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BEIS Consultation on Good Work
The Taylor Review of Modern Working Practices
Association of Labour Providers – Written Submission

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Scope of the consultation

In October 2016 the Prime Minister commissioned Matthew Taylor (Chief Executive of the Royal Society of the Arts) to conduct an independent review into modern working practices, focused on assessing how employment practices might need to change in order to keep pace with modern business models.

In July 2017, Good work: the Taylor review of modern working practices was published, which included 53 recommendations. The report considered a range of issues, including the implications of new forms of work, the rise of digital platforms and the impact of new working methods on employee rights, responsibilities, freedoms and obligations.

The purpose of the four BEIS consultations is to seek views on the recommendations contained in the Good work report:

- Consultation on Enforcement of employment rights recommendations
- Consultation on agency workers recommendations
- Consultation on measures to increase transparency in the UK labour market
- Employment Status Consultation

The Association of Labour Providers duly submits its responses on the four consultations below.

About the Association of Labour Providers

The Association of Labour Providers (ALP) is a trade association promoting responsible recruitment practice for organisations that supply the workforce to the UK consumer goods supply chain across the food processing, horticultural and wider manufacturing, industrial, warehousing and distribution sectors. The ALP supports and represents its members and provides a range of services to help labour providers achieve social compliance and ethical good practice.

The ALP has approximately 350 companies that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the membership regulations. ALP member organisations supply approximately 70% of the temporary contingent workforce into the food growing and manufacturing supply chain. Many of these workers progress to form the permanent workforce for UK industry. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters and Labour Abuse Authority (GLAA).

ALP's members predominantly provide unskilled workers and semi-skilled workers. Market pressures mean that unskilled work is either at, or very close to, national minimum wage (NMW). For many years these irregular low-paid jobs have been largely filled by migrant workers, able to earn more than they can in their home country.

ALP, with scheme manager NSF International, operates Clearview (www.clearviewassurance.com) a global labour provider certification scheme, mapped to global recruitment and labour standards. ALP is developing www.ResponsibleRecruitmentToolkit.org providing practical, interactive guidance for UK and global brands, retailers, employers and labour providers across the breadth of responsible recruitment good practice.

ALP is lead development partner, with the GLAA and Migrant Help of the Stronger Together Tackling Modern Slavery in Supply chains initiative launched in October 2013. Stronger Together is a business led multi-stakeholder collaborative initiative to equip employers and recruiters with the practical knowledge and resources to tackle modern slavery in their business and supply chains by providing free good practice guidance and tools through www.stronger2gether.org. To date over 7500 individuals have registered to access the resources for use within their organisations. Over 3600 individuals from over 1600 businesses have attended a "Tackling Modern Slavery in Business" workshop and committed to take the tackling slavery message back to over 8000,000 workers. An October 2017 impact assessment reported that:

- 96% of business respondents said that Stronger Together had increased their knowledge and understanding of modern slavery
- 87% of business respondents said that Stronger Together helped them prepare and understand how to manage potential situations of forced labour
- 72% of business respondents said that through engagement with Stronger Together their senior management had made a commitment to tackle modern slavery in their business and supply chain.

ALP Submission

1. Consultation on Enforcement of employment rights recommendations

Section A: State-led enforcement

Taylor Recommendation: Her Majesty's Revenue and Customs (HMRC) should take responsibility for enforcing the basic set of core pay rights that apply to all workers – National Minimum Wage, sick pay and holiday pay for the lowest paid workers.

Government position: The government accepts the case for the state enforcing a basic set of core rights for the most vulnerable workers and intends to move in this direction. The government will first evaluate the extent of the problem faced by low paid workers in accessing these rights and, following decisions relating to statutory sick pay, examine the best way to ensure the most vulnerable receive the level of protection they deserve, bearing in mind feasibility and cost-effectiveness for the taxpayer.

ALP response: ALP supports increased state enforcement of a basic set of core rights for the most vulnerable workers.

ALP endorses the government statement that, "It is also important that we get the existing legislation right and make decisions on the future of statutory sick pay and holiday pay before deciding how they are enforced." This is much needed

ALP has detailed technical knowledge of the flaws and inconsistences in the law relating to holiday pay for workers that work irregular hours. ALP has developed step by step guidance for members

on how to calculate and pay statutory holiday entitlement correctly, having to make legally informed assumptions and decisions where the law is absent, flawed or inconsistent.

ALP has sought independent legal counsel advice on the government interpretation of the law relating to statutory sick pay for casual, zero hour contract and agency workers as contained at https://www.gov.uk/guidance/statutory-sick-pay-how-different-employment-types-affect-what-you-pay#casual-zero-hour-contract-and-agency-workers. Counsel advice is that the government interpretation is not correct.

In drafting employment law:

- Government should introduce a broad ranging annual Employment Bill (as per the Finance Bill) to provide updates to statute where case law has developed or otherwise as required
- Statutes should be updated, rather than amendments issued, such that there is only one Act to refer to rather than an outdated Act and a series of Amendment regulations
- Statutes should be drafted in clear and accessible language

ALP provides further detail on this recommendation in its response below on the consultation on measures to increase transparency in the UK labour market, Section C: Holiday Pay.

Section B: Enforcement of awards

Simpler enforcement process

Taylor Recommendation: Government should make the enforcement process simpler for employees and workers by taking enforcement action against employers/engagers who do not pay employment tribunal awards, without the employee/worker having to fill in extra forms or pay an extra fee and having to initiate additional court proceedings.

Government position: The government agrees that the enforcement process could be simpler and intends to undertake wide ranging and comprehensive reforms of the process for civil claims and judgments across the courts and tribunals systems.

ALP response: ALP agrees that there is a need to simplify the process for enforcement of employment tribunals.

Establishing a naming scheme

Taylor Recommendation: Government should establish a naming and shaming scheme for those employers who do not pay employment tribunal awards within a reasonable time.

Government position: The government accepts this recommendation and is seeking views on how it can best achieve this.

ALP response: ALP agrees with the proposal to establish a naming and shaming scheme for those employers who do not pay employment tribunal awards within a reasonable time. ALP supports the earlier stage option of a naming scheme of employers, who having been issued with a warning notice, and have either not submitted representations, or not had them accepted, against being named or paid the award within 28 days of receiving the warning notice.

Section C: Additional awards and penalties

Taylor Recommendation: Government should create an obligation on employment tribunals to consider the use of aggravated breach penalties and cost orders if an employer has already lost an employment status case on broadly comparable facts - punishing those employers who believe they can ignore the law. Government should allow tribunals to award uplifts in compensation if

there are subsequent breaches against workers with the same, or materially the same, working arrangements.

Government position: The government accepts strong action should be taken and is seeking views on how existing sanctions should be extended and how to define when they should be applied.

ALP response: ALP agrees with the broad intention of the recommendation but recommends that such changes be accompanied by a raft of measures to limit the number of cases that need to come to tribunal. These should include:

- Collaborative working to provide sound guidance to business. Trade associations representing businesses operating in low pay sectors should be able to:
    - Meet formally and regularly (every 6 months) as a group with appropriate individuals within BEIS and HMRC to raise and address policy matters
    - Access and work with NMW Technical Advisors to develop their own sector relevant guidance and to assist with complex and challenging issues.
- Natural justice in dealing with disputes at work - The Acas statutory Code of Practice on disciplinary and grievance procedures applies to employees but not to workers. To apply this Acas Code of Practice, has the effect of inferring the status of employee onto workers which acts contrary to the employment status relationship of worker that the business is seeking to maintain. Workers, including agency workers, should have a right to natural justice in disputes at work. The Acas statutory Code of Practice which relates to dealing with disciplinary and grievance matters should be extended to workers in a way which does not challenge employment status.
- Resolving disputes prior to Employment Tribunals - there should be a full review of access to remedy through the UK justice system, particularly for the most vulnerable workers to include the potential for:
    - Free conciliation, mediation and arbitration services;
    - Speedy dispute resolution – perhaps by a 'fast track' employment tribunal with increased use of phone and Skype/Facetime meetings
    - Clear arrangements to limit “scandalous, unreasonable or vexatious” claims

2. Consultation on agency workers recommendations

Section 1. Improving the transparency of information provided to work seekers

Taylor Recommendation: Government should amend the legislation to improve the transparency of information which must be provided to work seekers both in terms of rates of pay and those responsible for paying them.

Government position: The government accepts this recommendation. The government proposal is that any contract/terms of business between a work seeker and an employment business should contain a “key facts” page which should be provided to work seekers at the time they register with the relevant organisation. This page would be presented at the start of either registration or engagement with an employment business or any job offer conversation, so the work seeker fully understands what is being offered.

ALP Response: The government proposal is irrelevant. It will have no meaningful impact other than to add extra bureaucracy and red tape to already compliant businesses. Enforcement will be, to all extents and purposes, non-existent.

The government has failed to address the core issue of the ubiquity of recruitment intermediaries in the recruitment sector labour supply chain. Such recruitment intermediaries are unable to operate in the sector regulated by the Gangmasters and Labour Abuse Authority (GLAA) as there is enforcement. Outside of the GLAA sector there is no enforcement to speak of, no deterrent and hence they are endemic.

These recruitment intermediaries add no perceived operational value to the recruitment supply chain. They exist because they generate profit through the facilitation of tax avoidance, aggressive tax avoidance or tax evasion. They exist because they generate profit by depriving agency workers of their legal and employee/worker rights and protections through the creation of artificial or complex structures which are deliberately impenetrable to decipher. There is of course a useful role played by payroll processing and financing support companies, but not for those structures that interpose themselves directly in the contractual relationship with the worker.

The more unscrupulous and exploitative the arrangements of recruitment intermediaries are, the lower the cost of labour supply. The 'losers' are agency workers, HM Treasury and decent recruitment businesses. Legitimate recruitment companies can feel that they are forced to use these arrangements in order to compete and to survive.

Section 2. Extending the remit of the Employment Agency Standards inspectorate to cover umbrella companies and intermediaries in the supply chain

Taylor Recommendation: The new Director of Labour Market Enforcement should consider whether the remit of the Employment Agencies Standards (EAS) Inspectorate ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain.

Government position: Subject to the recommendations of the Director of Labour Market Enforcement, the government will look to legislate to bring certain activities of umbrella companies and other intermediaries within the regulatory scope of the EAS, so that work seekers using them are better supported and protected.

ALP Response: ALP has no faith in this proposal. It will be ineffective because:

- EAS does not have the financial or personnel resource to enforce in this sector;
- EAS does not have the appropriate civil powers to enforce in this sector;
- The activities in this sector are opaque, relying on interpretations of law and complex company, tax and employment legal structures beyond the reasonable limit of EAS to enforce;
- Umbrella companies and other recruitment intermediaries are wealthy organisations able to fund expensive legal counsel to defend, settle or extend any legal challenge into seeming perpetuity.

The only way to achieve compliance is legislative change:

- If, there is determined to be no legitimate role for such intermediary structures, then as Germany has legislated, then for employment businesses there must not be more than one supplier between the worker and the end-hirer – a so-called ban on chain leasing.
- If, umbrella companies and intermediaries are determined as playing a legitimate role in the marketplace then this should be enshrined in law as to clearly what is legally acceptable and what is not.
- To ensure future prevention of market failure in this circumstance, statutory licensing should be introduced, against minimum standards using a sector fully funded model.

Section 3. Pay Between Assignments

Recommendation: The government should repeal the legislation that allows agency workers to opt out of equal pay entitlements (the 'Swedish Derogation'). The government should consider extending the remit of the EAS Inspectorate to include compliance with the Agency Worker Regulations (which would include enforcement of the Swedish Derogation, if not repealed).

Government position: The consultation seeks evidence and views on these issues.

ALP Response: As with regards to the so called 'Swedish Derogation', the ALP can make no sound case as to why an individual performing equal work of equal value should be paid less than another worker based only on his/her status as an agency worker.

ALP is not aware of any recent research on use of the Swedish Derogation. Eversheds research in April 2012 indicated that 17% of employers had opted for the Swedish Derogation. This may have fallen slightly in the intervening years but does not seem unreasonable. It is often large organisations, brands and retailers that instruct labour providers that this is the model that must be utilised. Labour providers, having thus established the operation of this model in their business, are then able to offer it to other potential clients as a cost reducing benefit over labour providers that do not operate it.

There is rarely commercial provision in client contracts with labour providers that for actual payment between assignments. Labour providers are required therefore to manage and administer arrangements such that there are no breaks in assignment. As such, the CBI is correct in stating that the Agency Workers Regulations Pay Between Assignments arrangement has allowed, "workers a stable relationship with one agency and… greater security."

Consideration could be given to repeal of the Agency Workers Regulations 2010 Regulation 10 Pay Between Assignments arrangements or if it is determined that for the reasons expounded by the CBI, that the model is to be retained then the derogation from the same basic working and employment conditions as relates to pay on these contracts could be repealed. In this latter scenario agency workers would receive both rights to equal pay and also benefit from the enhanced stability and security that these contracts afford. Transitional arrangements should be provided if the legislation is repealed.

ALP Response: EAS enforcement of the Agency Worker Regulations – ALP is in favour of this although impact will be minimal due to the limited resources available to the EAS.

3. Consultation on measures to increase transparency in the UK labour market

Section A – Written Statements

Taylor Recommendation: The government should build on and improve clarity, certainty and understanding of all working people by extending the right to a written statement to 'dependent contractors' as well as employees.

Government position: The government accepts this recommendation and wants to explore how best to implement this change.

ALP Response: ALP supports this proposal. There should be one standard set of terms that should be included in a written statement to workers/ 'dependent contractors' and employees and this should be provided before or at the same time as the formal contractual offer to improve clarity and understanding prior to acceptance of the contract.

Enforcement through the Tribunal should be as a last resort. Employees/workers should be able to report, anonymously if so desired, organisations that have failed to provide a statement (or incomplete / falsified / incorrect statements) through an Acas helpline and online form. Acas

should seek evidence from that organisation that this is remedied, prior to an escalating regime of civil penalty and enforcement.

Section B: Continuous Service

Taylor Recommendation: The government should extend, from one week to one month, the consideration of the relevant break in service for the calculation of the qualifying period for continuous service and clarify the situations where cessations of work could be justified.'

Government position: Government recognises the rationale behind this recommendation in a labour market where more people work atypically and agrees that the break in service period for continuous service should be extended beyond one week but does not yet have a firm position on the length that the period should be extended to.

ALP Response: ALP supports this proposal but has no comment on the length that the period should be extended to.

Section C: Holiday Pay

Taylor Recommendation: The government should do more to promote awareness of holiday pay entitlements, increasing the pay reference period to 52 weeks to take account of seasonal variations and give dependent contractors the opportunity to receive rolled-up holiday pay.'

Government position: Government accepts the recommendations to:

- Increase awareness of holiday pay entitlements
- Extend the holiday pay reference period for workers without normal working hours from the current 12 weeks to 52 weeks

The government agrees that some workers may not be receiving the holiday pay to which they are entitled. However, because rolled-up holiday pay has been found to be unlawful it wants to explore what alternative action could be taken to address these issues.

ALP Response: The recommendations do not address the reasons why holiday pay is not paid and underpaid. The law relating to the calculation of holiday pay for workers that work irregular hours is not fit for purpose.

Holiday pay constitutes a significant expense to business, the statutory minimum adding over 12% to employment costs. The Give us a break!* report, based on evidence from Citizens Advice Bureaux across England and Wales, reveals that denial of paid holiday entitlement is widespread, especially among small employers in low-profitability sectors of the economy.

To remedy this requires a three stage process:

1. The law on accrual, calculation, booking and payment of holiday is in serious need of overhaul, particularly for workers without normal working hours.
2. Appropriate guidance and awareness raising for employers and employees/workers/agency workers.
3. Enforcement of holiday non and under-payment

Firstly, with regard to the law regarding holiday pay. There are significant areas of complexity in calculating holiday pay and areas where the law is unclear, so employers do not understand how to calculate holiday pay correctly and consequently there is often underpayment and incorrect payment particularly for casual and agency workers and those who work irregular hours. This includes:

- Conflict between the Working Time Regulations 1998, Employment Rights Act 2006, Agricultural Wages Orders and Agency Workers Regulations 2010. In certain cases it is impossible to comply with each of these laws

- Lack of clarity regarding what constitutes "irregular and infrequent" overtime and whether and in what circumstances this should or should not be included in the calculation of overtime

- Lack of clarity regarding what constitutes a week's pay as defined in the Employment Rights Act 1996

- A plethora of case law which needs to be consolidated and incorporated into statute

Secondly, there should be appropriate guidance and awareness raising for employers and employees/workers/agency workers.

ALP supports the way in which GOV.UK provides basic and clear information on employer rights and responsibilities. However, in certain areas there is a requirement for more detailed and in-depth guidance – this is so for holiday pay.

ALP has for many months been endeavouring to prepare a technical brief to provide a step by step pragmatic guide for labour providers as to correctly calculate and pay holiday pay for agency workers. This has presented many challenges, extensive consultation and debates with lawyers and referral on technical points to specialist barristers. This should not have to be the case.

Employers and workers should both be able to understand entitlement and rights with regard to accrual, calculation, booking and payment of holiday.

BEIS officials, trade associations and other stakeholders in sectors characterised by agency, casual and irregular working should collaborate to develop straightforward guidance for employers and recruitment businesses on the calculation of holiday pay and this be made available on GOV.UK.

With regard to raising awareness with workers:

- Renaming of Acas – Acas provides a valuable and needed service but how many workers, particularly migrant and vulnerable workers actually know of its existence or purpose? Acas should be renamed and rebranded with a name that is clear to all such as "The Employment Helpline". This would be a renaming and rebranding exercise and no legal or structural changes should be required. The emphasis should remain on this body providing advice and signposting and resolving matters before they reach Employment Tribunal.

- Workplace Health, Safety and Employment Rights poster - Employers have a current legal duty under the Health and Safety Information for Employees Regulations to display the 2009 approved poster in a prominent position in each workplace or to provide each worker with a copy of the approved leaflet. This poster should have key employment rights added to it; how to access further information and how to report labour abuses up to and including modern slavery should be simplified, made more eye catching, be available in multi-language versions. There should be a civil penalty for not displaying the poster which may be applied by a wide variety of enforcement bodies including those within local authorities such as Environmental Health Officers, Trading Standards Officers etc.

Thirdly, with regards to enforcement of holiday pay:

- Enforcement through the Tribunal should be as a last resort. Employees/workers should be able to report, anonymously if so desired, organisations that have failed to pay any or all holiday pay through an Acas helpline and online form.

- Acas should seek evidence from that organisation that this is remedied, prior to escalating to HMRC NMW enforcement.

- HMRC NMW powers should be extended to enforce non or under payment of holiday pay with a regime of escalating civil penalties, name and shame and enforcement

ALP accepts that extending the holiday pay reference period for workers without normal working hours from the current 12 weeks to 52 weeks is likely to iron out some of the peaks and troughs. Alternatively, holiday could be accrued in actual financial terms in the form of a holiday 'pot' which can be drawn down from. The contents of the pot would be what the worker has accrued in their various assignments. In this way holiday pay could be paid and charged accurately.

ALP agrees with the government position that the option of rolled up holiday pay is unlawful and should not be pursued.

Section D: Right to Request

Taylor Recommendation:

1. The government should introduce a right to request a direct contract of employment for agency workers who have been placed with the same hirer for 12 months, and an obligation on the hirer to consider the request in a reasonable manner.

2. The government should act to create a right to request a contract that guarantees hours for those on zero hours contracts who have been in post for 12 months which better reflects the hours worked.

Government position: Government accepts the principle of individuals having a right to request a more predictable and stable contract and this consultation seeks information as to how best to implement this.

ALP response: ALP accepts the principle of directly engaged workers having a right to request a more predictable and stable contract but does not believe this sensibly applies to temporary agency workers. Specifically:

1. ALP does not accept the proposal or the principle that an agency worker should have the right to request to terminate his/her contract with his current "employer" i.e. the employment business and to request to commence with another employer i.e. the hirer.

    a. There would be a raft of unintended consequences by less scrupulous businesses such as an "11-month rule" whereby workers are rotated or replaced to prevent accrual of such rights. This would be detrimental to the workers concerned. This would have a negative consequence on agency workers' access to work.

    b. Enforcement impracticalities would make this unworkable. Three immediate questions spring to mind: What breaks in service would be deemed to pause or reset the clock? What provision of services to other hirers for what period would pause or reset the clock? How would sensible and practical anti-avoidance measures be developed? There are a raft of other scenarios that would make this legislation complex, bureaucratic and unenforceable.

    c. It is not needed – There is currently nothing to stop an agency worker, where there is a vacancy, from applying to work with the end hirer, and being selected on merit at any point in their assignment. Market forces drive the transfer of workers on temporary hire through agencies into permanent positions with the end hirer.

d. It will be ineffective – Those hirers that want permanent staff will hire them as they do now, and those that don't will simply send back a stock response. It will be a sledgehammer that will fail to crack the perceived problem that it seeks to address.

2. ALP perceives there to be a difference between agency workers and direct contractors / employees. ALP accepts that there is an argument in specific circumstances to provide directly engaged workers on zero hours contracts who have been in post for 12 months with a right to request a contract that guarantees hours which better reflects the hours worked. The right to request should apply between employees/workers and the "employer" within whose business they are working, contracted to and under the supervision, direction and control of. This provision does not sensibly apply to agency workers.

Section E: Information and Consultation of Employees Regulations (2004) (ICE)

Taylor Recommendation: The government should examine the effectiveness of the Information and Consultation Regulations (ICE) in improving employee engagement in the workplace. In particular it should extend the Regulation to include employees and workers and reduce the threshold for implementation from 10% to 2% of the workforce making the request.

Government position: Government will use this consultation to gather further evidence before fully assessing the merits of the recommendation and to seek wider views on how to improve worker voice in the workplace more generally.

ALP response: ALP is unaware of any labour provider within whose business the ICE Regulations have been taken up. To that extent the conclusion is that within our sector these Regulations have been ineffective in improving employee engagement in the workplace. There appears to be almost complete ignorance of the ICE Regulations. One must conclude that generally, neither employer or employees currently perceive there to be a benefit in implementing these regulations.

Extending the Regulation to include employees and workers and reduce the threshold for implementation from 10% to 2% of the workforce making the request is unlikely to make significant difference to this without a package of measures that convey the benefits to both parties of improving engagement and worker voice in the workplace.

ALP is currently working together with the National Farmers Union (NFU) on a 10 Point Plan to Better Recruit and Retain Workers. Better worker engagement and communication is a central tenet to increasing worker retention.

ALP is currently piloting digital worker voice communication tools to better enable engagement with workforces that are naturally disparate and peripatetic.

4. Employment Status Consultation

Taylor Recommendation: The review suggests a number of recommendations it believes could improve the employment status framework:

- Government should replace their minimalistic approach to legislation with a clearer outline of the tests for employment status, setting out the key principles in primary legislation, and using secondary legislation and guidance to provide more detail.

- Government should retain the current three-tier approach to employment status as it remains relevant in the modern labour market but rename as 'dependent contractors' the category of people who are eligible for worker rights but are not employees.

- In developing the test for the new 'dependent contractor' status, control should be of greater importance, with less emphasis placed on the requirement to perform work personally.

- In developing the new 'dependent contractor' test, renewed effort should be made to align the employment status framework with the tax status framework to ensure that differences between the two systems are reduced to an absolute minimum.

Government position: This consultation seeks to explore in a greater level of detail how the options proposed by the review would work, both in legal terms and in relation to the realities of the modern labour market, as well as seeking to understand the potential impacts and implications of those proposals. It also considers whether there are alternative approaches that could better achieve the aims of providing individuals and businesses with greater clarity and certainty. No decisions about whether or how to reform employment status, or to aim for alignment between the tests for tax and rights, have been made. This is an important and complex issue, and careful consideration is needed to avoid any unintended consequences.

ALP response: ALP endorses the government position that, if it were to decide that action was appropriate, it must preserve the flexibility in the labour market which, as the review recognises, works well for the UK. ALP supports the recommendations:

- For government to provide a clear, key principles of and tests for employment status in primary and secondary legislation with guidance to provide more detail.

- To retain the current three-tier approach to employment status. ALP recommends the retention of the status of 'worker' but that there are two categories of 'worker' - 'dependent contractor' status and 'agency worker' status.

- For alignment of the employment status framework with the tax status framework.

Q1. The ALP concurs with exposition of the key issues with regard to employment status as laid out in the consultation, namely:

- Employment status is dependent on the interpretation and application of case law against the specific facts of each case, making it difficult for some individuals to predict their status.
- This ambiguity in the rules can be used by unscrupulous employers to justify miscategorising their employees or workers as self-employed for their own financial gain (e.g. paying less NICs).
- For some, particularly those in atypical work, employment status can be a complex issue – requiring them to interpret and apply tests from several case law precedents.
- An individual's employment status can be inconsistent between employment rights and tax.
- There is a lack of clarity around the boundary between employee and Limb (b) worker employment statuses for rights, as well as between the Limb (b) worker and self-employed categories.
- Only a court or employment tribunal can definitively decide someone's employment status where a dispute arises.
- HMRC enforcement of employment status for tax purposes can be costly and time consuming for both HMRC and the businesses involved due to the fact-specific nature of the tests.

Q2-5 ALP supports efforts to achieve full codification with alignment between rights and/or tax. Initial drafting and consultation will highlight challenges with such an approach but in the preliminary stages this is the approach should be adopted and tested. Fifty years of case law (since Ready Mixed Concrete) have established the key factors in the irreducible minimum as the main principles to be codified into primary legislation.

Q6 -8 The concept of mutuality of obligation is not widely understood. The obligation to offer and to accept work however is centrally relevant to determine an employee's entitlement to full employment rights.

Q9-19 Personal service, control, financial risk, integral part of the business, provision of equipment and intention should, as developed in case law, in the first drafting be included in primary legislation for further consultation.

Q20-21 ALP's responses above and the need for secondary legislation are caveated by the central objective to create a clear delineation, understandable to the ordinary working person, between the employment relationship statuses.

Q22-28 An unambiguous statutory employment test that could apply across the board is attractive though probably idealistic. Primary legislation is required. This can be supported by an online statutory employment test, completed as part of the preparation of the written statement proposed to be provided to all employees and workers.

Q29 The Income Tax (Earnings and Pensions) Act 2003 Chapter 7 and the Social Security (Categorisation of Earners) Regulations 1978 require agency workers' PAYE and National Insurance to be deducted at source and paid to HMRC by the employment business. This should be extended to all workers and 'direct contractors' as defined.

Q30 ALP agrees with the review's conclusion that an intermediate category providing those in less certain casual, independent relationships with a more limited set of key employment rights remains helpful.

Q31-33 ALP agrees that the definition of worker be changed to encompass only Limb (b) workers.

Q34-51 Mutuality of obligation, personal service, control, in business on own account should all be factored when determining worker status.

There is a need to determine for casual and agency workers when defined as 'workers' and engaged on assignment based contracts:

- How continuous service is calculated
- What rights exist only when working on assignment and what rights subsist through breaks in assignment

Q52 ALP recommends the retention of the status of 'worker' but that there be two categories of 'worker' - 'dependent contractor' status and 'agency worker' status.