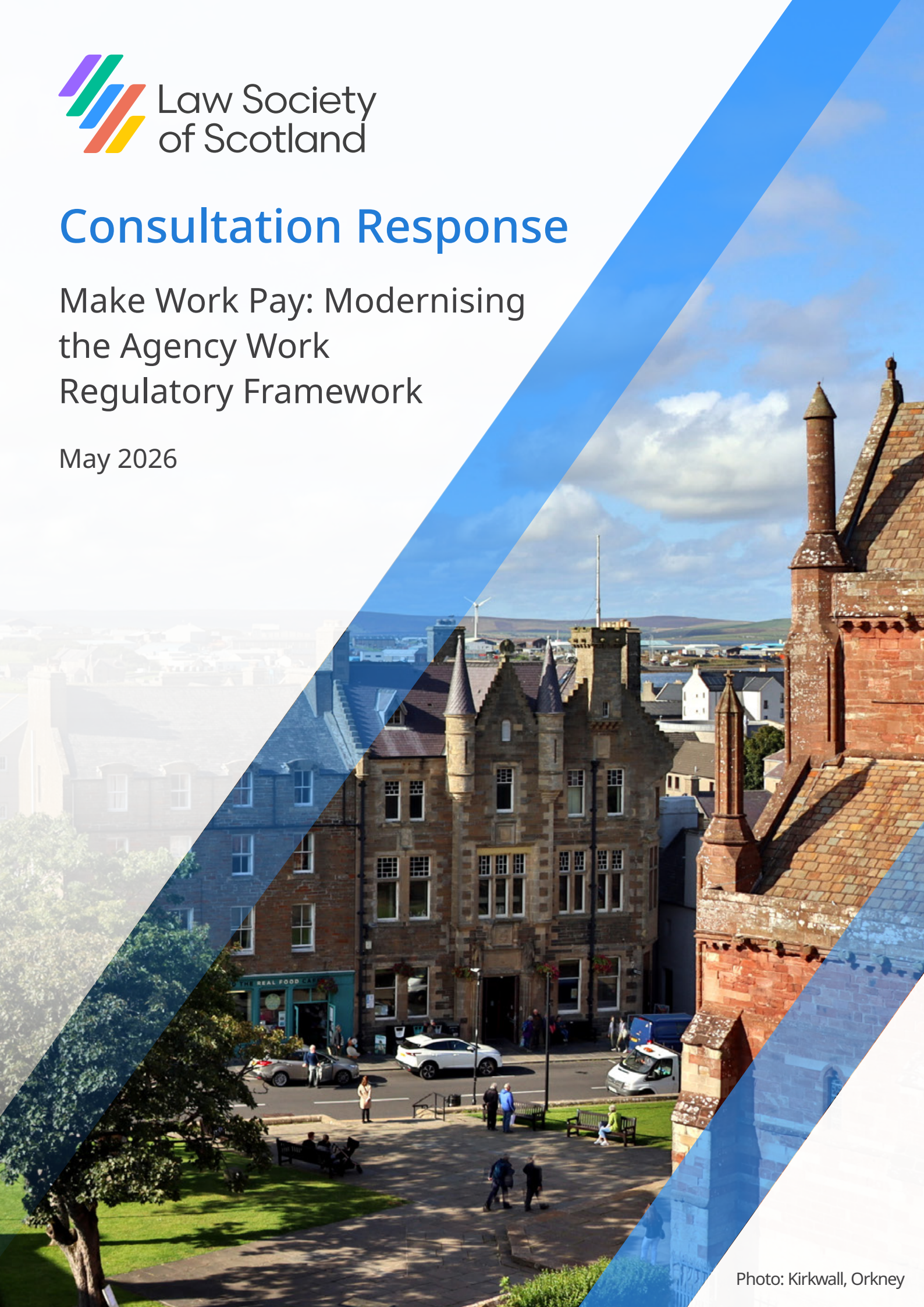


# Consultation Response

## Make Work Pay: Modernising the Agency Work Regulatory Framework

May 2026



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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law sub-committee welcomes the opportunity to consider and respond to the UK Government's Make Work Pay: Modernising the Agency Work Regulatory Framework consultation.<sup>1</sup> The sub-committee has the following comments to put forward for consideration.

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<sup>1</sup> [Make Work Pay: Modernising the Agency Work Regulatory Framework](#)



## Consultation Questions

### Chapter 1: Security

1a) Do you agree that the key objectives listed should underpin the regulations: ensuring fair remuneration; ensuring a wide-ranging coverage of protection; providing assurance for business?

- **yes**
- no
- don't know

1b) Please explain your answer.

The articulation of these objectives provides a necessary and balanced foundation for reform of the agency work regulatory framework. Ensuring fair remuneration and a wide-ranging coverage of protection remains essential to the legitimacy and sustainability of agency work as a form of labour engagement. These objectives support social confidence in the market and guard against exploitative practices which, if left unchecked, risk reputational damage to the sector as a whole.

Equally, the explicit recognition of assurance for business is both welcome and necessary. Agency work now operates within increasingly complex and fragmented supply chains involving employment agencies, employment businesses, umbrella companies and end hirers, often with overlapping functions and contractual relationships. Without a clear focus on legal certainty, predictable allocation of responsibility and proportionate obligations, even well-designed protections risk being undermined in practice. Businesses require clarity to structure their operations, manage risk, and invest confidently in compliant models. A regulatory framework that balances protection with certainty is more likely to promote sustained compliance, market stability and responsible participation.

2a) In your view, do the current regulations meet these objectives?

- yes
- **no**
- don't know

2b) How could the current regulations be adapted to better meet these objectives?

The current regulatory framework establishes important baseline protections, particularly in relation to payment safeguards and the principle of equal treatment following a qualifying period. However, it does not consistently achieve the stated objectives when applied to contemporary labour market practices.



In particular, the framework struggles to provide assurance for business where supply chains involve multiple intermediaries performing overlapping or evolving roles. The growth of umbrella company arrangements has exposed gaps in coverage and uncertainty as to where legal responsibility lies for key obligations. This can result in compliant agencies and end hirers being exposed to legal and reputational risk despite limited operational control over certain aspects of the engagement. Such uncertainty does not incentivise best practice and may discourage engagement with agency labour altogether or encourage overly defensive commercial behaviour.

Moreover, uneven enforcement and the presence of non-compliant operators can undermine fair remuneration in practice and distort competition. As a result, while the objectives remain sound, the current regulations do not consistently deliver them in a way that supports confidence, clarity and effective compliance across the market.

3a) Do you have views on how the government can ensure that the distinction between the activities of employment agencies and employment businesses are clearly defined? For example, changes to regulation 8, or publishing specific guidance.

- **yes**
- no
- don't know

3b) If yes, please explain your answer.

Clearer statutory definition of the respective roles and responsibilities of employment agencies and employment businesses would materially improve legal certainty and compliance. The current framework risks placing undue emphasis on labels or contractual form rather than the substantive activities carried out by entities within the supply chain. This can lead to inconsistent interpretation and enforcement, particularly where business models evolve over time or differ across sectors.

Revisiting regulation 8 to reflect modern working practices, with a clearer focus on functional responsibility rather than formal categorisation, would assist businesses in understanding their obligations and structuring operations accordingly. In addition, the publication of authoritative statutory guidance, developed in consultation with stakeholders, would support consistent application without unduly constraining legitimate commercial arrangements. Improved clarity in this area would reduce dispute, support compliance planning and lower administrative and legal costs.



4a) Do you think the government should relax restrictions on how and when employment businesses can charge end hirers?

- yes
- **no**
- don't know

4b) Please explain your answer.

The existing restrictions play an important role in maintaining stability, transparency and trust within the agency work market. From a business perspective, predictability in charging arrangements is preferable to increased flexibility that may introduce uncertainty or reputational risk.

Relaxation of these restrictions could risk reintroducing practices that obscure cost allocation or indirectly transfer commercial risk onto workers, thereby undermining confidence in the regulatory framework as a whole. There is limited evidence that loosening these safeguards would deliver proportionate benefits to compliant businesses. Instead, maintaining clear and stable charging rules supports fair competition and reduces the likelihood of disputes between parties in the supply chain.

5a) Do you agree that the principle that employment businesses cannot withhold, or threaten to withhold, payment for work done should be maintained?

- **yes**
- no
- don't know

5b) Please explain your answer.

This principle is fundamental to maintaining confidence in agency work and should remain a core feature of the regulatory framework. From a business perspective, it provides a clear and unequivocal rule which reduces the risk of disputes escalating through the supply chain and ensures that commercial disagreements are resolved between businesses rather than at the expense of workers.

Retaining this protection also supports responsible operators by preventing unfair competitive advantage being gained through practices that shift financial risk onto individuals. Clear payment rules contribute to market stability and reduce the likelihood of enforcement action, reputational damage and litigation.



6a) Do you agree that regulation 12 should place an obligation on umbrella companies to pay workers for all work done, including in situations where they have not received payment from an employment business?

- **yes**
- no
- don't know

6b) Please explain your answer.

Where umbrella companies assume responsibility for payroll functions and present themselves as the paying entity to workers, it is appropriate that they also bear the corresponding obligation to ensure payment. Clear allocation of responsibility is essential to avoid workers becoming caught between upstream commercial disputes and to provide certainty for all parties.

From a business perspective, this approach promotes effective risk management by incentivising robust contractual arrangements, credit controls and due diligence between supply chain participants. It also reduces the likelihood of disputes involving end hirers or agencies who may have limited control over payroll processes once payment responsibilities are delegated.

7a) Is there additional information beyond requirements or authorisations required by law, and requirements or authorisations required by a relevant professional body or regulator, that should be obtained and provided to hirers under these regulations, rather than agreed to through contractual arrangements?

- **yes**
- no
- don't know

7b) Please explain your answer.

There is some merit in requiring disclosure of high-level, compliance-relevant information to hirers, particularly regarding the structure of the labour supply chain and the identity and role of any umbrella companies involved. Such information would enable hirers to assess legal and reputational risk, exercise appropriate oversight and make informed decisions about engagement models.

Any additional information requirements should however be tightly defined and proportionate, focusing on matters that materially affect compliance rather than prescribing detailed contractual terms. A clear statutory baseline would reduce reliance on ad hoc contractual disclosures and promote consistency across the market.



8a) Where an umbrella company is involved, should the umbrella company be obliged to pass on any information they are aware of, relating to the two areas outlined above, to the relevant employment business (or to the end hirer when there is no employment business in the supply chain)?

- **yes**
- no
- don't know

8b) Please explain your answer.

Information differences within supply chains is a significant contributor to inadvertent non-compliance. Requiring umbrella companies to share relevant compliance-related information would support transparency, improve risk management and reduce duplication of checks by agencies and hirers.

From a business perspective, clear statutory expectations in this area would facilitate efficient compliance and reduce uncertainty, provided obligations are narrowly framed and aligned with existing data protection and confidentiality requirements. Proportionate information sharing supports confidence without imposing an unnecessary administrative burden.

9a) Do you agree that additional obligations and safeguards should remain in place where the work-seeker will be required to work with vulnerable persons?

- **yes**
- no
- don't know

9b) Please explain your answer.

Enhanced safeguards are appropriate where work involves vulnerable individuals and are consistent with broader public policy and safeguarding objectives. From a business perspective, clear and consistent safeguarding requirements reduce liability exposure, support reputational integrity and align with existing regulatory expectations in sectors such as health, social care and education.

Care should still be taken to ensure that safeguarding obligations are coherent with existing frameworks and do not impose unnecessary duplication. Integration and clarity are key to ensuring both protection and proportionality.



10a) Do you have views on how the processes relating to information gathering and sharing should be streamlined in order to facilitate workers taking up positions quickly and to reduce the administrative costs involved?

- **yes**
- no
- don't know

10b) If yes, please explain your answer.

The processes relating to information gathering and sharing would benefit from significant rationalisation and standardisation. At present, businesses operating within agency labour supply chains frequently encounter duplication of information requests, inconsistent data requirements and uncertainty as to whether information obtained at one stage can be relied upon by other parties. This can delay placements, increase administrative cost and create unnecessary friction, particularly in sectors where labour needs are time sensitive.

Streamlining should focus on identifying a core set of compliance critical information that is obtained once, verified, and then capable of being relied upon by other parties in the supply chain for a defined period. This would reduce duplication while preserving safeguards. The development of standardised information templates, supported by digital systems for secure sharing, could materially improve efficiency. Clear guidance on when information must be refreshed, rather than repeatedly re collected, would further support rapid deployment of workers while maintaining appropriate levels of assurance.

11a) In your view, are there any alternatives to these obligations which would give hirers and clients the necessary security and confidence?

- yes
- no
- **don't know**

11b) Please explain your answer.

While contractual mechanisms, voluntary standards and industry-led accreditation schemes can play a useful supplementary role, they are unlikely to provide consistent or sufficient assurance across a fragmented and competitive market. Such mechanisms tend to favour larger or more sophisticated operators and may not be uniformly adopted or enforced.

From a business perspective, clear statutory obligations provide a predictable baseline against which commercial decisions can be made. They reduce uncertainty, support fair competition and give hirers confidence that minimum standards apply across the market. Removing or replacing these obligations with



purely voluntary alternatives risks increasing inconsistency and undermining confidence, particularly for end hirers with limited visibility of the full supply chain.

12a) In your view, should the government make changes to the length of the qualifying period (12 weeks) after which agency workers are entitled to equal basic working and employment conditions, including equal pay?

- **yes**
- **no**
- don't know

12b) Please explain your answer.

The current qualifying period represents a practical and calibrated balance between protecting agency workers and preserving flexibility within the labour market. From a business perspective, it provides a clear and predictable framework that enables planning and cost forecasting, particularly for short term or project based assignments.

Shortening the qualifying period could have unintended consequences, including increased assignment churn or reduced willingness to offer longer placements, particularly in sectors where demand fluctuates. Conversely, extending the period would risk undermining the principle of equal treatment and eroding confidence in agency work. In the absence of compelling evidence that the current period fails to achieve its intended purpose, maintaining the existing framework supports both stability and certainty.

13a) In your view, should the government consider any other changes to the Agency Workers Regulations 2010 to reduce administrative burdens for business?

- **yes**
- no
- don't know

13b) Please explain your answer.

There is scope for targeted reform aimed at reducing administrative burden without weakening substantive protections. In particular, clearer statutory guidance on the identification of comparators, the scope of information obligations and the allocation of responsibility where multiple intermediaries are involved would materially reduce uncertainty and dispute.

Businesses would benefit from greater clarity on how equal treatment obligations should be assessed in practice, particularly in complex or atypical working arrangements. Simplification of reporting and record-keeping requirements, where



these do not contribute directly to enforcement or worker protection, could also reduce cost. Such reforms would support compliance by responsible businesses while allowing regulators to focus enforcement efforts on genuinely non-compliant actors.

14a) Do you have any views on how the regulations listed above operate in practice, and whether there are any changes that the government should consider?

- **yes**
- no
- don't know

14b) If yes, please explain your answer.

In practice, the effectiveness of the current regulations is undermined by uncertainty around responsibility and enforcement within complex supply chains. Compliant businesses may face disproportionate risk where obligations are unclear or where liability can attach despite limited control over relevant processes.

Consideration should be given to clearer statutory allocation of responsibility, particularly where umbrella companies are involved, and to strengthening enforcement against operators who deliberately exploit gaps or ambiguities in the framework. Improved enforcement would support confidence for responsible businesses and reduce the risk of competitive disadvantage arising from non compliance elsewhere in the market.

15a) Do you have any views, not already captured, on how the regulations discussed in this chapter should be streamlined to reduce administrative burden for businesses?

- **yes**
- no
- don't know

15b) If yes, please explain your answer.

Streamlining should focus on coherence, clarity and proportionality across the regulatory landscape. Businesses operating in agency labour markets often navigate overlapping employment, tax and regulatory regimes, each with distinct terminology and compliance expectations. Greater alignment and clearer cross referencing between regimes would materially reduce administrative burden and compliance risk.



Consolidated and authoritative guidance, supported by clear examples of compliant practice, would assist businesses of all sizes. Reducing duplication, improving consistency of terminology and clarifying expectations would support efficient compliance while preserving essential protections. A streamlined framework that is easier to understand and apply is more likely to be complied with in practice.



## Chapter 2: Transparency

16a) Do you agree that the key objectives listed should underpin the regulations: clarity for workers; pay transparency; proportionality?

- **yes**
- no
- don't know

16b) Please explain your answer.

It is recognised that greater clarity and transparency is essential to address the complexity and fragmentation of agency work arrangements and to ensure workers can fully understand their rights. Pay transparency is a necessary mechanism for enabling effective operation and enforcement of equal treatment provisions. Proportionality is also a legitimate and important consideration, ensuring that regulation protects workers without unduly constraining labour market flexibility or imposing disproportionate burdens on businesses.

That said, these regulations should also underpin the objectives of fairness, enforceability, and accountability.

17a) In your view, do the current regulations meet these objectives?

- yes
- **no**
- don't know

17b) How could the current regulations be adapted to better meet these objectives?

The current regulations are viewed as not being transparent enough, and do not always work as intended in practice. The rules can be difficult for workers to understand and the involvement of agencies, hirers, and often umbrella companies also makes it unclear who is responsible for what.

It is recognised that the current framework could be viewed to not fully reflect the modern temporary labour market, where complex supply chains, umbrella companies, and varied working arrangements are common.

The current regulations could be improved by simplifying the structure of rights, strengthening pay transparency, and clarifying responsibilities across the supply chain.



18a) Do you agree that those listed above represent the key pieces of information required to ensure transparency for work-seekers regarding how they will be engaged, how they will be paid and what type of work they will be doing?

- **yes**
- no
- don't know

18b) Please explain your answer.

The proposed key information that a work-seeker should be provided with before work-finding services – or payment services, in the case of umbrella companies – represent appropriate and relevant core elements for promoting transparency for work-seekers. They reflect the principal areas of uncertainty in agency working arrangements and, if properly implemented, would assist individuals in understanding the basis on which they are engaged.

However, it is considered that their effectiveness will depend on the degree of specificity and consistency in how this information is provided. In particular, it will be important to ensure clear disclosure of the contractual chain (including any intermediaries), full details of pay (including rates, intervals, and any deductions), and a sufficiently precise description of the role, location, and anticipated duration of the assignment. It is also important to consider how this will be enforced and what the consequences would be for failure to provide this information.

19a) Do you have any views on when or how this information should be provided to work-seekers?

- **yes**
- no
- don't know

19b) If yes, please explain your answer.

To be meaningful or able to be used by a work-seeker when considering acceptance of an assignment, this information should be provided in writing at the earliest practical stage and in good time prior to acceptance of an assignment—so that work-seekers can make informed decisions. It should be presented in a clear, accessible format in the key information document, and updated promptly where there may be any material changes. There may also be merit in requiring confirmation at key points, such as on assignment, to ensure ongoing transparency.



20a) Do you agree that where an umbrella company is offered to a worker as a means of providing payment, there should be an obligation on the umbrella company to provide a representative breakdown of how much they will charge for their services, and how deductions will be calculated?

- **yes**
- no
- don't know

Please explain your answer.

This is necessary to ensure genuine pay transparency and to enable work-seekers to make an informed choice. Without a clear, upfront breakdown, work-seekers would be unable to understand how the advertised or assignment rate translates into take-home pay.

21a) Do you agree that the government should regulate to restrict the use of 'kickbacks' in the umbrella company market?

- **yes**
- no
- don't know

21b) Please explain your answer.

The use of 'kickback' arrangements distort decision-making within the supply chain, creating incentives for agencies' or intermediaries' financial gain over the interests of workers. This undermines transparency, as workers are typically unaware of these payments, and can result in engagement through umbrella companies that offer less favourable terms.

Restricting kickbacks would promote fairer competition between umbrella companies and provide a fairer system for the worker.

22a) Which of the two options would be, in your view, most effective at restricting the use of 'kickbacks' in the umbrella company market?

- Option 1 – regulating to prevent umbrella companies from passing on these charges to a worker
- **option 2 – regulating to restrict employment businesses from charging fees to umbrella companies**
- other
- don't know



## 22b) Please explain your answer.

This option targets the source of the kickback arrangements. By restricting employment businesses from charging fees to umbrella companies, it removes the commercial motivation to steer workers towards particular providers. It is therefore considered to be more likely to promote genuine transparency, fair competition between umbrella companies, and better outcomes for workers.

## 23a) Do you have any views on how the regulations listed above operate in practice, and whether there are any changes that the government should consider?

- **yes**
- no
- don't know

## 23b) If yes, please explain your answer.

**Regulation 27A (Advertising in EEA states)** is considered to have limited practical impact in the current context and the requirement to publish advertisements in English in Great Britain does not materially enhance transparency for workers. It does not address the quality or completeness of information provided, nor the realities of modern digital recruitment channels. It may need to be considered whether this provision remains necessary in its current form, or whether it should be reframed to focus on minimum content standards for job advertisements.

**Regulation 33 (Electronic and other communications)** is adequate in our view, however, is framed at a high level, therefore could go further to ensure that information is clear and accessible for work-seekers. It is considered that standardised key information documents will assist with the consistency and transparency of communicating information to a work-seeker.

## 24a) Do you have any views, not already captured, on how the regulations discussed in this chapter should be streamlined to reduce administrative burden for businesses?

- **yes**
- no
- don't know

## 24b) If yes, please explain your answer.

Clear and concise standardised key information could be provided to avoid any uncertainty over what must be provided, and this could be in digital form, which can be issued once at the point of offer (or prior to acceptance) and updated only where there are material changes. This would replace multiple overlapping communications and reduce repetition.



## Chapter 3: Choice

25a) Do you agree that the key objectives listed should underpin the regulations?

- **yes**
- no
- don't know

25b) Please explain your answer.

It appears clear from previous call for evidence in relation to umbrella companies that workers often have little to no choice in the way in which their engagement is administered, including by which umbrella companies they are engaged. By ensuring choice, the regulatory framework intends to increase competition between businesses through quality. While a balance between the level of worker choice must be struck with commercial practices, the key objectives are valuable in ensuring a more modern system of engagement.

26a) In your view, do the current regulations meet these objectives?

- yes
- **no**
- don't know

26b) How could the current regulations be adapted to better meet these objectives?

Reference to opaque practices and kickbacks is made in the consultation document. Regulations should promote clarity and act in a way to ensure that such practices are not allowed to influence a worker's engagement. Clearer and stronger enforcement powers would discourage practices that limit or discourage choice.

27a) Do you agree that the government should regulate to ensure that workers cannot be forced to work through, or be paid via, an umbrella company?

- **yes**
- no
- don't know

27b) Please explain your answer.

Ultimately, the choice of vehicle for the engagement of workers should be a matter for agreement between parties. If a company wishes to make use of an umbrella company for some or all of its workers, this is a matter which a company should be free to decide. However, it is apparent from the evidence that there are



occasions whereby a company misleads a worker about the nature of their engagement. It appears that it can be difficult for an individual to extricate themselves from such an arrangement. Clarity should be achieved by the regulatory framework to ensure that this cannot be the case. Parties must be aware of the nature of the relationship which governs the engagement.

28a) Do you agree that the government proposal – regulating to restrict employment businesses from making work-finding services conditional upon workers using an umbrella company – is the most effective way of achieving this?

- yes
- **no**
- don't know

28b) Please explain your answer.

What is key is to achieve clarity in order that both parties are clear on the nature of the relationship underpinning the engagement. There is a place for umbrella companies. However, where an umbrella company is used this should be made clear to the individual and they should not be forced into an engagement with an umbrella company. A restriction on the use of umbrella companies would unfairly prejudice smaller businesses which are already highly regulated.

Restriction on unfair business practices, with effective sanctions, would be a more effective approach.

29a) Do you have any views on when a work-seeker should choose whether they would like to be engaged and paid through an umbrella company?

- **yes**
- no
- don't know

29b) If yes, please explain your answer.

As early as possible in advance of the commencement of work. It would be appropriate for this information to be included in any job advert in order for a work-seeker to make an informed decision on whether to apply or not.

30a) Do you agree that the government should amend the exception for individuals working under a contract of service or apprenticeship to ensure those working through an umbrella company are protected against detriment?

- **yes**
- no
- don't know



30b) Please explain your answer.

These individuals are at risk of detriment and as such it is appropriate for the protection to be extended to them.

31a) Do you have any views on whether the exception for individuals working under a contract of service or apprenticeship more generally remains appropriate? I.e., where the individual is working directly through an employment business.

- yes
- no
- **don't know**

31b) If yes, please explain your answer.

32a) Do you agree that the government should regulate to prevent umbrella companies from opting out of the Conduct Regulations on behalf of workers?

- **yes**
- no
- don't know

32b) Please explain your answer.

This is a question of choice and clarity. The evidence suggests that use of the opt-out can be opaque and can in some cases be used as a condition of an offer of work. This has the clear potential to erode rights of work-seekers.

33a) In your view, which of the two options would be most effective at ensuring that the opt-out is not abused by businesses who seek to engage workers?

- **option 1 – restricting the opt-out to personal service companies only**
- option 2 – removing the option to opt out entirely
- other
- don't know

33b) Please explain your answer.

The relationship between an employment business and a PSC is a commercial one. As such, it is not as open to the risk of abuse as the relationship between an employment business and an individual. Commercial entities should be free to enter into agreements which best suit their purposes.



34a) Do you think the definition above accurately captures how a personal service company operates?

- **yes**
- no
- don't know

34b) Is there an alternative definition which better defines a personal service company?

- yes
- **no**
- don't know

34c) Please explain your answer. For example, do you think there are any other characteristics of a PSC that the definition should cover?

35a) Do you have any views, not already captured, on how the regulations discussed in this chapter should be streamlined to reduce administrative burden for businesses?

- **yes**
- no
- don't know

35b) If yes, please explain your answer.

Government should consider how the regulations proposed could be reduced by a more effective enforcement agency. In addition, Government should be mindful of the record keeping obligations which regulations place on businesses. There has been a considerable increase in this burden in recent years, which has the potential to impact growth negatively.



36a) For the purposes of drafting the regulations specific to umbrella companies, the government intends to use the payment limb of the definition of “employment business” in the Employment Rights Act 2025 (Clause 36, sub-section 3B(b) “paying for, or receiving or forwarding payment for, the services of those persons, in consideration of directly or indirectly receiving a fee from those persons”) as a basis for applying obligations or any other provision specifically to umbrella companies. Do you see any issues with this approach?

- yes
- **no**
- don't know

36b) Please explain your answer.

## Chapter 4: Further opportunities for modernisation

37a) Do you have views on how the regulations listed above should be amended to account for modern working practices and business models, including the use of umbrella companies?

- **yes**
- no
- don't know

37b) If yes, please explain your answer.

We consider that that many of these regulations assume relatively simple, bilateral relationships, whereas current practice often involves multi-party arrangements with fragmented responsibilities.

Regulation 2 could be updated to explicitly recognise umbrella companies and other intermediaries and clearly allocate responsibilities across the supply chain.

Regulation 24 could be amended to make travel and accommodation rules more flexible by allowing proportionate approaches (e.g. allowances) and clarifying how obligations apply in umbrella arrangements.

Regulation 26 could be updated to strengthen transparency around charges to ensure all deductions and costs (particularly in umbrella models) are clearly disclosed and limited.

38a) Do you have any views on how the regulations listed above should be streamlined to reduce administrative burden for businesses?

- **yes**
- no
- don't know

38b) If yes, please explain your answer.

We consider that the administrative burden would be reduced by moving to a model of fewer, clearer, and standardised obligations, delivered digitally and with clearly allocated responsibility.



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