

The Future of Work: The Criticality of Employment Status Review

The Association of Professional Staffing Companies (Global) Ltd and OutSource (APSCo UK) were pleased to meet with Matt Warman MP who is leading the Government commissioned Future of Work Review on 7 June 2022 to discuss how APSCo UK sees the Future of Work in a world living with COVID and what challenges and opportunities lay ahead in the world of work and employment. Mr Warman asked APSCo UK to respond with a brief overview of what APSCo UK would do differently, or any other views APSCo UK had on the recommendations set out in the Taylor Review to assist in refining the scope of the review. APSCo UK's response to this is set out below.

We strongly advocate for the Future of Work Review scope to include implementation of Recommendation 1 of the Taylor Review, namely a clearer outline of tests for employment status setting out principles in primary legislation, using secondary legislation and guidance for more detail.

Only by doing this can Government implement many of the other recommendations such as the Recommendation 3 test for new "dependent contractor" status, replacing workers with worker rights.

Case Law has created greater certainty, particularly on employment status for rights since the Government's response to the Taylor Review of Modern Working Practices. Nonetheless, unless the common law on employment status is codified then the cycle of appeals on status for employment rights and tax will continue, with employers being ignorant of their responsibility to understand employment status or unwilling to take the risk of determining employment status for fear of getting it wrong, as is happening due to Off Payroll Working (OPW).

Further, we acknowledge that the scope of the Future of Work review does not extend to employment status for taxation, nonetheless the law is currently in the position where there is a worker status for rights, but not tax. This has the effect of OPW workers being treated as employees for tax and NIC purposes whilst receiving no statutory worker employment rights.

Without certainty it is unreasonable to put ever greater legal liability on the employer to correctly determine employment status, whether for rights, or as highlighted by the OPW implementation for tax.

Ensure greater support for self-employed and independent contractors

To resolve labour market complexity, this codification must include a definition of self-employed status. Such legislation must differentiate self-employed independent professionals from dependent contractors, workers, other variants of self-employment and the lower skilled, less independent elements of the gig economy.

Case law for both employment rights and tax is evolving to raise the prominence of “control” in employment status determination, and the factual matrix supporting “being in business on your own account.” However, currently the only test available for workers or business to check employment status is limited to tax and NICs status and is in any event a much-criticised tool, providing “undetermined” outcomes for more complex factual situations.

Legislative reform will also facilitate the necessary thinking around how workers and the self-employed can be financially assisted and access benefits, currently largely enjoyed by employees: enhanced pensions, life insurance, family and dependent related paid leave, training, and development.

Codification of Employment Status will enable the Government’s response to Recommendations 27-31 enabling the self-employed to have the greatest chance of succeeding. Flexibility and self-employment are recognised as increasingly relevant to retain highly skilled and experienced individuals in the 50+ age group in the labour market.

The Government must do more work on examining how the skills system, and a rescoping of the apprenticeship scheme can work more effectively for those working atypically including the self-employed and agency workers (Recommendation 34).

Prioritising the Implementation of the Single Enforcement Body

Government must prioritise funding of the Single Enforcement Body to protect workers’ rights and support an agile, productive, compliant supply chain.

Recognise and differentiate expert professional contracting

When the Employment Agencies Act and its regulations the Conduct of Employment Agencies and Employment Businesses Regulations 2003 are amended as part of the Employment Bill the supply of independent self-employed contractors must be expressly excluded from its remit.

The Agency Workers Regulations are derived from an EU Directive and have not been updated in over 10 years. If these regulations are retained in post-Brexit Britain their applicability should be clearly aligned with the Employment Agencies Act and its regulations, employment legislation such as the Employment Rights Act 1996 and relevant sections of ITEPA 2003. Independent self-employed

contractors must be excluded from recruitment, agency and worker laws and regulations. Legislative changes also tend to impact the professional end of the recruitment market, adding unnecessary complexity and administration in some cases. An agile, productive, and independent professional workforce remains critical to the UK.

Recommendation 17 to extend remit of EASI to umbrella companies and other intermediaries in the supply chain must be prioritised

The lack of clarity in the law and regulation surrounding “umbrella companies” and evolving payroll intermediary models risks the global attraction of the UK recruitment industry and labour market, due to the significant reliance on these entities following OPW implementation. Defining “Umbrellas” and other intermediaries more clearly in law and through more rigorous regulation will help to protect the rights of workers who are employed by umbrellas, thus ensuring the most compliant and attractive supply chain the UK can achieve.

Government must be ambitious and futureproof the legislation, considering Single Enforcement Body licensing of the “umbrella” market, the mandatory use of client accounts as well as the introduction of statutory compliance codes.

About APSCo Global

APSCo Global is an international trade body offering global services with local delivery to the international recruitment sector. APSCo UK and APSCo OutSource UK are comprised of over 1000 recruitment, outsourcing and Trusted Partner members from start-ups to listed global groups.

APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo UK as well as APSCo OutSource, the trade body for the recruitment process outsourcing (RPO) and managed service programme (MSP) sectors. Through its member services it helps differentiate the professional recruitment market by raising standards and delivering expert support and market intelligence to members of APSCo around the world.

APSCo Global members range from SMEs to the largest global, listed recruiters and outsourcers. Members recruit professionals into permanent and contract roles across STEM, accountancy, legal, finance, marketing, and media in addition to highly regulated sectors such as qualified social work, teaching, and clinical healthcare.

To discuss any part of this response further, please contact APSCo Global Public Policy Director Tania Bowers on: tania.bowers@apsco.org.