

Umbrella companies Call for Regulation

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Foreword

This policy document has been drafted by Rebecca Seeley Harris¹ from the Employment Status Forum². The policy has been drafted in order to assist the government in bringing forward the regulation of umbrella companies and the protection of umbrella company workers. It has focused on the actions that are needed to regulate the industry, what legislation is required, what statutory body should enforce the regulations and who should ensure that the workers can recover lost holiday pay.

There have been many different groups and individuals who have called for the regulation of the umbrella company industry. Recently, the Loan Charge APPG published their report into “How Contracting Should Work” which exposed significant non-compliance and malpractice in the supply chain by umbrella companies and recruitment agencies. Some of this has also driven the mis-selling of tax avoidance schemes and recently the use of called ‘mini umbrella companies’ (MUCs).

Lord Forsyth, the Chairman of the Economic Affairs Finance Bill Sub-Committee, recently wrote to Jesse Norman the Financial Secretary to the Treasury (FST), to express his concerns that the government had pressed ahead with the off-payroll working rules instead of concentrating on pressing forward with the recommendations of the Taylor Review. He said “The lack of strategic coordination on this issue across government and between departments is highly regrettable.”³

Unfortunately, although the government has made considerable inroads into the regulation of umbrella companies it has stopped short of actual regulation. It may be that Brexit and Covid-19 have been a diversion but, with the coming into force of the off-payroll working rules, this industry must be regulated as soon as possible. It is also critical that the post of Director of Labour Market Enforcement, which provides strategic oversight of this sector, is not left vacant any longer.

My thanks go to James Poyser of inni Accounts and Off-payroll.org; Meredith McCammond from the Low Incomes Tax Reform Group (LITRG); Julia Kermode from IWORK (formerly the CEO of the FCSA); and Lucy Smith from Clarity Umbrella who have given their input and guidance on this policy.

There are many interested parties that want to see the industry regulated not only to level the playing field but also for the protection of the worker.



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¹ Biography is on page 31.

² The Forum has been set up to focus on thought leadership of areas concerning employment status that the group feel needs independent expert advice to government. The administration is dealt with by Re Legal Consulting Ltd.

³ <https://committees.parliament.uk/publications/4776/documents/48264/default/>

1. Executive summary

Umbrella companies and other payroll intermediaries have taken increasing prominence in the labour supply chain since they were first conceived in 2000. They were first brought to market because of the introduction of the so-called IR35, the intermediaries legislation. They have grown steadily in use especially with the introduction of the Managed Service Company legislation⁴ in 2007 and more lately the off-payroll reforms in the public sector in 2017. As of 6 April 2021, they have been used increasingly because of the reforms to the off-payroll legislation to include the private sector.

This is a worrying development because the umbrella company sector is unregulated and there are signs of large-scale non-compliance, especially with workers' entitlement to holiday pay, pensions, the employment allowance scheme and mini umbrella companies (MUCs) and issues with disguised remuneration. That is not to say that all umbrella companies are non-compliant, there are undoubtedly umbrella companies that take an active role in compliance and are calling for regulation of the sector.

In 2021, there are reportedly 500 umbrella companies and 600,000 umbrella company employees. A conservative estimate of the value of unpaid holiday pay in 2016 was at least £1.8bn. The additional income tax collected on this basis would equate to £300 million. It was estimated that in the sector of employment agencies and intermediaries, £4.5 billion is misappropriated mainly from workers but also from HMRC. Finally, umbrella and related schemes are estimated to cost workers/HMRC £1 billion per annum through a number of tax avoidance schemes.

The non-compliant umbrellas have a competitive advantage so, in order to level the playing field for the compliant umbrellas, regulation is desperately needed. This does also include ensuring that the umbrellas are regulated to protect the workers. In addition, there needs to be tighter regulation between the agency and the umbrella company to prevent abuses in the supply chain. This could probably be achieved by amending the relevant agency legislation⁵.

Although there is no regulation, umbrella companies are required to comply more generally with current taxation and employment law, such as the Employment Rights Act 1996 (where the individual is employed by an umbrella).

There are, of course, other pieces of legislation such as the Agency Workers Regulations 2010 which also impact on the provision of information and the protection of the umbrella company worker. So, the government should also consider the compliance of the whole labour supply chain and how it impacts on the umbrella company worker.

1.1 Proposed legislation⁶

There have been proposals to legislate to bring certain umbrella company activities into the regulatory scope of the Employment Agencies Standards Inspectorate and, possibly, the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Conduct Regulations").

There are, however, queries over whether the Conduct Regulations are the appropriate legislative vehicle for the regulation of the umbrella companies. Either way, the umbrella companies need to be regulated.

Unfortunately, this has not happened.

⁴ Chapter 9 ITEPA 2003

⁵ See para 3.5 below.

⁶ See Appendix 1 for the chronology of the Taylor Review and government consultations leading up to the proposed legislation.

1.2 Single Enforcement Body

The government also considered whether to create a Single Enforcement Body (SEB) for the Labour Market to include the four main bodies:

- Employment Agency Standards Inspectorate - they enforce agency workers' rights
- Gangmasters and Labour Abuse Authority – they act on exploitation, trafficking and modern slavery
- Health and Safety Executive – poor working conditions and maximum limit of weekly hours worked
- HMRC – non-payment of the National Minimum Wage

Unfortunately, this has still not happened either.

1.3 Director of Labour Market Enforcement

The government created the post of Director of Labour Market Enforcement (DLME)⁷ to provide strategic direction and coordination to the overlapping responsibilities of the four main enforcement bodies. This post is, therefore, critical to the progress of the regulation of umbrellas and the protection of the workers.

Unfortunately, this post is currently vacant.

1.4 Action needed

So far neither the proposed legislation for the regulation of umbrella companies, nor the creation of the SEB or the extended remit of the EAS has happened and, at this time, the DLME post is vacant. If there is no one providing strategic direction, the first two steps are unlikely to happen.

This proposal calls on the government as a matter of priority to:

- Establish whether the SEB or the EAS is the most appropriate enforcement body;
- consult on whether the Conduct Regs are appropriate legislation for umbrella companies; if not
- clearly establish what type of regulation is needed in the labour market to ensure compliance of the umbrella companies and other intermediaries;
- consider whether the umbrella companies and other intermediaries should be licensed;
- consider alternative models for umbrella companies, possibly not-for-profit, based on international models;
- also to ensure that any legislation also protects the rights of the worker; and crucially
- that there is an enforcement body, possibly HMRC (as HMRC already do for National Minimum Wage), that can assist in recovering holiday pay on behalf of the worker.

2. Recommendations

2.1 Holiday pay⁸

It is recommended that the government re-consider the issue of rolled-up holiday pay (RHP) but ensure that the follow measures are implemented:

⁷ The post was created in the Immigration Act 2016, and was first held by David Metcalf, who commenced in 2017

⁸ See further information in Chapter 4.

*Rolled-up Method*⁹

1. Establish the legality of RHP in the aftermath of Brexit.
2. The holiday pay is calculated on top of the gross taxable pay.¹⁰
3. There should be a clear confirmation statement that the worker wishes to receive RHP.
4. The RHP should be clearly documented on the payslip as an individual item and clearly stating that it is holiday pay.
5. The method of calculation should be shown in the Key Information Document and the Contract of Employment.

*Accrued Method*¹¹

6. Consider whether the accrued basis should continue to be used in the umbrella industry.
7. If it is, providers should notify workers of their holiday entitlement, allowing enough time for them to take the holiday and not rely on the worker reading the contract.
8. If a worker has variable hours or leaves their job with any annual leave untaken, it is calculated at 12.07 % of their average pay.

2.2 Payslips¹²

It is recommended that the government considers the issue of payslips and the Key Information Document and does the following:

- The payslips should be very clear as to what the separate pay elements are; and
- Should show the costs and holiday pay separately;
- In addition to the agency or employment business, the umbrella company should have to provide the KID to the worker;
- The information provided should be actual figures not sample information;
- Agencies and employment businesses should have to provide the KID to all workers not just new ones;
- The KID should be given at the earliest opportunity and not left until after the contract has been signed;
- That the KID should include an additional requirement to state whether the umbrella has received any commission or other incentive from the agency or vice versa;
- The EAS should follow up on the implementation of the KID to see how it is working in practice.

2.3 State Enforcement¹³

It is recommended that the government considers either using the Employment Agency Standards Inspectorate as a regulatory body or a SEB and does the following:

- Provide education and information specifically to help umbrellas comply.
- In non-compliance, employers are “named” for holiday pay abuses;
- Civil penalties for non-compliance as an alternative to prosecution;
- Enforcement bodies to be able to recover enforcement costs;
- More severe penalties to act as a deterrent;
- Revenue from higher penalties should be recycled into the enforcement system;
- Reputational penalties – naming and shaming is a strong deterrent;

⁹ Discussed in para. 4.2 and 4.6

¹⁰ in the preceding 52 weeks, up from 12 weeks since April 2020, in line with the judgement in *British Gas Trading Ltd v Lock & Anor* [2016] EWCA Civ 983.

¹¹ Discussed in para. 4.6

¹² See further information in Chapter 5.

¹³ See further information in Chapter 6.

- HMRC to work on tax compliance of the umbrella with any state enforcement body.

2.4 Statutory Standards

It is recommended that the Government regulates to include a statutory standards framework to include the following:

- To strengthen, clarify and enforce the existing regulation that makes it unlawful for an employment business to offer a position that is conditional on using a specified umbrella company or payment intermediary;
- to stop workers being pushed or encouraged to opt-out of the Conduct of Employment Agencies and Employment Business Regulation 2003;
- To make it unlawful for agencies to receive financial incentives or 'kickbacks' from umbrella companies, via timesheet commissions, introductions, or otherwise;
- To make it a statutory obligation to quote the PAYE contract rates and the uplift rate for temporary worker engagements that are "inside IR35".
- To make it clear that employers' National Insurance Contributions cannot legally be deducted from workers' wages.
- To make those who promote and operate schemes that are deemed to be forms of tax avoidance exclusively liable for any tax avoided.
- To ensure that tax and NICs due on umbrella workers' income earned from employment are paid to HMRC on time and at the prevailing rate.

3. Introduction

3.1 Umbrella company data

There is an absence of robust data on the number of umbrella companies or intermediaries in operation, but it was estimated by a recent report by the Low Incomes Tax Reform Group (LITRG)¹⁴ that in 2021 there were 500 umbrella companies and 600,000 umbrella company employees¹⁵. It is likely though that due to the increased use of umbrella companies, as a result of the off-payroll legislation reforms coming into force in April 2021, there will be a growth in umbrella companies and the scope for poor practice.

The work seeker may not be using the umbrella company voluntarily but because an employment business has a working arrangement with the umbrella, or the client has insisted upon it. The work seeker has no right of redress or formalised complaints procedure outside of an Employment Tribunal or by using ACAS's mediation services¹⁶.

Umbrella companies and intermediaries play a legitimate role in the marketplace but, even with traditional, generally compliant umbrella companies, there can be issues with the small print in the contract (particularly around holiday pay) and workers not understanding their pay rates. The Key Information Document (KID) was brought in in April 2020 to help clarify issues such as the workers' pay rates but, this is only for new workers, not for existing ones. Furthermore, despite being a legal requirement for over 12 months the KIDs are still not being widely issued.

3.2 Proposed legislation

The Taylor Review into Modern Working Practices which was commissioned by the Government in 2017, made some recommendations concerning the regulation of umbrella companies and other intermediaries. These recommendations were then endorsed by the Director of Labour Market Enforcement in the Labour Market Enforcement Strategy¹⁷.

These recommendations resulted in a proposal to legislate to bring certain umbrella company activities into the regulatory scope of the Employment Agencies Standards Inspectorate and, possibly, the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Conduct Regulations").

There are, however, queries over whether the Conduct Regulations are the appropriate legislative vehicle for the regulation of the umbrella companies. In Appendix 3, it shows that there are more regulations that are not compatible with umbrella companies than ones that are.

The legislation should also consider whether the umbrella companies should be licensed and who the licensing authority would be.

3.3 Statutory definition

There is no statutory definition of an umbrella company and there is no universal understanding of it as an industry. Anyone can set up an entity, call itself an umbrella and insert itself into supply chains.

HMRC's definition of an umbrella company is:

¹⁴ LITRG – Labour Market Intermediaries Report 2021. Further details in Appendix 2.

¹⁵ It is not thought that this figure includes disguised remuneration schemes.

¹⁶ Unless under the GLAA

¹⁷ <https://www.gov.uk/government/publications/labour-market-enforcement-strategy-2019-to-2020-government-response>

“A UK limited company which acts as an employer to a number of individuals, meeting PAYE and other requirements, where operating legitimately. It signs contracts to provide the individual’s labour to engagers, either directly or through another intermediary such as a recruitment agency.”

The EAS inspectorate’s definition of an umbrella company is:

“A payroll company, which might charge or deduct a fee from a work seeker’s payment that has been given to them by an employment business to process the work seekers’ wages earned through the agency. In some cases, the work seeker will become an employee of the umbrella company.”

There are issues with both of these definitions:

1. HMRC: An umbrella does not have to be a UK limited company, but for some reason HMRC defines it to be a UK company.
2. EAS: Umbrellas do not charge or deduct a fee, the word “fee” is technically incorrect and would result in the cost becoming VAT-able. This is why umbrellas always “retain a margin” and never charge a fee.
3. EAS: Any fee (or retained margin) is not taken from the work seeker’s payment. The monies paid to the umbrella is not the work seeker’s payment, rather it is the umbrella’s income (not the worker’s) and is charged for the work seeker’s services provided to the client. The charge is the worker’s payment plus overheads, which includes an amount for the margin.

3.4 Umbrella company self-certification¹⁸

As this is an unregulated sector, several self-certification bodies have set up to provide accreditation for umbrellas. There are two main trade ‘accreditation’ bodies for the sector – Professional Passport (PP) and the Freelancer and Contractor Services Association (FCSA).

- Professional Passport have approved 74 providers over six services.¹⁹
- FCSA have approved 62 providers, over three models.²⁰

It could be viewed as unhelpful that umbrella companies have to make a choice between accreditation bodies, as there is the risk that the overall compliance message is diluted. However, some umbrella companies are both FCSA and Professional Passport accredited (for example, several of the umbrella companies that the LITRG looked at were) which indicates that there may be some synergy and consistency between the bodies.

The research conducted by LITRG indicates that both bodies have good intentions in respect of regulating the umbrella company market and that their offerings are far more than just a tick box exercise. However, there are inevitably limitations in their approach. For example:

- The review they carry out of their members is a snapshot of a moment in time and there would appear to be at least a year between reviews – a lot can change in a year.
- It may be hard to ensure in-year changes/updated compliance standards have been understood and processed by umbrella companies, even if they are encouraged to proactively follow new compliance standards until the next renewal process.
- Some umbrella companies may have patchy compliance histories, potentially under phoenix companies – it is not clear how much of this history is unearthed or is deemed relevant by the bodies in terms of what is before them today.

¹⁸ Information extracted courtesy of the LITRG – Labour Market Intermediaries

¹⁹ Professional Passport, Approved Providers, available at <https://professionalpassport.com/Approved-Providers/Approved-Providers>

²⁰ FCSA, Directory of Accredited Members, available at <https://www.fcsa.org.uk/members/>

- For commercial reasons, we understand most umbrella companies will have a group structure with a holding company and then individual services offered under subsidiary companies – it is not clear whether the review processes will pick up all the associated companies of a particular entity and if they do, what scope there is for delving into them all.
- It is unclear the extent to which either body interviews workers to check whether the contractual terms match what happens in practice.
- It seems difficult for either body to stop umbrella companies being purposefully obfuscatory in terms of trying to cheat the review.
- It also seems possible that umbrella companies might try and piggyback other offerings under different brands off of the main accreditation – this might not matter if the brands are used to target different market segments all using the same backend systems and services, but some may well have different operating systems.
- It is not possible for the FCSA or PP to monitor how umbrella companies apply subjective tests, such as the SDC test, on a daily basis.
- There are also things that fall into the commercial area they are unable to comment on or change as they are not compliance issues per se – for example, around fees. The most the accreditation bodies can do is encourage transparency and educate workers on what to look for.

Apparently²¹, roughly 25 to 30% of the current umbrella marketplace is accredited by either FCSA or PP or both.

3.5 Conduct Regulations

The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations). These laws are enforced by the Employment Agency Standards inspectorate (EAS). The umbrella companies and intermediaries are not, however, included within this legislation.

The legislation covers principles such as restrictions on fees, ensuring that temporary workers are paid for the work they have done, record-keeping, advertising, and ensuring that identity and suitability checks are carried out on work seekers. The regulations also provide a framework for arrangements between agencies and employment business; they also cover the arrangements between hiring businesses which include contracts between work seekers and agencies / employment businesses.

It was originally proposed by the Taylor Review that the umbrella companies be brought within the Conduct Regulations and then, in the BEIS consultation on agency workers the report stated: “Subject to *the recommendations of the Director of Labour Market Enforcement*, the government will look to legislate to bring certain activities of umbrella companies and other intermediaries within the regulatory scope of the EAS, so that work seekers using them are better supported and protected.”²²

Although bringing the umbrella companies within the scope of the Conduct Regulations has been discussed, there are many parts of the Conduct Regulations that are not relevant to umbrella companies²³ and, unless the Conduct Regulations are amended, it is unlikely that these regulations will be sufficient to regulate the umbrella company and deal with the recovery of holiday pay for the workers, for example.

²¹ LITRG: Labour Market Intermediaries Report 2021 - p.78 para 1.

²² Para 31. Good Work: The Taylor Review of Modern Working Practices – BEIS Consultation on agency workers.

²³ Appendix 3 – Conduct Regs and umbrella company compatibility

It may be worth considering new more appropriate legislation that is specific to the umbrella industry and, also, the other intermediaries such as Professional Employer Organisations (PEOs).

Opt-out

Umbrella company workers, however, are routinely required to opt-out of the Conduct Regulations either by the agency or the umbrella company. This is mainly so the umbrella company is not required to pay the worker before they get paid by the client, which is a requirement of the Conduct Regulations.

4. Holiday Pay

One of the main problems for umbrella company workers is the element of holiday pay. Many umbrella company workers do not know they are even entitled to holiday pay, so they don't know they are entitled to take time off and be paid. It is, however, difficult to use the accrued method for paying holiday pay because of the variation in the way these workers work but, the rolled-up holiday pay method is not technically lawful.

The worker's pay is often split between a small salary of national minimum wage plus commission. If the holiday pay is calculated on just the NMW proportion, it is obviously substantially less than if it was calculated on the whole.

4.1 Entitlements and 'wages'

Holiday pay and annual leave entitlements are set out in s.13 of the Working Time Regulations 1998 (WTR)²⁴. This transposed the EU Directive on Working Time into UK law. It is the Health and Safety Executives' (HSE) job to make arrangements for the enforcement of these rights. The HSE, however, state that it does not enforce paid annual leave entitlements. As a result of this, many workers are forced to take action through the Employment Tribunal.

In 2009, the judgment of *HMRC v. Stringer* [2009] held that holiday pay can fall under the definition of 'wages' under the Employment Rights Act 1996 (ERA). Under Regulation 12 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003, (the Conduct Regs) businesses are prevented from withholding any part of payment for work done.

Whilst Reg 12 might allow the EAS to investigate holiday pay issues and seek to prosecute withheld holiday pay as a breach of the Conduct Regs and potentially fine the employment agency, the EAS does not have the legal powers to recover outstanding wages or holiday pay owed to workers.

The Taylor Review recommended that HMRC should take responsibility for enforcing the basic set of core rights that apply to all workers: NMW, sick pay and holiday pay for the lowest paid workers. Stakeholders agreed with this, namely Usdaw and the FSB but, only for the lowest paid workers. The Recruitment and Employment Confederation (REC), however, disagreed but this appears to be based on a clarification of the WTR as to when agency workers are entitled to receive holiday pay.

The Director of Labour Market Enforcement (DLME) thought that holiday pay entitlements should be actively enforced by the state and recommended that HMRC (or another appropriate state body) was given the powers to take responsibility for the enforcement of holiday pay. The DLME added that it should not be restricted to just low paid workers: "...holiday pay is a fundamental right and therefore should be enforced across the board."

4.2 Rolled-up holiday pay

In 2006, the European Court of Justice held rolled-up holiday pay schemes to be unlawful and contrary to the principles of the EU Working Time Directive (WTD)²⁵. The WTD, transposed into UK law by the Working Time Regulations 1998, does not allow annual leave to be replaced by pay in lieu unless the employment relationship has been terminated. The rationale at the heart

²⁴ See Appendix 5 – Working Time Regulations.

²⁵ *Robinson-Steele v R.D Retail Services Ltd* [2006] ECR C-131/04

of this principle is health and safety, with the primary driver being to secure actual rest time for workers rather than just financial remuneration.

So, rolled-up pay schemes are considered at EU-level to be unlawful, but in practice, there is no other practical way of paying holiday pay for workers whose working pattern is extremely variable.

A conservative estimate of the value of unpaid holiday pay in 2016 was at least £1.8bn. The additional income tax collected on this basis would equate to £300 million. Other forms of unpaid wages are also estimated at £1.3 billion²⁶. It was estimated that in the sector of employment agencies and intermediaries £4.5 billion is misappropriated mainly from workers but also from HMRC. The £4.5 billion is derived as follows²⁷:

- First, consider holiday pay. Using a sector turnover figure of £30 billion, 12.07 per cent should be paid as holiday pay. It is estimated that 70 per cent is not paid, equivalent to £2.5 billion. Non-payment is via: not informing workers they are entitled to holiday pay; not warning workers they will lose their entitlement to holiday pay if not taken by the end of the year; not allowing workers to carry it forward between holiday years (which is unethical but legal); underpaying; making calculations too difficult to follow; and failing to pay accruals with the P45.
- Second, under the Agency Workers Regulations 2010 (AWR) temporary workers were entitled to receive the same wage as a permanent worker for the same job after 12 weeks. Using the Swedish derogation this right could be waived in lieu of “pay between assignments”. Many workers waived their rights but never received any pay between assignments. The estimated unpaid wage was put at £1 billion per annum. The Swedish Derogation has now been outlawed.
- Finally, umbrella and related schemes are estimated to cost workers/HMRC £1 billion per annum through a number of schemes.

4.3 Entitlement to annual leave

The statutory entitlement is to 5.6 weeks paid holiday a year. The principle is that pay received by a worker while they are on holiday should reflect what they would have earned if they had been at work and working.

People working irregular hours (like shift workers or term-time workers) are entitled to paid time off for every hour they work.

4.4 Working Time Regulations 1998 (as amended)

Reg 13²⁸

A worker is entitled to 5.6 weeks’ annual leave in each leave year and the leave may be taken in instalments but can only be taken in the leave year in respect of which it is due and may not be replaced by a payment in lieu, except where the employment is terminated.

²⁶ Clark and Herman (2017) – 4.9 % of workers report that they receive no holiday pay.

²⁷ Extracted from UK Labour Market Enforcement Strategy 2018/19

²⁸ Appendix 4 - WTR Reg 13 – revised: <https://www.legislation.gov.uk/uksi/1998/1833/regulation/13>

4.5 Reference Period

From 6 April 2020, the reference period increased. Previously, where a worker has variable pay or hours, their holiday pay was calculated using an average from the last 12 weeks in which they worked, and thus earned pay. This reference period has been increased to 52 weeks.

4.6 Umbrella company – holiday pay methods

Accrued method

The accrued holiday pay method, which is the technically correct process, is where the umbrella company accumulates the contractor's holiday pay entitlement and pays it to the contractor upon request. The holiday has to be requested before the end of the holiday year. The failure of a lot of umbrella companies is that they don't inform the worker of their entitlement. If the holiday entitlement is not taken within the leave year it is not carried over and can, therefore, be lost to the worker. Some unscrupulous umbrella companies, however, are reported to be taking advantage of this and profiting from the worker's loss. In some instances, deals are done between the agency and the umbrella to split the proceeds.

The accrued method was created with the notion of permanent employment in mind rather than sporadic or ad hoc employment where the worker does not take holiday in the same way. The 'rolled-up method', although not technically correct, does serve a purpose for umbrella company workers and its practical application is more appropriate.

Rolled up method

The worker's holiday pay is calculated and paid in their monthly payslip. The worker is then supposed to set aside the rolled-up pay to fund future time off.

There are various reasons why the rolled-up method is not advocated. Firstly, because some umbrella companies calculate it based on the national minimum wage portion of the wages, rather than the gross wages but, mainly because it is in direct conflict with the Working Time Directive. The Taylor Review advocated the rolled-up holiday pay method because workers seemed to prefer it but the government said that they that they could not proceed with the recommendation because it defeated the object of the Working Time Directive (WTD). Although, the WTD stems from European law and, as the UK has exited the European Union, maybe this can be revisited.

The WTD is based on the typical model of employment whereas, the umbrella worker is not a typical employee. Their periods of work vary and so calculating holiday pay is likely to be difficult.

4.7 Recommendation

It is recommended that the government re-consider the issue of rolled-up holiday pay (RHP) but ensure that the follow measures are implemented:

Rolled-up Method

1. Establish the legality of RHP in the aftermath of Brexit.
2. The holiday pay is calculated on top of the gross taxable pay.²⁹
3. There should be a clear confirmation statement that the worker wishes to receive RHP.
4. The RHP should be clearly documented on the payslip as an individual item and clearly stating that it is holiday pay.
5. The method of calculation should be shown in the Key Information Document and the Contract of Employment.

²⁹ in the preceding 52 weeks, up from 12 weeks since April 2020, in line with the judgement in *British Gas Trading Ltd v Lock & Anor* [2016] EWCA Civ 983.

Accrued Method

1. Consider whether the accrued basis should continue to be used in the umbrella industry.
2. If it is, providers should notify workers of their holiday entitlement, allowing enough time for them to take the holiday and not rely on the worker reading the contract.
3. If a worker has variable hours or leaves their job with any annual leave untaken, it is calculated at 12.07 % of their average pay.

5. Payslips

5.1 Contract rate and wages

The umbrella company payslips are complicated by the fact that there are two different pay structures: a contract rate and the wages. The contract rate is the rate paid to the umbrella company by the client or agency under their contract, this amount is not just what the worker gets paid, nor are they entitled to the contract rate. The umbrella company deducts the employer's costs³⁰ and the margin from the contract rate and what is left is paid to the umbrella company worker as wages (sometimes this is split into wages and commission or a bonus).

This complicated structure is little understood and fraught with misunderstandings. Sometimes that is unintentional but, there is anecdotal evidence that some recruitment company consultants might state the contract rate to lure the worker in and then the worker only realises that there are deductions when they get paid through the umbrella.

5.2 NMW and commission structure

Umbrella companies also use a discretionary bonus payment structure where they use the National Minimum Wage (NMW) plus a variable bonus or commission to pay their workers. There are two reasons for this structure:

1. To limit financial risk to the umbrella
2. To allow for pay rates to vary

In the first instance, the NMW plus variable pay structure protects the umbrella company against when the client and/or agency defaults on payment. When late payment occurs, the umbrella will pay the worker their basic rate while withholding commission or bonus payments. This will be paid when it is received from the agency. That is also the reason why umbrella company workers are obliged to opt out of the Conduct Regulations because those regulations would not allow for the umbrella company or agency to withhold payment.

In the second instance, the NMW plus variable pay structure allows for the umbrella worker to undertake different assignments for different pay rates and yet retain continuity of employment (and all accrued rights) without needing to vary their contractual terms.

5.3 Key Information Document³¹

In April 2020, the Key Information Document or KID was introduced. This is a document that is legally required to be given to all new agency workers and describes how their pay is structured and includes holiday pay entitlement.³² At present, the agency is supposed to give this to the worker. The agency, however, is not necessarily in receipt of the correct umbrella figures so the agency or umbrella may supply sample information instead.

It appears though that the KIDs are not being routinely given out to the workers³³. Also, workers themselves are not aware that they are entitled to receive a KID. The agency responsible for enforcement of agency workers' rights is the Employment Agency Standards inspectorate (EAS) but, this is not widely known by the worker either.

³⁰ The deductions will be the employer's NICs, the apprenticeship Levy (where applicable), pension contributions and any margin.

³¹ Extracted from LITRG paper on Labour Market Intermediaries.

³² Knowledge Information Document for umbrella companies: <https://www.gov.uk/government/publications/providing-a-key-information-document-for-agency-workers-guidance-for-employment-businesses>

³³ Contractor UK: KID should be dealing with deductions issues

https://www.contractoruk.com/private_sector_ir35_reform/should_agencies_be_clearer_inside_ir35_contract_rates.html

There is guidance on GOV.UK to help agencies understand how to comply with this requirement, which has seven sections:

- format, timing and frequency of key information documents
- information to include for a standard employment business: agency worker
- relationship (that is Pay As You Earn (PAYE))
- when additional information is required for the key information document
- information to include when an intermediary or umbrella company is involved
- key information documents for workers signing on as personal service companies
- changes to key information documents
- enforcement of the new regulation

The legislation that introduces the KID is prescriptive, even down to the length of the document, which must be no longer than two A4 pages and easy to understand. The purpose of the KID is not to outline all the terms of the contract, but instead to outline key information – provided the KID is completed correctly, the worker should be better able to fully track the difference between the gross amount paid by the agency to the umbrella company and the net sum that the worker receives.

It is understood that the KID is not working as well in practice as had been hoped. Although this evidence is anecdotal, the EAS should follow up on the implementation of the KID to see how it is working in practice.

5.4 Recommendations

It is recommended that the government considers the issue of payslips and the Key Information Document and does the following:

- The payslips should be very clear as to what the separate pay elements are; and
- Should show the costs and holiday pay separately;
- In addition to the agency or employment business, the umbrella company should have to provide the KID to the worker;
- The information provided should be actual figures not sample information;
- Agencies and employment businesses should have to provide the KID to all workers not just new ones;
- The KID should be given at the earliest opportunity and not left until after the contract has been signed;
- That the KID should include an additional requirement to state whether the umbrella has received any commission or other incentive from the agency or vice versa;
- The EAS should follow up on the implementation of the KID to see how it is working in practice.

6. State enforcement

6.1 Agencies

The private recruitment sector is regulated by the Employment Agency Standards Inspectorate (EAS) which is located within the Department for Business, Energy and Industrial Strategy (BEIS). Agencies and employment businesses have to comply with the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

Umbrella companies and intermediaries are currently not directly regulated by EAS. However, they are required to comply more generally with current taxation and employment law, such as the Employment Rights Act 1996 (where the individual is employed by the Umbrella company).

6.2 Good Work

In Good Work: the Taylor Review on modern working practices, the review made recommendations for agency workers. In February 2018, the government launched a consultation on agency workers and as a result of that it was further recommended that umbrella companies be brought under the remit of the EAS inspectorate.³⁴

The government was looking to legislate to bring certain activities of umbrella companies and other intermediaries within the regulatory scope of the EAS, so that work seekers using them are better supported and protected.

6.3 Employment Agencies Standards Inspectorate (EAS)

The main legislation underpinning the EAS is the Employment Agencies Act 1973, along with the Conduct of Employment Agencies and Employment Businesses Regulations 2003. Examples of offences investigated by EAS include placing false advertisements for jobs, employment businesses failing to pay wages and holiday pay to workers and providing additional services to work-seekers for a fee before providing any work-finding services.

The body takes an educative approach with the majority of employment agencies with which it engages. Where an employment agency has failed to respond to a formal written warning, EAS can pursue a criminal prosecution through the Insolvency Service's Criminal Enforcement Team. If successfully prosecuted and convicted a fine will be imposed. This fine may be capped at £5,000 for some summary offences committed before 12 March 2015, although after this date the fine is potentially unlimited.

EAS can also ban non-compliant individuals from running an employment agency for up to 10 years by seeking a Prohibition Order. This action may be taken after a prosecution, or on the basis of information gathered during an investigation. Any breach of a Prohibition Order is subject to criminal prosecution and a fine on conviction.

Bringing the umbrella companies within the Conduct Regs:

- Through legislation umbrella companies would have to meet a minimum set of standards in line with the minimum requirements currently in place for employment businesses under the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- However, many of these standards are not relevant for umbrella companies, e.g. requirements on how jobs should be advertised.

³⁴ Consultation on agency workers recommendations:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679831/2018-02-06_Agencyworkerconsultationdoc_Final.pdf

- In addition, the agency regulations do not include any tax or NIC requirements so will not deal with many of the fundamental non-compliance issues.
- There would be provision to make a complaint, so the worker did not have to go to an Employment Tribunal.
- It would also help to eradicate sharp practices.

6.4 Single Enforcement Body – Labour Market (SEB)

There are four main bodies that enforce workers rights, in addition to the Police, these are:

- Employment Agency Standards Inspectorate - they enforce agency workers' rights
- Gangmasters and Labour Abuse Authority – they act on exploitation, trafficking and modern slavery
- Health and Safety Executive – poor working conditions and maximum limit of weekly hours worked
- HMRC – non-payment of the National Minimum Wage

The post of Director of Labour Market Enforcement (DLME) was created to provide strategic direction and coordination to the overlapping responsibilities of these bodies. The DLME published the Enforcement Strategy 2018-19 in May 2018. The post of DLME is currently vacant.

Single Labour Market Enforcement Body (SEB)

The Consultation for the new Single Labour Market Enforcement Body closed in October 2019.³⁵ It is in the context of the additional support needed for vulnerable workers, such as umbrella workers, that the government were considering the need for a single labour market enforcement body.

HMRC

HMRC (a non-ministerial department) enforces the National Living Wage (NLW) and the National Minimum Wage (NMW). HMRC take civil action to recover wage arrears for workers by issuing a Notice of Underpayment to the employer. A civil penalty is also imposed on employers for breaches of the NMW/NLW. Employers who are issued with a Notice of Underpayment and owe arrears over £100 in wages are publicly “named” as part of the BEIS scheme introduced in 2011.

As HMRC already act as an enforcement body for the NMW, it may be that HMRC could enforce the rights to holiday pay for umbrella workers and assist in the collection of holiday pay that is owed. This would mean that the umbrella company workers would not have to resort to using the Employment Tribunal.

6.5 An ideal enforcement system

- Proactive use of intelligence and information
- Educating individuals and employers
- Complaint's system
- Response
- Impact: reduced non-compliance.

6.6 Recommendations

It is recommended that the government considers either using the Employment Agency Standards Inspectorate as a regulatory body or a SEB and does the following:

³⁵ Good Work Plan establishing a new Single Enforcement Body for employment rights: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-consultation.pdf

- Employers are “named” for holiday pay abuses;
- Civil penalties for non-compliance as an alternative to prosecution;
- Enforcement bodies to be able to recover enforcement costs;
- More severe penalties to act as a deterrent;
- Revenue from higher penalties should be recycled into the enforcement system;
- Reputational penalties – naming and shaming is a strong deterrent;
- HMRC to work on tax compliance of the umbrella with any state enforcement body.

7. Appendix 1

7.1 Good Work: the Taylor Review on modern working practices

In November 2016, the Prime Minister commissioned Matthew Taylor, Chief Executive of the RSA (Royal Society for the encouragement of Arts, Manufactures and Commerce) to carry out an independent review of modern employment practices in the UK. The review explored issues such as employment status, transparency between employers and workers, protections for agency workers and enforcement of employment rights.

Agency workers

The review was published in July 2017 and made more than 53 recommendations. In February 2018, the government responded³⁶ to the review and launched some further consultations to help inform the approach to implementing the review. One of the consultations was on agency workers.³⁷ And the consultation was to look at ‘intermediaries and umbrellas companies’ and ‘improving transparency’³⁸.

It was thought that the outcome of the consultation would have resulted in amendments to the current Employment Agencies Act 1973 (the Act), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) – both as amended - and the Agency Worker Regulations 2010 (AWR). It would be a statutory requirement to consult on changes to these pieces of legislation.

Improving transparency

The consultation sought views on improving the transparency of information for agency workers and on Matthew Taylor’s specific recommendation around a key facts page.

The vast majority of respondents thought that a key facts page would help work seekers in making decisions. There was more significant variation in views on the facts that should be included. Several respondents suggested a longer list of information should be included such as statutory sick pay entitlement, holiday pay entitlement, and the right to join a union.

The consultation also asked about who should be responsible for issuing a key facts page, and when. Some respondents suggested that making the employment business clearly responsible would help ensure they comply with their broader responsibilities towards the work seeker. Others suggested the umbrella company (if used) should be responsible. There was some disagreement as to the employment businesses’ responsibility to ensure a worker has understood the key facts page, with some suggesting this would be important and others suggesting that it would be too burdensome.

Intermediaries and umbrella companies

The consultation sought evidence and views on the use of umbrella / intermediary companies and whether the Employment Agency Standards inspectorate’s (EAS)³⁹ remit should be extended to cover the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer.

There was widespread support for expanding the Employment Agency Standards inspectorate’s (EAS’s) remit to cover umbrella companies, on the same basis as employment businesses are

³⁶ <https://www.gov.uk/government/publications/government-response-to-the-taylor-review-of-modern-working-practices>

³⁷ Consultation on agency workers recommendations:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679831/2018-02-06_Agencyworkerconsultationdoc_Final.pdf

³⁸ Improving transparency: <https://www.gov.uk/government/consultations/increasing-transparency-in-the-labour-market>

³⁹ Employment Agency Standards inspectorate: <https://www.gov.uk/government/organisations/employment-agency-standards-inspectorate>

regulated. Many responses argued that EAS's resources should be significantly increased to manage this expanded remit.

7.2 The Good Work Plan

The government then published a summary of consultation responses⁴⁰ and a Good Work Plan⁴¹ in December 2018. This was presented to parliament by the Rt Hon Greg Clark MP Secretary of State for Business, Energy and Industrial Strategy.

7.3 Good Work: Recommendations

1. To bring forward legislation to repeal the Swedish derogation and ban the use of this type of contract to withhold agency workers' equal pay rights.
2. To legislate to require all employment businesses to provide every agency worker with a Key Facts Page.
3. To launch an awareness campaign, targeted at both individuals and employers, to boost awareness and understanding to help ensure all workers are benefiting from their paid entitlement to leave.
4. To introduce new guidance, including real life examples, to support the interpretation of holiday pay rules. This will be accompanied by an updated and improved holiday entitlement calculator and we are exploring the option of a new holiday pay calculator.
5. To legislate to extend the holiday pay reference period from 12 to 52 weeks.

7.4 State Enforcement⁴²

The Taylor Review examined how the state enforces some aspects of employment law where there is considered to be a higher risk of vulnerability or exploitation.

The government created the post of Director of Labour Market Enforcement (DLME) to provide strategic direction and coordination to the overlapping responsibilities of the EAS inspectorate, the Gangmasters and Labour Abuse Authority and HMRC's National Minimum Wage enforcement team.

Sir David Metcalf, who took up post as the first DLME in 2017, published his Enforcement Strategy 2018-19 in May 2018. The Director's Strategy reinforced a number of Matthew Taylor's recommendations. The government published their response to the strategy alongside the Good Work Plan, committing to a vast majority of its recommendations, including increasing the number of frontline inspectors within the EAS inspectorate and new powers for the EAS inspectorate.

7.5 Adapting to modern employment arrangements⁴³

The DLME Industrial Strategy outlined how a flexible workforce benefits the UK economy, and it creates opportunities for both employers and workers without a long-term commitment for either side. As levels of self-employment and flexible working have increased, so has the number of umbrella companies acting as intermediaries between employers and workers. In simple terms, these relationships involve the employing firm paying the umbrella company, who in turn reimburse the worker. This helps employers reduce the cost and complexity of managing payroll systems.

⁴⁰ Summary of consultation responses: <https://www.gov.uk/government/publications/government-response-to-the-taylor-review-of-modern-working-practices/summary-of-consultation-responses>

⁴¹ Good Work Plan Cm 9755: <https://www.gov.uk/government/publications/good-work-plan>

⁴² p.39 State Enforcement: Good Work Plan December 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766167/good-work-plan-command-paper.pdf

⁴³ p.40 Adapting to modern employment arrangements: Good Work Plan December 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766167/good-work-plan-command-paper.pdf

The Taylor Review concluded that, while higher-skilled, higher-paid sectors are well served by umbrella companies, their role is more questionable for lower-skilled, lower-paid roles. The statutory protections for these workers have not kept pace with this increasingly common arrangement.

A significant drawback for workers is that the added layer of umbrella companies can create uncertainty – it can be unclear who their employer is. This means it is hard to know who to hold responsible for paying wages in full and on time, and who should be ensuring their employment rights and entitlements are observed. Umbrella companies can also charge agency workers administration fees, which can be unclear to the worker.

In the Good Work Plan, the Government’s response to the Taylor Review, the Government promised to introduce legislation to expand the remit of the EAS inspectorate to cover umbrella companies.

They said it would empower the EAS inspectorate to investigate complaints involving an umbrella company and take enforcement action where required. This action would focus on situations where agency workers have not received adequate pay and would protect decent employers from unfair competition.

The Government would continue to monitor the role of umbrella companies by ensuring the EAS inspectorate worked closely with HMRC and the Gangmasters and Labour Abuse Authority to identify any further enforcement or regulation required to tackle any detrimental aspects of the arrangement.

The Good Work Plan Recommendation 17

The new DLME should consider whether the remit of EAS ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain.

Government response: “Accept – we will extend EAS’s remit to cover umbrella companies in the supply chain.”

Recommendation 19

HMRC should take responsibility for enforcing the basic set of core pay rights that apply to all workers – NMW, sick pay and holiday pay for the lowest paid workers.

Government response: We will introduce a new state enforcement system for holiday pay and identify the most appropriate body for doing so. State enforcement is already in place for National Minimum Wage. HMRC run a disputes process for sick pay. Government is looking to reform Statutory Sick Pay and as part of this we will consider whether changes are required to the enforcement mechanism.

The recommendations have yet to be implemented.

7.6 Director of Labour Market Enforcement

This post is instrumental to carrying out the government responses, but it is currently vacant. Matthew Taylor had been an interim, but the post was vacated in February 2021 without a

successor. The post was re-advertised, and applications closed on 7 March 2021, it is unclear whether anyone has been appointed to this post.

7.7 Single Labour Market Enforcement Body

In July 2019, a consultation⁴⁴ by BEIS was launched to establish a new single enforcement body for employment rights for workers and businesses. The consultation closed in October 2019 and the government are still analysing feedback.

Core remit

The government proposes that a new Single Enforcement Body would have responsibility for those areas that sit under the Director of Labour Market Enforcement's remit, as a minimum. There may also be additional areas where government has committed to state enforcement.

Area of law	Currently enforced by
National Minimum Wage (NMW) and National Living Wage (NLW)	HM Revenue and Custom (HMRC)
Domestic regulations relating to employment agencies	Employment Agency Standard Inspectorate (EAS)
Umbrella companies	Not currently enforced but government has committed to legislate to give the state a role
Licenses to supply temporary labour in high risk sectors in agriculture and the fresh food supply chain	Gangmasters and Labour Abuse Authority (GLAA)
Labour exploitation and modern slavery related to worker exploitation	Gangmasters and Labour Abuse Authority (GLAA)
Holiday pay for vulnerable workers	Not currently enforced but government has committed to legislate to give the state a role

⁴⁴ Good Work Plan: establishing a new Single Enforcement Body for employment rights:

<https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights>

8. Appendix 1

8.1 LITRG Report⁴⁵ - Umbrella companies in numbers

40,000	Estimated number of agencies in the UK
500	Estimated number of umbrella companies in 2021
600,000	Estimated number of umbrella company employees in 2021
50%	Estimated proportion of agency workers handed to umbrella companies to be paid

25 Umbrella companies were sampled for the LITRG report

£287, 681, 131	Highest turnover
£20-25	Average margin
2.66%	Gross profit margin
13	were promoting mileage expenses
12	were not promoting mileage expenses
3	showed itemised expenses costs in their accounts
0.81%	Expenses costs to salary costs ratio
10	Companies House registration number not visible on their website

⁴⁵ Low Income Tax Reform Group – Labour Intermediaries Report 2021.

9. Appendix 2

9.1 Umbrella Company Data

What would be the potential cost of regulating Umbrella Companies?

- In October 2019 the Good Work Plan estimated that there were 32.75 million in employment in the UK.
- As of January 2021, employment amongst 16–64-year-olds has been estimated by the ONS at 75.2% (1.1% lower than January 2020).
- As of October 2019, the Good Work Plan noted that £33 million was spent per year on enforcing standards in the labour market. These enforcement measures cover several areas including:
 - National Minimum Wage and National Living Wage (NMW and NLW)
 - Domestic regulations relating to employment agencies
 - Licenses to supply temporary labour in high-risk sectors in the fresh food supply chain
 - Labour exploitation and modern slavery related to worker exploitation
- In 2019 it appears that a little under £1 was spent for each worker (assuming c.32.75 million in employment).
- The Good Work Plan notes that the UK government has committed to regulating Umbrella Companies. The plan also proposes to create a single body to cover the enforcement of labour standards. These companies, as of 2019, are not regulated by the state.
- The Parasol Group estimate (using DBIS statistics) that some 14% of the UK’s “professional contractors” manage their business by working through an umbrella company although no date for this metric is given on their website.
- This suggests that if we are to judge by the cost of labour standards enforcement in 2019 (just under £1) then it may cost somewhere below £430,000 to regulate and enforce standards for umbrella workers.
- However, this potential estimate does not account for any additional costs associated with the regulation of a new group of workers or any other specific factors which may inflate (or indeed, reduce the cost).

10. Appendix 3

10.1 The Conduct Regulations and umbrella company compatibility.

Conduct regulations that might be relevant for umbrella companies:

Reg 5	additional services
Reg 6	restriction on detrimental action
Reg 12	withholding payment
Reg 13	notification of charges and terms of offers
Reg 14	requirement to obtain agreement to terms
Reg 15 & 16	content of terms
Reg 25	client accounts
Reg 33	electronic and other communications

Conduct regulations that are inappropriate for umbrella companies:

Reg 7	restriction on providing workers in an industrial dispute
Reg 9	restriction on agencies acting on a different basis
Reg 10	restriction on charging fees to hirers
Reg 11	entering into a contract on behalf of a client
Reg 17	requirement to agree terms with hirer
Reg 18	information to be obtained from hirer
Reg 19	confirmation to be obtained about a work seeker
Reg 20	steps to be taken for the protection of the work seeker and hirer
Reg 21	provision of information to work seekers and hirers
Reg 22	additional requirements where professional qualifications required / working with vulnerable
Reg 23	where more than one agency is involved
Reg 24	where work seekers are provided with travel or live away from home
Reg 26	circumstances in which fees may be charged to work seekers
Reg 27	advertisements
Reg 29	records
Reg 30	civil liability?
Reg 31	effect of prohibited/unenforceable term
Reg 32	application of regulations to incorporated work seekers

Unclear

Reg 8	restriction on paying workers remuneration
Reg 28	confidentiality

11. Appendix 4

11.1 Working Time Regulations 1998 - Entitlement to annual leave

13.—(1) Subject to paragraphs (5) and (7), a worker is entitled in each leave year to a period of leave determined in accordance with paragraph (2).

- (2) The period of leave to which a worker is entitled under paragraph (1) is—
- (a) in any leave year beginning on or before 23rd November 1998, three weeks;
 - (b) in any leave year beginning after 23rd November 1998 but before 23rd November 1999, three weeks and a proportion of a fourth week equivalent to the proportion of the year beginning on 23rd November 1998 which has elapsed at the start of that leave year; and
 - (c) in any leave year beginning after 23rd November 1999, four weeks.
- (3) A worker's leave year, for the purposes of this regulation, begins—
- (a) on such date during the calendar year as may be provided for in a relevant agreement; or
 - (b) where there are no provisions of a relevant agreement which apply—
 - (i) if the worker's employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or
 - (ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.
- (4) Paragraph (3) does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.
- (5) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.
- (6) Where by virtue of paragraph (2)(b) or (5) the period of leave to which a worker is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.
- (7) The entitlement conferred by paragraph (1) does not arise until a worker has been continuously employed for thirteen weeks.
- (8) For the purposes of paragraph (7), a worker has been continuously employed for thirteen weeks if his relations with his employer have been governed by a contract during the whole or part of each of those weeks.
- (9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

- (a) it may only be taken in the leave year in respect of which it is due, and
- (b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

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Biography

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Rebecca is a thought leader and leading expert on employment and tax status including IR35, off-payroll, the self-employed and the gig economy. She has been specialising in this sector for over 20 years advising companies on how to work within the incredibly complex employment status legislation to comply with both tax and employment rights. She was seconded to the Office of Tax Simplification (an independent body of HM Treasury) as a Senior Policy Adviser to advise the government on employment and tax status. This included advising on the Employment Status Review, the Small Company Taxation Review, the Gig Economy, and the Cross-Government Working Group on Employment Status.

Rebecca has recently been shortlisted for the Outstanding Contribution to Taxation Award 2020-21 for her work on a previous campaign drafting the Directors Income Support Scheme (DISS) and the Targeted Income Grant Scheme (TIGS). She drafted these policy documents to help the government provide support for the self-employed and limited companies who had been excluded from support during the Coronavirus pandemic.

Rebecca's work on the Employment Status Forum and policy drafting is currently given voluntarily with no funding.

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