



THE ASSOCIATION OF
RECRUITMENT CONSULTANCIES

MANIFESTO 2016

Post Brexit UK: a better place for doing business



A blueprint for modernisation and change in government
policy on agency tax and employment relations



Foreword

None of us can know the outcome of Brexit. We could have a total split from the EU, or we could find ourselves signing up to the single market and all its rules. The government has indicated that whatever the outcome the legislative change required will be a repeal of the European Communities Act 1972, so preserving everything that is currently in place at the time, namely all those laws that have been made pursuant to EU legislation including the AWR and Working Time.

Accordingly there is a strong sense that change is afoot, new ministers have different ideas; a change of direction for the UK is very much on the cards. But with the AWR and Working Time on the back burner for now, what other measures could the government take to signal the UK as a better place to do business in?

Today there are a host of issues which, when combined, paint an unhappy and negative scenario that does not encourage an efficient and productive recruitment industry. The administration and risk that this engenders is hugely unhelpful particularly in the areas of agency tax and employment status. Yet recruitment supply plays a pivotal role, enhancing flexibility in the workforce and adding some £30bn p.a. to the economy.

As a leading trade association, ARC's primary objective is to support recruitment as a positive asset, and this involves lobbying government on key issues. We have a track record of success in this area. ARC believes that, whilst the UK is considering all options, now is the best time to promote a modern and progressive vision for the recruitment industry, to make the UK a better place to do business, to appeal as much to investors abroad as to those already based in the UK. That is why we have launched our manifesto for change and clarification where we call on government to:

- **adopt a single, positive, overarching policy towards the recruitment sector;**
- **scrap antiquated tests in the agency tax rules;**
- **implement a tax payment policy based on supply;**
- **create a tax relief policy for all agency workers;**
- **implement a joined up tax approach; and**
- **remove the ability for an AW to claim employment rights against a hirer.**

ARC believes that with your support our practical, common sense call for change has a real chance to succeed, not only improving the conditions for temporary and contractor supply, but once and for all converting government to supporting our industry. The opportunity to press for this much needed change is now. Let's grasp it.

Adrian Marlowe,
Chairman, Association of Recruitment Consultancies
10th October 2016



Policies

adopt a single positive overarching policy towards the recruitment sector

- Currently there is no obvious policy at government level towards the recruitment industry, except an apparent negative one. Put simply, the sector is not seen by politicians unequivocally as a major asset and too often the industry is linked with tax avoidance and avoidance of rights, issues with which most agencies do not wish to be associated. Yet agency work helps hirers, candidates and investors alike. Given the significant value to the economy, the government should be encouraged to address and promote the industry in a positive and unambiguous way.
- To achieve the aim of a single positive policy will not only require a change of mindset by government, it also requires genuine joined up thinking. It is no good if one department thinks one way and another thinks the other. For example, HM Revenue & Customs' (HMRC) view is that travel expenses do not count towards equal pay for the purposes of the Agency Workers Regulations (AWR), whereas the Department for Business, Energy and Industrial Strategy (BEIS) says that expenses do count. BEIS wants to deregulate to make business easier, whereas HMRC is set upon increasing tax regulation, making business harder, by placing liability on hirers and agencies in areas that should not, in fairness, affect them.

scrap antiquated tests in the agency tax rules and implement a tax payment policy based on supply as the common factor

- ARC believes that the Supervision, Direction or Control (SDC) tests are antiquated, outmoded and should be scrapped. Guidance does little to assist and the government seems impervious to the consequence that the tests cause unfairness.
- Current status tests cause division and promote inequality, where an agency worker with one status, e.g. self employed, can achieve tax reliefs that are not available to another with a different status, yet all are supplied through an agency.
- At the same time agencies and hirers should not be the determiners of tax status. Yet HMRC looks to the agency sector and is set on a course to make agencies and hirers liable for determining employment, self employment status and the application of IR35 with penalties if they get it wrong.
- This is not in the interests of the recruitment industry and it's time for a different approach. Consequently ARC calls for clarity and simplification, together with the removal of ambiguity and dependence upon guidance which often misses the mark.





implement a tax payment policy based on supply

- In principle, the following would result in a significant negation of tax avoidance, minimise administration, remove risk of liability from agencies, protect HMRC tax recovery, and preserve reputation and flexibility
- tax and liability on agencies arises because of the supply of agency workers and contractors. The common factor is the supply. Accordingly existing rules based on SDC should be scrapped and replaced with a simple taxation rule based on the concept of supply
- all agency workers to be paid on a PAYE basis, or if they operate through a PSC they should be paid subject to an 'on account' deduction, leaving self employment and IR35 as a matter for the contractor and HMRC.

adopt a tax relief policy for all agency workers

- Scrapping tax relief, as effected under the 2016 expenses rules, makes it harder for workers to find work at reasonable rates, particularly work further from home, and it limits options for hirers to engage temporary workers from further away.
- ARC is calling for tax relief on home to work travel expenses for all agency workers, with no distinction on status. The relief would not necessarily be 100% but a fair amount that applies to everyone based on distance travelled. This moves away from potential injustice, division and inequality, yet helps towards flexibility. This will help hirers source the talent they need.

implement a joined up tax approach

- A joined up tax approach as outlined above will result in benefits for agencies by reducing administration and encouraging efficiency and productivity. No more unnecessary RTI rules or status tests, so reducing tax compliance to the minimum. Service providers will still be able to run the payroll and act as employers whilst tax avoidance arrangements would be out of the equation, leaving agencies to focus on what they do best and hirers to use agencies without fear or concern in that area.
- The cashflow advantage to HMRC of receiving payment weekly/monthly would be matched by significant administrative gains as the need for assessments and expensive online tools would fall away.



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remove the ability for an agency worker to claim employment rights against a hirer

- Hirers do not want the risk of employment rights claims any more than they want the risk of tax claims. Case law supports that there is no employment relationship when the worker is supplied through an agency if the contracts used are correct. Simplify the position and make it law that an agency worker cannot claim employment rights.
- Agency workers already have rights under the AWR, they cannot be employees of the hirer also. In addition, clearer identification of who is an employee and who is not, as under the AWR, would clarify the arrangements we would want to see in place in the future.



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Summary

- ARC's message of simplification, clarity and fairness has a broad positive appeal, and chimes with the current call for change.
- Collectively, we can push for the government to adopt a single comprehensive policy across all its departments, to reverse their current negative, ambiguous attitude towards the industry, instead embracing a positive approach.
- The availability of a flexible workforce, free from tax risk and employment claims, will appeal to employers and those wishing to set up office in the UK. As the need for tax compliance and risk falls away and productivity and confidence improves, this can only benefit our economy, our industry and the tax man; in short, making the UK a better place to do business.
- ARC's proposal for modernisation will enable Brexit ministers to understand a better way of operating when envisioning our future with the EU and on the world stage.

ARC's track record

ARC has a proven track record of initiating and running successful campaigns since 2009. For example:

Agency Workers Regulations: From the outset we argued against excessive measures and for a fair balance reflecting the realities of the recruitment industry. This campaign was a significant success and helped retain agency worker supply as we currently know it.

Employment Tribunal rules: Following representations to government including a meeting with the then Minister pointing to the 'blackmail effect' which allows vexatious claimants to raise unwarranted employment claims, many of the suggestions we put forward have been adopted in one form or another, leading us to a resounding success for all employers and recruitment consultancies.

let's work together

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