 10 is over complicated and difficult to follow. The definition of ‘relevant period’ in particular needs to be simplified so as to be easily understood.

Excessive fees should be avoided but the employment business should be properly compensated whilst avoiding excessive fees which would restrict opportunities for the workers. A matrix should be developed linked to proposed salary, head-hunter costs (had the individual been sourced directly) and loss of income to the employment business based on a projected period. The matrix should become the standard charge structure and be written into the legislation and referred to in terms of business and contracts between the worker and the employment business.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes

b) Please give reasons for your answer

Whilst it should not be compulsory to publish information as such information is freely available i.e. accounts, internet stories, legal cases etc. we would suggest that a lot of information is already provided in the form of marketing collateral.

Question 11: What information do you think would be of most interest to:

a) work-seekers

- Sector expertise
- Client List
- Successful placements
- Job vacancies
- Active testimonials from candidates

b) hirers

- Financial Stability
- Sector Expertise
- Compliance – due diligence
- Use of third-party intermediaries
- Candidate availability
- Active Testimonials from hirers and workers

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

b) Please give reasons for your answer.

Requirement to do so would only introduce further regulatory requirement which is not necessary.

c) If you answered yes, what information do you think it should be compulsory to publish?

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes

b) Please give reasons for your answer.

An industry “code of practice” which is signed up to by each employment business (rather like the Taxpayers Charter) might be appropriate. There are too many accreditation agencies and trade associations aiming to provide an industry standard and taking large fees for allowing the use of their charter mark. Many employment businesses and hirers are mis-guided by value of such accreditation. It should be illegal to promote an unregistered charter mark in the recruitment sector.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

See our comments regarding a Recruitment Industry Charter to which all parties to the contractual relationship will participate.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

b) Please give reasons for your answer.

Government enforcement should act as a deterrent and not a stick with which to beat the sector. Enforcement for the sector in its entirety should be allocated to one regulator who would be responsible for the following;

Establishing the facts against a regulatory framework

Report the findings

Refer findings to the appropriate authority for further investigation and follow-up action with penalties as appropriate.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes

b) Please give reasons for your answer.

Use of prohibition orders should only be used in the most extreme circumstances and only after actions which have resulted in a criminal conviction.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes

b) Please give reasons for your answer.

The AWR has given workers rights to receive information about their position after 12 weeks and certain rights at Day One. It is clear that very few workers have exercised those rights.

In appropriate circumstances, a worker should be able to seek redress through the court but only after all avenues have been explored with the engager. The use of an independent arbitration service may prevent the clogging up of the tribunal service and costs which could be incurred by the workers.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Standard unambiguous guidance should be made available by every employment business upon registration. The regulator should have an easily accessible web-site which should contain any additional guidance about worker rights with links to other agencies.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

No

b) Please give reasons for your answer.

Naming and Shaming in our view is a last resort for serious abuse cases and has no place in a regulatory framework.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

No

b) Please give reasons for your answer.

The employment business should sign up to the regulatory framework and act accordingly. Government should not dictate how an employment business should demonstrate that it is compliant by determining the records it must keep.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

- Registration Documents inc. all contracts
- Assignment Schedules – duration, job role, pay details
- AWR “Pay Comparator details
- ID and Right to Work Verification
- Details of Qualifications
- Health and Safety Requirements
- Details of Hirer
- Duration
- Job role
- Training
- Pay detail

b) hirers?

- Contact details
- Health and Safety policies

- Requests for placements recoded on an appropriate system
- Terms of Business

c) other employment agencies/employment businesses?

- Details of the intermediaries who may be involved in the supply chain either used via a PSL arrangement or brought by the worker on registration.
- Terms of Business

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11 April 2013

Recruitment Sector Legislation - Consultation on reforming the regulatory framework for employment agencies and employment businesses: Response form

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Before dealing with the specific questions raised by the consultation document, we set out below a brief description of the Institute of Interim Management and relevant information about Interim Management.

About the Institute of Interim Management

The [Institute of Interim Management](http://www.iiim.org.uk) (“the Institute” or “the IIM”) is a membership organisation for senior professional Interim managers and executives (“IMs”). It was established in 2001, with the principal aims of establishing quality standards and best practice for its members. All members undergo an assessment process on joining, are expected to continue their professional development throughout their membership, and are required to abide by a Code of Conduct regulating the way in which they source and fulfil assignments on behalf of their clients.

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, and a growing number in Canada and the Far East.

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](#). 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 over 7,800 members, made up primarily of IMs (76%). A further 11% in the group are niche Employment Businesses (“Providers”) which specialise in placing IMs with clients, and the remaining 13% consist of clients, management consultants and others, including people considering joining the IM profession. The on-line group is currently the largest group globally dedicated to the Interim management industry.

The IIM has for many years maintained relationships with sister organisations in The Netherlands and Germany. It has recently been approached by similar newly formed bodies in several eastern European countries, to provide knowledge transfer and capacity building, and is actively engaged in this role in Poland.

The Institute conducts annual surveys of the Interim industry, and its 2012 survey conducted over June and July 2012 closed with 2,553 replies overall, of which 2,013 replies were from IMs. The conduct of the survey is overseen by independent external scrutineers.

About Interim Management

There are estimated to be up to 10,000 IMs in the UK providing their services on a freelance basis across virtually every sector and business function at businesses and organisations in the private, public and not-for-profit sectors. They typically manage, direct, or control, a project, or a part (or all) of an organisation for a finite period, taking decisions and ensuring the implementation and management of those decisions.

Because of the fragmented nature of the industry, it is difficult to plot statistically. However, currently the market is estimated to be in the order of £1.5 billion (source: the Interim Management Association’s Ipsos MORI quarterly survey). (The Interim Management Association (IMA) is a trade association for Providers and is affiliated to the Recruitment and Employment Confederation.)

The UK is the undoubted leader in the use of IMs in Europe, but given recent 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.

IMs come from a variety of backgrounds but are mainly experienced business executives, frequently with a professional qualification, who 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 in business 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, and skill in delivering results-driven implementation.

From a legal standpoint, IMs operate through a variety of legal structures. The Institute's 2012 survey data suggest that the vast majority (90%) of IMs work through their own personal service company ("PSC"). About 5% 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. A further 5% operate through umbrella companies.

Although not employees of either the end user client or of any employment business which might place them with a client, most IMs are therefore incorporated workers within the meaning of Regulation 32 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Conduct Regulations").

Professional IMs are a key part of the UK's flexible economy, particularly adding value to organisations in both public and private sectors. However, the application of the specialised skill set of an IM is, by definition, a temporary requirement of the client organisation and not relevant to a permanent role.

For this reason, regardless of legal structure, IMs operate as suppliers on a business-to-business basis to their clients under a contract for services (company law), rather than a contract of employment (employment law). Assignments can therefore be terminated quickly and cleanly, without a claim for wrongful dismissal and a lengthy and expensive hearing at an Employment Tribunal.

Response to the Consultation Questions

It is not the Institute's intention to respond to all questions, only to those where we consider we have useful comments to make. Any omissions in the numbering sequence of the questions are therefore deliberate.

Question 1:

a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- *Employment businesses and employment agencies are restricted from charging fees to work-seekers*
- *There is clarity on who is responsible for paying temporary workers for the work they have done*
- *The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable*
- *Work-seekers have the confidence to use the recruitment sector and are able to assert their rights*

IIM Response

Yes

b) Please give reasons for your answer.

IIM Response

We agree in principle with the four outcomes listed.
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Question 2:

a) Are there any other outcomes that you think should be achieved by the new legislation?

IIM Response

Yes

b) If yes, please give details on what these are.

IIM Response

Any new legislation must ensure that there is an opportunity for IMs to place themselves outside the scope of the new regulatory framework.

One of the key aspects of the present Conduct Regulations for the Institute is the 'opt-out' available to incorporated workers set out in Regulation 32(9), and our support for this dates back to the time when the Regulations were being drafted some 11 years ago.

At the time, the IIM recognised that, as IMs are senior executives who do not work under the day to day supervision of their clients, they do not seek or need the protections mandated by the Regulations, aspects of which were inappropriate to the way IMs contract and work with their clients. We therefore met with officials from the Department of Trade & Industry to ask what might be done to ensure that IMs could fall outside the scope of the Regulations, and were subsequently very pleased to see the inclusion of the wording in Regulation 32(9).

Ever since the Regulations came into effect, it has always been the Institute's position that, on balance, the opt-out acts to the benefit of IMs, and it is our recommendation to IIM members who are incorporated workers that in normal circumstances they should sign to opt-out when sourcing assignments through employment businesses.

We also reiterated that support in our response to the Department for Business Enterprise & Regulatory Reform when it issued a consultation paper in 2009 to review the operation of the Conduct Regulations.

Section 13(3) Employment Agencies Act 1973 defines an Employment Business as

"...the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity."

Given this definition, when a Provider as an employment business supplies an IM to work at a client, theoretically such supply should be outside the scope of the Conduct Regulations, because IMs working on a self-employed basis are not under the control of the client. However, the degree of control can be a matter for debate and consideration by the courts, so the opt-out in Regulation 32(9) is used to put the IM outside scope, and means the non-application of the Regulations is beyond doubt.

Regulation 32 taken as a whole serves two purposes:

- It brings incorporated workers within the scope of the Conduct Regulations
- In paragraph 9, it provides incorporated workers the opportunity to opt-out of scope, subject to certain conditions.

As should be evident from the description earlier as to how IMs operate, most IMs are incorporated workers within the meaning of Regulation 32. However, it is essential

nevertheless to recognise that the terms ‘employee’ and ‘worker’ are not interchangeable. Despite being workers, IMs are not employees of either the end user client or of any employment business which might place them with a client.

Thus they want to be free to negotiate terms with clients and employment businesses on a business-to-business basis, not an employment basis, and do not wish contractual terms such as are found in Regulation 15, to be imposed by regulation where there is no place for them (because they are terms applicable to an employment contract) or they are being imposed too early in the process. To look at a few such terms from Regulation 15 in detail:

- Paragraph (b) (and also Regulation 12): the employment business will pay in the event that the client does not.

IMs, whether incorporated or not, are self-employed, and accept the risk of non-payment as a normal commercial risk or entrepreneurship. Indeed, the acceptance of financial risk is one of the determining factors in setting their tax status as self-employed, and it should not be removed by regulation

- Paragraph (d): rate of remuneration.

Because under Regulation 14 this term has to be agreed before the employment business provides work finding services, the IM has no opportunity to influence the rate of remuneration based on his/her assessment of the complexity or difficulty of the assignment which is eventually found, and may therefore find that the remuneration level is set a rate which is too low having regard to the nature of the task

- Paragraph (e): frequency of payment of remuneration.

IMs are often required to work at clients which are in a parlous financial situation. They may therefore require payment at shorter intervals to reduce exposure, or indeed, payment in advance. As in the previous bullet, this assessment cannot be made by the IM before the employment business provides work finding services and has identified a client

- Paragraph (f): holiday entitlement and pay.

This has no place in a commercial contract.

In May 2006, the International Labour Organisation made a Recommendation (Recommendation R198, 95th Session of the Conference) on employment relationships. The most important clause is Clause 8:

“National policy for protection of workers in an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due.”

The freedom to negotiate and agree contractual terms is of particular importance given that IMs find only a third of their work through employment businesses – it would be unfortunate if they had to adopt different contractual relationships when dealing with employment businesses and when dealing direct with clients.

Without the opt-out, problems also arise under Regulation 19, because the employment

business cannot introduce the IM to the client unless the IM agrees in advance that he/she is willing to undertake the role on offer. As will be appreciated, IMs operate at a senior level in their clients, and success in a role is achieved as much by the 'personal chemistry' working between IM and client, as by the IM's experience, qualifications and skill.

In addition, it is often the case that the role as described by the client will need to be redefined once the IM has had the opportunity to review what the client's problems are and the solution needed.

The IM therefore needs the opportunity to meet the client before confirming willingness to undertake the role, which Regulation 19 prohibits, save for the opt-out.

Furthermore, the Providers in the Interim Management sector each maintain a 'candidate' database of potential IMs, and any one database may include several thousand; but as an employment business may only fulfil a few hundred roles at most in a year, the numbers of candidates far exceed need. A driving factor leading to these large databases is that IMs of course wish to maximize their opportunity to be considered for assignments, and will therefore register with a number of relevant employment businesses in parallel.

The opt-out therefore only requires employment businesses and IMs to agree terms when there is an identified client and role. Without it, Regulation 14 would require employment businesses to agree terms with every IM on their candidate databases, even if there were no prospect of work arising. An unnecessary time consuming and costly administrative burden.

The Conduct Regulations also impose a significant data gathering requirement on employment businesses, both in terms of data sought from the client (Regulation 18) and data sought from the IM (Regulation 19). But for the opt-out, the need to collect this data in advance would significantly slow down the recruitment process, thereby having a negative impact on speed of response – one of the qualities most highly valued by clients which use IMs.

The opt-out is therefore certainly needed in relation to the current Conduct Regulations. We would be seriously concerned if no equivalent provision were to be in the new legislation and the effect was to bring within scope IMs who have previously been outside. This would also not be in keeping with the Red Tape Challenge.

Question 3:

a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

IIM Response

No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

IIM Response

N/A

Question 4:

a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

IIM Response

Yes

b) Please give reasons for your answer.

IIM Response

The definition was framed before the invention of the internet, and its wording may bring within scope internet job noticeboards and other websites where jobs are posted, such as LinkedIn. We believe that the posting of jobs in this way does not constitute the activity of an employment agency, and the definition should be updated to exclude such internet jobsites where the posting of jobs is purely an ancillary activity.

Question 7:

a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

IIM Response

Yes

b) Please give reasons for your answer.

IIM Response

Yes

When an IM is appointed through a Provider to a client, there are two alternative contractual models:

- Client><Provider><IM
- Client><Provider and, separately, Client><IM

Whichever model is used, we do not believe that in practice there is any confusion about who is responsible for paying the IM, and that, if an opt-out exists to take IMs outside scope, there should be no need for legislation anyway.

However, in the absence of an opt-out and where the Provider is responsible for payment, there should be a requirement for a contract dealing with payment terms. Such a contract should include a clear definition of the services to be performed by the IM, and specifying the circumstances in which payment can be withheld by the Provider.

The current Conduct Regulations require the contract to be in place before the Provider supplies CVs to the client, but this is unrealistic. The requirement should be at the time the assignment commences.

Question 13:

a) Do you think trade association codes of practice help to maintain standards in the sector?

IIM Response

Yes

b) Please give reasons for your answer.

IIM Response

Codes of practice can help to raise standards. Any code of practice needs to be reinforced by a vetting procedure on entry to the association, and by a disciplinary process if standards are not adhered to.

A problem of course with any code of practice is that not all businesses which could and ought to be members of an association are in fact members.

Question 17:

a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

IIM Response

No

b) Please give reasons for your answer

IIM Response

If an opt-out is available under the new legislation, the likelihood is that IMs will have exercised it, so will be outside scope and have no rights to enforce under the legislation.

For those IMs who are within scope, either because they have chosen not to exercise the opt-out, or because there is no opt-out available, it remains the case that IMs operate on a company law business-to-business basis. An employment tribunal is an inappropriate forum for IMs to use to enforce their rights.

Question 19:

a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

IIM Response

Yes

b) Please give reasons for your answer.

IIM Response

Publication of findings can act as both a deterrent and an educational tool to others. However, it is for consideration that trading names should only be published in cases of gross infringements.

If you have any queries on the foregoing, please do not hesitate to contact me. I would be very pleased to meet with you as necessary

I should also be pleased if you would add my contact details to your mailing list for future consultations concerning the Conduct Regulations and/or any successor legislation.

I should be grateful if you would please acknowledge receipt of this reply.

In order to facilitate data capture for the BIS database, the Institute will also provide its responses to the specific questions through Survey Monkey. These responses should nevertheless be read in the context of the information given herein in [About Interim Management](#).

Yours sincerely

Tom Brass

TF Brass
Director
Institute of Interim Management

Caroline Daly
Labour Market Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

11th April 2013

Dear Ms Daly,

Consultation on reforming the regulatory framework for employment agencies and employment businesses

BSI (British Standards Institution) has read with interest the BIS consultation on reforming the regulatory framework for employment agencies and employment businesses.

We would like to give some information with regard to Question 14, **'What other non-regulatory tools could be used to maintain standards in the recruitment sector?'**

Where Government is considering non-regulatory instruments to deliver its policies, British Standards are market-based tools that can provide a business-friendly alternative. Standards have the necessary legitimacy and degree of market acceptance to be used to deliver policy due to the openness and independence of the process and the involvement of all interested parties, including consumers and other public interest groups. We therefore encourage BIS to consider working with BSI to develop standards or Publicly Available Specifications (commissioned, fast-track standards) when looking to deliver its policy objectives.

As an example in the area of recruitment, BSI has already published BS 8877: 2011 – Code of Practice for Online Recruitment – recommendations for online recruitment to ensure greater transparency and improved candidate experience in the provision of online recruitment. This standard sets out good practice in terms of advertising (candidate attraction), screen, storage and selection using web-based technologies. It is relevant to any organization involved in the online recruitment process using the web.

Background on BSI

BSI is the UK's National Standards Body, incorporated by Royal Charter and responsible independently for preparing British Standards and related publications. BSI has 111 years of experience in serving the interest of a wide range of stakeholders including government, business and society.

BSI presents the UK view on standards in Europe (to CEN and CENELEC) and internationally (to ISO and IEC). BSI has a globally recognized reputation for independence, integrity and innovation ensuring standards are useful, relevant and authoritative.

A BSI (as well as CEN/CENELEC, ISO/IEC) standard is a document defining best practice, established by consensus. Each standard is kept current through a process of maintenance and reviewed whereby it is updated, revised or withdrawn as necessary.

Standards are designed to set out clear and unambiguous provisions and objectives. Although standards are voluntary and separate from legal and regulatory systems, they can be used to support or complement legislation.

Standards are developed when there is a defined market need through consultation with stakeholders and a rigorous development process. National committee members represent their communities in order to develop standards and related documents. They include representatives from a range of bodies, including government, business, consumers, academic institutions, social interests, regulators and trade unions.

I would be pleased to discuss the BSI response contained in this letter.

Yours sincerely,



Richard Collin
National and European Policy Manager, External Policy
The British Standards Institution

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11th April 2013

RECRUITMENT SECTOR LEGISLATION - CONSULTATION ON REFORMING THE REGULATORY FRAMEWORK FOR EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES

RESPONSE BY THE ASSOCIATION OF LABOUR PROVIDERS

Contacts

David Camp, Director, E-mail: _____

Introduction

The Association of Labour Providers (ALP) represents around 250 labour providers, which together supply the majority of the seasonal and temporary workforce to the agricultural and food processing industries.

ALP members are subject to the licensing standards of the Gangmasters Licensing Authority (GLA). The Association has been heavily involved in the GLA regulation of labour providers over the last nine years.

This BIS Consultation is concerned with two pieces of legislation, the Employment Agencies Act 1973 (the Act) and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Regulations). These two pieces of legislation are disapplied for activities for which a GLA licence is required under the Gangmasters (Licensing) Act 2004, but in effect their requirements are closely mirrored in the Gangmasters (Licensing Conditions) Rules 2009.

However, for all activity undertaken by ALP members outside of the GLA Licensed sector, the Act and Regulations apply. ALP members are therefore subject to a two tier regulatory framework depending on whether activities fall in or out of the GLA sector.

Legitimate labour providers want, and have a right to expect, a “level playing field” in order to compete fairly within the law. To enable this it is essential that action is taken to prevent rogue businesses from undercutting legitimate labour providers, either through tax evasion, worker exploitation or both.

To this end, the ALP supports an intelligence-led, risk-based proportionate regulatory and enforcement regime that facilitates a fair, competitive trading environment for labour providers.

ALP Response

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

Employment businesses and employment agencies are restricted from charging fees to work-seekers

We agree that employment businesses and employment agencies should be restricted from charging for providing work finding services.

However they should be able to continue to charge for the provision of non-mandatory ancillary services over and above the provision of work-finding services. Examples of this would be optional transport to work, personal accident insurance etc.

There is clarity on who is responsible for paying temporary workers for the work they have done

Individuals should have clarity as to their contractual arrangements, employment status, the service that is being offered to them and they are signing up to and who is responsible for paying them (See Question 7).

The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable

Contracts with recruitment firms should not hinder movement between jobs but there should be no reasonableness test for temp-to-perm transfer fees (See Question 8 and 9).

Work-seekers have the confidence to use the recruitment sector and are able to assert their rights

Work-seekers should have the confidence to use the recruitment sector and be able to assert their rights but we do not agree with the means proposed in the consultation to achieve this. (See Question 10,11 and 12)

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

YES

ALP supports the REC consultation response arguments for:

- Better analysis of current recruitment/supply activity & examination of whether the current definitions are fit for purpose.
- Requirement for clarity on the opt-out provision
- Retention of the statutory provisions that require employment agencies and businesses to carry out suitability checks
- Mandatory umbrella/travel & subsistence use
- Clarity on composition of pay, particularly through intermediaries and allocation of tax savings.

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

The ALP believes that there should be free access to jobs and does not think that there are circumstances, outside of the entertainment and modelling sectors, where agencies should be allowed to charge fees.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes

The current definition of “employment agency” should be reviewed to provide clarity in light of a) Job Boards and b) situations where employment businesses effectively act as an employment agency by introducing an individual worker to an umbrella company or other intermediary, who then employs that individual.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

As the ALP believes that employment agencies should not charge fees to work-seekers for providing work finding services, these questions are not applicable.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes

The ALP supports the REC position on this matter with regard to the need for clarity with regard to intermediaries in current labour supply chains e.g. umbrella companies, payroll companies and master/vendor arrangements and particularly:

- how “temporary workers” are defined and whether any new legislation will aim to protect individuals and/or limited companies;
- how intermediaries should be covered by any new legislation given their responsibilities for employing and paying individuals ; and
- if other intermediaries are responsible for employing and paying individuals, employment businesses should not be required to underwrite payment of individuals where those intermediaries have failed to pay those individuals.

The ALP supports that:

- Intermediaries should have a separate definition to employment businesses
- Any new legislation should make clear that the intermediary that is the “employer” for other employment rights (e.g. responsible for paying holiday pay) should also be responsible for paying the temporary worker

- The definition of employer should be consistent with other employment law
- There should, of course, be clarity about who is responsible for paying a temporary worker but there should also be clarity about the service that is being offered to the individual.
- Employment businesses should not be required to underwrite payment of temporary workers where other parties have failed to pay those workers.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Temporary workers should be able to move within the labour market without detrimental action being taken against them. Individuals should not be penalised because they have terminated or because they give notice to terminate a contract with an employment agency or business.

However, the use of post termination restrictions in employment contracts is commonplace and there may be situations where it may be appropriate in this sector such as hirers wishing to restrict an individual from going to work for a competitor or incorporated work seekers that are in business of their own account.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

No

The ALP position is that as a principle it is not for the Government to legislate on what is a reasonable fee in a commercial negotiation. Any new legislation needs to retain a provision in line with Regulation 10, which gives a precise outcome as opposed to any test of reasonableness.

Proposals to implement “reasonableness” should not be considered as they would:

- Prejudice employment businesses ability to receive a reasonable level of recompense. Article 6.2 of the Agency Workers Directive states that action Member States take, shall be “without prejudice to provisions under which temporary agencies receive a reasonable level of recompense for services rendered to user undertakings for the assignment, recruitment and training of temporary agency workers”. It enables at any stage a hirer to issue a legal letter prior to action stating that it no longer considers the temp to perm charges that it previously agreed to as “reasonable”. This will in effect compromise employment businesses to accept lesser terms than those originally agreed to in writing between the parties.
- Be unnecessary. The current Regulations allow that:
 - Temp-to-perm fees must be agreed in writing – thus providing the opportunity for the client to refuse any unreasonable terms – and if they are not in writing then they are null and void.
 - Any agreement must include the option of an extended hire period - and if they don't they are null and void. This precludes any transfer fee which has

the effect of preventing the conclusion of an employment relationship between the user undertaking and the agency workers and

- The Unfair Contracts and Terms Act 1977 establishes provisions for the assurance of reasonableness in contractual terms.
- Increase bureaucracy, red-tape and litigation. There would need to be legislation or guidance that dealt with:
 - A reasonable process to determine what is “reasonable”.
 - What situations may render terms agreed as reasonable between the parties, within the commercial contract, to no longer be reasonable.
 - Mediation and arbitration as alternatives to litigation.
 - The process to replace what are regarded as unreasonable terms with reasonable ones without rendering them null and void.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Question 11: What information do you think would be of most interest to: a) work-seekers
b) hirers

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

The ALP promotes a stakeholder partnership approach to continuously improve standards of labour provision and to raise labour standards beyond base compliance. The ALP supports labour providers and hirers to meet their legal and ethical responsibilities to the contingent workforce and to treat temporary and seasonal workers fairly and with respect.

Within the agricultural and food processing sectors, employment businesses (referred to as labour providers) are:

- Inspected by and subject to the licensing standards of the Gangmasters Licensing Authority
- Able, at low cost, to use the ALP Complyer tool to self-audit against the GLA licensing standards
- Regularly audited by their clients to monitor compliance with GLA licensing standards
- Audited by professional third party Social Compliance Auditors against compliance to Ethical Labour Standards Base codes

Consequently, significant compliance information, or the means to access this, is currently available to hirers within the food and agricultural sector.

ALP does not support the proposal that employment agencies and businesses should publish information about their business:

- It would add bureaucracy and red-tape and divert focus away from businesses building growth.
- It would not be practically or logistically possible to detail information accurately and consistently
- It would be open to abuse by less scrupulous agencies.
- It would be impossible for the government to viably ensure that the data published is accurate
- It would be impossible for the government to properly enforce

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Trade association codes of practice can help to maintain standards. However they are only part of the solution and there are many issues about how they are constructed and implemented that should be improved or integrated within a broader portfolio of measures (see answer to Question 14).

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

The food and agricultural sector has made significant progress in raising standards within the last ten years.

The food and agricultural sector invests considerable time and resource into ensuring compliance. This is partly driven by the large supermarkets who demand compliant ethical labour standards in their supply chains to protect their reputation. It is also driven by the underpinning of a regulator with teeth whereby a non-compliant labour provider runs the risk of losing its GLA licence and its ability to trade and a complicit hirer risks reputation damaging media attention.

There is also a very developed ethical trade compliance understanding spearheaded by the supermarkets to their supply chain; the GLA licensing standards; the Ethical Trading Initiative; the Supplier Ethical Data Exchange (Sedex) and the labour standards auditing programmes undertaken by global social compliance auditing programmes. The sector faces rigorous scrutiny by trades unions, the media, the Equalities and Human Rights Commission and third sector bodies such as the Joseph Rowntree Foundation; Anti-Slavery International, the Institute for Human Rights and Business and more.

Many lessons can be learned by other sectors from the journey that employment businesses in this market have undergone.

Some of the most relevant non-regulatory tools that maintain standards in the recruitment sector are:

- A collaborative multi-stakeholder approach
- The risk of reputation damaging publicity
- An effective and proportionate regulator with teeth
- Demonstrable compliance being a marketable benefit to clients

- Low cost/high quality compliance training for employment businesses and hirers
- Low cost self-audit tools that enable employment businesses to assess their own compliance and implement corrective actions
- Low cost audit tools that enables hirers to audit employment businesses to assess compliance and work in practice to implement corrective actions
- A consistent low cost approach to third party independent social compliance auditing which recognises:
 - All legal requirements i.e. more akin to GLA Licensing Standards
 - Key Ethical Base code requirements
 - Which matters are under the control of the hirer

The ALP supports standardisation of compliance self-assessment and auditing and is working with the UK food supply chain and global auditing bodies on this matter.

- The ability to share audits with multiple clients (through a body such as Sedex) to avoid an unnecessary audit burden.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

Yes

The ALP believes that proportionate regulation facilitates fair competition and supports economic growth. In the last ALP survey, over 70% of members stated that they support the licensing of employment businesses.

Scrapping the Employment Agency Standards Inspectorate (EASI) and moving to a purely civil, employment tribunal enforcement regime would be a retrograde step for a number of reasons:

- Compliant employment businesses want stronger enforcement action against non-compliant businesses for gross abuses such as failing to pay wages; NMW; holiday pay and the like than an employment tribunal is likely to bring.
- Workers in exploitative situations rarely bring tribunal action for fear of repercussions such as losing work altogether.
- Compliant employment businesses and clients would be left with no recourse to report grievances against other businesses.

However the remit, powers and resources of EASI are currently wholly inadequate.

ALP advocates further consultation on how to ensure there is a focus on the worst breaches of legislation within the recruitment industry. Particular proposals to be considered include:

- There should be a move towards closer integration between EASI and the GLA to share intelligence gathering; conduct joint enforcement activities and examine areas for efficiency improvements.

- EASI's remit should be extended to enforce the same issues as the GLA
- EASI should be provided with a range of civil i.e. Maccrory regulatory penalties up to and including prohibition.
- EASI to be properly resourced to undertake its function

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes

As a civil rather than criminal power.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Agency workers may already enforce their rights at Employment Tribunal, most notably under the Agency Workers Regulations 2010, National Minimum Wage Regulations 1999; Employment Rights Act 1996; Working Time Regulations 1998 and the Equality Act 2010.

In light of the ALP response to the other questions in this Consultation, ALP does not perceive that there is a need to add further remedies.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Individuals need to have straightforward guidance made available to them which allows them to understand their rights and how to seek further information from the Pay and Work Rights Helpline.

The GLA already makes available a Worker Rights leaflet in multiple languages for agency workers in the food and agricultural sectors.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes

“Regulation by Reputation” by publicly naming non-compliant businesses is an effective way to drive improvement in standards.

There would need to be fair and proportionate regulatory principles in place in accordance with the Regulators’ Compliance Code, most notably:

1. Proportionality in decision making – Recognition of difference between systematic and isolated non-compliance; willingness to co-operate, correct and comply.
2. Right to fairly present a case - In accordance with the Regulators’ Compliance Code 8.2 that: “When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach” and the “Audi alteram partem” principle of natural justice that no person should be judged without a fair

hearing in which the party is given the opportunity to respond to the evidence against them.

3. Right to appeal - that does not impose unnecessary burden and accords with good regulatory practice.
4. Right to correct – A proportionate right to correct non-compliance, (excluding proven extreme cases of abuse) by putting matters right within a set period to avoid having details of non-compliance published.

There is significant experience within the GLA that can be shared on this matter.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to: a) work-seekers? b) hirers? c) other employment agencies/employment businesses?

As per the current GLA Licensing requirements

Ray Knight Casting

Department for Business Innovation & Skills

Consultation on reforming the regulatory framework for employment agencies and employment businesses.

January 2013

I am responding to the above Consultation. This Agency operates in the entertainment and modelling field and has done so since 1988. We supply extras, walk-on artistes and models to all sections of our industry and this year will achieve our one millionth engagement.

I can only respond in respect of our field of work as it is the area in which I have my experience and expertise. I cannot comment on parts of the consultation which refer to legislation and practice outside the narrow confines of our area, but we do have our own specific issues which I would like to address.

Up-Front Fees:

The first item to examine is the up-front fee. This is a charge made by Agencies who provide a work-seeking service to performers for the purpose of registering for the services of an Agency. At the present time such fees are allowed provided they reflect the costs to the Agency of the service and the performer is shown the form that service will take. There is a 30 day period allowed for the performer to withdraw and obtain a refund. In practice, this still allows unscrupulous individuals to set up an Agency, draw in the gullible and take a fee and disappear in less than 30 days.

Some Agencies have circumvented the restrictions by taking photographs and charging an up-front non-refundable fee, at the same time making the payment for photography mandatory for the registration to join the Agency. Other scams are to charge for "training" or show-reels, which like the photographic charges are not covered by the 30 day cooling off period.

For my part, we photograph all successful applicants to the Agency and make no up-front charge for this service. We also allow some of the performer's own photographs to be added to ours on our website. To examine the result please go to www.rayknight.co.uk, our gallery is password protected as we have encountered instances of advertisers lifting photographs from ours and other agencies sites to use for their own promotional purposes without payment. The password is changed from time to time so in order to access the gallery it will be necessary to telephone our production line to obtain it if you wish.

It is my submission that the up-front fee in all forms, whether for advertising, photography, coaching or any other way it can be dressed up, should be banned altogether and that Agencies should be financed only by fees agreed between performer and Agency and funded out of monies earned through the services of the Agency by the performer. This Agency charges 15% on work obtained for the performer in common with other Agencies like us, but not on expenses, and a once a year media charge which covers the web-site, DVD production and book publication of their photographs. This fee is currently £50 and reflects our costs. All charges are deducted from monies paid to the performer via the Agency from employers. Were it to be decided to make Agencies entirely commission driven and outlaw all other charges such as our media fee then the commission charged by all Agencies would be driven up and in my opinion would settle at between 18 to 20%. There is some merit in this argument as the media fee is paid by all no matter how much work they

(2)

get, whereas on an entirely commission based charging, those earning more would pay more and those getting less work would in proportion pay less overall for the services of the Agency. No charge is made to the employer. The Consultation asks whether other Agencies in other fields of employment should be allowed to charge up-front fees under particular circumstances. My experience of this practice in the entertainment industry leads me to strenuously advise they should not. It would be simply facilitating fraud not employment. I am certain it would be a great mistake to permit money to be taken from a worker with no guarantee of employment and every chance of losing it. Without seeing details of what form a fee paid by a work-seeker to an Agency would take it is difficult to see how the employment industry would benefit. Were a worker to pay a fee once employment for him/her had been secured then would the employer also pay a fee? To enable this the regulation against “charging to both sides” would have to be scrapped. However, without an outline of any proposal it is not possible to comment further at this stage, but I feel uneasy that it could easily leave the vulnerable open to exploitation as has happened in my industry.

I referred previously to the unscrupulous who have dogged our industry by “ripping-off” and disappearing with up-front fees. It is true that this practice is not as prevalent as it was, although there are still instances. The practice has simply changed its operation. The unscrupulous now claim to be not Agencies but a “work-seeking” service. Therefore not subject to the legislation covering Agencies. Operating in this way has been greatly facilitated by the rise and proliferation of the internet. They make it clear that they are not Agencies and do not take commission, but simply advertise their clients to potential employers. This is a pointless exercise and there is no really viable employment emanating from this system. Some of these sites are based out of the UK and therefore it would be impossible to apply any controls. There is only the Spotlight in the UK who have established a position whereby they do provide a useful and reputable service to the industry. I can only suggest that appropriate high profile advice be put in the public domain warning of the potential to waste money on the proliferation of internet enterprises.

Enforcement by a Trade Association:

We have tried on two occasions to set up a trade association for Extras Agencies. Both times these have failed because there is no compulsion on Agencies to join and adhere to the codes of conduct. Just the opposite, Agencies have preferred to stay away from the associations in order to have the freedom to operate at a lower standard than the association demanded. There are rates of pay for extras agreed between the BBC, ITV companies, and Film Producers and the two Unions operating in this area, namely BECTU/FAA and Equity. Agencies outside both trade associations have secured work to themselves by offering performers at less than these agreed rates, which was against the main thrust of the association's rules. The BBC and ITV do not themselves offer rates under the union agreed levels, but independent producers commissioned by them do. Therefore performers are working, albeit indirectly, for the BBC and ITV companies, at rates below those that they have agreed to pay for those employees had they been directly employed by them. This is not in the best interest of the performer. Both associations quickly became defunct.

For a trade association to work it needs to find some “clout” from somewhere. Should a way be found to encourage Agencies to join an association and stick to its codes of conduct then there would be a better climate of employment for the performer and proper controls exercised over their operations including enforcing statutory legislation. With no such pressure then no trade association in my area of operation is going to be viable.

With other agencies I had a meeting with the BBC some years ago when we tried to make an association work. I was seeking an assurance that they would only use Agencies that were members of the association and therefore would have the benefit of knowing that a code of conduct was in

(3)

place. Such a concession from the BBC would have considerably strengthened the position of the association. They declined to go that far, but agreed to maintain a list of “approved agencies”, which evolved as a list of all agencies they considered solvent, irrespective of association membership.

In conclusion, I would advise the Department to avoid making it possible for those seeking employment through agencies to be charged any kind of fee by an Agency. Although trade associations are a good idea and codes of conduct desirable, unless there is some disciplinary system at the disposal of an association that must have the backing of enforcement couched in legislation, then they will prove to be worthless.

I seem to be flying against the thrust of the consultation document by asking for more legislation, not less. My experience leads me to conclude that this is the right advice for me to give. This may well be where more controls would lead to a better result rather than permitting latitudes that are open to abuse.

There is finally the question of enforcement. I know it is unlikely to happen, but I would like to see a licensing system with proper supervision in place, as any regulation is only as effective as its enforcement.

Ray Knight

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Elstree Studios
Shenley Road
BOREHAMWOOD
Herts. WD6 1JG

www.rayknight.co.uk

Caroline Daly,
Labour Market Directorate
Department of Business, Innovation and Skills,
1 Victoria Street,
LONDON SW1H 0ET

15th March 2013

Dear Ms.Daly,

Consultation on reforming the regulatory framework for employment agencies and employment businesses – January 2013.

I enclose my response to the consultation document.

As an agency operating solely in the entertainment sector my experience is limited to the narrow confines of that specialist area. I cannot therefore comment on the wider and separate issues raised. I hope that you nevertheless find some information of use in what I have to say.

Any further help or insight I can contribute, please do not hesitate to ask.

Yours sincerely,

Ray Knight

Fox Rodney Search

3 April 2013

Caroline Daly
Labour Market Directorate
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Dear Ms Daly

We are writing to you in connection with your consultation on reforming the regulatory framework for employment agencies and employment businesses, published in January 2013.

We welcome this consultation and support the need for legislation which protects people who are looking for work as well as the proposal that the legislation should be minimised and focussed where work-seekers are most at risk of exploitation. In turn this will enable government to direct resources for enforcement of the regulations to those parts of the recruitment industry where enforcement is most likely to be needed.

We also welcome your vision to free employment agencies and businesses from unnecessary regulation, in line with the Red Tape Challenge and to allow them more scope to operate in the way that is best for them.

As a background, we are an executive search firm whose business it is to place highly skilled and experienced professionals (senior commercial lawyers) into senior management positions.

The work-seekers we engage with as potential candidates for the positions we are seeking to fill, are sophisticated, experienced individuals who are not at risk of exploitation by us.

Our general view on the consultation is that we do not consider that our business, or other executive search firms, should be subject to the revised legislation/regulations arising from this consultation. This is on the basis that the work-seekers we engage with are not vulnerable to exploitation by us. They are experienced senior managers seeking permanent roles.

We believe that exemption from the regulations should be based on the characteristics of the roles the employment agency is seeking to fulfil as this will determine the type of candidate suitable for the role and whether they are likely to be vulnerable to exploitation.

Where these roles have one or more of the following characteristics we suggest that the candidates likely to be seeking, or suitable for, such roles will not be vulnerable to exploitation by the employment agency:

- The role pays a rate which is greater than the national average wage as published by the Office For National Statistics (currently £28,700 for men and £23,100 for women)¹ (on a pro rata basis where the role is part time); or
- The role is for a statutory company director, trustee, or partner]

We also believe for interim/contractor roles, where the candidate operates via a personal service company the regulations should not apply as this is indicative of a level of sophistication of the individual which makes them unlikely to be vulnerable to exploitation.

FOX RODNEY SEARCH

Where these characteristics are present we consider that the agency should not be subject to the provisions of the legislation or conduct regulations.

In the appendix to this letter we have provided our views on each of the specific questions posed by the consultation.

We would be delighted to discuss our views with you or other representatives of the Department for Business Innovation and Skills should you wish to do so.

Yours faithfully

Stephen Rodney

Footnotes:

1. Source: Office for National Statistics Annual Survey of Hours and Earnings 2012 Provisional Results
<http://www.ons.gov.uk/ons/rei/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/stb-ashe-statistical-bulletin-2012.html#tab-Annual-earnings>

2. UK Government Procurement Policy Note- Tax Arrangements of Public Appointees Action Note 07/12 24 August 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62099/PPN-0712-Tax-Arrangements-of-Public-Appointees.pdf

Appendix

In this appendix we provide our response to specific questions posed by the consultation.

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- **Employment businesses and employment agencies are restricted from charging fees to work-seekers**
- **There is clarity on who is responsible for paying temporary workers for the work they have done**
- **The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable**
- **Work-seekers have the confidence to use the recruitment sector and are able to assert their rights**

Response: Yes

b) Please give reasons for your answer.

Our commercial return is based on fees payable by organisations seeking the best candidate for the role. To receive a fee from a prospective candidate would give rise to a conflict of interest between us and the hiring organisation and therefore we would not consider charging a fee to candidates as part of the search process. We therefore are ambivalent to whether regulations exist regarding the charging of fees to work-seekers as commercially we would not seek to charge such a fee.

We do not consider there to be an issue as regards who is responsible for paying temporary workers/contactors for the roles we fulfil.

We agree that movement between jobs should not be hindered. However, it is a commercial imperative for the recruitment industry that where an interim worker is moved into a permanent role with the hirer a commercial rate of compensation should be payable to the agency who introduced to the candidate. We believe that the applicable rate for any such transfer fee should be left to the market to decide through contractual negotiation and does not need to be regulated.

We do not believe there is a lack of confidence, in work-seekers who are appropriate to the services we provide, to use our services.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

No

b) If yes, please give details on what these are.

N/a

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Question 4: a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?

No

b) Please give reasons for your answer.

N/A

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

N/a

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

N/a

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Not applicable as we do not place temporary workers]

b) Please give reasons for your answer.

See above.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

No, we consider the provisions of regulation 6 to be fairly drafted such as to afford reasonable redress to employment agencies for non-performance of contracted actions and/or adherence to reasonable notice periods.

b) Please give reasons for your answer.

See above

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes

b) Please give reasons for your answer.

We believe the regulation should be removed in its entirety and refer you to our comments above under our response to Question 1.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

No

b) Please give reasons for your answer

Information published about our business should be left to our own judgement as to what is required in the competitive market in which we operate in order to attract the sophisticated clients and candidates which underpin our business.

This should be driven by competitive market forces and not by regulation.

We take particular exception to the suggestion of a regulatory provision which would require publication of the items listed in para 7.17 of the consultation document. Our exception to this relates to the fact that many of the items listed are of no relevance whatsoever to our business, our clients or our candidates. To force publication of such information would add to unnecessary bureaucracy for our business and runs counter to the Government's Red Tape Challenge cited as one of the reasons for this consultation.

Question 11: What information do you think would be of most interest to:**a) work-seekers****b) hirers**

Work-seekers and hirers seeking to avail themselves of our services will wish to know our expertise in the sector or management strata they are seeking to fill/secure a position. We already publish this information as part of the competitive market in which we operate. We can see no regulatory need to require us to publish this or any other information about our business. Should clients or candidates wish to receive further information from us we will provide this to them, as appropriate, in each individual circumstance.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

No

b) Please give reasons for your answer.

We refer you to our responses to Questions 10 & 11 above.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

No.

b) Please give reasons for your answer

Our business is founded on our reputation for quality of service. Codes of practice are irrelevant in this regard as it is the service our clients and candidates receive that is of paramount importance to us and the enduring success of our business.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

None. We refer to our comments in Question 13 (b) above.

Question 15: Do you think that it is necessary for the Government to enforce the recruitment sector legislation?

To the extent that the legislation implemented as a result of this consultation applies to relevant businesses we do think the government should enforce the legislation. However, we refer you to our comments under the section of the letter entitled 'General view on the consultation' as to the applicability of the legislation to our business.

b) Please give reasons for your answer.

Where legislation is on the statute books it should be enforced. Not to do so undermines the rule of law of this country.

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

We have no particular view on this – as previously stated our business is founded on our reputation for quality. There is no need for prohibition orders in the executive search market as clients and candidates simply would not engage our services should our quality of service fall below the consistently high levels expected.

b) Please give reasons for your answer.

See above.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

We refer to our response given to Question 16 above.

b) Please give reasons for your answer.

See above.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

We refer to our response given to Question 16 above.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

We refer to our response given to Question 16 above.

b) Please give reasons for your answer.

See above.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

We refer you to our comments under the section of the letter entitled 'General view on the consultation' as to the applicability of the legislation to our business. As such we have no particular view on this.

b) Please give reasons for your answer.

See above.

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers?

b) hirers?

c) other employment agencies/employment businesses?

We refer you to our comments under the section of the letter entitled 'General view on the consultation' as to the applicability of the legislation to our business. As such we have no particular view on this.

UCATT

UCATT's response to the Department for Business, Innovation & Skills

Recruitment sector legislation – consultation on reforming the regulatory framework for employment agencies and employment businesses.

April 2013



Introduction.

The Union of Construction, Allied Trades and Technicians (UCATT) is the largest specialist union for construction workers in the UK and the Republic of Ireland, with members both in the public and private sectors. UCATT is the lead union among the signatories to the *National Working Rule Agreement of the Construction Industry Joint Council* and the *Joint Negotiating Committee for Local Authority Craft and Associated Employees*. UCATT is represented on a number of construction industry related bodies by the General Secretary including the *Strategic Forum for Construction*, the *Construction Industry Training Board*, the *Construction Skills Certification Scheme* and *B&CE Pensions and Financial Services*.

UCATT's members in private companies are builders and craftspeople, refractory users, steeplejacks and lightning conductor installers and workers in the demolition industry. UCATT also represents workers in Local Government, the NHS and the Prison Service.

The construction industry is notorious for its use of flexible labour and high level of agency workers. Informal employment practices are widespread and sub-contracting is commonplace. False self-employment is rife and is often encouraged by agencies and payroll companies, who help construction companies to change the status of their workers from directly employed to self-employed sub-contractor, even though they are not genuinely self-employed.

To be considered to be genuinely self-employed according to HM Revenue & Customs, workers should be paid a pre-agreed price on completion of a job, bearing the financial risk. They should have autonomy over what work they accept; who completes the work – whether they carry it out themselves or simply supply the labour of others; and when the work is undertaken. They should also supply the materials and tools used.ⁱ However, most self-employed workers in construction share the same characteristics as employees. They have to

undertake the work themselves, at a time and place dictated to them. They work set hours and are paid an hourly rate or salary.

Labour Market Statistics from February 2013 show that although construction workers form just 7.2% of the total UK workforce, they form 20.3% of the self-employed workforce.ⁱⁱ At the end of 2012, the construction workforce comprised 859,000 self-employed workers and 1.268 million employees. This has pushed self-employment in construction to just over 40%.ⁱⁱⁱ

This over-representation of self-employed workers in the construction industry when compared to other industries and sectors, is a direct result of false self-employment. UCATT is deeply disappointed that a review of employment agency regulations has failed to address this important issue and that the Government has made no proposals to stop the growth of and exploitation by payroll companies.

Confidentiality & Data Protection.

Yes, I would like you to publish or release my response

No, I don't want you to publish or release my response

Contact details.

Name: Kate Purcell.

Organisation: The Union of Construction, Allied Trades and Technicians (UCATT).

Address: UCATT House, 177 Abbeville Road, London SW4 9RL.

Please tick the boxes below that best describe you as a respondent to this:

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?

- **Employment businesses and employment agencies are restricted from charging fees to work-seekers**
- **There is clarity on who is responsible for paying temporary workers for the work they have done**
- **The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable**
- **Work-seekers have the confidence to use the recruitment sector and are able to assert their rights**

Yes No

b) Please give reasons for your answer.

To limit regulation to the four areas specified above, is a wholly inadequate response. In UCATT's opinion, this is an extremely incomplete list and there are many more areas in need of regulation.

UCATT agrees that regulation is required to ensure that no charges are made to work-seekers. No employment agency or business should be allowed to charge fees for finding or trying to find work for those seeking employment. This would prove prohibitive to unemployed people and those on low incomes who are attempting to secure alternative work. Restricting employment opportunities in this way would also have a detrimental impact on the economy as a whole.

It is essential that agency workers understand the nature of their contract. UCATT agrees that they need to be informed of who will be paying them but they also need to be made aware of the rate of pay, the hours of work and whether they are employed under a contract for services or a contract of employment. They also need to be told the full terms and conditions of their employment. These details should be available when the vacancy is advertised to help work-seekers assess its suitability to their personal circumstances. UCATT has many examples of agency staff starting work without being told that they were being treated as self-employed, including those working on large Government funded projects.

One worker, whose identity has been protected, was being paid just under £8 per hour for construction work on a hospital building project in Scotland. He was recruited through an agency but found himself being paid by a separate payroll company, who deducted £22 every week in administrative charges. It took the worker almost a year to find out from his peers that he was being treated as a self-employed worker and had no rights to sick pay or holiday pay. He had never been told he was self-employed, had not registered himself as self-employed and had not joined the Construction Industry Scheme for self-employed workers in the sector. ^{iv} Such abuse needs to be prevented through strict regulation.

UCATT agrees that agencies and employment businesses should be prohibited from constructing barriers that prevent temporary workers from securing permanent employment with a hiring company. Transfer fees can make it unattractive for employers to offer permanent posts to agency staff. This disadvantages the agency worker but also has consequences for the wider economy. Insecure workers tend to spend less and are unwilling and unable to make long-term financial commitments, such as acquiring a mortgage or purchasing a car.

However, there also needs to be regulation to ensure that workers don't suffer detriment if their hiring company wishes to change employment agencies but continue to employ existing agency staff. There should be no charge or barrier to the worker, including fee levels that deter the company from maintaining current employment relationships. This regulation should also apply to third party fees when a hiring company introduces a worker to another company for either temporary or permanent employment.

Work-seekers should be able to seek redress if they face exploitation or mistreatment by an agency. However, UCATT does not see how their rights can be exercised adequately if the proposal to close the Employment Agency Standards Inspectorate goes ahead.

Question 2: a) Are there any other outcomes that you think should be achieved by the new legislation?

Yes No

b) If yes, please give details on what these are.

Payroll companies should face greater regulation to prevent them from making charges to workers for processing their wages. This cost should be borne by the business using the payroll company. In addition, UCATT believes that there is a desperate need to regulate business, employment agencies and payroll companies from exploiting current tax loopholes that encourage false self-employment.

A report commissioned by UCATT in 2008 and written by academics from the University of Essex, concluded that there were between 375,000 and 433,000 falsely self-employed construction workers.^v With a further 270,000 to 325,000 genuinely self-employed construction workers in 2008, this reveals false self-employment rates that could be as high as 58%.^{vi}

The most significant factor in creating the disproportionate numbers of self-employed workers in construction is the unique taxation scheme – the Construction Industry Scheme (CIS). This scheme was established to regulate payments from contractors to subcontractors, in order to simplify tax payment for those working for a large number of different clients and to maximise tax collection for the government. Unlike other self-employed workers, those registered through the CIS are taxed at source by those who engaged them, who then pass on the payments to the HMRC. These deductions are made at a standard rate of 20%. As Employers' National Insurance contributions are only made for employees and not self-employed workers, the employer is exempt from paying the required 13.8% of each employee's earnings.

The numbers of workers paid through the Construction Industry Scheme has been rising steadily. According to figures obtained from the HMRC, there were 740,000 CIS workers in 2009/10, increasing to 760,000 in 2010/11, reaching a peak in 2011/12 of 770,000.^{vii} This growth has occurred at a time when overall employment in the construction industry has slumped to its lowest level since 2002.^{viii}

In 2008, Mark Harvey and Felix Behling, from the University of Essex, evaluated the cost of false self-employment as a loss to the Exchequer of between £1.4 billion and £1.9 billion per annum, with employers responsible for 58% of this loss.^{ix} This figure has been updated for 2012 and now stands nearer £2 billion per annum.^x This figure comprises £1.2 billion of lost revenue through unpaid Employer's National Insurance contributions at a rate of 13.8%. Added to this is a further loss of £200 million caused by the lower rate of National Insurance paid by self-employed people,

9% compared to the 12% paid by employees. Furthermore, as the self-employed are taxed on the profits of their business (although in the case of the falsely self-employed, there are no profits, only wages), there are additional deductions that self-employed workers can make from their gross income. This tax relief costs a further £520 million.

This problem has been compounded by the development in the last few years, of a multi-million pound business designed to contravene employment status guidelines. Payroll companies provide a service to businesses to help them to transfer directly employed staff to self-employed status. In doing so, the payroll companies effectively take on the risk of prosecution, offering protection for construction companies. This is something that they emphasise in their sales pitch and marketing material, as demonstrated by the extract below, taken from the web site of Hudson Contract, the UK's largest CIS contract and payroll company:

There is nothing mysterious or questionable about our ability to inoculate every client against HMRC investigations, fines and penalties. The plain fact is that we have been through the legal process to prove that what we do is legitimate, so that you don't have to. We have defended our business model through two Tax Commissioner hearings and a High Court Appeal.

HMRC accepts we simply make use of the taxation scheme that they have put in place. We work with the Revenue on a day-by-day basis to verify and pay over 120,000+ freelance operatives each year...

If HMRC wanted to question the status of the freelance operatives contracted by us to work on your sites, we would provide the legal team at our expense, and we would pay the fines if we were to lose.^{xi}

Such confidence is astonishing. The profits to be made from flouting the existing employment status guidelines clearly outweigh the risk of prosecution. Hudson Contract increased its turnover by 21% in 2011/12, producing a pre-tax profit of £4.3 million.^{xii} At the same time, the HMRC seem powerless to act. This feeling of impotence may explain why the number of employer compliance reviews into employment status issues carried out by the HMRC has fallen considerably, from 1205 in 2009/10 to 454 in 2010/11 and just 433 in 2011/12.^{xiii}

Whilst greater enforcement would be helpful and could act as deterrent, it is an inadequate and unrealistic response given the recent escalation of the scale of the problem. The Construction Industry Scheme has already been reformed several times during its existence, in 1997, 2004 and 2007,^{xiv} yet it is still not fit for purpose. UCATT does not accept that genuinely self-employed workers in construction are any different to self-employed workers in other sectors and believes that it is time to abolish the Construction Industry Scheme. As part of its objective was to maximise tax collection for the government, the CIS has clearly failed and it has now become a

tool to **enable** tax avoidance. In order to stop the misuse of the self-employed status, UCATT supports the establishment of a single self-employed tax status where all genuinely self-employed workers, no matter what their occupation, are paid gross and are responsible for their own tax affairs.

UCATT believes that removal of regulation around health and safety information will jeopardise workers' safety and lead to more deaths in high risk industries, such as construction. There needs to be strict regulation to ensure that employment agencies are aware of the health and safety requirements of the hirer so it can assess the suitability of work-seekers. The health and safety risks of particular assignments also need to be fully disclosed to the work-seeker by the agency. In addition, agencies should have a responsibility for training all work-seekers, free of charge, in health and safety at a level appropriate to the risk in the sector.

Obviously, hirers have a responsibility to provide adequate health and safety inductions for new starters. However, the reality is that agency workers are more likely to be used at busy times to respond to peaks in workload or to work unsociable hours when there is less supervision and support. As a result a number of agency workers have died on their first day at work: an agency worker in Newmarket was crushed when unloading sheets of glass from a shipping container ^{xv} and another agency worker working as a rigger fell to his death at a power station. An inquest into the death of the rigger heard that "there was a lack of communication at all levels between all parties". ^{xvi}

McGinley Recruitment Services were fined £325,000 along with Balfour Beatty Rail Infrastructure Services Limited after the death of a rail maintenance agency worker who had only completed a few shifts before his death. The HSE stated that "MRS supplied a team less qualified than that specified by BBRIS." ^{xvii} Another agency worker died during the demolition of a building in Blandford. He was not wearing a hard hat and had no experience of demolition. ^{xviii}

When an agency worker died after being crushed whilst welding a tip bucket, the HSE said: "Incidents can happen when inadequate information and instruction is provided to such workers". ^{xix} Removing the regulations governing the exchange of health and safety information between agency and hirer will mean that accidents such as these are more likely to occur in the future. UCATT objects vociferously to the statement in the impact assessment that "any risk to a work-seeker is minimal as hirers also have a health and safety duty, and will require staff who are suitable for the placements they are offering". ^{xx} The examples provided above show that the current regulations are not enforced sufficiently. Deregulation in this area will have tragic consequences. How many agency workers will need to die before word gets round that an agency does not supply adequately trained and experienced staff?

UCATT also opposes the removal of regulations governing protection for work-seekers who take employment away from home. Employment agencies and businesses must provide full details of travel and accommodation arrangements, including costs, in a transparent manner before the work-seeker accepts the contract. In 2008, UCATT discovered a group of workers employed on

the construction of a hospital in Mansfield who were being paid by their employment agency a total of £8.80 for a 40 hour week once accommodation costs had been deducted. ^{xxi}

Question 3: a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Yes No

b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?

Not applicable.

Question 4: a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Yes No

No suggestion to make.

b) Please give reasons for your answer.

Question 5: a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes No

b) Please give reasons for your answer

A cooling-off period is essential to allow workers to fully consider the benefits of paying for additional services provided by employment agencies and businesses. This prevents workers from agreeing to expensive and unnecessary services in the heat of the moment, under pressure from agencies keen to increase their profits. A reasonable cooling-off period gives workers and work-seekers the opportunity to review the services, compare charges with other companies providing similar services and ascertain if it is beneficial for them. There should be no charge or detriment for a worker or work-seeker who, after further reflection, chooses to terminate a contract for a service provided by the agency.

UCATT fears that abolishing a cooling-off period will result in the introduction of charges for work-seekers through the back door. For example, without regulation, fees could be made for inductions or essential health and safety training which are a pre-requisite for obtaining work in high risk industries, such as construction, or even life-saving personal protective equipment.

UCATT already has evidence of agencies making exorbitant charges in this area. The Construction Skills Certification Scheme (CSCS) card is a mandatory requirement for construction workers to work on most construction sites. In order to obtain a card, workers must successfully complete a health and safety test. The CSCS card is the single most important factor in ensuring that construction workers have the necessary skills to work safely, in an industry where injury rates are high and on average 50 workers die each year. The normal cost of a CSCS card is £30 with the health and safety test costing £17.50. In one case that UCATT has uncovered, a booking agency has been charging £43 for the test alone.

Without a cooling-off period, work-seekers could be pressured into using agency services which in the example above, cost over double the amount that it would cost if they were went directly to CSCS. Young workers, migrant workers and those new to the industry are most at risk of this exploitation. There has to be regulation to ensure that employment agencies and businesses cannot make it a condition of employment that work-seekers have to pay for services or training requirements provided by the agency.

Question 6: a) If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes No

b) What do you think the cooling off period should be?

30 days.

Question 7: a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes No

b) Please give reasons for your answer.

As outlined in the response to question 1 on page 4, UCATT believes that it is critical that workers understand who is responsible for paying them. They also need to fully understand the terms on which they are employed. As stated earlier, UCATT has many examples of agency staff starting work without being told that they were being treated as self-employed, including those working on large Government funded projects.

Workers could end up not receiving payment for their work whilst the agency and the employer engage in a blame game, passing the worker's complaint between each other. Removal of effective legislation in the area will effectively give carte blanche to disreputable agencies to flout statutory rights. UCATT already deals with routine refusals by companies and agencies to pay staff

for their last week of wages at the end of a contract. Many companies delay this payment in order to benefit their cash flow. These cases are often resolved shortly before the employment tribunal hearings or even on the day itself. Unlawful deduction of wages form over half of UCATT's employment tribunal cases. Without proper regulation, this situation will deteriorate further.

Question 8: a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?

Yes No

b) Please give reasons for your answer.

UCATT would like to see the extension of this regulation to work-seekers who are or will be employed under a contract **of** service. This would ensure that the clause covers those workers who are falsely self-employed, who share all the characteristics of an employee whilst being taxed as a self-employed worker through the Construction Industry Scheme (see the introduction on page 1). This would still exclude those engaged under a contract **for** service and would not prevent a business claiming compensation from a client who fails to deliver the services agreed. Genuine business to business contracts between two companies on a buyer and supplier basis would still fall outside the scope of this regulation.

Question 9: a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?

Yes No

No suggestion to make.

b) Please give reasons for your answer.

Question 10: a) Do you think employment agencies and businesses should publish information about their business?

Yes No

b) Please give reasons for your answer

Publishing information such as a breakdown of charges, number of placements available, the number of work-seekers registered etc. can all help clients, both businesses and work-seekers, to establish whether the agency meets their needs. This offers greater transparency if it is compulsory for all agencies and employment businesses.

However, UCATT is concerned about how this information can be verified if the sector becomes self-regulating. Not all agencies belong to a relevant trade association. To prevent unsubstantiated and misleading claims, there needs to be a government regulator in the form of a strengthened Employment Agency Standards Inspectorate to oversee and decide the information that should be published, to carry out checks to ensure the information is accurate and truthful, and investigate any complaints from clients.

Question 11: What information do you think would be of most interest to:

a) work-seekers **b) hirers**

Both types of clients would be most interested in transparent information about charges for services.

Question 12: a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Yes No

b) Please give reasons for your answer.

If there is to be a level playing field and fair competition, clients must be able to use the same comparators to assess the differences between employment agencies. This means that all agencies and employment businesses need to publish the same type of information and use the same methods for collation.

c) If you answered yes, what information do you think it should be compulsory to publish?

UCATT would be most interested in seeing information about charges to work-seekers of additional services as well as statistics relating to the number of vacancies filled. There should also be a breakdown of vacancies by type of vacancy, e.g. permanent, temporary, self-employed; the sector e.g. construction, health care, media; and rates of pay.

Question 13: a) Do you think trade association codes of practice help to maintain standards in the sector?

Yes No

b) Please give reasons for your answer.

A trade association code of practice only applies to members of that specific association. It does not have sufficient penetration to be effectual, especially in an area such as the recruitment sector where there is a high number of companies that do not belong to a trade association. UCATT finds it very disturbing that BIS is prepared to remove government regulation to rely on self-regulation through trade association when it admits that it has “no information about the proportion of employment agencies or businesses that ... are members of sector trade association”.^{xxii}

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

UCATT believes that the best way to maintain standards in the recruitment sector is to have effective regulation.

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Yes No

b) Please give reasons for your answer.

UCATT welcomes the rights of individuals to pursue claims against employment agencies and businesses through employment tribunals but believes that this should be **in addition** to a government enforcement regime. Where there are companies who are systematically abusing employment rights or regulations, it takes more than an individual employment tribunal case to rectify the situation. An employment tribunal can provide justice for a wronged worker but it does not tackle the wider problem of non-compliance which may require a prohibition order or a criminal prosecution.

As agency work is precarious and many agencies workers would be considered vulnerable workers, there is a need for additional protection in the form of a government enforcement agency. Many agency workers are low paid and low skilled, many are migrant workers whose first language is not English. This makes it harder for them to seek individual redress.

The current Employment Agency Standards Inspectorate has been ineffective in UCATT’s opinion. However, this is not an argument for its closure, rather it requires better resourcing, more powers and a more proactive approach. It has a staff of just 12 and is responsible for 6,820 employment

agencies and 11,045 employment businesses.^{xxiii} There is a high level of non-compliance in the recruitment sector in construction. EAS conducted a targeted inspection exercise in the construction sector between 2010 and 2012 and inspected 59 employment agencies and businesses. As a result 54 were found to be non-compliant and were issued with warnings.^{xxiv}

EAS also plays an important role in the recovery of unpaid wages. EAS manages to recover 70% of unpaid wages within 6 weeks^{xxv} and this provides a far quicker outcome for the worker than using the employment tribunal system which takes on average 24 weeks.^{xxvi}

Question 16: a) Do you think that prohibition orders should be included in the new enforcement regime?

Yes No

b) Please give reasons for your answer.

UCATT believes that prohibition orders are essential to prevent agencies and individuals guilty of non-compliance from operating. More use should be made of them in order to act as deterrent.

Question 17: a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes No

b) Please give reasons for your answer.

UCATT supports bringing the recruitment sector into line with other areas of employment law so that individuals can pursue employment tribunals for rights covered by the Conduct Regulations as well as those covered by the Agency Worker Regulations but for the reasons outlined in response to question 15, this should be in addition to the protection and powers provided by a government enforcement agency.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

All agencies should give out details of EAS when work-seekers register with them.

Question 19: a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes No

b) Please give reasons for your answer.

This would improve the quality of the recruitment sector by serving as a deterrent. It would also alert clients, both work-seekers and businesses, to the existence of non-compliant agencies and employment businesses.

Question 20: a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?

Yes No

b) Please give reasons for your answer.

If businesses do not keep the necessary documentation, how can they demonstrate that they have complied with the legislation when challenged?

Question 21: What records do you think employment agencies and employment businesses should be required to keep relating to:

a) work-seekers? b) hirers? c) other employment agencies/employment businesses?

This is not a comprehensive list but UCATT believes that records should be kept about the training that work-seekers have been provided with, along with records of their full terms and conditions and a record of hours worked. Records should also be kept of the health and safety requirements of the hirers and particular assignments.

ⁱ <http://www.hmrc.gov.uk/employment-status/index.htm#1>

ⁱⁱ <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/february-2013/table-emp14.xls>

ⁱⁱⁱ Ibid

^{iv} Elliot, Jamie. 2012. *The great payroll scandal*. London: UCATT, p.5

^v Harvey, Mark and Felix Behling. 2008. *The evasion economy: false self-employment in the UK construction industry*. London: UCATT, p. 22.

^{vi} Ibid, p. iv.

^{vii} Elliot, Jamie. 2012. *The great payroll scandal*. London: UCATT, p. 12.

^{viii} <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/february-2013/table-emp13.xls> (based on the mean average per year).

^{ix} Harvey, Mark and Felix Behling. 2008. *The evasion economy: false self-employment in the UK construction industry*. London: UCATT, p. 38.

^x Elliot, Jamie. 2012. *The great payroll scandal*. London: UCATT, p. 11.

^{xi} <http://www.hudsoncontract.co.uk/benefits/your-tax-guarantee>

^{xii} Elliot, Jamie. 2012. *The great payroll scandal*. London: UCATT, p. 12.

^{xiii} Ibid, p. 1.

^{xiv} See Chapter 4: What action has been taken in the past?

http://webarchive.nationalarchives.gov.uk/http://www.hm-treasury.gov.uk/d/consult_falseselfemploymentconstruction_200709.pdf

^{xv} <http://www.hse.gov.uk/press/2010/coi-e-49arkenpop.htm>

^{xvi} <http://news.bbc.co.uk/1/hi/wales/7731009.stm>

^{xvii} <http://www.hse.gov.uk/press/2004/e04136.htm>

^{xviii} <http://www.hse.gov.uk/press/2012/rnn-sw-alaistercopland.htm>

^{xix} http://news.bbc.co.uk/1/hi/scotland/south_of_scotland/8269444.stm

^{xx} https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52302/13-531-recruitment-sector-legislation-consultation-on-reforming-regulatory-framework-impact.pdf, p. 49.

^{xxi} The hidden workforce building Britain: exposing exploitation and protecting vulnerable workers in construction. 2011. London: UCATT, p. 13.

^{xxii} https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52302/13-531-recruitment-sector-legislation-consultation-on-reforming-regulatory-framework-impact.pdf p. 22.

^{xxiii} Labour Markets Directorate, Employment Agency Standards Inspectorate. 12th March 2013. *Response to Freedom of Information request from UCATT*.

^{xxiv} Ibid.

^{xxv} https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52302/13-531-recruitment-sector-legislation-consultation-on-reforming-regulatory-framework-impact.pdf, p. 26.

^{xxvi} Ibid, p. 31.

Resource Solutions Group PLC

Recruitment Sector Legislation - Consultation on reforming the regulatory framework for employment agencies and employment businesses: Response form

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Summary

Resource Solutions Group Plc ("RSG") welcomes this consultation to review the effectiveness and appropriateness of the Employment Agencies Act 1973 ("EA A") and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("the Conduct Regulations"). RSG also welcomes the Government's acknowledgement of the vital role that the recruitment sector plays in the economy and we are encouraged by the Minister's commitment to ensuring that employment law supports and maintains the UK's flexible labour market.

RSG has worked extensively with APSCo in preparing their consultation response, including being part of their working group of recruitment company members and affiliates to provide input in shaping their opinions and suggestions contained within their response.

It is crucial that Government supports legislation that protects work-seekers at risk of exploitation by unscrupulous staffing companies. It is also, however, important that legislation does not act as a barrier to economic growth by imposing unnecessary burdens on recruitment businesses that do not pose a risk to work-seekers. Having a new regulatory framework that protects the vulnerable sectors of the labour market while recognising a distinct professional sector where work seekers are not at threat is paramount and we would like to see this distinction clearly reflected in a move away from the "one size fits all" legislation, which has been a feature of regulation in the staffing industry over the past 13 years and, like all APSCo's members, recognise change is necessary.

RSG fully share and support APSCo's views that the highly-paid business professionals who use professional recruitment businesses neither want nor need the protections of such legislation, and habitually opt out of the Conduct Regulations. However, the current opt-out system is fraught with difficulties, which we consider within our response.

Ideally, we would propose that arrangements between client businesses, recruitment businesses, and professional business consultants working via limited companies should be considered 'business to business' relationships and should therefore be out of scope of any future regulations, in a similar manner to many professional business consultants being out of scope of the Agency Workers Regulations. Alternatively, we would expect a minimum standard to be spelt out that protects the vulnerable but does not impact upon these business to business relationships.

Response to Consultation

Question 1:

- a) Do you agree with the four outcomes that the government believe should be achieved by the recruitment sector legislation (outcomes are listed below)?
- Employment businesses and employment agencies are restricted from charging fees to work-seekers
 - There is clarity on who is responsible for paying temporary workers for the work they have done
 - The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable
 - Work-seekers have the confidence to use the recruitment sector and are able to assert their rights
- b) Please give reasons for your answer.

Yes - In principle we do agree with the four outcomes above and discuss each outcome in more detail in the following questions.

Question 2:

- a) Are there any other outcomes that you think should be achieved by the new legislation?
b) If yes, please give details on what these are.

Yes – RSG would like to see a clear distinction in the new regulatory framework between:

highly-paid, highly-skilled professional business consultants providing their services through limited companies to end-user clients who do not have day to day supervision, direction or control over the method by which they provide the required service

and

lower-paid, often unskilled and vulnerable individuals who work under the supervision, direction, and control of the end-user client.

Highly paid individuals (known in the industry as 'limited company contractors' whether working through a personal service company ("PSC") or an umbrella company) should automatically be considered outside of the scope of the new regulatory framework as there is a genuine business to business relationship between the parties, rather than a relationship similar to that of employer and employee. Such individuals are highly paid and use recruitment firms as a pathway to the end-user client.

The vast majority of limited company contractors neither want nor need the protections afforded by the current Conduct Regulations, which is borne out by the number that opt out via a Regulation 32. From our experience of having worked with this legislation since the outset, many contractors do not actually understand why we even have to ask about providing an opt out because they do not feel the legislation is relevant due to level of skills / pay that set them aside from the more vulnerable work-seekers. Statistically, RSG have a 99.9% rate of contractors who currently opt out. In previous years, this rate was 100% save for 2012 when it was 99.86%.

The Agency Workers Regulations ("AWR") set precedent within the UK by acknowledging the professional, self-employed nature of consultants engaged in business to business relationships with staffing companies and end-user clients, allowing such individuals to be considered outside of the scope of those regulations. Unfortunately, the AWR made a differentiation between the type of limited company through which a contractor provides its services, forcing all umbrella company contractors to be within scope. We do not believe that the differentiation between umbrella companies and personal service companies is relevant – what is relevant is the genuine business to business relationship.

RSG do appreciate and fully support the need for safeguards to prevent unscrupulous firms from using limited companies as a means to avoid complying with legislation. APSCO have proposed safeguards, which we support.

Ultimately, all limited company contractors should still have the right to protection under the new regulatory framework and should retain a right to 'opt in'; this is similar to what we already have in place but much simpler, thus avoiding the problems that recruiters currently face.

One thing that has never been clear is at what point an opt-out notice must be obtained in order for it to be valid: before the CV is even submitted to the client or before the assignment commences? Due to the nature of contract recruitment, it is very often the case that a client will want a contractor to start the assignment before all the

necessary paperwork is executed between the contractor, the company supplying the contractor, and the employment business. There are also numerous situations where candidates are new to contracting and at the time their CV is submitted to a client they are not incorporated so in effect the opt-out is not in accordance with Regulation 32(9) and is arguably invalid.

Communication with professional contractors is usually by telephone and email, under extreme pressure of time; they are often working away from home, and it's not uncommon for the recruitment process, from CV sent to start date to take no longer than a day or so. As a result, it is inevitable that many contractors – who have willingly opted out of the conduct regulations – are actually legally within the regulations because neither they, nor the company supplying the contractor get the opt-out notice executed in time before the assignment commences, despite the best endeavours of the employment business. Having to ensure opt outs have been completed and returned adds an unnecessary and burdensome administration to the recruitment process; turning the opt out around so it's automatic (for highly-paid, highly-skilled business professionals in business to business relationships) can only ease the regulatory burden upon the professional staffing industry, thus allowing the focus to be on those sectors with vulnerable work-seekers who require protection.

Question 3:

- a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

No

Question 4:

- a) Do you think the current definition of "employment agency" as set out in section 13 of the Employment Agencies Act 1973 could be improved?
b) Please give reasons for your answer.

Yes - the definition in its current form implies that all employment agencies' clients must permanently employ candidates. Also, it is not clear enough in recognising the distinction between actual 'employment agencies' and companies who offer supplementary services connected with the recruitment process. Although the business purpose of these companies such as internet job sites and LinkedIn, is to find suitable candidates for positions, they are not directly involved in the employment decision between the end-user client, the staffing company and work-seeker.

We would recommend defining an employment agency as that which provides services for the purpose of finding and placing suitable individuals into positions at end-user clients. These individuals are not supplied by the employment agency directly as a principal, and will be directly employed or engaged by the end-user client.

Question 5:

- a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

This question is not relevant to the business undertaken by RSG.

Question 6:

- a) If you answered yes to question 5, do you think there should be one standard cooling off period?

N/A

Question 7:

- a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?
b) Please give reasons for your answer.

No – In our experience there is no ambiguity as clarity is provided via the commercial contracts that are held with all parties; however, these are business to business arrangements. When engaging PAYE, there should be a statutory obligation for a contract to exist between the parties which clearly sets out payment terms and conditions; this should be at the point the assignment is agreed

RSG do not, however, wish to see any legislation imposing what payment terms can be agreed between the employment business and limited company contractor under business to business arrangements.

Question 8:

- a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved?
- b) Please give reasons for your answer.

Yes - Regulation 6 is clearly intended to ensure that lower-paid temporary workers, i.e. those engaged and paid directly on a PAYE basis, can exercise a general right to cut short their temporary assignment and either be taken on permanently or work elsewhere.

Highly paid, highly skilled consultants should be able to enter into contracts that include penalties for termination. These clauses are necessary for clients to protect their investments, as projects could be jeopardised if consultants terminate the contract mid-way through. All contracts should be clear and transparent to all parties involved, allowing them to make informed choices.

Limited company contractors with rare/niche skills cannot be simply swapped in and out. Replacing a professional limited company contractor is less easy than replacing a less skilled temporary worker, who can often be immediately swapped in and out of roles with plenty of available replacements. A project could be damaged if a limited company contractor was to walk off site because he had a better paid role elsewhere to start immediately. For this reason, it is essential that the right to termination must be in line with the commercial requirements of the client.

Question 9:

- a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved?
- b) Please give reasons for your answer.

Yes – Clients and recruiters alike struggle with interpreting the wording under Regulation 10. A requirement to agree transfer fees before an assignment begins should be sufficient; transfer fees form part of the commercial arrangements between the end-user client and the employment business and therefore should not be subject to prescriptive legislation.

We work with professional, career contractors, who very rarely take permanent roles, so this really isn't an issue in our industry; statistically 0.35% of our limited company contractors have taken permanent roles since 01 January 2013.

Where RSG have had to sign up to extended period of hire clauses these have never been used, with clients preferring to simply pay a fee; removing this option would offer simplification.

What we do not want is a move towards the prohibition of temp-to-perm fees. The legitimate business interests of the employment business that has invested significant up-front effort, cost and expense into sourcing, building relationships and knowledge of placing a contractor, and the on-going cost of maintaining contractors in assignments must be appreciated and recognised.

Question 10:

- a) Do you think employment agencies and businesses should publish information about their business?
- b) Please give reasons for your answer

No - We do not believe the kind of information suggested in the consultation would be of much use to a contractor looking for his/her next assignment. In the professional sector, contractors usually source assignments from job board adverts, or via networking. The sort of information suggested in the consultation would not be accurate for any reasonable length of time, and would be of little benefit to contractors. Therefore, we believe requiring staffing companies to publish such information would only accomplish a league table of sorts, which could only be of benefit to larger more established companies, but would provide no advantage to work-seekers or clients.

Question 11:

What information do you think would be of most interest to:

- a) work-seekers
- b) hirers

N/A; refer to our response under Q10.

Question 12:

- a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business?
- b) Please give reasons for your answer.

Compulsory publication of information will place a further administrative burden on businesses, in particular smaller businesses and this seems to run counter to the intention of the government to reduce red tape. In addition it may serve as a barrier to entry to new businesses thereby reducing the level of competition in the market.

Question 13:

- a) Do you think trade association codes of practice help to maintain standards in the sector?
- b) Please give reasons for your answer

Yes - As a member of APSCo we are committed to achieving best practice, and compliance is extremely important to us. We believe that all recruitment businesses should be members of a reputable trade association, as they can have an appreciable effect on professionalism within the industry.

Question 14:

What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

If clear and transparent contracts are required for business to business relationships, market forces will ensure that the informed professionals entering in to these relationships are well served.

Question 15:

- a) Do you think that it is necessary for the Government to enforce the recruitment sector legislation?
- b) Please give reasons for your answer.

Yes - Transparent and proportionate enforcement creates a level playing field for all companies. Staffing companies that are not compliant with current legislation have an advantage over compliant businesses. When in commercial negotiations with clients, opening up discussions about the Conduct Regulations and relevant clauses that need to be included, we are repeatedly advised by our clients that 'all our other recruitment partners have signed up without issue so we will not make any amendments to our terms'.

If enforcement does not happen, non-compliant businesses will have a greater advantage, to the detriment of compliant, professional businesses, such as RSG.

Question 16:

- a) Do you think that prohibition orders should be included in the new enforcement regime?
- b) Please give reasons for your answer.

Yes – they should be included as an ultimate sanction for a repeatedly non-complying staffing company. Staffing companies that give the industry a poor reputation and image should be eradicated.

Question 17:

- a) Do you think individuals should be able to enforce their rights at an Employment Tribunal?
- b) Please give reasons for your answer.

No - We believe that enforcement of such regulations should be conducted by EAS inspectors who have the real-world sense to dispense justice and appropriate sanctions in a considered and even-handed manner.

Question 18:

What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

A Government website with information for temporary workers would be helpful as there are far too many grey areas around this.

Question 19:

- a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?
- b) Please give reasons for your answer.

Yes - Knowing about previous cases helps to improve practice. Government should proactively publish the findings of investigations that have been carried out so as to act as a deterrent against poor practice and so as to validate good practice.

Question 20:

- a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements?
- b) Please give reasons for your answer.

No - we do not believe that the industry needs complicated and in-depth legal requirements on record keeping, mainly because accurate record keeping is the only effective way to prove compliance to both staffing-related and other appropriate legislation. It is best, therefore, and common practice by professional recruitment companies to keep such records, whether statutorily required or otherwise.

Question 21:

What records do you think employment agencies and employment businesses should be required to keep relating to:

We do not think that recruitment businesses should be required by additional legislation to keep further information, which is not already required by law. Recruitment businesses already collect the following:

- a) From work-seekers:
 - CV
 - ID documents
 - Right to Work in UK confirmation
 - PES check docs
 - Relevant phone/email logs
 - Contracts
 - Contacts details
 - Actual refs received, no requirement to take out references
 - Company docs if applicable (either direct with the PSC or the umbrella)
 - Opt outs
 - Timesheets/invoices
- b) From hirers:
 - Contracts
 - Relevant phone/email logs
 - Contacts details

- Invoices/timesheets
- Comparable employee information if the work-seeker is within scope of the AWR

c) other employment agencies/employment businesses?

- Third party Managed Service Provider our Recruitment Process Outsourcing documentation.

The Law Society



The Law Society

**Reforming the regulatory framework for
employment agencies and employment businesses**
Response to the BIS consultation

April 2013



The Law Society

The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law.

This response has been prepared by the Society's Employment Law Committee and reflects the expertise of solicitors with daily experience of putting employment law procedures into practice. Our interest in employment law and practice is to secure 'good law making', to provide clarity for employers and employees, and to avoid possible unintended consequences. We offer our expertise and experience to help government shape and tailor its policies accordingly.

Q1. Do you agree with the four outcomes that the Government believe should be achieved by new recruitment sector legislation?

- **OUTCOME 1: Employment businesses and employment agencies are restricted from charging fees to work-seekers**
- **OUTCOME 2: There is clarity on who is responsible for paying temporary workers for the work they have done.**
- **OUTCOME 3: The contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable**
- **OUTCOME 4: Work-seekers have the confidence to use the recruitment sector and are able to assert their rights**

Yes.

Q2. Are there any other outcomes that you think should be achieved by the new legislation?

No.

Q3. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

The Law Society does not have a view on this matter.

Q4. Do you think the current definition of 'employment agency' as set out in Section 13 of the Employment Agencies Act 1973 could be improved?

Yes. The definitions of an employment agency and an employment business should be more closely aligned to the usage of the terms in practice. This will facilitate better understanding of the relevant regulations.

It is our experience that among work seekers an 'employment agency' is more commonly understood to mean a business which employs the work seeker and supplies them to its end client on temporary contracts covering for example, maternity leave or holiday. Workers commonly fill in timesheets and submit them to their 'agency' which is then responsible for paying them. Under the Employment Agencies Act 1973 (the Act) however, that arrangement is said to be an employment business.

Conversely, businesses which place people into jobs permanently, where they are introduced to the business looking to employ someone directly, are more commonly referred to as 'recruitment companies'. Under the Employment Agencies Act 1973 however, that arrangement is described as an employment agency relationship.

There is often a difference between what is understood to be an 'employment agency' and what is meant by the legislation. This makes the Act and consequential regulations difficult for workers to decipher and are a barrier to them understanding their rights.

Any amendment should not have the effect of confusing or negating the effect of existing contractual arrangements and should not therefore have retrospective effect for contracts entered into before the implementation date.

Q5. Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged?

Yes. This would introduce a sensible protection for work seekers.

Q6. If you answered yes to question 5, do you think there should be one standard cooling off period?

Yes. A standard cooling off period will introduce certainty and clarity.

Q7. Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done?

Yes. As will be seen from our response to question 17, we believe that individuals should be able to enforce their right to be paid through an employment tribunal.

If the legislation introduces a requirement for individuals to be informed who is responsible for paying them, that would reduce any pre action debate (and wasted time and costs). If the requirement were to have a penalty for non-compliance, akin to the failure to provide a Section 1 Statement of Terms under the Employment Rights Act 1996 (Section 38 of the Employment Act 2002), it would encourage compliance.

We can see no particular prejudice that could be suffered by an employment business having to set out in clear terms who is responsible for paying an individual.

Q8. Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of Regulation 6 could be improved?

Yes. The current text of Regulation 6 is at Annex A and we have marked our suggested amendments as tracked changes.

Q9. Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of Regulation 10 could be improved?

Yes. The provisions of Regulation 10 are unduly complex and require substantive redrafting to aid understanding. The current text of Regulation 10 is at Annex B. We have marked some suggested amendments as tracked changes.

Q10. Do you think employment agencies and businesses should publish information about their business?

The Law Society does not have a view on this matter.

Q11. What information do you think would be of most interest to work-seekers and hirers?

The Law Society does not have a view on this matter.

Q12. Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

The Law Society does not have a view on this matter.

Q13. Do you think trade association codes of practice help to maintain standards in the sector?

The Law Society does not have a view on this matter.

Q14. What other non-regulatory tools could be used to maintain standards in the recruitment sector?

The Law Society does not have a view on this matter.

Q15. Do you think it is necessary for the Government to enforce the recruitment sector legislation?

The Law Society does not have a view on this matter.

Q16. Do you think that Prohibition Orders should be included in the new enforcement regime?

The Law Society does not have a view on this matter.

Q17. Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Yes. The Tribunal has particular expertise in dealing with such matters.

While some rights under the Act and the Regulations would not be appropriate for enforcement before the Employment Tribunal (particularly following the introduction of fees), we would support the right for an individual to enforce their right to be paid before an Employment Tribunal. The right to be paid is a narrow issue, thus the

Tribunal's focused timetable, proposed compulsory conciliation, and swift and effective judicial determinations are particularly suited for resolution of such issues.

Q18. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

It seems sensible that individuals should be provided with something akin to a statement under Section 1 of the Employment Rights Act 1996 setting out the identity of their employer, how much they are to be paid, when they are to be paid etc.

Q19. Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?

Yes, to a limited extent.

In broad terms we support the 'name and shame' proposal. However, we would caution against a disproportionate application of this principle. For example, an inadvertent breach may have detrimental effect on well intentioned businesses. The Regulations are complex and difficult to follow. Smaller employment agencies or employment businesses, without the benefit of legal advice, may inadvertently infringe some of the legislative requirements. It is possible that in some such cases the reputation of a business could be held to ransom by a worker where there is an inadvertent or minor breach, which causes no particular loss but is technically a breach of the legislation. Enforcement agencies must be sensitive to this.

Q20. Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements.

Yes.

Most businesses will already maintain records to an adequate standard so should not be effected by this. We would caution the enforcement agencies against assuming that a breach of this requirement automatically means that an organisation has breached the legislation.

Q21. What records do you think employment agencies and employment businesses should be required to keep relating to workers, hirers, other employment agencies/employment businesses.

The Law Society does not have a view on this matter.

Annex A

“Restriction on detrimental action relating to work-seekers working elsewhere

6.—*(1) Neither an agency nor an employment business may (whether by including ~~the inclusion of a term in a contract with a relevant work-seeker or otherwise~~)—*

(a) subject or threaten to subject a relevant work-seeker to any detriment on the ground that—

(i) the relevant work-seeker has terminated or given notice to terminate any contract between the work-seeker and the agency or employment business, or

(ii) in the case of an employment business, the relevant work-seeker has taken up or proposes to take up employment with any other person; or

(b) require the relevant work-seeker to notify the agency or the employment business, or any person with whom it is connected, of the identity of any future employer of the relevant work-seeker.

(2) For the avoidance of doubt, the following shall not constitute a detriment within the meaning of paragraph (1)(a)—

(a) the loss of any benefits to which the relevant work-seeker might have become entitled had he not terminated the contract;

(b) the recovery of losses incurred by an agency or employment business as a result of the failure of the relevant work-seeker to perform work he has agreed to perform; or

(c) a requirement in a contract with the agency or employment business for the work-seeker to give a period of notice which is reasonable to terminate the contract.

(3) In this regulation, “relevant work-seeker” means any work-seeker other than, in the case of an employment business, a work-seeker who is or will be employed by the employment business under a contract of service or apprenticeship.”

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Annex B

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“Restriction on charges to hirers

10.—~~(1) Any term of a contract between an employment business and a hirer which is contingent provides for the payment of a fee where on a work-seeker taking takes up employment with the hirer or working for the hirer pursuant to being supplied by another employment business is unenforceable by the employment business in relation to that work-seeker unless the contract provides that instead of a transfer fee the hirer may by notice to the employment business elect for a hire period of such length as is specified in the contract during which the work-seeker will be supplied to the hirer—~~

~~(a) in a case where there has been an introduction of the worker to the hirer but no supply, on the terms specified in the contract; or~~

~~(b) in any other case, on terms no less favourable to the hirer than those which applied immediately before the employment business received the notice.~~

~~(2) In paragraph (1), “transfer fee” means any payment in connection with the work-seeker taking up employment with the hirer or in connection with the work-seeker working for the hirer pursuant to being supplied by another employment business.~~

~~(3) Any transfer fee term as mentioned in paragraph (1) is unenforceable where the employment business does not supply the work-seeker to the hirer, in accordance with the contract, for the duration of the hire period referred to in paragraph (1) unless the employment business is in no way at fault.~~

~~(4) Any term of a contract between an employment business and a hirer which is contingent depends on any of the following events, namely a work-seeker—~~

~~(a) a work-seeker taking up employment with the hirer;~~

~~(b) a work-seeker taking up employment with any person (other than the hirer) to whom the hirer has introduced him; or~~

~~(c) a work-seeker working for the hirer pursuant to being supplied by another employment business,~~

~~is unenforceable by the employment business in relation to the event concerned where the work-seeker begins such employment or begins working for the hirer pursuant to being supplied by another employment business, as the case may be, after the end of the relevant period.~~

~~(5) In paragraph (4), “the relevant period” means whichever of the following periods ends later, namely—~~

(a) the period of 8 weeks commencing on the day after the day on which the work-seeker last worked for the hirer pursuant to being supplied by the employment business; or

(b) subject to paragraph (6), the period of 14 weeks commencing on the first day on which the work-seeker worked for the hirer pursuant to the supply of that work-seeker to that hirer by the employment business.

(6) In determining for the purposes of paragraph (5)(b) the first day on which the work-seeker worked for the hirer pursuant to the supply of that work-seeker to that hirer by the employment business, no account shall be taken of any supply that occurred prior to a period of more than 42 days during which that work-seeker did not work for that hirer pursuant to being supplied by that employment business.

(7) An employment business shall not—

(a) seek to enforce against the hirer, or otherwise seek to give effect to, any term of a contract which is unenforceable by virtue of paragraph (1), (3) or (4); or

(b) otherwise directly or indirectly request a payment to which by virtue of this regulation the employment business is not entitled.”