



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.