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HMRC consultation on off-payroll working in the private sector Association of Labour Providers – Written Submission

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Scope of the consultation

An evaluation of the off-payroll working rules for engagements in the public sector and options for changes to the off-payroll working rules for engagements in the private sector. HMRC is asking for comments on how best to address the compliance challenges with the off-payroll working rules in the private sector. HMRC is particularly interested to hear how the off-payroll working rules as they apply in the public sector could be adapted to fit the needs of the private sector, if appropriate.

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

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

In the May 2018 submission to the BEIS Consultation on Good Work - The Taylor Review of Modern Working Practices and specifically the [Consultation on agency workers recommendations](#) the ALP stated,

"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.

Specifically commenting on 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 ALP's view is that 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.”

With regard to this Consultation directly, the ALP does not have direct experience of working with the public sector rules. ALP notes that, due to their relative success, the government considers extension of similar reforms to the private sector to be the lead option which will effectively tackle non-compliance.

ALP will limit its response to the questions relating to encouraging or requiring businesses to secure their labour supply chains. ALP’s view is that these checks should be conducted as well as extension of the public sector rules into the private sector.

Q14. Overall, what are your views on this option? Would it be a proportionate response to the issue?

- A. Yes, it is a proportionate response. The due diligence steps required of clients are reasonable.

Q15. If the government were to pursue this option, what checks should the client be required to perform?

- A. The checks proposed within the HMRC’s guidance “Use of labour providers: advice on due diligence” are reasonable. They will require further discussion with industry bodies and other stakeholders prior to finalisation. They should be clear and unambiguous in their specification. The checks should be mandatory rather than optional. There should be a mandatory Companies House record check

Q16. How should different views on employment status be dealt with? For example in the public sector, disputes should be resolved between the client and the worker, which ultimately allows either party to walk away if they do not agree.

- A. Disputes should be resolved between the client and the worker where there is no intermediary or between the client and the labour provider which has the direct contractual relationship with the client.

Q17. How would HMRC best enforce compliance with securing labour supply chains, keeping in mind the need to mitigate or reduce dealing with each PSC individually?

A. Transfer of liability to the client will self-enforce to a great degree.

Q18. Should the requirement be underpinned by some form of penalty?

A. Yes, a civil penalty on the client and/or the labour provider depending on where liability lay.

Q19. Should the requirement be underpinned by denying the client a deduction for the cost of labour from an unchecked supply chain?

A. Yes, proportionately. This should be linked to the civil penalty.

Q20. Should the requirement be underpinned by the risk that the client could be named as having used a non-compliant supply chain?

A. Yes both clients and non-compliant labour providers should be named.

Q21. Would such penalties effectively change behaviour within labour supply chains, helping to ensure the correct income tax and NICs are paid?

A. Yes, to a significant degree, combined with other changes.

Q22. What would the impact (including the effect on administrative burdens) of this option be on affected businesses, agencies, and individuals?

A. Significant detrimental on businesses and agencies operating such non-compliant models. Significantly beneficial on legitimate businesses who currently cannot compete on a level playing field with the non-compliant businesses.
Limited on businesses using such workers, in that they will have to undertake some reasonable and proportionate due diligence.
Significantly beneficial on workers currently denied workers' rights through being required to work on fraudulent self-employment models.

Q23. How effective would this option be in addressing non-compliance with the off-payroll working rules in the private sector?

A. Reasonably significantly effective

Q24. Is there any way to improve this option which would make it more effective?

- Amend the Conduct Regulations to make it a mandatory requirement for labour providers to declare the required checks with evidence to clients prior to supplying workers;
- Provide an exemption where the work is covered by Gangmasters Licensing Act where a higher burden already applies;
- Make it a requirement for companies to affirm in their annual tax returns that they have undertaken the required checks.
