

Mixed news for contractors as the final BIS consultation on the AWD is held in London

Indications are that [limited company contractors](#) will be excluded from the [Agency Workers Directive](#), whereas [umbrella company contractors](#) will be covered by the directive. This information is based on the final consultation meeting at the Department for Business, Innovation and Skills ([BIS](#)) in London yesterday, to which ContractorCalculator's CEO, Dave Chaplin, was invited.

Opened by minister for employment relations, Lord Young, the meeting was also attended by representatives from the recruitment industry, unions, clients and contractor organisations.

What is a 'worker'?

During the intense debate between different camps, it emerged that the proposed definition of a 'worker', originally applied in the Working Time Regulations 1998, and which is likely to be used to define an agency worker covered by the AWD, excludes limited company contractors but includes umbrella company ones.

That is because although most umbrella company contractors view themselves as independent contractors, through their working arrangements they are actually pay-as-you-earn employees.

"The AWD is designed to protect vulnerable agency workers by giving them equal pay and conditions after 12 weeks," explains Chaplin. "Whilst it is essential that these vulnerable workers are protected, contractors, who have not asked for these rights, are far from vulnerable and may frequently be remunerated higher than their permanent peers. So it is wrong for them to be 'protected' by legislation aimed at vulnerable workers.

Fear of loopholes could hurt contractors' cause

The definition, included in the [consultation](#) document published by BIS, says that a worker "is someone who works under a contract of employment" and then goes on to say:

So, what is the upshot of this definition? "Crucially, limited company contractors supply their services via their [limited company](#) to their clients," explains Chaplin, "whereas umbrella company contractors 'work under a contract of employment' with their umbrella company."

Although limited company contractors appear to be out of the frame completely if this definition is adopted, and that is still being questioned by BIS, union delegates pushed hard for there to be no exclusions. Their claim is that any exclusions would become loopholes and that vulnerable workers would therefore be forced to adopt working practices to remain outside the AWD.

Client concerns

Representatives of client organisations expressed their concerns about implementation. One of the clients who spoke is responsible for managing a substantial workforce of agency workers, limited company contractors and umbrella company contractors.

He highlighted the difficulty that already existed, as to how they could differentiate one worker from another; even as things stand now, it was explained, a limited company contractor can't use the gym, but the contractor sitting next to that person can, because they're working through an umbrella company.

"Clearly some of the traditional models of working will have to change once the legislation comes into force," continues Chaplin. "The unfortunate repercussions will be clients choosing to hire contractors elsewhere in Europe, where the AWD's enforcement is not so draconian, or outside of Europe completely."

When will things change?

There were clear divisions on timing amongst delegates, with union officials urging that the legislation enter the statute books as soon as possible, whereas recruitment sector, client and contractor industry representatives are pushing for a much more considered response.

According to Chaplin, despite the looming general election, BIS officials confirmed that the government still intends to impose the AWD legislation in this session of parliament.

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As the deadline for responses to the BIS consultation approaches at the end of this month, contractors are urged to make their views known via the [BIS website](#) and to write to their MPs urging for a delay in the directive's implementation, to allow for a more considered introduction.

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Dave Chaplin is a former IT contractor in the City of London, and is founder and CEO of ContractorCalculator, and author of the Contractors' Handbook.


Started in 1999, ContractorCalculator (this site) is the leading independent website for the UK contracting industry – most of whom are highly skilled knowledge workers. [Read Full Profile...](#)

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