

On 23 November 2011 the Government announced that it planned to consult on changes to the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (Conduct Regulations). At that time, Business Secretary Vince Cable said:

*“We are going to consult next year with a view to scrapping unnecessary rules and making the remaining ones more comprehensible to business, so they can use agency workers as flexibly as possible”.*

Sounds great, doesn't it? On 17 January 2013 (some 14 months later) the Government started the consultation process, which will close on 11 April 2013. However, the extent of the consultation is much more limited than originally envisaged. It focusses on 4 key principles, which are summarised as follows:

- There should be restrictions on the fees that employment businesses and agencies can charge to work-seekers;
- It should always be clear which entity is responsible for paying the temporary worker;
- Contracts should not hinder agency workers' ability to move between jobs, e.g. “temp-to-perm” transfer fees must be reasonable; and
- Work-seekers should be able to assert their rights.

The recruitment sector is already relatively familiar with these principles and it is apparent from the content of the consultation document that the Government actually considers the existing rules to be pretty sensible and reasonable. It is therefore unlikely that the Government will be “scrapping” any of the existing rules, but will instead be consolidating and tweaking them, either through this new consolidated legislation and/or by recommending that trade bodies within the recruitment sector create additional rules and guidance for the industry themselves. Therefore whilst it appears unlikely that the current constraints upon the recruitment sector will be lifted as a result of this consultation, it is also unlikely that this consultation will produce a significant amount of new red-tape for the industry either.

One impact could be, however, that the number of Employment Tribunal claims brought by agency workers against employment businesses may well increase. Some of the changes that the Government has flagged as possibly being included in the new consolidated legislation are:

- not only ensuring that the transfer fees payable by hirers are reasonable, but also introducing a method of ensuring that agency workers do not suffer a detriment as a result of their terminating the assignment/contract – *One possible conclusion could be for employment businesses to incur a specific monetary penalty in the event the agency worker suffers a detriment.*
- where an employment agency or business breaches the rules, agency workers could bring an Employment Tribunal claim, whereas the existing legislation can only be enforced by the Employment Agency Standards Inspectorate - *This could give rise to additional Employment Tribunal claims, but the positive impact is that it may result in a higher level of compliance with respect to the existing detriment/transfer fee rules.*
- increased transparency generally, which would require compulsory disclosure of market information including (but not limited to) the number of jobs/temporary placements available, number of work-seekers available, average length of time to fill a vacant post, number of payroll errors etc. – *Some employment agencies and businesses may already volunteer these details to agency workers and hirers. However, for those that do not, it is likely to increase what is already a heavy administrative burden.*
- more rules on the records that the recruitment sector must maintain to demonstrate compliance – *It is envisaged that this would give agency workers more protection and ensure compliance. Even if the legislation does not directly deal with this, given the heightened risk of Tribunal claims, agencies will probably find they keep more records in any event to assist with their defence should claims be brought against them.*

The Government will provide its response to the consultation on 5 July 2013. The sector is therefore unlikely to see the new draft legislation until late 2013.

For the avoidance of doubt, the provision in the Conduct Regulations which prevents the supply of agency workers to replace striking employees does not form part of this consultation nor do the Agency Workers Regulations 2010, which the Government previously indicated it would review in May 2013.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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