

KEY COMMITMENTS

entered into by Alliance Members

 Building Services Engineering
EMPLOYMENT AGENCY ALLIANCE
administered by **BESA**

Key Commitments entered into by Members of the Building Services Engineering Employment Agency Alliance

Employment Agencies in membership of the Building Services Engineering Employment Agency Alliance and applicants for membership of the Alliance (“Alliance members and applicants”) must demonstrate to the satisfaction of the independent auditor appointed on behalf of the Alliance compliance with the *Key Commitments* set out below.

The *Key Commitments* are a set of transparent, industry-relevant standards to be followed by employment agencies operating in the building engineering services sector to help contractors who are clients of employment agencies when determining how to resource their temporary worker procurement.

Employment Agencies, commonly known in the Building Services Engineering Industry as “Labour Agencies”, are sometimes more correctly described as “Employment Businesses”. However, “Employment Agencies” is the term used throughout this document to refer to such businesses.

The businesses which employment agencies serve – sometimes generally called “user businesses” – are referred to throughout this document as “client contractors”.

Independent Auditing of Employment Agencies

Members of the Alliance – and applicants for membership – must demonstrate to the satisfaction of the independent auditor appointed on behalf of the Alliance compliance with the Alliance’s *Key Commitments* which form the basis for membership of the Alliance. This process of establishing whether an employment agency is compliant with the Alliance’s *Key Commitments* is referred to as “independent auditing”.

Relevance of other Qualification Schemes

Some aspects of the Alliance’s *Key Commitments* may already be covered by other qualification schemes against which members and applicants may have been accredited. In such cases, this in itself does not grant automatic exemption from the relevant provisions of the independent auditing; however, they may, at the absolute discretion of the independent auditor, be “deemed to satisfy” the relevant sections of the *Key Commitments*. Currently, the “deemed to satisfy” principle extends to ISO 9001 (Quality Management) and OHSAS 18001 (Occupational Health and Safety).



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1 Regulatory Standards
The regulatory standards set out below are used to establish that the employment agency has a sound commercial footing, is properly regulated and is committed to the industry.

Financial Standing

Alliance members and applicants must follow financial accounting procedures that are appropriate to the size and complexity of the business and be able to demonstrate financial stability.

In particular, Alliance members and applicants must demonstrate that:

- they are a registered company;
- none of the Officers of the company is or has within the last five years been declared bankrupt;
- they have a fixed business address;
- they are able to produce audited accounts for the past two financial years, or provide evidence of proper book-keeping records;
- they have filed accounts at Companies House as required; and
- they are able to provide a declaration that they do not have any unsatisfied County or High Court judgements against them.

Insurances

Alliance members and applicants must carry insurance cover, as follows:

- *Public Liability Insurance: cover of at least £2 million; and*
- *Employers' Liability Insurance as required by statute – an appropriate level in respect of all workers engaged, but at least £5 million.*

Regulation of Employment Agencies

Alliance members and applicants must ensure that they, their staff and their business processes comply with:

- *the provisions of the Employment Agencies Act 1973, as amended;*
- *the Conduct of Employment Agencies and Employment Businesses Regulations 2003;*
- *the Agency Workers Regulations 2010; and*
- *other current relevant legislation, statutory codes and official guidance, including but not limited to those relating to equal opportunities and equal pay, taxation, health and safety, data protection, trade union membership, immigration, rehabilitation of offenders, telecommunications privacy and working time.*

Alliance members and applicants must ensure that any revisions or updates of

relevant legislation, regulations and codes are communicated to the staff of their own businesses and adhered to accordingly.

Alliance members and applicants must have in place appropriate measures to prove compliance with the *Key Commitments* set out in this document.

PAYE Tax and NIC Compliance Standards

Alliance members and applicants for membership must be able to demonstrate compliance with all current legislation regarding their statutory obligations in relation to PAYE and NIC, as they apply to personnel supplied by them to client contractors.

Alliance members and applicants for membership must be able to demonstrate that they adopt procedures aimed at minimising the risk of any transfer of liability for PAYE/NIC debt to client contractors. In particular, Alliance members and applicants for membership must be able to demonstrate that they:

- *take steps to determine the way in which each worker is supplied to client contractors – i.e., as an individual, unincorporated business, limited company or partnership;*

- *have procedures in place to:*
 - *establish the employment status of each worker or entity by ensuring that appropriate details have been supplied by each worker or entity; and*
 - *ensure that their assignment terms reflect the employment status as so determined; and*
- *establish that HMRC-compliant procedures are in place – either within the employment agency itself or within some other entity, as the case may be – with a view to ensuring that:*
 - *PAYE and NIC deductions appropriate to the way in which the worker or entity concerned provides its services are made on any payments to the work people whose services the employment agency provides; and*
 - *these payments are properly accounted for to the HMRC, whether this responsibility is undertaken by the employment agency itself or by another party (such as an outsourced payroll company or an incorporated entity or partnership).*

In cases where the above PAYE and NIC procedures are undertaken externally to the employment agency, the employment agency must be able to demonstrate that it has received

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appropriate confirmation from the third party concerned that such procedures exist.

Notification to Client Contractors

Alliance members and applicants must inform their client contractors in writing before an assignment commences that, if the client contractor subsequently directly engages the workers supplied – whether through PAYE or sub-contract terms – during, or within a specified period after the end of the assignment, the client contractor may be charged a fee or the period of the assignment may be extended before the individual worker can take up work direct without charge to the client contractor.

Long-term Commitment to Training

It is recognised that Alliance members and applicants may not have traditionally contributed to the development of the industry's pool of qualified manpower – although any employment agency will co-operate with their client contractors to provide training to individual workers, or groups of workers, as required by client contractors.

Alliance members and applicants recognise that they must make a tangible contribution to the industry's training efforts. In the light of this, they agree to commit to be involved in the

future development and provision of the arrangements that may be proposed by the employers' associations in the industry (i.e., the Building Engineering Services Association and others as appropriate) and by individual client contractors themselves concerning widening the base of training provision in the industry.

It is not possible at this stage to define precisely what is, or might be, involved in this, but it could involve a commitment to:

- *supporting and facilitating the training of apprentices (e.g., by working with contractors to enable apprentices to obtain exposure to the full range of experience necessary for their training, in accordance with their individual training plan);*
- *supporting and facilitating the accreditation of the previous experience of mature workers (e.g., by working with contractors to enable experienced workers to obtain exposure to the full range of work necessary to achieve individual accreditation, in accordance with their individual training plan);*
- *supporting, facilitating and undertaking appropriate ancillary training, at the request of their client*

contractors – such as: health and safety training, training on mobile towers and mobile elevated work platforms, first aid training, supervisory training, etc.; and

- *payment of any levy that may be introduced to support the industry's training effort.*

The strength of this commitment will be measured by audits undertaken by the independent auditor appointed on behalf of the Alliance, who will be concerned to establish the extent to which employment agencies in membership of the Alliance have in the period since their first audit developed a track record for contributing to the industry's skills development initiatives, as part of the basis of determining their eligibility for Alliance membership from 2011 onwards.

In the meantime, Alliance members and applicants will be expected to demonstrate that their internal procedures include:

- *systems for maintaining records of the skills, qualifications, experience and training of individual workers they assign to their client contractors; and*
- *plans and a timetable for the future build-up and provision of a training budget appropriate to the scale of*

training necessary to prepare the individual workers they assign to their client contractors for the tasks they are expected to undertake.

2 Business Management Standards

The business management standards set out below are aimed at providing re-assurance to the client contractors of employment agencies and to the work people they supply that the employment agency is a potentially reputable and trustworthy business partner.

Business Activity

Members of the Building Services Engineering Employment Agency Alliance shall consist of registered businesses which are established in the United Kingdom, the Channel Islands or the Isle of Man which supply personnel and personnel recruitment/procurement services to client contractors which operate in the business of building services engineering contracting – including, but not limited to electrical, plumbing and heating, ventilating, air conditioning and refrigeration contracting and associated service and maintenance activities.

Customer Relations

Alliance members and applicants must have in place, and operate in

accordance with, clear written terms of business, conditions of contract and/or service level agreements with their client contractors.

Clear and accurate information about the services provided by the employment agency and its terms of business must be provided to the client contractor on request.

Confidentiality

Alliance members and applicants must treat information from client contractors about their vacancies and manpower requirements confidentially. Disclosure of information or data identifying a client contractor and/or a client contractor's requirements either explicitly or implicitly must be restricted to those involved in or integral to their recruitment process.

Qualifications of Direct Staff of Employment Agencies

The direct professional/consulting staff of members and applicants should have passed the relevant CITB-Construction Skills health, safety and environment

FOOTNOTE 1 It is recognised that SKILLcard may not always be required by client contractors/service providers in the service and maintenance field (sometimes also referred to as facilities services provision) and that service providers in this area, uniquely, may not specify a need for personnel to be registered with SKILLcard. In this case, Employment Agencies will not be required by virtue of these *Key Commitments* to provide personnel registered with SKILLcard. They will, however, need to demonstrate to the satisfaction of the independent auditor appointed by the Alliance that they are capable of providing personnel registered with SKILLcard on those occasions when their client contractors/service providers require them to do so.

test. In addition, they should possess, or be working towards, a relevant professional recruiting and health and safety qualification. The qualifications that are relevant for this requirement are:

- *Construction Skills SSSTS course, or equivalent; and*
- *Institute of Recruitment Professionals (IRP) Certificate (or Diploma) in Recruitment Practice, or equivalent.*

Quality of Individual Workers Supplied to Client Contractors

Alliance members and applicants must have appropriate procedures for ensuring that the quality of the personnel supplied to their client contractors is consistent with the client contractor's specification. In particular, before assigning any individual worker to a client contractor, employment agencies must undertake, in respect of that worker:

- *to provide to client contractors only personnel who possess a valid:*
 - *Electrotechnical Certification*

Scheme ("ECS") card in respect of electrical and related trades; or

- *Engineering Services SKILLcard ("SKILLcard") in respect of heating, ventilating, air conditioning, refrigeration and related trades¹;*
- *competence card issued by the Joint Industry Board for Plumbing and Mechanical Engineering Services (JIB-PMES) in respect of plumbing and related trades; or*
- *competence card issued by a body which is similarly affiliated with the Construction Skills Certification Scheme (CSCS) in respect of other relevant building services engineering trades or occupations, as the case may be;*
- *to obtain at least two satisfactory work references on each individual worker supplied covering past employment (where this exists) for the previous 12 months before assignment;*
- *to ensure that personnel supplied possess all relevant qualifications for the job they are to undertake with the client, including Criminal Records Bureau (CRB) checks and other appropriate "clearances", where relevant;*
- *to undertake the necessary checks to ensure that each worker supplied to a client contractor is legally eligible to work in the UK.*

Employment Agencies must provide evidence of compliance with all relevant legislation and Home Office guidelines in relation to the entry of foreign nationals into the UK – for example, the verification of work permits, visas, National Insurance numbers, etc – as appropriate to the nationality of the individual worker concerned;

- *to ensure that the ECS card, SKILLcard, JIB-PMES card or other CSCS-affiliated scheme competence card (as the case may be), previous employment references and other relevant qualifications (including CRB, other "clearances" and proof of nationality documentation) referred to above are visually checked in each case;*
- *to establish whether an individual worker has any specific occupational health and physical restrictions which may interfere with the kind of work he/she is able to undertake; maintain records of such information; and share such information with client contractors, as appropriate in the recruitment and/or assignment/allocation process; and*
- *to make available photocopies of the documents listed in the bullet points above to the client contractor concerned, when requested to do so by the client contractor.*

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In cases where Alliance members and applicants outsource any of the functions listed immediately above, they must demonstrate that the body/organisation to which they have outsourced such activities complies with the requirements in the bullet points above.

In addition, Alliance members and applicants must demonstrate that, where they use selection tests, including psychometric tests and personality questionnaires (if appropriate to the type of personnel being supplied by the employment agency), they are relevant, properly validated and conducted by trained or licensed personnel.

Alliance members and applicants must record and document accurately and appropriately all stages of the recruitment process, including the results of face-to-face interviews and tests, and they will supply their client contractors with copies of such records, if required by the client contractor concerned.

Monitoring Workers' Standards of Performance

Alliance members and applicants for membership must:

- *liaise with their client contractors within 4 weeks of the commencement of each work placement to review and record the*

standards of performance of individual workers assigned by them to contractors; and

- *take steps – at the end of each work placement – aimed at obtaining a written reference from the client contractor regarding the standard of work of each individual worker during that assignment and client contractors will work with the employment agency concerned to ensure such references are provided.*

Equal Opportunities

Throughout all the processes and procedures Alliance members and applicants have in place to undertake their business and to fulfil these *Key Commitments*, they must establish and adopt working practices which safeguard against unlawful discrimination, in particular on the grounds of colour, race, nationality, ethnic or national origin, sex, marital status, gender re-assignment, sexual orientation, disability, (in certain cases) criminal record, religious belief, trade union membership, age or whether somebody is seeking engagement or assignment on the basis of a fixed-term or a part-time contract.

Alliance members and applicants must have measures in place to prove compliance with their organisation's equal opportunities policy statement.

Health and Safety

General/Background

Both client contractors which use agency workers and the employment agencies which supply them have legal responsibilities to look after the health and safety of agency workers when they are assigned to a client contractor's workplace. Agency workers are considered to be the client contractor's employees for health and safety purposes, even if they might not be for income tax and National Insurance purposes. This is determined by the circumstances, including who directs and controls the work. However, the most important thing to clarify and agree at the start of a placement is how the day-to-day supervision, direction and control of the work to be done by the agency workers will be achieved.

The *Key Commitments* in this section are designed to complement those health and safety management responsibilities of client contractors and employment agencies for protecting the health and safety of agency workers. It is important that, when carrying out their risk assessments, client contractors take into account the particular requirements associated with using agency workers. Similarly, the employment agencies must take account of the general risks which the workers they supply might face in the

client contractor's workplace, before they place them with that client contractor.

Before and at the Time of Assignment of Individual Workers

Alliance members and applicants must have in place procedures that enable them to record and assess all the relevant health and safety issues and potential risks arising from the specific work that the client contractor is undertaking. When placing agency workers with that client contractor, they must make sure that the workers have the necessary competences to cope with the health and safety issues and risks in the workplace to which they are being assigned.

Alliance members and applicants must not assume that there are no particular health and safety issues or general risks associated with a given placement just because the client contractor does not notify them of any. Such an assumption would be unsafe and naive. Instead, Alliance members and applicants must proactively seek clarification of the work to be carried out from the client contractor so that any relevant health and safety issues arising from the work are understood, before they identify individual workers for the work.

Communication with Individual Workers

Alliance members and applicants must as far as possible advise individual workers of any health and safety issues and/or general risks arising from the work to which they are being assigned, before they are placed with a client contractor. Alliance members and applicants must demonstrate that they provide the following information to individual workers for each placement:

- the client contractor's health and safety policy, accident reporting procedures, instructions (such as sample method statements and permit to work systems) and other initiatives designed to improve workplace health and safety;
- details of any particular health and safety issues and general risk from the work that they will do;
- details of the provision of personal protective equipment required, and how this is to be provided;
- how and when safety induction training will be provided; and
- who to contact if they are concerned about any aspect of the health and safety arrangements associated with the work they are required to do.

Continuing Duty during the Worker's Assignment

Alliance members and applicants must have procedures in place which enable them to:

- assess and record the competence of each worker;
- check that workers on placement with client contractors are required to do only work that they are competent to do and is in keeping with their individual physical capability and medical status and which is not detrimental to their safety and/or general well-being; and
- maintain a record of the medical status and general well-being of each individual agency worker; and his/her ability to undertake work of the kind he/she is registered with the employment agency to do.

Training Records

Alliance members and applicants must keep records of the training they have provided their own direct staff in relation to the implementation of these Key Commitments.

Managing Complaints

Alliance members and applicants must have in place, and operate in accordance with, a written complaints procedure that complies with good practice for dealing with complaints from

client contractors. The procedure should aim at the speedy and effective resolution of complaints from their client contractors.

The staff of the employment agency must be fully aware of the operation of the complaints procedure.

3 Employment Standards
These define the standards of employment fairness which individual work people who are placed by employment agencies at client contractors' workplaces can expect from the employment agency responsible for placing them.

Confidentiality

Alliance members and applicants must treat information from individual work people about their skills, qualifications, competences, previous work experience, personal details, etc. strictly in accordance with the data protection legislation.

Disclosure of information or data identifying an individual worker either explicitly or implicitly must be restricted to those involved in or integral to the recruitment/placement process and to appropriate representatives of the client contractor responsible for deciding who to take into employment/for

placement at his workplace.

Alliance members and applicants must not disclose an individual worker's identity and/or personal employment details to a client contractor without first obtaining the worker's express permission, unless the worker has otherwise agreed in advance that the employment agency may do so.

Equal Opportunities

In all their dealings with individual work people seeking placement through an employment agency, Alliance members and applicants must establish and adopt working practices which safeguard against unlawful discrimination against any individual work person, in particular on the grounds of colour, race, nationality, ethnic or national origin, sex, marital status, gender re-assignment, sexual orientation, disability, (in certain cases) criminal record, religious belief, trade union membership, age or whether somebody is seeking engagement or assignment on the basis of a fixed-term or a part-time contract.

Terms of Engagement

Alliance members and applicants must supply individual work people whom they are about to place with a client contractor with full details of the work to which they are being assigned. The

information to be supplied by the employment agency must include, but shall not be limited to:

- *location of the relevant workplace;*
- *the name of the person to whom the individual worker should report;*
- *the expected duration of the assignment;*
- *nature of the work to be undertaken;*
- *method and frequency of payment;*
- *rate of pay;*
- *disciplinary rules;*
- *grievance procedures – in relation to any matter arising with:*
 - *the relevant employment agency; and*
 - *the client contractor at whose workplace the individual worker is for the time being assigned.*

Alliance members and applicants must ensure that any variation to an engagement or assignment will only occur with prior notification to, and agreement of, the individual work person concerned.

Alliance members and applicants must pay promptly and accurately any wages and benefits due in accordance with any agreed terms and legal requirements – whether directly to the individual work person concerned or to an intermediary nominated by him/her to receive such monies on his/her behalf.

Other Employment

Alliance members and applicants must not withhold or refuse to provide any information reasonably requested by another employment agency in respect of any individual worker whom they may have previously placed with a client contractor, with a view to preventing that individual from obtaining work elsewhere, unless they can objectively justify their decision for refusing to give such information in any particular case.

4 Additional Standards in respect of Overseas Workers **These additional standards are intended to set out the obligations on employment agencies and client contractors resulting from assigning and engaging the services of individual workers from overseas to work within the UK.**

Alliance members and applicants must comply with all the obligations listed above in relation to indigenous UK workers. In connection, specifically, with the supply of overseas labour, they must also comply with the following additional commitments:

- *they must provide evidence that skills and qualifications are at least of an equivalent standard to those required for comparable UK workers. (This will be able to be achieved*

through UK Naric, which, in appropriate cases when the relevant conditions are met, is able to provide acceptable certification that the overseas qualification concerned is equivalent to a relevant UK occupational standard);

- *they must objectively verify each individual worker's awareness of the UK health and safety management culture and approach to the reduction of workplace accidents and of occupational illness; and*
- *they must examine and objectively categorise each individual worker's command of the English language in a UK construction site context in such a manner as to enable the client contractor to whom they supply that information to be able usefully to use that information in any necessary risk assessments that client contractors might undertake in deciding whether it is safe to engage the services of workers whose native language is not English.*

Disclaimer

Neither the establishing association of the Building Services Engineering Employment Agency Alliance – the Building & Engineering Services Association – nor the Alliance itself accept any liability whatsoever for any expenses, claims, losses, proceedings or damages arising out of this *Key Commitments* document, any related documentation regarding the independent auditing process or any other documentation of the Employment Agency Alliance.

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