

## Opt Out

On 6th July 2004, The Conduct of Employment Agencies and Employment Businesses Regulations 2003 became effective for contractors whether they worked through a limited company, umbrella or directly through the agency.

The regulations attempt to govern the way agencies operate and protect workers employed by them. The rules apply to all workers but in our view are mainly directed to lower paid employees and unscrupulous agencies.

A campaign by bodies such as PCG, APSCO and REC succeeded in allowing the agency worker to operate outside the regulations (Opt Out) if they choose to do so.

### How to Opt Out

If a contractor working through a limited company wishes to opt out. The company and contractor must notify the agency in writing, before either the introduction or the supply of services to the client.

The notice can be withdrawn at a later point by the contractor, although the withdrawal will not take effect until the contract ends.

An agency cannot make opting out a condition of providing work-finding services. Therefore, opting out is an option to contractors, but if this option is exercised it must be made before the introduction to the client.

### Effects of opting out?

The main factors are:

Contractors will not be required to comply with certain procedural requirements of the Agency Regulations such as confirmation of identity. There will also no longer be any requirement upon the recruitment agency to obtain certain information from the client before placement of the contractor.

If your client has not signed a timesheet, the regulations do not allow the agency to use this as an excuse for non-payment. You would still need to prove that the work has been done before payment can be claimed but the agency could no longer use this as an excuse for non-payment. This regulation would override any contract terms. If you do Opt Out, this protection would be removed.

There is some argument that opting out strengthens your defence against IR35, whilst this may assist in showing that you do not have legal protection, this line of defence is probably weak.



## Should I Opt Out?

At Nixon Williams we do not have a firm opinion on either side. Some contractors have taken the view that opting-in to the Agency Regulations can put them at a disadvantage in obtaining a contract with a particular client. This is mainly due to the additional procedural requirements imposed upon the employment business and the client may delay the assessment of the contractor relative to a contractor who has opted-out of the Agency Regulations.

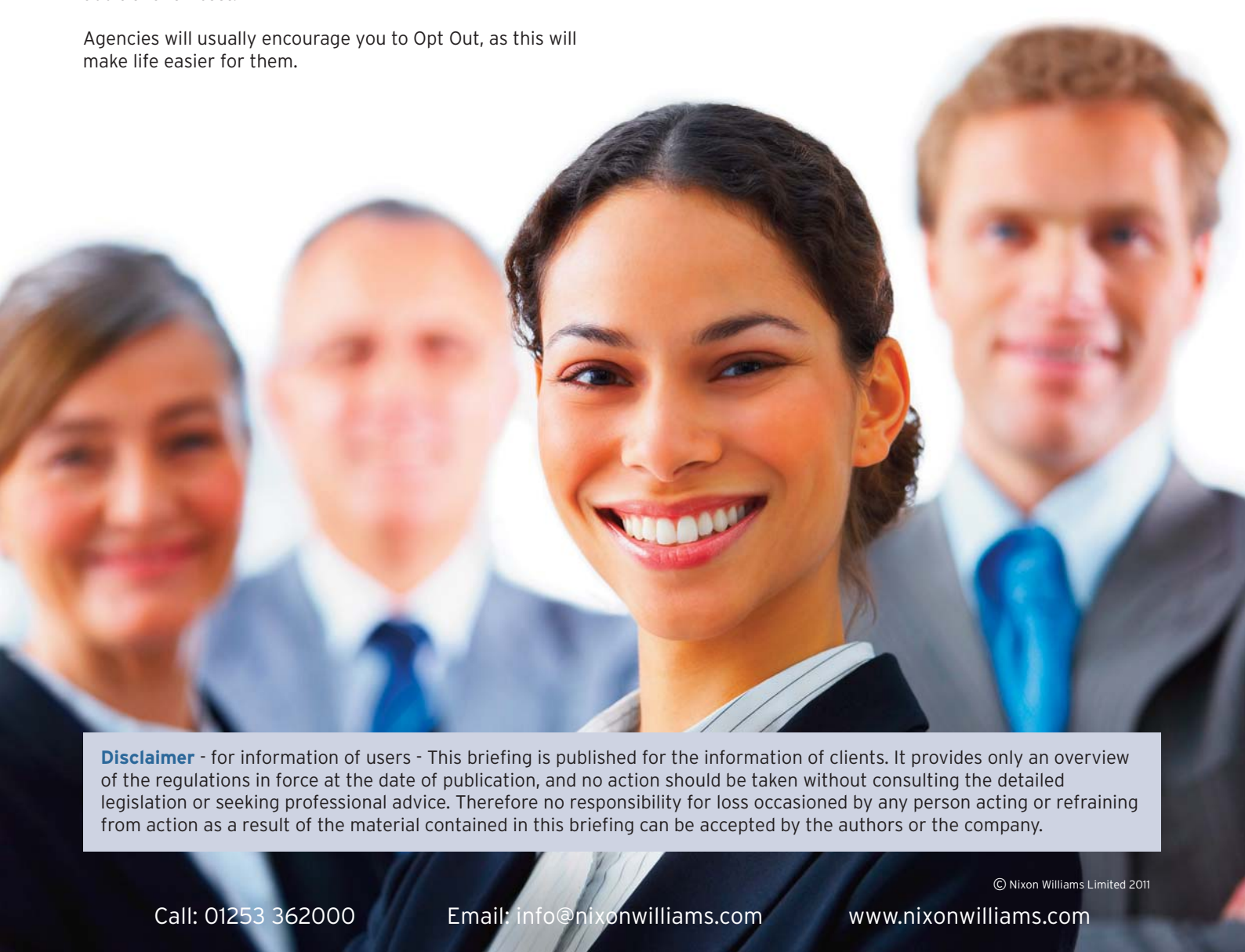
Another concern of clients is the additional employment risk of opted in contractors on the basis that by being subject to the Agency Regulations the contractor will be more similar to a temporary employee rather than an independent contractor. Consequently, some clients may encourage the recruitment of contractors who have opted out of the Agency Regulations.

Certain recruitment agencies are also suggesting an additional on cost to clients where there are additional administrative requirements for managing contractors who have opted in to the Agency Regulations. This again may disadvantage contractors where clients prefer to avoid the additional on cost.

Agencies will usually encourage you to Opt Out, as this will make life easier for them.

## Summary

As with many legal issues, this is rarely an easy decision available; each case will need to be decided on its own merits. Whilst from a legal stance, the regulations do provide you with some extra protection, in the real commercial world they may prove to be an obstacle to progressing your contracting career.



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