

Re Legal Consulting Ltd

The Umbrella Reforms

Umbrella Company Market

Tackling non-compliance

policy and regulation

- Interim Review -

Rebecca Seeley Harris

2nd Edition – 5 June 2025

Independent Review

This is an independent review of the Policy Paper ‘Tackling non-compliance in the Umbrella Company Market’ and the umbrella company market generally. The author is Rebecca Seeley Harris from Re Legal Consulting Ltd – for more details about Rebecca see her biography in Appendix 27. The author received the support of FSCA and others in the preparation of this report. The report represents the views of the author as at the date of first publication.

It has been produced as a general guide to the umbrella company market, umbrella company policy and regulation and to make recommendations for future policy. It is an interim review and will be added to depending on the outcome of the policy and what transpires over the next few months.

If you wish to make any comments on the paper please send an email to the address below with Umbrella Policy Paper in the subject line:

Email: umbrellapolicy@relegalconsulting.co.uk

Acknowledgements

The research for this review was mainly desk-based with some in-person meetings including: Umbrella Industry Working Group: FCSA, IPSE, APSCo, REC, Professional Passport and TEAM. I had individual meetings with HMRC, REC, TEAM, Fabian Society, TUC, FCSA Tech Team and LITRG. Private companies: My Digital, Merit Software, PayStream, Clarity Umbrella, SafeRec, Pendragon, Payments Pro, Sapphire and MyPay. Thanks to all those who contributed and reviewed the paper, particularly Nick Dancer (Head of Policy FCSA), Philip Ross (Deputy Chair of Labour Business), John Whelan (My Digital) and Lucy Smith (Clarity Umbrella).

Copyright © Re Legal Consulting Ltd 2025.



Author: Rebecca Seeley Harris

Edition: Second Ed.

First published: 21 March 2025

2nd Edition: 5 June 2025

Contents

1. FOREWORD	8
THE UK LABOUR MARKET	8
SOLUTIONS	9
2. EXECUTIVE SUMMARY	10
COMPLIANT SECTOR	11
THE POLICY ISSUES	12
JOINT EMPLOYMENT	13
THE WORKER	14
PUBLIC SECTOR	15
OFF-PAYROLL WORKING	15
3. RECOMMENDATIONS	17
OPTION 3 – DEEMED EMPLOYMENT	17
JOINT AND SEVERAL LIABILITY	17
LABOUR SUPPLY CHAIN REVIEW	18
LABOUR SUPPLY CHAIN FRAUD	18
LABOUR SUPPLY CHAIN SPECIAL ADVISER	18
CONSULTATION	19
MANDATED DUE DILIGENCE	20
MANDATORY TRANSPARENCY REPORTING	20
INDUSTRY BODY ACCREDITATION AND REGULATION	20
GOVERNMENT-BACKED VERIFICATION	21
OPERATOR’S LICENCE	21
INDEMNITIES AND INSURANCE BACKED DUE DILIGENCE	21
KEY INFORMATION DOCUMENT	21
PUBLIC SECTOR	22
INSIDE IR35 CONTRACTOR	22
4. THE LABOUR SUPPLY CHAIN	23
NETWORK OF ENTITIES	23
END CLIENT	23
RECRUITMENT AGENCIES	23
UMBRELLA COMPANIES	24
PROFESSIONAL EMPLOYER ORGANISATIONS (PEOs)	24
WORKERS	24
5. WHAT IS AN UMBRELLA COMPANY?	26
DEFINITIONS	26
GROUP STRUCTURE	27
LEGAL STRUCTURE	27

INSIDE IR35	28
EMPLOYMENT OBLIGATIONS	29
OTHER REWARDS	29
PAYROLL	30
EMPLOYER OF RECORD	30
PAYE SCHEME	31
EMPLOYER REFERENCE NUMBER	31
EMPLOYER TAX LIABILITY	31
<u>6. GOVERNMENT COMPLIANCE AND REGULATION</u>	<u>32</u>
CONSULTATION	32
BETTER REGULATION FRAMEWORK	33
GOVERNMENT RESPONSE	33
UMBRELLA REGULATION	34
TAX NON-COMPLIANCE	34
TRANSFER OF DEBT	35
DEEMED EMPLOYMENT	35
<u>7. REASONS FOR THE POLICY</u>	<u>37</u>
INTRODUCTION	37
GROSS FUNDS	38
GROUP OF COMPANIES	38
MULTIPLE FRAUDS AND PAYROLL PIRACY	38
<u>8. GROSS PAY</u>	<u>39</u>
GROSS PAYMENT MODEL – PERSONAL SERVICE COMPANY	39
HMRC v. DUCAS LTD	39
CHAPTER 10 ITEPA 2003	40
GROSS PAYMENT MODEL – SELF-EMPLOYED	40
HMRC v. PPS UMBRELLA	41
HIGH COURT PROCEEDINGS	41
COURT OF APPEAL PROCEEDINGS	41
PPS UMBRELLA OUTCOME	42
<u>9. OPTION 3 – DEEMED EMPLOYMENT</u>	<u>43</u>
PRACTICALITIES OF A CHANGE OF THE DEEMED EMPLOYER	43
DEEMED EMPLOYMENT	43
OPTION 3 DEEMED EMPLOYMENT	43
GENERAL OPERATION	43
EXPECTED IMPACTS	44
IMPACT ON WORKERS	45
POTENTIAL RISKS	45
RESPONSE TO THE POLICY	45
CONTRACTUAL ISSUES	46

CONTRACT 1	46
CONTRACT 2	46
THE PAYROLL BUREAU MODEL	47
10. UMBRELLA EMPLOYER	48
TECHNICAL CHALLENGES	48
FUNCTIONAL CHALLENGES	49
EMPLOYER OF RECORD	49
EMPLOYER'S REFERENCE NUMBER	49
JOINT EMPLOYMENT	50
OPERATIONAL DIFFERENCES	51
GROSS PAYMENT STATUS	51
11. TAX POLICY SOLUTIONS FOR DEEMED EMPLOYMENT	53
INTRODUCTION	53
EXISTING LEGISLATION	53
IMPLEMENTING JOINT AND SEVERAL LIABILITY	53
NEW CONCEPTS	53
S.44 ITEPA – TREATMENT OF WORKERS SUPPLIED BY AGENCIES	53
UMBRELLA COMPANY WORKAROUND	54
S.44 MECHANICS	55
OFFSHORE "HOST EMPLOYER" RULES (ITEPA 2003, s.689 & NICs REGs)	56
MANAGED SERVICE COMPANY (MSC) DEBT TRANSFER (ITEPA 2003, s.688A)	57
OFF-PAYROLL WORKING RULES CH 10 – CHAIN LIABILITY PROVISIONS	57
JOINT AND SEVERAL LIABILITY NOTICES	58
SUMMARY	58
IMPLEMENTING JOINT AND SEVERAL LIABILITY	59
DEEMED DUAL-EMPLOYER MODEL	59
STATUTORY DEBT TRANSFER (CONTINGENT LIABILITY) MODEL	60
STATUTORY DEFENCES	60
NEW STATUTORY CONCEPTS	60
DEFINED JOINT EMPLOYMENT	61
LICENSING OR REGISTRATION TIED TO TAX COMPLIANCE	61
ENHANCED DUE DILIGENCE AND PENALTY REGIMES	62
CONCLUSION	62
12. REGULATION	64
EMPLOYMENT AGENCIES ACT 1973	64
CONDUCT REGULATIONS	64
CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES REGULATIONS 2003	64
EMPLOYMENT RIGHTS BILL 2025	65
KEY INFORMATION DOCUMENT	65
UMBRELLA COMPANY	66
FAIR WORK AGENCY	67
IMPLEMENTATION TIMELINE	67

APPENDICES	68
13. TIMELINE	68
14. OVERVIEW OF THE MARKET	69
ESTIMATES FOR UMBRELLA COMPANY WORKERS	69
15. CONSULTATION	70
TACKLING NON-COMPLIANCE IN THE UMBRELLA COMPANY MARKET	70
LINK TO THE CONSULTATION	70
CHAPTER 4 – TACKLING TAX NON-COMPLIANCE IN THE CONTINGENT LABOUR MARKET	70
OPTION 1 MANDATING DUE DILIGENCE	70
OPTION 2 TRANSFER OF DEBT	70
OPTION 3 DEEMED EMPLOYMENT	70
GENERAL OPERATION	71
EXPECTED IMPACTS	72
POTENTIAL RISKS	72
16. POLICY PAPER	74
TACKLING NON-COMPLIANCE IN THE UMBRELLA COMPANY MARKET	74
LINK TO THE FULL POLICY PAPER	74
INTRODUCTION	74
HMRC ANALYSIS	74
WHAT IS BEING PROPOSED?	74
WHO WILL BE LIABLE?	75
IMPACT ON THE AGENCY	75
IMPACT ON THE END CLIENT	75
IMPACT ON THE UMBRELLA COMPANY	76
IMPACT ON THE WORKER	76
WHEN WILL THIS TAKE EFFECT?	76
17. GOVERNMENT RESPONSE	77
TACKLING NON-COMPLIANCE IN THE UMBRELLA COMPANY MARKET	77
LINK TO THE FULL GOVERNMENT RESPONSE	77
GOVERNMENT RESPONSE TO QUESTIONS 34 TO 41	77
18. HMRC GFC12 – FRAUD	80
OUTSOURCED LABOUR FRAUD (OLF)	80
ORGANISED LABOUR PAYROLL FRAUD (OLPF)	80
MINI UMBRELLA COMPANY FRAUD (MUCs)	80
LABOUR FRAUD IN CONSTRUCTION (LFIC)	81
INTERNAL FRAUD	81
OTHER FRAUD AND NON-COMPLIANCE	81
TAX AVOIDANCE SCHEMES (DISGUISED REMUNERATION)	82

CURRENT LIST OF NAMED TAX AVOIDANCE SCHEMES, PROMOTERS, ENABLERS AND SUPPLIERS:	82
LIST OF TAX AVOIDANCE SCHEMES SUBJECT TO A STOP NOTICE	82
<u>19. FRAUD LEGISLATION</u>	<u>84</u>
FAILURE TO PREVENT FRAUD	84
OFFENCE LIST FOR ENGLAND AND WALES	85
<u>20. S.44 ITEPA</u>	<u>86</u>
<u>21. DUCAS</u>	<u>88</u>
AMPLE EVIDENCE OF DISHONESTY	89
<u>22. PPS UMBRELLA</u>	<u>90</u>
WITHOUT NOTICE APPLICATION	91
UNLIMITED CROSS-UNDERTAKING FOR DAMAGES	91
HMRC'S PRIMARY CASE	92
FOUR SOURCES OF EVIDENCE	92
HMRC'S PRIMARY CASE: THE WORKERS WERE EMPLOYED BY THE COMPANY	92
HMRC'S ALTERNATIVE CASE: PPS IS THE DEEMED EMPLOYER	93
ON COSTS	93
COURT OF APPEAL SEEKING A STAY	93
UNLIMITED LIABILITY	94
<u>23. UMBRELLA WORKER CASE LAW</u>	<u>95</u>
JOINT EMPLOYMENT	95
EMPLOYMENT TRIBUNAL	95
FACTUAL MATRIX	98
<u>24. SUMMARY OF MAJOR REVIEWS (2006 – 2021)</u>	<u>99</u>
<u>25. RESOURCES</u>	<u>101</u>
<u>26. TERMINOLOGY</u>	<u>103</u>
<u>27. BIOGRAPHY</u>	<u>106</u>

1. Foreword

The UK Labour Market

In the UK's labour market, umbrella companies have received a lot of bad press. This is partly due to a small number of entities committing large labour supply fraud, some operating tax avoidance schemes and others being accused of worker exploitation. All these issues, however, have been collectively attributed to the whole industry. Mention the work 'umbrella company' and there are immediate negative connotations. The reality, in my opinion, is very different.

Rather than the whole industry being fraudulent, corrupt or simply 'at it', it actually only represents a small percentage of non-compliant companies or payroll bandits and those who commit fraud are an even smaller percentage. It is still bad but, this new policy measure could potentially have serious implications for the genuine, compliant companies who represent about 70% of the workforce. These are normal compliant, well-functioning companies that have a valid place in the labour supply chain as an Umbrella Employer for the contingent workforce.

The problem is not the compliant Umbrella Employer but, the failure of the Government to understand the internal workings of the labour supply chain as a whole and identify the problems within it. Existing legislation including IR35 and the off-payroll working reforms¹ have driven the use of umbrella companies but during this time the previous government failed to regulate the sector.

The fraudsters, the payroll bandits, and the Mini Umbrella Companies (MUCs) are all taking advantage of an inefficient system, gross payments and the difficulty in legally identifying the fraud. Whereas worker exploitation, salary skimming, holiday pay infringements affect the worker and are due to a lack of regulation.

The compliant industry of Umbrella Employers has matured into intermediaries who have become integral in the labour supply chain. These entities which employ contingent workers, provide an essential service of continuity for a workforce who have multiple assignments with multiple clients and multiple agencies. They provide access to employee benefits, employment rights, pensions, credit ratings, mortgages, rewards and other facilities that the contingent worker benefits from. They are employers, some large, who contribute billions in tax.

The problem in the labour supply chain, however, is three-fold. The first is how to stop the fraud; the second is how to regulate the industry; the third, however, is based on the

¹ [Economic Affairs' Finance Bill Sub-Committee](#) wrote to the Government to advise that the Off-payroll working rules have resulted in an increased use of umbrella companies:

lack of understanding of the labour supply chain as a whole. It is important to understand the entities within it, the interactions between those entities and how the distinct lack of regulation and policing by the Government has encouraged bad habits.

The current proposed policy of 'deemed employment' is only focused on tackling non-compliance for the benefit of the Treasury. Although, the Government has now announced that they will regulate the industry but the two need to be in tandem. If the current policy, is enacted, it could destroy the compliant industry and put the worker in a worse position. It is likely that the worker who is currently employed by an Umbrella Employer may become an agency worker² on a contract for services³.

There is no simple fix that will prevent the fraud and introduce a fully compliant industry overnight. The solution is several steps that need to be taken to address a multifactorial problem. Changing the deemed employer is unlikely to fix the problem, in my opinion, although it is a 'quick win'. It could, however, defeat an industry that contributes billions in tax and supports the contingent workforce.

Unfortunately, the large-scale fraud has been linked back almost in its entirety to the public sector. Although it is understood that there are issues with the supply of labour into the public sector, particularly healthcare, using an unaccredited umbrella company should not be an option.

Solutions

The Government needs to review the labour supply chain holistically. It needs to gain a full understanding of the issues and act appropriately to preserve the compliant umbrella company industry and acknowledge its legitimate place in the labour supply chain. There also needs to be a better understanding of fraud and tax avoidance and the drivers and motivations in the supply chain.

There should be a consultation on Option 3 to allow the industry and, in particular, the software providers to assist in the solution. In addition to the consultation, there should be an impact assessment carried out to assess the impact this measure will have on the compliant industry, balanced against the impact it will have on the non-compliant fraudsters.

A cross-government working group is recommended to assess how each department's initiative impacts on the other. For example, HMRC and the deemed employment policy and the DBT and the regulation of the umbrella company, including how it will be policed by the Fair Work Agency.

² Estimated number of agency workers handed to umbrella companies to be paid – 50% [LITRG – Labour Market Intermediaries 2021]

³ Chapter 4 – Labour Supply Chain

2. Executive Summary

2.1 The key focus of this report is on the new Policy Paper ‘Tackling non-compliance in the umbrella company market’⁴ specifically relating to a change in policy that was announced by the Labour Government. The announcement made in the Autumn Statement on 30 October 2024 stated that the Government would be bringing forward legislation to move the responsibility to account for PAYE from the umbrella company that employs the worker to the recruitment agency that supplies the worker to the end client. Where there is no agency in a labour supply chain, this responsibility will sit with the end client. This will take effect from **April 2026**.

2.2 The decision was based on the consultation ‘Tackling non-compliance in the umbrella company industry’⁵ published on 6 June 2023. In that consultation there were three options 1) mandating due diligence 2) transfer of debt; or 3) deemed employment. The previous Conservative Government announced that it would be proceeding on the basis of Option 1 – due diligence. The Labour Government has opted for **Option 3 – Deemed Employment**.

2.3 It is undoubtedly true that there is fraud in the labour supply chain that needs to be stopped. According to HMRC, there are approximately **700,000** umbrella company workers in 2024⁶. Out of the **700,000**, at least **275,000** of these umbrella company workers were engaged in umbrella companies that failed to comply with their tax obligations.

2.4 HMRC also reported that **£500 million** was lost to disguised remuneration tax avoidance schemes in 2022 to 2023. Hundreds of millions more were lost to so-called mini umbrella company fraud or MUCs. The measure is expected to protect around **£2.8 billion** from being lost to umbrella company non-compliance across the score card period 2029 to 2030.

2.5 The FCSA⁷, however, reports that the compliant umbrella industry of FCSA members alone contributes approximately **£12.5 billion**⁸ in employment tax to the Treasury per annum. The projected employment tax remittances over the lifetime of the current Parliament is **£64 billion**.

⁴ Appendix 16 - Policy Paper [30 October 2024]

⁵ Appendix 15 - Consultation [6 June 2023]

⁶ Appendix 14 - Overview of the market

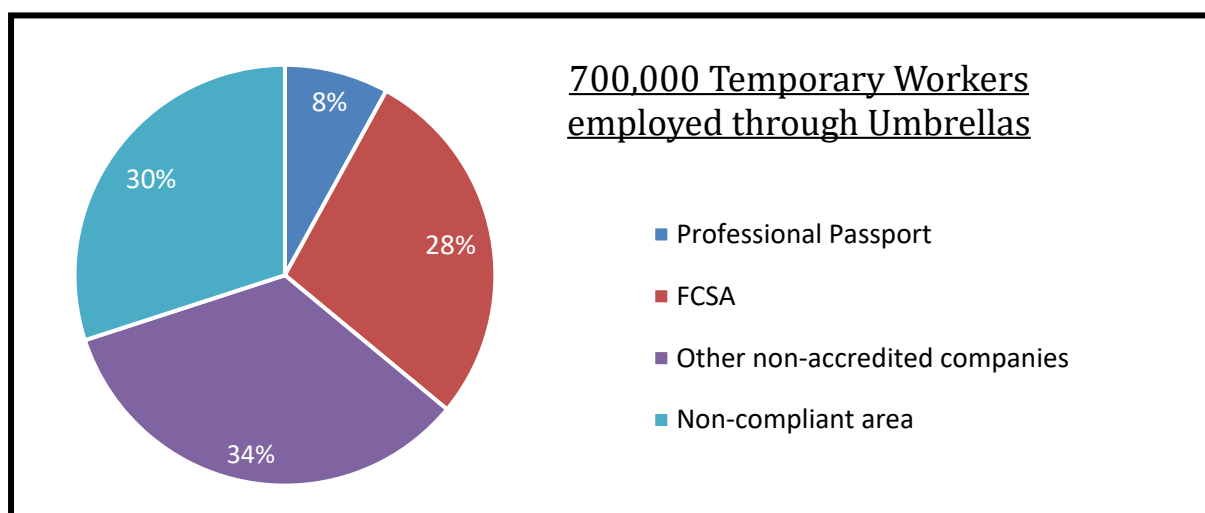
⁷ Freelancer and Contractor Services Association (FCSA) is a non-profit making association that raises standards and promotes compliance by conducting rigorous audits. It also lobbies Government on behalf of its members.

⁸ FCSA Regulating the UK’s umbrella market [March 2025] - <https://fcsa.org.uk/documents/the-umbrella-regulation-report/>

Compliant sector

2.6 FCSA membership represents approximately 28% of the market and Professional Passport⁹ represents a further 8%. The non-accredited companies represent a further 34% of the market and the non-compliant sector represents about 30%, see Fig 1 below.

Fig. 1 – Umbrella company sector¹⁰



2.7 It is worth noting that the non-accredited sector might not be accredited but there is nothing to say that they are not compliant, and they use other methods to ensure compliance such as payroll auditing and due diligence. The non-compliant sector represents only 30% of the workforce but, that non-compliance is not defined. So, the proportion of actual proven fraud within these companies is an even smaller percentage. **70% being compliant** for tax.

- 2.8 If this policy goes ahead the immediate repercussions are likely to be:
- Software changes will need to be made but these need to be coded based on the policy which is yet to be published.
 - Recruitment businesses will need to upskill and adopt the correct systems
 - There will be cashflow implications
 - 30-90 day credit terms will need to be called in between the recruiter and the umbrella company involving millions of pounds.
 - Contractual documentation will need to change.
 - This could result in a massive fire & rehire exercise for the contingent workforce, and they will need to be made redundant if they have over two years of continuous service.

⁹ Professional Passport is a private compliance and risk management solution for umbrella companies.

¹⁰ My Digital Response to Policy Document v2.1 [2025]

The policy issues

2.9 The umbrella company policy anticipates that the recruitment agency or, technically, the ‘employment business’¹¹ will become the ‘deemed employer’ for tax purposes. This is in an attempt to curb the fraud by making the employment business liable for the correct payment of tax.

2.10 The assumption being that making the employment business legally liable for any shortfall in tax will ensure two things 1) that the employment business carries out better due diligence to ensure that they are only working with compliant umbrella companies and 2) that they are liable for the tax in any case. There will be no transfer of debt because the liability will always be with the employment business.

2.11 In the Policy Paper, it states that: *“The Government also recognises the positive role that compliant and well-managed umbrella companies and payment intermediaries can play in the functioning of the temporary labour market. This measure will not prevent businesses from continuing to use umbrella companies or other payment intermediaries to operate payroll on their behalf **as they do now.**”*

2.12 On that basis, one would expect ‘business as usual’ but, when you drill down into the operational detail, it is hard to see how this will be business as usual. The worst-case scenario is that this policy prevents the umbrella company from operating in the labour supply chain.

2.13 It is likely that this measure will disproportionately affect the smaller businesses both in the recruitment sector and the umbrella sector. Despite it constantly being reported that this ‘might not be a bad thing’ this is a very glib response to a fully compliant business that may have to close as a result of this government policy change.

2.14 The lack of consultation on Option 3 has left an industry in turmoil not knowing what the draft policy will contain until it is published in draft in the Spring 2025. There is a distinct lack of formality other than a very short implementation date. The businesses in both the recruitment sector and the umbrella sector are unable to plan their future without knowing what the policy will contain. This is not a desirable position to be in for a compliant business.

2.15 Some businesses may be able to find another way to operate post-April 2026, but this would have to be as a payroll bureau in addition to having to provide

¹¹ The definition of an employment business is in para. 12.4 below.

employment rights¹². Although it may seem like the umbrella company is fulfilling the same function, a change in who operates the PAYE Scheme and is the Employer of Record¹³ will entirely change how the umbrella company operates.

2.16 If the employment business takes on the liability under the PAYE Scheme and is the Employer of Record, it is likely that they will want to renegotiate the margins. Margins are already small in the umbrella sector, so a decrease in margin whilst having to make business changes may have a catastrophic effect on the umbrella company's business.

2.17 It is essential, therefore, that the Government works with the industry to fully understand how to implement a policy where the employment business holds the legal liability for any shortfall in the tax BUT the Umbrella Employer can still operate under its own PAYE Scheme as the Employer of Record.

Joint employment

2.18 If the Government makes the employment business the deemed employer for tax purposes and the employment business continues to outsource to the umbrella company, there will effectively be a 'joint employment'. The employment business will be an employer for tax purposes only and the umbrella will be the employer for employment rights. This will then impact on the worker because they will then have two employers.

2.19 Although this policy is focused on tax, the Government has just published its commitment to regulation in its response to the 2023 Consultation. Informed by the responses to this consultation, the government is therefore legislating to define umbrella companies, to allow for their regulation and to bring them within scope of the Employment Agency Standards Inspectorate's (and subsequently, the Fair Work Agency's) remit, through an amendment to the Employment Rights Bill.

2.20 Without knowing the policy detail, which HMRC are currently working on with the Office of the Parliamentary Counsel, it is hard to understand exactly how this policy will work in practice.

¹² The technical and operational problems with this can be seen in Chapter 10

¹³ The umbrella effectively operates as an Employer of Record in this context, but it is accepted that it is traditionally used in an international hiring context. See paras. 5.23 and 10.4 for more details.

The Worker

2.21 The worker in an umbrella company is a full employee of the company even though they do not provide any services to the umbrella company.¹⁴ One of the proposals is to bring the umbrella company worker in line with the agency worker. This would be done by amending Chapter 7, Part 2 Income Tax (Earnings and Pensions) Act 2003, s.44 ITEPA.¹⁵

2.22 Currently, however, the worker in an umbrella company is a **full employee** with all the benefits and rewards of an employee¹⁶. It is likely that if the worker transferred to the employment business as an agency worker it would be under a contract for services. This would disadvantage the worker in the compliant Umbrella Employer. Some of the compliant Umbrella Employers are reporting that these employees will have over two years of continuous services leading to potential redundancy issues.

2.23 One of the problems with the lack of regulation for the worker highlights the necessity to look closer at the interaction between the employment business and the umbrella company. Despite the Key Information Document (KID)¹⁷ being mandatory from April 2022, it doesn't go far enough. The use of it is not policed and it needs to be more transparent with a better understanding of the supply chain as a whole. Where there is an umbrella company in the chain, the employment business is still responsible for the KID. This is even though the umbrella company probably has more pertinent information on the payment to the worker and to ensure more accurate information is provided, rather than "sample KIDs" being issued.

2.24 There is the obvious problem of having a joint employer. It can be seen from the umbrella worker case law¹⁸, that the worker finds it difficult to establish who is the employer for employment rights purposes. The cases have addressed the constant issue of the 'assignment rate' or 'on an umbrella company basis' claiming for an unlawful deduction of wages usually to recover holiday pay.

2.25 The recent case of *Tripod*¹⁹, however, shows how the communications to the worker from both the Employment Business and the Umbrella Employer needed clarity. In this context, it was with the understanding of what the words 'employment taxes' meant. The relevance is that the worker needs a clearer understanding of the

¹⁴ There is currently an employment status issue as to whether a worker in an umbrella company is an employee – see Appendix 22 *PPS Umbrella*

¹⁵ Appendix 20 - S.44 ITEPA

¹⁶ Para. 5.18 - Employment rights and benefits

¹⁷ Key Information Document - Para.12.7

¹⁸ Appendix 21 – Umbrella worker case law

¹⁹ Appendix 21 - *Appiah v. 1. Tripod Partners Limited 2. Home Office Judgment* [2024] ET 2302929

deductions that are being made from the assignment rate ‘on an umbrella company basis’ and ultimately from their wages.

Public Sector

2.26 Unfortunately, a high percentage of fraud or tax loss can be attributed to the labour supply chain emanating from the public sector. The public sector, especially in health care, has a high volume of workers which equates to hundreds of millions of pounds of fees working its way through the labour supply chain.

2.27 This eventually ends up with the umbrella group of companies and the tax loss is attributed firstly to the umbrella company being paid gross and then to the worker being paid gross. The public sector client, however, has paid the fee including the employment taxes (including employer’s NICs) which the umbrella then keeps on the basis that the worker is not an employee.

2.28 In both the cases of *PPS Umbrella*²⁰ and *Ducas*²¹, the end client in the supply chain was the NHS Trust. Both these cases involved the supply of healthcare workers and locums into the NHS. In *PPS Umbrella*, HMRC sought to recover £7.2 million and in *Ducas*, HMRC sought to recover in the region of £171 million. This is just for the recovery of Employers' NICs so the actual unpaid tax is likely to be higher.

2.29 Again, in both cases, the recruitment company had carried out due diligence but, the documents provided were fraudulent. Both *PPS Umbrella* and *Ducas* were part of a group of companies that included an umbrella company but also subsidiaries that utilised the payment of the worker either as self-employed or through a Personal Service Company²².

2.30 Neither *PPS Umbrella* nor *Ducas* is an accredited umbrella company, but this is not something that the public sector is required to check. The deemed employment policy does not impact on the end client, unless there is no agency in the chain.

Off-payroll Working

2.31 The labour supply chain has grown in complexity, but its purpose is the supply of labour other than as a permanent employee. Part of the complexity is the law surrounding workers who are paid off-payroll. Depending on how the individual is supplied will depend on what law the business has to comply with.

²⁰ Appendix 22 – *HMRC v. PPS Umbrella* cases

²¹ Appendix 21 – *HMRC v. Ducas*

²² Defined in Appendix 25 - Terminology

This includes:

- Self-employed sole traders
- Self-employed sole traders through an agency
 - s.44 ITEPA 2003 – supervision, direction and control test
- Personal Service Companies
 - Chapter 10 ITEPA – Off-payroll Working (OPW) reforms to IR35
 - Chapter 8 ITEPA – Intermediaries legislation (IR35)
- Agency workers
- Umbrella workers
- Umbrella employees

2.32 The Umbrella Employer has been more widely used partly as a result of the introduction of the Off-payroll Working rules in the public sector in 2017 and the private sector in 2021²³

²³ The private sector reforms apply to medium and large-sized companies and the voluntary sector. IR35 now only applies to contractors working with a small company.

3. Recommendations

3.1 The recommendation is that the Government looks at a multifaceted approach to compliance. There are many different steps that involve different parts of the labour supply chain. This is not a problem that is going to be solved in one simple step.

3.2 Although, it is acknowledged that the fraud issue needs to be addressed sooner rather than later.

Option 3 – Deemed Employment

3.3 It is assumed that the policy will require a change of ownership of the PAYE Scheme²⁴ and Employers Reference Number (ERN). Specifically, it is anticipated that the ERN will move to the employment business under the new policy.

3.4 Without further details at this stage, it is not clear how the Umbrella Employer can continue to function as usual without having ownership of the ERN. However, it is understood that without the employment business having ownership of the ERN, the liability cannot pass. Indeed, if the ERN remains with the Umbrella Employer, that would be Option 2 – Transfer of Debt²⁵ because the debt would still have to be transferred from the non-compliant umbrella company to the employment business.

3.5 If the Government considers leaving the ERN with the Umbrella Employer, there are a number of other options that could be pursued below, most notably Gross Payment Status²⁶.

Joint and Several Liability

3.6 Extending the application of Joint and Several Liability (JSL), whereby end-users or employment businesses become jointly and severally liable for unpaid tax and NICs debts. There are existing examples of the use of JSLs in VAT Fraud, MSC legislation, Off-payroll Working legislation and ‘host employer’ legislation. This is explored more fully in Chapter 11 below, but the Statutory Debt Transfer (Contingent Liability) Model is recommended.

3.7 If JSL was used, the compliant Umbrella Employer could potentially continue using their own PAYE Scheme and Employers Reference Number and HMRC could also achieve the aims of the policy to attribute liability to the employment business.

²⁴ See para. 5.27 for further information on the function of the PAYE Scheme and ERN.

²⁵ Transfer of Debt - Para 6.18

²⁶ Gross Payment Status - Para 3.26

Labour supply chain review

3.8 The labour supply chain has grown organically over the years as a result of the growth in the contingent workforce. Compliance, however, has been piecemeal. There have been many reviews of different areas of the labour supply chain²⁷ including:

- Review of the taxation of small companies [2013] – Office of Tax Simplification²⁸
- Employment Status Review [2015] – Office of Tax Simplification²⁹
- Good work: the Taylor review of modern working practices [2017]³⁰
- The Good Work Plan [2018]³¹
- Tackling non-compliance in the umbrella company market – Consultation [2023]
- Tackling non-compliance in the umbrella company market – Response [2025]

3.9 Full review - There has never been a review of the supply chain as a whole and how it functions. The lack of compliance in the umbrella company market is partly as a result of the lack of coherent compliance and regulation in the chain as a whole. The labour supply chain needs to be reviewed holistically in order to understand how it can function efficiently. Each entity in the chain plays its part as does the interaction between the entities.

Labour Supply Chain Fraud

3.10 The Government should bring in measures specifically to combat labour supply chain fraud. This would include fraudulent documentation, RTI fraud, changing employment status in the supply chain. Failure to Prevent Fraud legislation that is coming into force in September 2025.

Labour supply chain special adviser

3.11 Employment status and other legislation - The labour supply chain is responsible for a great deal of time and money spent on compliance by businesses; on investigation and recovery work by HMRC; and indeed policing by the Employment Agencies Standards Inspectorate (EASi) under the Department of Business (DBT). The complexity of the labour supply chain and the sheer quantity of legislation that affects it need a dedicated Government adviser. There is a great deal to understand about the complexities in terms of employment status, IR35, off-payroll working, the conduct regulations and other legislation for the recruitment sector, umbrella company policy, single worker status, the gig economy, etc.

²⁷ Appendix 24 - Summary of major reviews (2006 – 2025)

²⁸ [Review of IR35](#)

²⁹ [Employment Status Review \[2015\] – Office of Tax Simplification](#)

³⁰ [Good work: the Taylor review of modern working practices \[2017\]](#)

³¹ [The Good Work Plan \[2018\]](#)

3.12 Fair Work Agency - Different departments are dealing with different aspects but, the initiatives are not aligned. The umbrella company market needs regulation, and this comes under the Department of Business and Trade but the policy for the change of deemed employer doesn't seem to be on the same timetable. Nor is the creation and implementation of the Fair Work Agency which will presumably eventually govern umbrella companies and the interaction with recruitment businesses.

3.13 Cross-Government Working Group - There are many issues in the labour supply chain that need a dedicated position to coordinate cross-government or at least a cross-government working group³².

Consultation

3.14 Consultation - There has been no consultation on Option 3 Deemed Employment. Although tabled as a tax change, it appears to be an administrative change. It is likely to disproportionately impact on small businesses in both the umbrella sector and the recruitment sector. The Government should consult on Option 3 and work with the industry on how it will work in practice.

3.15 Impact Assessment³³ - Under the Better Regulation Framework (BRF) there would be a duty to consult and carry out an Impact Assessment. The Government must carry out an Impact Assessment and its promise in the Government Response to consult³⁴.

3.16 Delay - The Government should also consider delaying the implementation of the policy in April 2026. In a meeting of the Umbrella Policy FCSA Industry Working Group on 6 March 2025, it was unanimously agreed that a delay was necessary.

3.17 It was reported that the employment businesses are unlikely to be ready for implementation of the policy partly because of the very short time there is between publishing of the legislation and the implementation, possibly only 5 months. It is also partly because of the other areas of change including the Employment Rights Bill that the employment businesses will have to focus on.

³² A Cross-Government Working Group on Employment Status was set up in 2016 on the recommendation of the Office of Tax Simplification. <https://www.gov.uk/government/groups/cross-government-working-group-on-employment-status>

³³ Better Regulation Framework para. 6.8

³⁴ Para. 6.7

Mandated due diligence

3.18 Although the Government has discounted mandating due diligence as an option, it is essential that due diligence is part of the labour supply chain compliance process.

Due diligence may include³⁵:

- Full audits
- Review of payslips in real-time
- Review of contracts, processes and policies
- Checking company information
- Credit checks
- Cross-referencing data and HMRC records (Agency Worker Requirements v. RTI)
- Using a due diligence questionnaire
- Using the Key Information Document (KID) see below.
- Accreditation confirmation

Mandatory transparency reporting

3.19 Introduction of mandatory transparency reporting, requiring companies to clearly identify each party involved in labour supply chains. This could also include reporting of financial incentives between the entities in the chain.

Industry body accreditation and regulation

3.20 There are various industry bodies which already do provide accreditation including:

- FCSA - is a non-profit making association that raises standards and promotes compliance by conducting rigorous audits. They have just launched a payslip auditing software called VeriPAYE. FCSA also lobbies the Government on behalf of its members and is a member of the Trade Association Forum.
- Professional Passport - is a private compliance company and is an APSCo Trusted Partner.

3.21 Formal accredited body - The Government should formalise an industry body to work with the industry and Government to provide accreditation, guidance and sanctions to improve compliance.

3.22 Accredited companies only - Businesses and the public sector should be required to contract with only those umbrella companies that have full accreditation.

³⁵ See a full list of suggested due diligence examples in para. 6.17

3.23 Regulation – Any representative organisation that is set up in order to provide private sector policing of an industry should be regulated. The accreditation and audit function should comply with a code of conduct.

Government-backed verification

3.24 Part of the problem with non-compliance is allowing umbrella companies access to gross funds³⁶. There have been several reported cases of fraud or payroll piracy. This is where the umbrella company has taken advantage of the group structure³⁷ and paying the workers off-payroll, thereby claiming that they do not owe the Employers NICs that HMRC is pursuing them for. In addition to other measures, some form of Government-backed scheme or licensing to verify that the umbrella company is fit to handle gross funds could be devised.

3.25 Gross Payment Status³⁸ - The Government already has a verification system for companies that handle gross funds under the Construction Industry Scheme (CIS) – Gross Payment Status. Although this system will need to be adapted, many of the umbrella company groups already have a subsidiary that provides services under CIS and already have Gross Payment Status.

Operator's licence

3.26 The Government under the new Fair Work Agency (FWA) could have a list of registered companies or provide an operator's licence.

Indemnities and Insurance backed due diligence

3.27 It is likely that an employment business will want an indemnity from an umbrella company in future. There are already insurance products for using an umbrella company.

Key Information Document

3.28 The Key Information Document (KID)³⁹ is already a part of the labour supply chain compliance. From 6 April 2020, Regulation 13A of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the “Conduct Regs”) required that agency workers were to be issued with a key information document before they agree on terms with employment agencies or businesses.

³⁶ Chapter 8 – Gross Pay

³⁷ Para. 5.7

³⁸ Para 10.10

³⁹ Para 12.7

3.29 Where there is an umbrella company or intermediary involved, it is still the responsibility of the employment business to provide the KID. The employment business must gather the information required from the intermediary/umbrella and where the intermediary or umbrella company changes, a revised KID must be issued.

3.30 The KID could be used more effectively as a compliance document between the parties.

Public sector

3.31 The public sector should have a duty not to have an unaccredited umbrella company in their supply chain and be required to carry out due diligence checks to ascertain the compliant supply of the worker.

Inside IR35 contractor

3.32 The inside IR35⁴⁰ contractor should be an employed position and only be engaged by an Umbrella Employer. This would give the worker employment rights which they currently don't have despite paying full employment taxes.

⁴⁰ Para 5.19

4. The Labour Supply Chain

Network of entities

4.1 The labour supply chain has grown exponentially over the years. More entities have entered the supply chain and with that brings more complexity but also less transparency.

4.2 The labour supply chain in the UK refers to the network of entities involved in recruiting, placing, managing and paying workers for businesses. It typically includes end clients, managed service providers (MSPs), recruitment agencies, umbrella companies, professional employer organisations (PEOs), and self-employed workers or Personal Service Companies (PSCs).

End Client

4.3 The end client is the organisation that needs workers but does not directly employ them. They contract with recruitment agencies or managed service providers (MSPs) to supply workers.

4.4 The use of a contingent workforce is essential to the flexibility of a business. There are end clients, however, who routinely engage workers off-payroll or through an Umbrella Employer so that they do not have the responsibility for tax or employment rights. The current legislative framework places no obligations on the end client in terms of their corporate responsibility for who is in the labour supply chain.

Recruitment Agencies

4.5 Agencies act as intermediaries between workers and end clients. They source candidates, negotiate pay rates, and arrange contracts. Some agencies pay workers directly (PAYE model), while others engage umbrella companies or work with the self-employed.

4.6 Technically under the Umbrella Company policy, the deemed employer would be the 'employment business' as defined by the Employment Agencies Act⁴¹. The employment business is usually the part of a recruitment company that deals with temporary workers.

4.7 The larger employment businesses may take the payroll in-house if they become the deemed employer. Most of the larger employment businesses are reported as using FCSA members so, this will affect mainly the compliant accredited industry. It

⁴¹ Employment Agencies Act - Para 12.3

may also affect the small and medium-sized employment businesses, who are unable to accommodate a change in deemed employment or start using only larger compliant umbrella companies.

Umbrella Companies

4.8 These companies act as an employer for temporary workers, handling payroll, tax deductions (PAYE & NICs), employment rights, rewards and workplace benefits⁴².

Workers sign employment contracts with the Umbrella Employer but do not provide services to them. The services are provided to the end client engaged on a business-to-business contract between the umbrella company and the agency.

4.9 The recruitment agency pays the umbrella company gross, the umbrella company then deducts all taxes and pays the worker. Used in industries where contractors prefer employment rights while maintaining flexibility or where the end client wants to ensure that there are no liabilities on them as an employer, especially under the Off-payroll Working rules (OPW)⁴³.

Professional Employer Organisations (PEOs)

4.10 PEOs handle payroll, tax compliance, and HR for companies that want to outsource employment responsibilities. Similar to umbrella companies but typically work with businesses, rather than individual workers.

Workers

4.11 There are a number of ways in which an individual worker can be supplied in the labour supply chain to the end client. These include⁴⁴:

- Personal service companies
- Self-employed sole trader
- Agency worker
- Umbrella worker (there are some umbrella companies that use a contract for services)
- Umbrella employee (under a contract of employment)

4.12 Legislation affecting personal service companies:

⁴² See Chapter 5 – What is an umbrella company.

⁴³ See para. 4.12 below.

⁴⁴ See Appendix 25 – Terminology for an explanation of each type of worker.

- IR35 – Chapter 8 of Part 2 of ITEPA 2003²¹⁰ and in the Social Security Contributions (Intermediaries) Regulations 2000, SI 2000/727
Under Chapter 8 the contractor carries out the assessment. IR35 now only exists if the contractor is working with a small company as defined by the Companies Act.
- OPW – Chapter 10 of Part 2 of ITEPA 2003²¹⁰ and in the Social Security Contributions (Intermediaries) Regulations 2000, SI 2000/727
Under Chapter 10, the end client carries out the assessment and has to provide a Status Determination Statement (SDS)
Chapter 10 applies to the public sector and medium and large private sector companies.
- Managed Service Companies - Chapter 9 of Part 2 and section 688A, Part 11 ITEPA 2003
- Agency Workers Regulations 2010 – in or out of scope established by Employment Status Test (no limited company opt-out)
- Conduct of Employment Agencies and Employment Businesses Regulations 2003 (section 32 – contains an opt-out for limited companies)
- Onshore intermediaries – section 44(2) ITEPA 2003, no direct opt-out, but thought not to include personal service companies although it is still unclear whether PSCs will be included in the reporting regulations.
- Umbrella companies
- Travel and subsistence

4.13 Working with an individual off-payroll is fraught with difficulty for the end client. Since OPW, the end client has the responsibility for assessing whether they can work with the individual on or off-payroll.

4.14 In the event that the end client wants to ensure that they are not responsible for either employment taxes or employment rights for the worker, they may assess them as an ‘inside IR35’ contractor.

4.15 The ‘inside IR35’ contractor is typically a deemed employee for tax purposes and is not entitled to employment rights. If the inside IR35 contractor is engaged by an Umbrella Employer they will be entitled to full employment rights. This is a fact that does not appear to be widely understood, especially by the contractor. It is not clear why this is not understood but the confusion is undoubtedly due to the lack of information and also to some unscrupulous companies shirking their responsibilities. This is also partly why many organisations have been calling for the regulation of the industry.

5. What is an umbrella company?

Definitions

5.1 There is currently no legal definition of an umbrella company. Although, the Government has just announced⁴⁵ that they will legislate to include an expansion of the definition of “employment business” in s.13 Employment Agencies Act 1973⁴⁶ to include an umbrella company. The definition in s.2 Conduct Regs⁴⁷ will also need to be changed in order to incorporate the umbrella company.

5.2 The term "umbrella company" is used because it acts like an "umbrella" covering or employing contractors for the duration of their assignments. Essentially, rather than working as self-employed individuals, contractors join an umbrella company which formally employs them and handles their payroll, tax, and related administrative tasks. This creates a single point of contact—a protective "cover"—under which various assignments and payment arrangements are managed.

5.3 There is some confusion in the public understanding about the employment status of umbrella company workers. Umbrella Employers formally (legally) employ the individual. The individual has likely come through the supply chain as a contractor or contingent worker and the end client has assessed the contractor under the relevant off-payroll legislation⁴⁸ as ‘inside IR35’ or on-payroll but requiring them to be engaged through an Umbrella Employer. They may have been a contractor or freelancer but once they are engaged by the Umbrella Employer, they are an employee. As such, the normal UK employment legislation applies.

5.4 Umbrella companies have received a lot of bad press and there is a very negative narrative collectively. The non-compliant umbrella companies, however, bear little relation to the compliant accredited Umbrella Employer. The Umbrella Employer is a good option for a contingent worker. There are many benefits⁴⁹ to having the continuity of employment for these workers and these companies should be encouraged.

⁴⁵ Hansard written statements - Consultation 5 - <https://hansard.parliament.uk/commons/2025-03-04/debates/962b7f09-03d1-4c11-a0f6-8374dc8fab56/WrittenStatements>

⁴⁶ Employment Agencies Act 1973 – see 12.3

⁴⁷ Conduct of Employment Agencies and Employment Businesses Regulations 2003 – see para. 12.4

⁴⁸ A mention of ‘off-payroll legislation’ refers to any type of engagement not on-payroll, but not referring specifically to the off-payroll working rules which will be referred to as OPW.

⁴⁹ The benefits can be seen in paras 5.18-20 below.

5.5 This compliant industry has suffered from the lack of regulation which it has been calling on for years. If the deemed employer is changed to the employment business, the worker will no doubt suffer because employing the worker is not its core function.

5.6 It is also likely that the umbrella employee will become an agency worker, possibly under a contract for services. So, whereas the employment business may be perfectly capable of running a compliant payroll, that is not the same as the benefits of a compliant Umbrella Employer.

Group structure

5.7 There is also confusion surrounding the engagement by other entities in the same group as an umbrella company. The group may have subsidiaries which provide contractors under the Construction Industry Scheme (CIS) or as a self-employed sole trader or as a 'personal service company' (PSC). The same group of companies may also supply accounting services to the contractors. These are all separate entities but the Umbrella Employer should be a model that only engages with individuals on an employed basis.

5.8 Indeed, the latter point is perhaps a point that should be picked up in the regulation of umbrella companies. So, those who work through an Umbrella Employer should always be legally employed.

5.9 Another point to consider for regulation is the legal structure of the groups of companies that incorporate an Umbrella Employer and the use of that group structure to distribute gross funds through the other entities, such as in the *Ducas*⁵⁰ case.

Legal Structure

5.10 An umbrella company⁵¹ (Umbrella Employer) is typically a UK-registered limited company that acts as an employer to agency contractors. The Umbrella Employer may also provide workers direct to an end client. It does not source work itself, the recruitment agencies find temporary assignments with end clients and the Umbrella Employer formally employs the worker to carry out that work.

5.11 In a typical labour supply chain⁵², the end client contracts with a recruitment agency acting as an employment business for the provision of temporary labour. The

⁵⁰ *HMRC v. Ducas Ltd* [2024] EWHC 3132 (Ch) - see Appendix 21 below.

⁵¹ The umbrella company will be referred to as an Umbrella Employer where it engages workers only on an employed basis.

⁵² Chapter 4 – The Labour Supply Chain

recruitment agency then contracts with the Umbrella Employer to supply the worker, and the Umbrella Employer employs and pays the worker.

5.12 The industry is currently unregulated but in the Government Response to the 2023 Consultation⁵³, the Government has published its intention to legislate to allow for their regulation. As part of this, as mentioned above, the Government will define umbrella companies and bring them within scope of the Employment Agency Standards Inspectorate's (and subsequently, the Fair Work Agency⁵⁴) remit, through an amendment to the Employment Rights Bill.

5.13 As an employer, the Umbrella Employer has to comply with UK employment law. The employee of the umbrella is usually a contingent worker who may have been introduced to the umbrella company by the end client or the employment business. There are various pieces of legislation which have increased the use of umbrella companies.

5.14 In 2017, there was an increase in the use of Umbrella Employers because of the public sector reforms in the Off-payroll Working rules (OPW)⁵⁵. There was another increase in 2021 when OPW was reformed and operational in the private sector for medium and large-sized companies. Some contractors may have made use of an umbrella company under the original intermediaries' legislation known as IR35⁵⁶. Indeed, these companies may have been linked to the 'Loan Charge'⁵⁷ There is some evidence that the use of umbrella companies also increased during COVID-19. This was because healthcare workers, in particular, needed to be engaged quickly.

Inside IR35

5.15 As a result of the change of obligation in OPW, the end client⁵⁸ is now responsible for the assessment as to whether they can engage a contractor inside or outside of IR35. If the end client assesses the contractor as 'inside IR35', the contractor is very often routed through an umbrella company because the end client has assessed that they have to be paid on-payroll.

⁵³ Appendix 15

⁵⁴ Fair Work Agency Para 12.11

⁵⁵ Part 2 Chapter 10 Income Tax (Earnings and Pensions) Act 2003 (OPW)

⁵⁶ Part 2 Chapter 8 Income Tax (Earnings and Pensions) Act 2003 (IR35)

⁵⁷ These are part of the disguised remuneration schemes of tax avoidance pursued by HMRC against the taxpayer. <https://www.gov.uk/government/publications/loan-schemes-and-the-loan-charge-an-overview/tax-avoidance-loan-schemes-and-the-loan-charge>

⁵⁸ Only if the end client is a medium or large-sized private sector company or in the public sector. If the end client is a small company, they are exempt from OPW and the contractor continues to assess under IR35.

5.16 There is some evidence that the ‘inside IR35’ role is utilised as part of the gross payment scam whereby the end client believes that tax is going to be paid on the basis that the contractor is inside IR35, but then at some point in the labour supply chain, the contractor is paid off-payroll through a limited company.

5.17 Bearing in mind the association of the inside IR35 role with the gross payment scam and that the inside IR35 contractor that doesn’t work through an Umbrella Employer gets zero employment rights; it could be an opportunity to ban the use of ‘inside IR35’ positions and insist on an inside IR35 contractor being employed by an Umbrella Employer.

Employment obligations

5.18 As the worker’s employer, an Umbrella Employer must fulfil all the normal legal obligations of any UK employer:

- Written contract of employment
- Paying the worker’s wages via PAYE
- National Minimum wage
- Holiday pay and working time
- Statutory Sick Pay and Parental Rights
- Pension Auto-enrolment
- Agency Workers Regulations
- Right to Work checks and compliance
- Discipline and Grievance procedures
- Redundancy
- Unfair Dismissal

5.19 Other employee rights include: a written statement of employment particulars on day one (contract detailing terms), itemised payslips for each pay period, protection from unlawful deductions, working time limits (e.g. the 48-hour work week average unless the contractor opts out), and protection from discrimination under the Equality Act. The worker also has the right to join a union and to statutory minimum rest breaks and rest days. Essentially, none of the basic employment rights are waived just because the contractor works through an umbrella – the umbrella is the employer and has to follow UK employment law accordingly.

Other rewards

5.20 Beyond statutory rights, most reputable Umbrella Employers will offer additional benefits and services to attract and support contractors. Whilst these perks vary by provider, they often mirror what large employers offer to their staff:

- Dedicated contract manager
- HR support
- Insurance cover such as professional indemnity
- Payment flexibility and financial perks – weekly or daily payroll
- Loans and mortgages are easier to obtain
- Discounts and reward schemes
- Additional insurance and health benefits
- Pension enhancements
- Career support and other services
- Training resources

5.21 One overall benefit, however, is the flexibility and security of employment with a single Umbrella Employer for the multiple engagements the contractor may be working on through the year. Some Umbrella Employers report that they have many workers who have over two years of employment with them.

Payroll

5.22 The Umbrella Employer's other function is to pay the worker. The Umbrella Employer may run daily, weekly, fortnightly or monthly payroll as well as the usual requirements of an Employer of Record⁵⁹.

Employer of Record

5.23 At present, the umbrella company effectively operates as the Employer of Record (EOR). Although the term EOR is more commonly used in international employment context. An umbrella company acts as a type of EOR within the UK context, but it's specifically tailored to contractors, freelancers, or temporary workers rather than permanent international hires.

5.24 In the UK, an EOR is an entity that legally employs workers on behalf of another company. While the client company directs the day-to-day activities of these workers, the EOR assumes all the statutory responsibilities and legal risks associated with employment.

5.25 There should normally be only one employer record for any employer who operates PAYE. Each new employer has a system-allocated employer reference that is protected on the record⁶⁰.

5.26 This might include:

⁵⁹ Chapter 10 – para 10.4 Employer of Record.

⁶⁰ HMRC PAYE20001 <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee20001#IDAE1Q5F>

- **Payroll Management:** Processing pay through the PAYE system, deducting income tax and National Insurance contributions, and ensuring accurate reporting to HMRC.
- **Compliance:** Adhering to UK employment laws, including the provision of statutory benefits like holiday pay, sick pay, and pension contributions.
- **HR Administration:** Managing contracts, employee records, and other administrative tasks associated with employment.
- **Risk Mitigation:** Assuming the legal liabilities related to employment, which shields the client company from potential legal and regulatory breaches.

PAYE Scheme

5.27 PAYE (Pay As You Earn) is a system used by UK employers to deduct Income Tax and National Insurance (NI) contributions directly from employee salaries and pay these to HM Revenue & Customs (HMRC). Employers running payroll must register with HMRC under PAYE.

Employer Reference Number

5.28 The ERN (also known as the PAYE reference) is a unique number provided by HMRC to each UK employer when registering for PAYE. It identifies an employer's payroll records for tax purposes and appears on payslips, tax forms, and HMRC communications.

Employer tax liability

5.29 Employers with an ERN are legally responsible under these acts and must comply with HMRC guidance and regulations. Employer liabilities under PAYE, associated with the ERN, are primarily governed by:

- Income Tax (Pay As You Earn) Regulations 2003
(Statutory Instrument 2003 No. 2682)
- Social Security Contributions and Benefits Act 1992
(for National Insurance obligations)
- Finance Act 2004 & Finance Act 2008
(for rules on compliance, penalties, and enforcement by HMRC)
- Pensions Act 2008
(Workplace pensions and auto-enrolment obligations)

5.30 If the ERN is transferred to the employment business, it will entirely change the function of the Umbrella Employer.

6. Government Compliance and regulation

Consultation

6.1 In November 2021⁶¹, HM Treasury, HMRC and the Department for Business and Trade (DBT) jointly published a Call for Evidence ‘Umbrella Company Market’. This was initially concerned with umbrella company regulation led by DBT.

6.2 In June 2023, HM Treasury, HMRC and DBT published a joint consultation on Tackling non-compliance in the umbrella company market. This consultation at the time was owned by DBT which led to the joint consultation on how to regulate the umbrella company market.

6.3 The consultation looked at three regulatory options:

Option 1 - Mandating due diligence

Option 2 - Transfer of debt

Option 3 - Deemed employment

6.4 The Conservative Government opted for Option 1 – mandating due diligence but this was not operational by the time the Government changed to Labour.

6.5 In October 2024, the Labour Government announced their intention to legislate to change to Option 3 - Deemed employment. This Policy Paper, however, was released by HMRC alone. The Government also announced that there would be no further consultation on this option and that draft legislation would be released in Spring 2025 and the measure would be operational in April 2026.

6.6 The Government response to the 2023 Consultation was published on 4 March 2025 by HM Treasury. It was, however, also published by DBT on their web page ‘Make Work Pay’⁶² as part of the Employment Rights Bill (ERB).

6.7 In the Government Response, the Government stated that it will: “consult on draft legislation this year, ahead of introducing legislation to Parliament.”⁶³ This does not, however, appear to be a formal consultation.

⁶¹ Appendix 13 – Timeline of Government consultation and responses

⁶² DBT Make Work Pay - https://www.gov.uk/government/collections/make-work-pay?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=a808b067-37be-4cb5-8f0f-bb13a486fda6&utm_content=immediately

⁶³ Appendix 17 - Para 3.126 – Government Response

Better Regulation Framework

6.8 Policy changes that will regulate or deregulate business are governed by the Better Regulation Framework (BRF)⁶⁴ under the Regulatory Policy Committee (RPC)⁶⁵. The BRF ensures that regulatory provisions are appropriately considered and scrutinised. The framework is a robust process that seeks to ensure that the costs of new regulation to business or others are justified.

Its objectives are:

- to increase the consideration and use of alternatives to regulation
- earlier and more holistic scrutiny of regulatory proposals through consideration of wider impacts beyond direct costs to business
- earlier and more consistent evaluation of whether implemented regulations are achieving their aims

6.9 The BRF does not apply to regulatory provisions that deal with taxes but changing of the Deemed Employment is an administrative change not a change of tax policy. There are also implications to the employment rights or benefits of the worker to the change of deemed employer or the Employer of Record⁶⁶.

6.10 There has been no consultation on Option 3 and no impact assessment. Bearing in mind the potential impact on good compliant Umbrella Employers themselves, there should be a consultation on how Option 3 will work in practice and an impact assessment. At the very least this measure should be logged with the RPC.

6.11 This measure is likely to have a disproportionate impact on the smaller businesses in both the recruitment sector and the umbrella sector. It could potentially mean that compliant businesses will close as a result of this measure.

Government Response

6.12 On 4 March 2025, the Government published its response⁶⁷ to the 2023 Consultation on Tackling non-compliance in the umbrella company market. This response covers two broad areas the regulation of the industry for employment rights purposes and tax policy to address non-compliance.

⁶⁴ RPC - Better Regulation Framework - <https://www.gov.uk/government/publications/better-regulation-framework>

⁶⁵ Regulatory Policy Committee - <https://www.gov.uk/government/organisations/regulatory-policy-committee>

⁶⁶ Para. 5.23 above

⁶⁷ Appendix 17 - Government response to questions 34 to 41

6.13 It's worth noting at the beginning that there seems to be some confusion between the two initiatives. Umbrella Regulation is under the remit of the Department of Business and Trade (DBT) and addresses the conduct of companies; how these companies should operate; and the protection of the worker. The policy change is under the remit of HMRC and this will change who is the deemed employer for tax purposes. This initiative is to tackle tax non-compliance or fraud.

Umbrella Regulation

6.14 Informed by the responses to the consultation, the Government has promised to legislate to allow for their regulation. As part of this, they will define umbrella companies and bring them within scope of the Employment Agency Standards Inspectorate's (and subsequently, the Fair Work Agency's) remit, through an amendment to the Employment Rights Bill.

Tax non-compliance

Mandating Due Diligence

6.15 Most respondents thought that mandating due diligence would have a positive effect on non-compliance and, in fact, it was option 1 that the previous government preferred. Ultimately though, the Labour Government decided against this option because it would not go far enough and would have a limited impact on non-compliance. Evidence from the *Ducas* case shows that the agencies carried out due diligence but, that the documents were fraudulent.

6.16 However, the Government is still expecting businesses to use due diligence to choose wisely when they use an umbrella company. There were numerous suggestions as to what should be included in any due diligence requirement in the Government Response, these were⁶⁸:

6.17 Due diligence:

- **Full audit:** incorporating some of the measures listed below.
- **Industry body accreditation:** receiving an accreditation from an industry body such as the FCSA, Professional Passport or APSCo.
- **Review of Payslips:** review a percentage of payslips at set times during the year or use the payslip auditing technology which is currently available in real-time⁶⁹.

⁶⁸ Appendix 17 - Government Response Para 3.26

⁶⁹ Real time payslip auditing is available from FCSA VeriPAYE <https://veripaye.co.uk/> or SafeRec <https://saferec.co.uk/>

- **Employer Costs:** NICs, pension contributions, and statutory employer obligations.
- **Review of Contracts, Processes, and Policies:** covering compliance with employment laws, data protection, and financial reporting standards. Copies of all reviewed contracts and policies should be kept as evidence of compliance.
- **Company Information:** company registration details, director information, and other relevant data to establish the legitimacy of the umbrella company.
- **Credit Check:** a credit report should be obtained and kept, establishing the financial strength of the umbrella, particularly for new companies.
- **Cross-Referencing:** with independent data or HMRC records.
- **Due Diligence Questionnaire:** questions to the umbrella company with responses.
- **Summary Report:** a final summary report outlining the due diligence process, findings, and any actions taken.
- **Payslip checker:** Use HMRC's free tool to check payslips⁷⁰ or Payslip Buddy⁷¹

Transfer of Debt

6.18 Respondents had mixed views on whether this measure would be effective. Most thought that it would have a behavioural impact on who the employment business chooses and that they would take greater care. Others thought it would embolden umbrella companies to be non-compliant.

6.19 There was also an argument that the threat of debt transfer simply would not register on an umbrella company that was non-compliant. It would not influence their behaviour and have no effect on overall compliance.

6.20 Ultimately, it was thought that a transfer of debt provision would be a long and protracted process. This would be further exacerbated by the inclusion of a due diligence defence. So, the length of time and level of proof could exclude actual recovery of the debt.

Deemed Employment

6.21 Opinions were mixed but, the largest group thought that this would reduce non-compliance. Others suggested that this approach would likely result in businesses moving away from the umbrella company model to engage labour. The industry perspective was that this model would not work and would not solve the non-compliance.

⁷⁰ HMRC payslip checker - <https://www.gov.uk/guidance/work-out-pay-from-an-umbrella-company>

⁷¹ Payslip Buddy - <https://payslipbuddy.co.uk/>

6.22 The Government, however, believes that this option would do the most to address non-compliance, improve the outcome for workers and protect the Exchequer. So, in April 2026, the responsibility for accounting for PAYE will move from the umbrella company to the agency (or more accurately the employment business).

6.23 Although the likelihood of this change is that a lot of umbrella companies will cease to function, the Government reported that not all respondents thought that these changes would represent a bad outcome.

7. Reasons for the Policy

Introduction

7.1 The complexity and length of the labour supply chain is facilitating a lack of transparency and an inability to effectively monitor the full chain. The incentives for using outsourced labour are partly to have workers supply labour but at arms-length to the end client. Very often, however, the end client does not know how the labour is being supplied.

7.2 There are many ways in which contingent labour can be supplied whether it is as a self-employed sole trader, through a personal service company, as an agency payroll worker or as an umbrella company worker. This is part of the problem because the contrived labour supply chain involves workers who are engaged off-payroll or may have originally been employed at the start of the chain but are then paid gross off-payroll by the time the worker gets paid.

7.3 This is in part due to the interaction of other pieces of legislation in the labour supply chain such as the Off-payroll Working rules (OPW)⁷² and s.44 ITEPA⁷³ the ‘agency tax legislation. Although this policy is centred on the workings of the umbrella company in the labour supply chain, the interactions with the other entities, particularly the recruitment company should also be in focus.

7.4 There is no regulation of the umbrella company industry but also no particular attention has been paid to the regulation of the interaction between those two entities.

7.5 The main impetus for the policy appears to be the huge loss sustained by the Treasury as a result of a small number of fraudsters and payroll pirates. These losses, however, are being labelled as umbrella fraud which has tainted the whole industry. This is despite a growing sector of the compliant industry being large companies that contribute huge amounts in tax to the Treasury.

7.6 The fraudsters and payroll pirates have access to hundreds of millions often billions of pounds of fees paid by the end client. These fees which are received as ‘gross funds’ include the payroll taxes which the payroll intermediary is supposed to process and pay over to HMRC.

⁷² Part 2 Chapter 10 ITEPA 2003 - <https://www.legislation.gov.uk/ukpga/2003/1/part/2/chapter/10>

⁷³ See Appendix 20 – Chapter 7 - s.44 ITEPA

7.7 These fraudsters and the recent *Ducas*⁷⁴ case is a good example, are able to divert the tax to another company in their group of companies and fail to pay on the basis that the worker is engaged off-payroll so the employment taxes are not due.

Gross funds

7.8 Receiving gross funds facilitates the collection of fees from the end client which are then eventually distributed to an umbrella company which is part of a payroll group of companies. The group of companies typically have directors in common and distributes funds between the companies funnelling the pay to the worker either as self-employed or through a PSC.

7.9 Even though the end client may think that the worker is being employed by the umbrella, one of the companies in the group will pay the worker off-payroll and keep the taxes that the end client has paid which are included in the fees. These are the taxes that should be paid to HMRC. This has been evidenced in two recent cases: in the *PPS Umbrella*⁷⁵ [2024] case HMRC pursued the umbrella company for £7.3 million of unpaid taxes and in the *Ducas* [2024] case, there were £171 million in unpaid taxes.

Group of companies

7.10 In both *PPS Umbrella* and *Ducas*, there were multiple companies in the group. These companies are taking advantage of the lack of transparency and complexity of the chain and the lack of government regulation. The length of the supply chain was commented on in the 2023 Consultation and whether it should be restricted in length.

Multiple frauds and payroll piracy

7.11 There are multiple different frauds in the labour supply chain. There are also different ways of payroll piracy where the lack of transparency has allowed unscrupulous operators to take funds that would otherwise be due to HMRC. These operators then argue that there is no tax to pay because the status of the worker is off-payroll. HMRC has identified various different frauds in their recent compliance manual GfC12⁷⁶.

⁷⁴ See para 8.6 and Appendix 21 - *HMRC v. Ducas Ltd* [2024] case notes

⁷⁵ See para. 8.12 And Appendix 22

⁷⁶ See Appendix 18 – HMRC Help with labour supply chain assurance GfC12 - Fraud

8. Gross Pay

8.1 Gross pay is a particular problem in the labour supply chain. At present, frauds are being committed, and tax is being lost because non-compliant umbrella companies are taking advantage of being paid gross by the employment business. The employment business is paying the umbrella company on the basis that the worker is going to be employed by the umbrella company.

8.2 So, the funds that are supplied gross to the umbrella company include an amount for employment taxes including the Employers' NICs and Apprenticeship Levy. There are expected requirements of due diligence on the employment business to establish whether the umbrella company worker will be paid on-payroll. In the cases of fraud or payroll piracy, the umbrella company is providing fraudulent payslips and or RTI's. Mandated due diligence was initially agreed by the previous government but was never brought in.

8.3 The funds are then paid gross to the worker either as self-employed or as a PSC and the umbrella company keeps what would equate to the Employers' NICs which in most cases amounts to millions of pounds lost to the Exchequer.

Gross Payment Model – Personal Service Company

8.4 This model takes advantage of the use of a Personal Service Company (PSC) in the labour supply chain. Initially, the worker will be considered either 'inside IR35' or considered as an umbrella company worker. So, employment taxes should be deducted and paid to HMRC.

8.5 At some point, however, the funds will be diverted to the worker through a PSC as outside IR35 or off-payroll. At this point, the worker is paid gross and the umbrella company keeps the employment taxes that have been paid to it by the end client through the labour supply chain.

8.6 This has been seen in the recent case of *HMRC v. Ducas* [2024]

HMRC v. Ducas Ltd ⁷⁷

The basic points of *Ducas*:

- 30,000 healthcare workers engaged through recruitment agencies and supplied into the NHS Trust.

⁷⁷ Appendix 21 - *HMRC v. Ducas Ltd* [2024] case notes

https://assets.caselaw.nationalarchives.gov.uk/ewhc/ch/2024/3132/ewhc_ch_2024_3132.pdf

- HMRC made an application for a freezing injunction against Ducas Ltd on the basis of a liability for ER NICs at £171 million.
- The turnover was about £564 million according to the accounts with a £10 million profit.
- There was evidence of falsified payslips and misleading RTI documents.
- liquid assets were at risk of dissipation

8.7 HMRC alleged that Ducas engaged in large-scale tax fraud by failing to pay employer National Insurance Contributions (NICs) for thousands of healthcare workers supplied to NHS Trusts. Instead of deducting and remitting the required taxes, Ducas diverted funds to associated companies Enix and FL Capital, which processed workers' pay gross via personal service companies.

8.8 The court found that HMRC established a good arguable case, citing fraudulent documentation, liquid assets at risk of dissipation, and unjustified financial transactions. Consequently, a freezing order was imposed on Ducas and its associated companies.

Chapter 10 ITEPA 2003

8.9 There is also a possible additional complexity when there is a PSC in the labour supply chain. This comes under the off-payroll working rules in Chapter 10 ITEPA 2003 (OPW). The end client makes a chain payment to the agency, the agency then makes a chain payment to the umbrella company. The payments are being made on the basis that the worker is either employed or 'inside IR35'.

8.10 Where there is a PSC in the chain and the client is required to comply with OPW. They are required to issue a Status Determination Statement (SDS). If an SDS is not issued or communicated to the worker, the client is liable for the tax as the so-called fee-payer under Chapter 10 s.61N(5) ITEPA.

- (5) *Unless and until the client gives a status determination statement to the worker (see section 61NA), subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client;*

Gross Payment Model – Self-employed

8.11 This model takes advantage of paying the worker as a self-employed sole trader. Again, the worker will initially be considered as an umbrella company worker but, at some point, paid off-payroll instead.

8.12 This has been seen in the recent case of *HMRC v. PPS Umbrella*⁷⁸.

HMRC v. PPS Umbrella

The basic points of *PPS Umbrella*:

- 3,000 locum workers engaged through recruitment agencies and supplied into the NHS Trust.
- HMRC presented a winding-up petition claiming PPS owed about £7.3 million in unpaid ER NICs.
- The core of HMRC's argument was that PPS had misclassified its workers as self-employed to evade paying the appropriate National Insurance Contributions and that this was a labour supply fraud.
- The court identified a genuine dispute regarding the employment status of the workers, questioning whether they were correctly classified as self-employed.

8.13 The legal proceedings between Payroll & Pension Services (PPS Umbrella Company) Ltd and HM Revenue & Customs (HMRC) primarily revolved around allegations of unpaid Employers' National Insurance Contributions (ErNIC) and the subsequent actions taken by HMRC.

High Court Proceedings

8.14 In November 2023, HMRC presented a winding-up petition against PPS Umbrella Company Ltd, asserting that the company owed approximately £7.3 million in unpaid Employers' NICs. HMRC alleged that PPS had misclassified workers as self-employed to circumvent paying these contributions. In response, HMRC sought the appointment of provisional liquidators to oversee the company's affairs. The High Court, while agreeing to appoint provisional liquidators, mandated that HMRC provide an unlimited cross-undertaking in damages—a safeguard ensuring compensation if the action was found to be unwarranted.

8.15 PPS Umbrella contested the winding-up petition, leading to a detailed examination of the company's practices. The court identified a genuine dispute regarding the employment status of the workers, questioning whether they were correctly classified as self-employed. Given this uncertainty, the High Court dismissed HMRC's petition in July 2024 and discharged the provisional liquidators.

Court of Appeal Proceedings

8.16 Dissatisfied with the High Court's requirement for a cross-undertaking in damages, HMRC appealed the decision. The central issue on appeal was whether a

⁷⁸ Appendix 6 - *HMRC v. PPS Umbrella* [2024] see a summary of all the cases concerning PPS Umbrella.

public authority like HMRC should be obligated to provide such an undertaking when seeking provisional liquidators. In August 2024, the Court of Appeal upheld the High Court's decision, affirming that HMRC must furnish an unlimited cross-undertaking in damages in these circumstances. The court reasoned that exempting HMRC from this requirement could lead to unjustified actions against companies without adequate safeguards.

8.17 These proceedings underscore the judiciary's commitment to balancing the enforcement powers of public authorities with protections for companies against potentially unwarranted insolvency actions.

PPS Umbrella outcome

8.18 HMRC has so far been unable to retrieve any funds in *PPS Umbrella* because of the genuine employment status issue upheld by the court. HMRC has also had to provide an unlimited cross-undertaking in damages. This requirement, upheld on appeal, means that HMRC must put aside funds to cover any potential loss suffered by the affected party if its proceedings (aimed at recovering unpaid tax or National Insurance) prove to be unjustified.

8.19 Bringing these entities to court and establishing fraud is incredibly difficult and time-consuming. As can be seen from *PPS Umbrella* and *Ducas* HMRC has to work hard to establish a viable case. There isn't legislation for specific labour supply chain fraud, which there probably should be. Although, new fraud legislation is coming into force in September 2025 'Failure to Prevent Fraud'⁷⁹

⁷⁹ Appendix 19 – Failure to Prevent Fraud

9. Option 3 – Deemed Employment

9.1 The policy paper's main objectives⁸⁰ are to strengthen accountability and transparency in the umbrella company market by shifting responsibility for PAYE and NIC non-compliance up the labour supply chain. It seeks to reduce fraudulent and non-transparent pay practices by ensuring that end clients or their employment businesses are held liable if umbrella companies fail to meet their statutory obligations.

Practicalities of a change of the deemed employer

9.2 The policy proposes that the employment business becomes the deemed employer for tax purposes. The policy does not go into detail about how this is going to work or indeed who the employer will be for employment rights purposes. Here are some of the areas that will need to be considered in implementing this change.

Deemed employment

9.3 The policy paper is implementing Option 3 Deemed Employment from the 2023 Consultation⁸¹.

Option 3 Deemed Employment

Deeming the employment business which supplies the worker to the end client to be the employer for tax purposes where the worker is employed by an umbrella company, moving the responsibility to operate PAYE

The third option would deem the employment business that supplies the worker to the end client to be the employer for tax purposes. This option would require a party further up the labour supply chain to operate PAYE on payments to contingent workers. This would not prevent the deemed employer from using a payroll bureau or umbrella company to discharge their PAYE obligations, but the deemed employer would be ultimately responsible for ensuring the correct operation of PAYE.

General operation

9.4 In the absence of further information from the 2024 Policy Paper, information has been gathered from the 2023 Consultation and the 2025 Government Response⁸² on the Government's intentions with regard to the *deemed employment* option.

⁸⁰ See Appendix 16 - Tackling Non-Compliance in the Umbrella Company Market – Policy Paper [30 October 2024]

⁸¹ See Appendix 15 - Tackling Non-Compliance in the Umbrella Company Market – Consultation [6 June 2023]

⁸² See Appendix 17 - Tackling Non-Compliance in the Umbrella Company Market – Government Response [4 March 2025]

9.5 This option would involve legislating to change the entity in the labour supply chain that is treated as the employer for tax purposes and secondary contributor for NICs purposes.

9.6 The deemed employer would be responsible for deductions of Income Tax and NICs and for payment of employer NICs. The employment business that has a contract with the end client to supply the worker would be the deemed employer.

9.7 The deemed employer could still use the services of another business, such as a payroll bureau or umbrella company, to calculate the liabilities but would remain ultimately responsible for PAYE being operated correctly.

9.8 The Government envisages using the existing agency legislation in Chapter 7, Part 2 ITEPA 2003 – Application of provisions to agency workers⁸³ This would be similar to the approach taken in the off-payroll working rules in Chapter 10, Part 2 ITEPA 2003. Under these rules, the intermediary that pays the worker's Personal Service Company is treated as the deemed employer, assuming the end client and any other parties in the labour supply have met their obligations under the legislation.

Expected Impacts

9.9 This option is expected to substantially impact non-compliant tax behaviour in the umbrella company market. It would place responsibility for operating PAYE nearer the top of the labour supply chain, reducing the likelihood of non-compliant umbrella companies entering the chain.

9.10 Employment businesses and clients could still outsource payroll operations but would be incentivised to ensure compliance. They would be incentivised to ensure that any outsourcing is only contracted to reputable firms because the ultimate responsibility for compliance would remain with them.

9.11 The Government considers that, as with any reform, the temporary labour market may also react to the introduction of this option by re-evaluating its engagement practices, in some cases potentially moving away from using the umbrella company model.

9.12 During the Call for Evidence⁸⁴, many client and employment business stakeholders said that one of the key services that they value from umbrella companies is taking over the operation of the payroll, which would otherwise be the responsibility

⁸³ See Appendix 20 – s.44 ITEPA

⁸⁴ Call for Evidence - <https://www.gov.uk/government/calls-for-evidence/call-for-evidence-umbrella-company-market>

of the employment business. Businesses could therefore continue to use umbrella companies for tax administration, as well as the administration of employment rights.

9.13 Compliant Umbrella Employers, however, are concerned that the Government has underestimated their role in the labour supply chain. It is not clear whether this change in deemed employer would allow an Umbrella Employer to trade on any reduced margins.

Impact on workers

9.14 The Policy Paper⁸⁵ suggests that “Workers will continue to receive their pay net of income tax and NICs following the introduction of the measure, although the business providing their payslip may change. By reducing non-compliance in the umbrella company market, this measure will prevent workers from being engaged by non-compliant umbrella companies. This means that they will no longer be party to non-compliant tax arrangements that could otherwise have left them facing large, unexpected tax bills.”

9.15 The reality may be very different. The worker may lose their employment with the existing Umbrella Employer and be transferred over to the employment business as an agency worker on a contract for services. There may be a lack of continuity in their employment, and they may not know who their employer is if there ends up being a joint employment. They will lose the employment rewards such as credit rating, access to loans and mortgages, health care and other benefits.

Potential Risks

9.16 As highlighted in the 2023 Consultation, there is a risk of disruption in the temporary labour market as employment businesses re-evaluate their relationships with umbrella companies. In addition, non-compliant umbrella companies might move workers into other non-compliant arrangements.

9.17 Workers might have different employers for tax and rights purposes, but the practical implications would need to be considered.

Response to the Policy

9.18 Having reviewed the evidence from the 2021 Call for Evidence and the 2023 Summary of Response, there are a number of points that need to be addressed:

⁸⁵ Appendix 16 – Policy Paper

- If the employment business is the deemed employer, will they be required to be the Employer of Record; if that is the case
- will the umbrella company no longer be the Employer of Record; if that is the case
- it is presumed that the Employers Reference Number (ERN) will be with the Employment Business and not the umbrella company.
- If the ERN is moved to the Employment Business, regardless of whether the umbrella company can receive gross funds, the umbrella company will cease to function as an Umbrella Employer.

9.19 The point of an Umbrella Employer is that the umbrella company is both the legal employer for employment rights but is also the deemed employer for tax purposes.

9.20 If the Employment Business becomes the deemed employer these legal responsibilities will be split and it would become a joint employment which has traditionally been frowned upon.

9.21 From the 2023 Consultation, it appears to envisage that with the Employment Business as the deemed employer, the Umbrella Employer will become an amalgamation of a Payroll Bureau and an HR department, or certainly the Government is expecting the Umbrella Employer to remain as the legal employer for employment rights.

9.22 This hybrid is, however, unlikely to work for the following reasons:

Contractual issues

Contract 1

9.23 Whereas the Umbrella Employer would have been contracted to the Employment Business as an outsourced service in its entirety, there would now need to be a consultancy service contract for the employment function with a clear division between the obligations of the deemed employer and the legal employer. Joint employment models have not been a popular model or particularly successful with implications for VAT fraud.

Contract 2

9.24 There would need to be a separate contract for the provision of an outsourced payroll. The Government have intimated that they believe the umbrella company could transition to a Payroll Bureau Model (PBM).

The Payroll Bureau Model

9.25 The Payroll Bureau Model (PBM) works by allowing a business to partially outsource its payroll processing to a third-party company. The business retains some control over the process by inputting the employee data and the hours worked, while the Payroll Bureau handles the calculations, tax deductions and payment distribution.

9.26 The PBM, however, is ordinarily used by companies with high numbers of permanently employed staff where the task is relatively straight forward. It is not used by the contingent labour force where there are multiple clients with multiple workers on multiple assignments.

10. Umbrella Employer

10.1 That is partly why the Umbrella Employer was developed in the first place, to accommodate the contingent workforce who were engaged by multiple clients through different recruitment companies on multiple assignments. This is a very different proposition to a PBM.

10.2 The Umbrella Employer enables:

- continuity of employment for the worker, all the worker's assignments are in one place under the same umbrella. Should this policy go ahead, the worker's assignments will be split across different employment businesses.
- continuity for the worker's pensions, so they are all under one employer. Should this Policy go ahead, it is assumed that the worker's pension pots will be split between different deemed employers.
- The worker has a central point of contact for employment rights issues. Should this policy go ahead, there will be potentially three entities responsible for employment rights. The client who facilitates the work and hosts the work environment, the employment business and the umbrella. Although there has been no clarity on what the split in employment responsibilities will be.
- It can be seen from umbrella employment case law where workers have had to take multiple entities to tribunal to let the court decide how to enforce their legal rights.⁸⁶

Technical Challenges

- Multiple umbrellas feeding into one PAYE Scheme ERN for an employment business
- Complications with processing thousands of payments within 24-48 hours
- Turning round the timesheets and getting the timesheets authorised and processed in time for weekly payroll
- The Umbrella Employer provides cashflow and credit terms for the Employment Business.
- Issues with workers having multiple income streams through different umbrellas/employment businesses.
- Challenges managing employee benefits and statutory rights linked to the Employer's Reference Number.
- A potential shift from being an Umbrella Employee to being an agency worker, under a contract for services affecting the worker's rights and benefits.

⁸⁶ Appendix 23 – Umbrella worker case law

- Risk of losing pension contributions (approx. £2 billion in pensions is collected by Umbrella Employers)
- The risk of multiple pension pots for workers, created by multiple assignments. With the Umbrella Employer there is only one pension pot.
- Fragmenting the market by moving from an Umbrella Employer who is an expert in the function to an Employment Business, who is in the business of recruitment.⁸⁷

Functional challenges

10.3 There are, however, several areas that will need attention and these will depend on the following:

- Who is the Employer of Record
- Who has the Employer's Reference Number (ERN); and
- Whether the EB can pay gross funds to the umbrella.

Employer of Record

10.4 Some of the essential functions of the UK EOR may, however, be moved to the EB post April 2026. An EOR relies on its Employer's Reference Number (ERN) as a unique identifier to manage its payroll functions and meet tax compliance requirements.

Employer's Reference Number

10.5 Here's why the ERN is essential:

- **PAYE Administration:**
The ERN is used to link payroll records to HMRC's systems, ensuring that income tax and National Insurance contributions are correctly deducted and reported under the PAYE scheme.
- **HMRC Reporting:**
All payroll submissions, including Real Time Information (RTI) reports, use the ERN to ensure that the employer's data is accurately recorded and that the correct amounts are remitted to HMRC.
- **Statutory Compliance:**
The ERN is critical for fulfilling legal obligations, such as issuing accurate employee payslips, submitting annual returns, and managing other statutory forms (e.g. P11D for benefits in kind).

⁸⁷ There are currently circa 600 umbrella companies and 40,000 recruitment companies.

- **Audit and Verification:**

The unique identifier helps HMRC track and audit payroll information efficiently, ensuring that the EOR is compliant with tax laws and employment regulations.

Joint employment

10.6 The joint employment model where the recruitment company acts as the deemed employer for tax purposes while an umbrella company serves as the legal employer for employment rights can create several pitfalls:

- **Ambiguous Liability:**

With two entities sharing employment responsibilities, it may be unclear who is ultimately accountable for issues like tax compliance, payroll errors, or employment law breaches. This ambiguity can expose both parties to regulatory penalties if responsibilities overlap or are neglected.

- **Administrative Complexity:**

Managing separate roles—one handling tax deductions and the other managing employment rights—requires robust coordination. Miscommunication or gaps in information sharing can lead to errors in PAYE processing, National Insurance contributions, or the timely payment of statutory benefits.

- **Risk of Inconsistent Application:**

Differing internal systems and practices between the recruitment and umbrella companies can result in inconsistent treatment of employees. Workers might receive unequal application of benefits, or there may be delays in resolving issues related to their rights or payroll.

- **Dispute Resolution Challenges:**

In the event of a dispute—whether concerning tax liabilities, pay discrepancies, or employment rights—resolving the issue can become complicated if it's unclear which party should take responsibility. This not only affects the worker's well-being but may also lead to costly legal proceedings.

- **Compliance Risks:**

The model increases the risk that one party's non-compliance might jeopardise the entire arrangement, affecting both tax and employment law outcomes.

10.7 Overall, these pitfalls highlight the need for clear contractual arrangements and robust communication between the entities to ensure compliance and protect worker interests.

Operational differences

10.8 There are operational differences between an Umbrella Employer and a Payroll Bureau. An Umbrella Employer functions as the legal employer for temporary or contract workers, which involves a broader range of responsibilities than a Payroll Bureau typically handles. Key functions unique to an umbrella company include:

- **Employer Role:**
Umbrella companies provide employment contracts, meaning they assume full legal responsibility for workers. This covers aspects like statutory rights, employment benefits (e.g., holiday, sick pay), and pensions—services not provided by a payroll bureau.
- **Comprehensive HR Administration:**
They manage the entire employee lifecycle, from onboarding and payroll to handling expenses, leaves, and other HR-related queries. Payroll bureaus generally focus solely on processing payments and managing tax deductions.
- **Regulatory Compliance and Risk Management:**
Umbrella companies ensure full compliance with employment laws and tax regulations, liaising with HMRC on behalf of the workers. They also often provide additional insurance coverage, such as liability and professional indemnity insurance, which a payroll bureau doesn't offer.
- **Employee Support Services:**
Beyond payroll, umbrella companies typically offer ongoing support for workers, including guidance on tax matters, expense claims, and resolving employment-related issues, whereas payroll bureaus are primarily service providers for payroll processing.

10.9 In summary, while payroll bureaus concentrate on payroll processing and tax deductions, umbrella companies deliver a full employment package with integrated HR services and statutory benefits for workers.

Gross Payment Status

10.10 One of the recommendations would be for the Umbrella Employer to achieve Gross Payment Status. A system similar to the Gross Payment Status (GPS)⁸⁸ in the construction industry.

10.11 The criteria would be to show that:

⁸⁸ CIS Gross Payment Status - <https://www.gov.uk/what-you-must-do-as-a-cis-subcontractor/gross-payment-status>

- tax and National Insurance have been paid on time in the past;
- there is a business bank account;
- there is a separate account for wages;
- the business is a member of an accredited membership organisation;
- is regulated by the Fair Work Agency (FWA).

10.12 Many of the Umbrella Employers already have a company in their group that has GPS when they are dealing with the construction industry.

11. Tax policy solutions for deemed employment

Introduction

11.1 This section analyses the various solutions which are available firstly, under existing legislation and secondly, under a new concept for legislation which allows for joint and several liability. This would enable the umbrella company to continue to function under its own Employer's Reference Number and the agency or end client (if there is no agency) to have the liability for the PAYE and NICs attached to them.

11.2 Crucially, it would also enable HMRC to recover any tax that is due automatically without having to apply to transfer the debt thus, fulfilling the policy objectives.

Existing legislation

- s.44 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), the existing "agency worker" tax rule;
- Offshore "Host Employer" Rules (ITEPA 2003, s.689 & NICs Regs)
- Managed Service Company (MSC) Debt Transfer (ITEPA 2003, s.688A)
- Off-Payroll Working Rules Chapter 10 ITEPA – Chain Liability Provisions

Implementing joint and several liability

- Deemed Dual-Employer Model
- Statutory Debt Transfer (Contingent Liability) Model

New concepts

- Defined "Joint Employment" for Tax
- Licensing or Registration Conditions Tied to Tax Compliance
- Enhanced Due Diligence and Penalty Regimes

s.44 ITEPA – treatment of workers supplied by agencies

11.3 Section 44 ITEPA 2003⁸⁹ is the cornerstone of the agency worker legislation. It ensures that where an individual provides services through or via an intermediary, such as an employment agency, any payment for their services is treated as employment income subject to PAYE and NIC. The problem with s.44, however, is that the legislation requires the agency to consider whether the worker is under the supervision, direction and control (SDC) by any person.

⁸⁹ Chapter 7, Part 2 of ITEPA 2003 – Appendix 20

11.4 This test is often misapplied, or the agency relies on a standard generic ‘SDC declaration’ rather than any meaningful assessment. This practice results in widespread misclassification. So, s.44 is not the ideal piece of legislation unless HMRC plans to police it more effectively.

Umbrella company workaround

11.5 Since 2014, these agency rules have placed the PAYE obligations on the agency that supplies the worker to the end client. This was intended to prevent agencies from avoiding PAYE by claiming workers were self-employed. However, umbrella companies have been used as a workaround to s.44.

11.6 When a worker is employed by an umbrella company, which then supplies the worker to the client, often via an agency, the arrangement falls outside the scope of the s.44 - the agency tax legislation. This is because the worker technically is someone else’s employee i.e. the umbrella company’s. The result is that the agency is relieved of the s.44 obligation, and the umbrella company becomes responsible for PAYE.

11.7 HMRC explicitly noted this gap in its consultation outcome⁹⁰: *“These [agency] rules do not apply where an umbrella company is used to employ the worker and as such are circumvented by the umbrella company model.”*⁹¹ It is likely that the proliferation of umbrella companies in recent years can be partly attributed to this loophole. Option 3 is designed to close that loophole by bringing umbrella arrangements into line with s.44’s original intent. In effect, the proposal could extend or modify s.44 so that the presence of an umbrella employer will no longer shield the agency from liability.

11.8 The same agency that would be responsible under s.44 if it had engaged the worker directly will also bear responsibility when an umbrella is interposed. The government emphasises that this change *“ensures that the approach to taxation is consistent across these two engagement models”*⁹².

11.9 Under Option 3’s framework, s.44 would function by deeming the agency as the statutory employer for tax purposes even though the worker has a contract of employment with the umbrella company. The agency’s PAYE/NIC obligations would apply *“while [the agency] can continue to outsource the operation of payroll to [the] umbrella company... [it] will no longer be able to outsource the underlying obligation*

⁹⁰ Appendix 17 - Government Response

⁹¹ Government response to questions 34 to 41 para. 6

⁹² See above.

and will be ultimately responsible if the umbrella company ... fails to [operate PAYE] correctly.”⁹³

11.10 The umbrella company’s role would be relegated to that of a payroll administrator or intermediary for convenience, rather than the party HMRC looks to for the tax. This would probably mean that the agency would withhold tax on the worker’s pay and account for it to HMRC. Funds passed to the umbrella would likely be net of PAYE and NIC, except perhaps the umbrella’s fee or any reimbursable expenses.

11.11 S.44’s deeming mechanism will bite notwithstanding the worker’s employment contract with the umbrella. This will represent a significant legal shift and has been flagged by industry representatives as a model that is unlikely to work for umbrella companies.

11.12 A critical question is how liability will be shared or allocated between the umbrella company and the newly deemed employer (agency) under Option 3. Will the umbrella be completely off the hook for PAYE, or could both parties be held jointly and severally liable for tax compliance?

11.13 The clear intention is to shift primary liability to the agency. As the government states, umbrella companies *“will no longer be able to outsource the underlying obligation” to account for tax – the agency engaging the umbrella will be “ultimately responsible”*.

11.14 This suggests that, in legislation, the agency (or end client, where applicable) will be made the principal party liable for PAYE and NIC, rather than creating a dual or shared liability. In other words, HMRC would ordinarily pursue the agency for any underpaid tax, not the umbrella.

s.44 mechanics

The mechanics of the legislation could be designed in two ways:

- Complete deeming; or
- Joint liability

11.15 Complete deeming - the agency replaces the umbrella as the employer for tax purposes, and the umbrella is treated as if it were transparent or absent in the PAYE chain.

⁹³ Government response to questions 34 to 41 para. 5

11.16 Joint liability - the umbrella and the agency would both be legally liable for the PAYE debts. This should allow the umbrella to continue to use its own Employer's Reference Number (ERN) and allow HMRC to collect from whichever entity is best placed. However, HMRC needs to be able to collect the tax from a third party without having to apply for it. So, it would need to be joint and several liability rather than just joint or shared.

11.17 HMRC's policy paper leans towards complete deeming. This follows the existing off-payroll working rules under Chapter 10 ITEPA where the "fee-payer" in the supply chain is made solely responsible for withholding tax.

11.18 HMRC considered which entity in a chain should be the deemed employer: the agency closest to the client (as current agency rules do) or the one closest to the umbrella (as the off-payroll rules do). The government's current view is that the agency contracting with the end client should have the liability, as this "*client-facing*" business is "*least likely to be structured, and able to behave, in ways designed to frustrate HMRC's compliance*"⁹⁴. This indicates a policy choice to target the most solvent and accountable entity, rather than smaller intermediaries deeper in the chain.

Offshore "Host Employer" Rules (ITEPA 2003, s.689 & NICs Regs)

11.19 Under s.689 of ITEPA⁹⁵, if a worker's direct employer is overseas, any UK entity that makes payments to the worker (often the UK agency or client) must operate PAYE and is treated as the employer for tax purposes⁹⁶.

11.20 A parallel NIC provision (Regulation 5 and Schedule 3 of the Social Security (Categorisation of Earners) Regulations 1978) similarly makes a UK "host" liable as a secondary contributor for NIC.

11.21 These deeming rules were historically used to transfer PAYE/NIC liability to agencies or end clients when offshore intermediaries or umbrellas were used to avoid UK secondary NICs.

Certification Scheme

11.22 The legislation also applies a certification scheme. "*If the offshore employer voluntarily meets all PAYE and NICs obligations on behalf of the licensee, then HMRC will issue a certificate exempting the licensee from their PAYE and NICs obligations. As*

⁹⁴ Government response to questions 34 to 41 para. 7

⁹⁵ [S.689 Income Tax \(Earnings and Pensions\) Act 2003](#)

⁹⁶ [Offshore Employment Intermediaries – Gov.uk](#)

*long as this certificate is in force, the licensee cannot be pursued for any PAYE or NICs due.”*⁹⁷ This could also be applied to Option 3.

11.23 Option 3’s mechanism could mirror these rules. This would effectively treat the UK agency as a “host employer” for tax, even if the umbrella is onshore. By amending s.689 and the NIC regulations (or introducing analogous provisions for onshore umbrellas), HMRC could hold agencies jointly liable for the tax obligations, without removing the umbrella’s own PAYE scheme.

11.24 The umbrella would continue to operate payroll under its Employer Reference Number, but both it and the agency would be jointly and severally responsible in law for remitting the correct PAYE and NICs (much as a UK host and offshore employer are effectively co-liaible under the current s.689 framework).

Managed Service Company (MSC) Debt Transfer (ITEPA 2003, s.688A)

11.25 The MSC legislation provides a clear precedent for joint liability in PAYE enforcement. If a worker’s company is deemed a Managed Service Company, all payments to the worker must be treated as employment income with PAYE/NIC withheld. Crucially, if the MSC fails to pay the tax due (for example, it folds or evades payment), HMRC can transfer the PAYE and Class 1 NIC debt to third parties connected to the arrangement⁹⁸.

11.26 Section 688A of ITEPA 2003 (Part 11) and accompanying regulations empower HMRC to recover an MSC’s unpaid PAYE/NIC from, for instance, the MSC’s directors, the scheme promoter, or others who facilitated the arrangements. Those parties become jointly and severally liable for the debt.

11.27 There is no statutory defence such as ‘reasonable care’ under the MSC legislation. The MSC legislation was deliberately designed so HMRC could recover from a third party without them being able to avoid liability by claiming ignorance or negligence.

Off-Payroll Working Rules Ch 10 – Chain Liability Provisions

11.28 The Off-payroll Working reforms (Chapter 10 of ITEPA 2003, as updated in Finance Act 2021) (OPW) introduced a form of cascade liability in labour supply chains.

⁹⁷ [PAYE81770 – PAYE operations: international employment](#)

⁹⁸ [ESM3615 - Managed Service Companies \(MSC\): MSC Transfer of Debt Provisions - Legislation - HMRC internal manual - GOV.UK](#)

Under these rules, the party paying a contractor's personal service company (the "fee-payer," often an agency) is treated as the employer for PAYE/NIC on deemed employment income.

11.29 If that fee-payer fails to deduct or pay the tax, HMRC can shift the liability up the chain where there is "...no realistic prospect of recovering from the deemed employer."⁹⁹ The law allows recovery of the tax from another "relevant person" higher in the supply chain (for example, the end client or the next agency above). This is achieved through provisions inserted by FA 2021¹⁰⁰ which ensure that if the deemed employer (fee-payer) doesn't fulfil its PAYE obligation, HMRC can collect the deemed employer "PAYE debt" from a higher-tier entity in the chain.

11.30 This framework could inform an umbrella joint liability model. By legislating a similar chain of liability, HMRC could stipulate that if the umbrella fails to account for PAYE/NIC, the agency (as the next entity in the chain) becomes liable by default. Essentially, the recruitment agency would be a "deemed employer" for tax purposes, much like the fee-payer in OPW.

Joint and several liability notices

11.31 Finance Act 2020 Schedule 13¹⁰¹ introduced 'Joint and Several Liability Notices for Company Directors' for cases of tax evasion/avoidance or repeated insolvency. This makes named individuals (directors or those controlling companies) jointly liable for company tax debts.

11.32 While these tools target individuals rather than making two companies liable for the same debt, they indicate the trend toward joint liability in tax enforcement. They could be invoked if, say, an umbrella company repeatedly phoenixes to avoid PAYE debts. Its directors (or even shadow directors orchestrating schemes) could face joint liability notices.

Summary

11.33 Existing law provides a patchwork of mechanisms (deemed employer rules, debt transfers, chain liability, and personal liability tools) that could be expanded or adapted to firmly attach PAYE/NIC responsibility to both umbrella companies and the agencies engaging them. Each of these frameworks seeks to prevent "buck-passing" of tax obligations, which is precisely the goal of Option 3.

⁹⁹ [S.688AA Workers' services provided through intermediaries: recovery of PAYE](#)

¹⁰⁰ [The Income Tax \(Pay As You Earn\) \(Amendment No. 3\) Regulations 2020 - PAYE regulations 97LA-97LK](#)

¹⁰¹ [Finance Act 2020 Schedule 13](#)

Implementing Joint and Several Liability

11.34 How might HMRC legislate for agencies and umbrellas to share PAYE/NIC liability while the umbrella retains its PAYE scheme?

11.35 The new rules will likely be structured so that the umbrella remains the worker's contractual employer for employment rights, but the agency is made liable in law for fulfilling all PAYE and NIC obligations. In order to implement joint and several liability, however, HMRC could take one of two approaches (or a blend of both):

- Deemed Dual-Employer Model; or
- Statutory Debt Transfer (Contingent Liability) Model

Deemed Dual-Employer Model

11.36 Parliament could enact a provision deeming that, for workers supplied via an umbrella, the employment business (agency) is also treated as an employer for the purposes of income tax and NICs. In other words, both the umbrella and the agency would be “employers” under the PAYE Regulations and NIC legislation.

11.37 The joint liability could be included in a Finance Act, for example: *“Where a worker is employed by an intermediary (umbrella company) and supplied by an employment business to a client, the employment business shall be jointly and severally liable with the intermediary for all PAYE income tax and Class 1 NICs due in respect of the worker’s earnings.”*

11.38 Corresponding changes to PAYE regulations would clarify how practical reporting is handled. It could be that the umbrella continues filing Real Time Information returns under its reference, but the agency's details might be noted or available.

11.39 This dual-employer approach ensures HMRC has “two bites at the cherry” for enforcement. If the umbrella defaults or engages in fraud, the agency is on the hook to pay the tax debt. It also directly imposes a duty on agencies to police tax compliance of the umbrellas they use.

11.40 The joint or dual employment model is not, however, the model of choice for many in the industry. Joint employment has been linked to VAT fraud and has been noted by various industry bodies (such as REC and TUC) as likely to cause confusion for the worker.

Statutory Debt Transfer (Contingent Liability) Model

11.41 The legislation could frame the agency's liability as secondary, kicking in if the umbrella fails to pay. This would be similar to the MSC and off-payroll provisions above, as well as the certification scheme used in s.689 ITEPA where a voluntary payment of PAYE is made. The law might provide that if PAYE tax or NICs due on an umbrella worker's income is not accounted for by the umbrella, HMRC may issue a notice to the agency deeming the unpaid amounts to be the agency's debt.

11.42 The agency would then be liable as if it were the employer from the outset. This is essentially a joint and several liability outcome. The debt becomes enforceable against the agency (while the umbrella remains liable too). Section 688A of ITEPA (MSC debts) and the off-payroll debt rules (ITEPA s.688AA with PAYE regs 97LA-97LK) offer templates for the legislative language.

11.43 A new "Umbrella Company Tax Compliance" section could be inserted into ITEPA 2003, Part 11¹⁰² (which deals with PAYE obligations and already houses these debt transfer rules). It might enumerate the "relevant persons" who can be made liable. Presumably, the first port of call would be the agency that directly contracted with the umbrella and possibly the end client if there is no agency or if the agency also fails.

Statutory defences

11.44 The law could include a due diligence defence or HMRC guidance to not penalise agencies who took "reasonable care" in choosing compliant umbrellas. This, however, was part of the reason not to use Option 2 – transfer of debt. The reason being that a non-compliant agency could abuse the reasonable care defence and HMRC would have to spend a disproportionate amount of time proving that reasonable care was not taken.

11.45 In practice, however, just having the joint-liability power on the statute books creates a strong incentive for agencies to monitor umbrella compliance. The mere risk that HMRC can pursue the agency for any shortfall should drive behavioural change, as was seen with the introduction of OPW / MSC debt transfer provisions.

New statutory concepts

11.46 HM Government could consider bespoke legislative measures to enforce PAYE/NIC compliance in the umbrella market. This could either be by a defined 'joint

¹⁰² [Income Tax \(Earnings and Pensions\) Act 2003 - Part 11 Pay As You Earn](#)

employment’ model; or by regulating the arrangement of a measure similar to a ‘failure to prevent tax evasion’.

Defined Joint Employment

11.47 Introduce a definition of “joint employers for tax purposes” in tax law. This concept could explicitly acknowledge that in certain labour supply arrangements (like umbrellas), two entities can share tax responsibilities for the same worker. This is somewhat novel in UK tax law, but it would formalise the joint and several liability in a clear way.

11.48 For example, a new section could state that “...*the umbrella company and the employment agency shall be jointly and severally liable for compliance with all obligations imposed on an employer by the PAYE Regulations and Part 1 of the Social Security Contributions and Benefits Act 1992, in respect of payments to the worker.*”

11.49 Such a framework would give HMRC flexibility to collect from either party and could be accompanied by provisions on information-sharing (e.g. requiring umbrellas to furnish agencies with payroll records or requiring joint record-keeping).

Licensing or registration tied to tax compliance

11.50 The government is moving to regulate umbrella companies via the Employment Rights Bill (bringing umbrellas under the Employment Agency Standards inspectorate and consequently, under the Fair Work Agency). This opens the door to licensing umbrellas or agencies with conditions related to tax compliance. A new framework could require agencies to only engage licensed umbrellas, and one condition of an umbrella’s license could be an agreed tax compliance arrangement whereby the agency is jointly responsible for PAYE.

11.51 For instance, agencies and umbrellas might be obliged to sign a joint undertaking to HMRC for each contract, or umbrellas could be mandated to use a client-specific PAYE reference that the agency registers an interest in. If HMRC systems were adapted, an agency could be flagged as an “associated PAYE account” for an umbrella.

11.52 This would ensure that HMRC could easily communicate about any compliance issues and facilitate joint audits of both entities. Whilst this is more of an administrative framework than a purely legislative one, it would support the legislative joint liability by formalising cooperation between umbrellas and agencies on tax matters.

Enhanced due diligence and penalty regimes

11.53 New legislation could also bolster joint liability with specific penalties or requirements. For example, HMRC could be given powers to levy a penalty on an agency that fails to undertake proper due diligence in selecting an umbrella (somewhat akin to the “reasonable care” tests in off-payroll rules).

11.54 Alternatively, a “failure to prevent tax evasion” style offence (as in the Criminal Finances Act 2017¹⁰³) could be extended to the umbrella context, making an agency criminally liable if it facilitates an umbrella’s tax evasion by way of negligence or turning a blind eye. However, the simpler and more direct route remains a civil joint liability for the tax itself, as outlined above, rather than new criminal law.

11.55 There is also a new offence of ‘failure to prevent fraud’ introduced by the Economic Crime and Corporate Transparency Act 2023¹⁰⁴. Under the legislation, an organisation will be criminally liable where:

- a specified fraud offence is committed by an employee, agent or other ‘associated person’, for the organisation’s benefit
- the organisation did not have ‘reasonable’ fraud prevention procedures in place

It does not need to be shown that company managers ordered or knew about the fraud.

The offence applies to:

- all large incorporated bodies, subsidiaries and partnerships
- large not-for-profit organisations such as charities if they are incorporated
- incorporated public bodies

The offence will come into effect from September 2025.

Conclusion

11.56 Multiple existing legislative models could be leveraged or adapted to create joint and several liability for PAYE and NICs in umbrella arrangements.

11.57 S.44 ITEPA historically has not been particularly effective due to systemic weaknesses stemming from commercial incentives, practical enforcement challenges and ambiguous criteria. Some agencies typically sidestep proper assessments to maintain cost advantages.

¹⁰³ [Corporate offences for failing to prevent criminal facilitation of tax evasion - GOV.UK](#)

¹⁰⁴ [Economic Crime and Corporate Transparency Act 2023: Guidance on failure to prevent fraud](#)

11.58 The offshore intermediary rules show how deeming an agency as an employer can work. The legislative framework could be adapted from the ‘host employer’ in s.689 ITEPA to Option 3 - deemed employment. This measure also includes a certification scheme. If PAYE and NICs obligations are met voluntarily by the onshore EOR, HMRC could issue a certificate exempting the agency from their PAYE and NICs obligations.

11.59 The MSC and off-payroll provisions also demonstrate mechanisms to enforce tax debts further up the labour supply chain.

11.60 Building on these, HMRC’s Option 3 reform will likely either designate agencies as the primary liable party for PAYE/NIC (with umbrellas acting as payroll agents) or make agencies a fallback liable party if the umbrella defaults, or a combination of both.

11.61 Umbrella companies can only continue to use their own PAYE references and pay workers as they do now, however, if there is joint and several liability. Agencies will share full legal responsibility for correct withholding and payment of tax, but HMRC will have the ability to pursue the agency direct if the umbrella defaults.

11.62 This joint liability approach, backed by clear statutory language and HMRC’s enforcement powers, is intended to ensure no entity in the supply chain can escape accountability for PAYE and NICs compliance. It represents a significant tightening of tax enforcement in the temporary labour market, designed to protect workers and the Exchequer from the kind of non-compliance that the umbrella model has sometimes enabled.

12. Regulation

12.1 The industry has been calling for the regulation of the umbrella company for many years. The regulation of the industry would be under the remit of the Department of Business (DBT). The obvious solution is to include the umbrella company and other payment intermediaries within the Conduct of Employment Agencies and Employment Businesses Regulations 2010 under the governance of the Employment Agencies Act.

12.2 In addition to using the existing legislation to regulate the industry, the Key Information Document (KID) which was introduced in Reg 13A of the Conduct Regs could also be used. This is discussed further below.

Employment Agencies Act 1973

12.3 The EAA¹⁰⁵ regulates the conduct of employment agencies which recruit and manage temporary and permanent labour. It governs the Conduct of Employment Agency and Employment Businesses Regulations 2003¹⁰⁶.

Conduct Regulations

Conduct of Employment Agencies and Employment Businesses Regulations 2003

12.4 A statutory instrument governed by the Employment Agencies Act 1973 (EAA). The Conduct Regulations could be adapted to include the umbrella company under the definition of the ‘employment business’.

An Employment Business is defined as:

In the Conduct Regulations:

"employment business" means an employment business as defined in section 13(1) and (3) of the Act and includes a person carrying on an employment business, and in the case of a person who carries on both an employment business and an agency means such a person in his capacity in carrying on the employment business;

In the Employment Agencies Act s.13 (1):

“employment business” has the meaning assigned by subsection (3) of this section but does not include any arrangements, services, functions or business to which this Act does not apply by virtue of subsection (7) of this section;

¹⁰⁵ Employment Agencies Act 1973

<https://www.legislation.gov.uk/ukpga/1973/35>

¹⁰⁶ Conduct of Employment Agencies and Employment Businesses Regulations 2003

<https://www.legislation.gov.uk/uksi/2003/3319/contents>

EAA s.13 (3):

12.5 For the purposes of this Act “employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity.

Exemptions are included in s.13 (7).

Employment Rights Bill 2025

12.6 This new clause would expand the scope of the Employment Agencies Act 1973 to cover other types of business that participate in arrangements under which persons are supplied by their employer to work for other persons (such as “umbrella companies”)

In section 13 of the Employment Agencies Act 1973 (interpretation), for subsection (3) substitute—

- “(3) For the purposes of this Act “employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of participating in employment arrangements.
- (3A) Employment arrangements” means arrangements under which persons who are, or are intended to be, in the employment of a person are, or are intended to be, supplied to act for, and under the control of, another person in any capacity.
- (3B) “Participating in” employment arrangements means doing any of the following in connection with the arrangements—
- (a) being an employer of the persons who are, or are intended to be, supplied under the arrangements;
 - (b) paying for, or receiving or forwarding payment for, the services of those persons, in consideration of directly or indirectly receiving a fee from those persons;
 - (c) supplying those persons (whether or not under the arrangements);
 - (d) taking steps with a view to doing anything mentioned in paragraphs (a) to (c).

Key Information Document

12.7 From 6 April 2020, Regulation 13A of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the “Conduct Regs”) required that agency workers were to be issued with a KID before they agree on terms with employment agencies or businesses.

The following facts must be provided within the KID:

- Name of worker
- Contract type
- Identity of the employment business
- Rate of pay
- Pay intervals
- Statutory deductions
- Non-statutory deductions
- Any fees for goods or services, or other benefits
- Leave entitlement

Umbrella Company

12.8 Where there is an umbrella company or intermediary involved, it is still the responsibility of the employment business to provide the KID. The employment business must gather the information required from the intermediary/umbrella and where the intermediary or umbrella company changes, a revised KID must be issued.

12.9 In addition to the list provided above for an agency worker relationship, the following facts must be provided within the KID when an intermediary/umbrella is involved:

- Name of intermediary or umbrella company
- Who will employ the worker
- Who will pay the worker
- Any business connection between the employment business and umbrella/intermediary
- Supplementary information
- Representative example statement

Intermediary/umbrella company information:

- Rate of pay to the intermediary/umbrella
- Statutory deductions from the intermediary/umbrella
- Non-statutory deductions from the intermediary/umbrella

Worker pay information:

- Expected or minimum rate of pay to individual
- Any other differences between the umbrella company's income and the worker's net pay
- Any other benefits
- Any Regulation 32 opt-out agreement

12.10 There is a substantial amount of information needed for the KID and processes must be updated to ensure the accurate and timely transfer of information between the intermediary/umbrella and agency.

Fair Work Agency

12.11 The Fair Work Agency (FWA) is a central component of the Labour Government's Employment Rights Bill 2025, aimed at consolidating and enhancing the enforcement of employment rights in the UK.

12.12 Key Functions of the Fair Work Agency:

- **Consolidation of Enforcement Bodies:** The FWA will merge existing enforcement agencies, including the Gangmasters and Labour Abuse Authority (GLAA), HM Revenue and Customs' National Minimum Wage unit, and the Employment Agency Standards Inspectorate, into a single entity. This consolidation aims to streamline enforcement and provide a unified approach to protecting workers' rights.
- **Expanded Enforcement Powers:** The agency will have authority over several critical areas:
 - **National Minimum Wage Compliance:** Ensuring employers adhere to minimum wage laws.
 - **Holiday Pay Enforcement:** Addressing issues related to holiday pay entitlements.
 - **Statutory Sick Pay (SSP):** Overseeing compliance with SSP regulations.
 - **Modern Slavery Offenses:** Combating labour exploitation and modern slavery practices.
 - **Employment Agency Standards:** Regulating employment agencies and businesses to ensure fair practices.
- **Inspection and Penalty Authority:** The FWA will be empowered to conduct workplace inspections and impose penalties on employers found violating employment laws, thereby strengthening compliance and deterring malpractice.

Implementation Timeline

12.13 The establishment of the Fair Work Agency is scheduled for late 2026, following the passage and implementation of the Employment Rights Bill. This timeline allows for the necessary structural and operational preparations to ensure the agency's effectiveness upon launch.

Appendices

13. Timeline

30 November 2021	Call for Evidence – Umbrella Company Market https://assets.publishing.service.gov.uk/media/61a4c9cb8fa8f503816403b7/Umbrella_Company_CfE_Final.pdf
6 June 2023	Call for Evidence – Summary of Responses https://www.gov.uk/government/calls-for-evidence/call-for-evidence-umbrella-company-market
6 June 2023	Consultation - Tackling non-compliance in the umbrella company industry https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market
30 October 2024	Policy Paper - Tackling non-compliance in the umbrella company industry https://www.gov.uk/government/publications/tackling-tax-non-compliance-umbrella-company-market/tackling-non-compliance-in-the-umbrella-company-market--3
4 March 2025	Tackling non-compliance in the umbrella company market - Government response [4 March 2025] https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market/outcome/tackling-non-compliance-in-the-umbrella-company-market-government-response-accessible
April 2025	HMRC will inform stakeholders ahead of the draft legislation publication
Summer 2025	Draft legislation is expected to be published under the Finance Bill
Autumn 2025	The Finance Act is expected to be published
6 April 2026	Umbrella company policy will take effect

14. Overview of the market

Estimates for umbrella company workers

2015

Increased from 300,000 and 400,000

2021

Increased to 600,000¹⁰⁷ [This figure includes workers from Mini Umbrella Companies)¹⁰⁸

This figure is also backed up by the CIOT Low Income Tax Reforms Group - Labour Market Intermediaries report – March 2021¹⁰⁹

These numbers were both, however, from 2021 but, recent reports show that there was not as large a swing to umbrella companies from PSCs as originally thought. So, the figure is likely to have increased but, by maybe 10%.

2023

10% increase

660,000 My Digital report (2023)

2024

700,000 HMRC Policy paper¹¹⁰

¹⁰⁷ Call for evidence: umbrella company market – HMT 30 November 2021

<https://www.gov.uk/government/consultations/call-for-evidence-umbrella-company-market>

¹⁰⁸ This has been verified by Meredith McCammond who wrote the LITRG report on Labour Market Intermediaries below.

¹⁰⁹ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Labour-Market-Intermediaries-Report-2021.pdf>

Written by Meredith McCammond

¹¹⁰ Policy Paper - Tackling non-compliance in the umbrella company market – 30 October 2024

<https://www.gov.uk/government/publications/tackling-tax-non-compliance-umbrella-company-market/tackling-non-compliance-in-the-umbrella-company-market--3>

15. Consultation

Tackling non-compliance in the umbrella company market

Published: 6 June 2023

Link to the Consultation

<https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market>

Chapter 4 – Tackling tax non-compliance in the contingent labour market

Option 1 Mandating due diligence

The end client often doesn't have visibility on the supply chain. The government believes that this lack of visibility and absence of due diligence may create the gaps non-compliant umbrella companies need to enter and operate within the labour supply chain.

The government is interested in exploring if a requirement for businesses using umbrella companies to carry out mandatory due diligence, with a potential penalty for failure to do so, may lead to fewer non-compliant umbrella companies entering labour supply chains, protecting workers from the harms that can arise.

Option 2 Transfer of debt

Transfer of tax debt that cannot be collected from an umbrella company to another party in the supply chain

Some individuals will have made an active choice to enter into disguised remuneration arrangements, tempted by promises of increased take-home pay. While it is appropriate, where the relevant legal tests are met, to collect the tax due from individuals, in some cases it may be more appropriate to consider the actions of other parties. Particularly this could be where non-compliance has occurred and there has been a failure of due diligence within the wider labour supply chain and where the other parties in the labour supply chain have, explicitly or implicitly, benefitted from the non-compliance, for example by paying a lower fee for a worker's services.

Option 3 Deemed Employment

Deeming the employment business which supplies the worker to the end client to be the employer for tax purposes where the worker is employed by an umbrella company, moving the responsibility to operate PAYE

4.37 Some stakeholders suggested that an effective way to prevent non-compliance by umbrella companies would be to prevent them from handling gross funds. This could be achieved by requiring a party sitting above the umbrella company in the labour supply chain (such as the employment business) to make deductions of Income Tax and NICs from the fee paid for the supply of the worker's services. This would mean for example that non-compliant umbrella companies would not be able to incorrectly treat payments to workers as non-taxable, such as with the "loans" commonly seen in avoidance schemes, if the tax had already been withheld and paid to HMRC.

4.38 The government welcomes views from stakeholders on how this might work in practice, whether it would be a proportionate change and the extent of any wider risks and impacts.

General operation

4.39 This option would involve legislating to change the entity in the labour supply chain that would be treated as the employer for tax purposes and secondary contributor for NICs purposes. This deemed employer would be responsible for deductions of Income Tax and NICs and also for payment of employer NICs. Under this option, the deemed employer would still be able to use the services of another business, for example, a payroll bureau or umbrella company, to calculate the Income Tax and NICs liabilities but would remain ultimately responsible for PAYE being operated correctly.

4.40 It is the government's view that the most appropriate party to act as the deemed employer would be the employment business which has a contract with the end client to supply the worker to them. This would mirror the existing agency legislation in Chapter 7, Part 2 ITEPA 2003. In the event that an umbrella company was engaged directly by the client, the client would be the deemed employer. Another party which could act as the deemed employer would be the employment business that has a contract with the umbrella company. This would be similar to the approach taken in the off-payroll working rules in Chapter 10, Part 2 ITEPA 2003. Under these rules, the intermediary that pays the worker's Personal Service Company is treated as the deemed employer, assuming the end client and any other parties in the labour supply have met their obligations under the legislation. The government is interested to hear views from stakeholders on which entity would be best placed to be the deemed employer, were this option to be taken forward.

Question 34: *Do you agree that, were this option to be pursued, it would address tax non-compliance in the umbrella company market, and to what extent?*

Question 35: *Were this option to be taken forward, which entity in the labour supply chain would be best placed to be the deemed employer, and why?*

Expected impacts

4.41 This option is expected to have a substantial impact on much of the non-compliant tax behaviour currently seen in the umbrella company market.

4.42 By placing responsibility for operating PAYE nearer the top of the labour supply chain, the government believes that non-compliant umbrella companies would be less likely to enter the chain. Employment businesses and clients that want to outsource the administration of operating a payroll would still be able to do so. However, they would be incentivised to ensure that any outsourcing is only contracted to reputable firms because the ultimate responsibility for compliance would remain with them.

4.43 As with any reform, the temporary labour market may also react to the introduction of this option by re-evaluating its engagement practices, in some cases potentially moving away from using the umbrella company model. During the Call for Evidence, many client and employment business stakeholders said that one of the key services that they value from umbrella companies is taking over the operation of the payroll, which would otherwise be the responsibility of the employment business. This option would not prevent employment businesses from engaging another party to run their payroll but it would stop them from being shielded from responsibility for failure to do this correctly. Businesses could therefore continue to use umbrella companies for tax administration, as well as the administration of employment rights.

4.44 It is not thought that workers would see a significant impact were this option to be taken forward, although they may have different employers for tax and rights purposes. The government would consider what implications this might have for the practicalities of employment, for example, the issue of payslips, were this option to be taken forward.

Question 36: *How would businesses manage their obligations as deemed employers following this change? What could the government do to support them with these new obligations?*

Question 37: *Would businesses stop using umbrella companies as a result of this change? How many businesses*

Potential risks

4.45 The government acknowledges the risk that this option may lead to disruption in the temporary labour market as a result of a large number of employment businesses re-evaluating their relationships with umbrella companies. The government is interested in hearing views from stakeholders on the extent to which they think this is a risk. There is also a risk that, should engagement practices change, workers could be

moved by non-compliant umbrella companies into some other form of non-compliant arrangement.

Question 38: *How would the temporary labour market respond to this option being taken forward?*

Question 39: *Would this option improve outcomes for workers engaged via umbrella companies?*

Question 40: *Are there any further risks that the government should consider before deciding whether to take this option forward?*

Question 41: *Are there any other options that have not been covered in this chapter that you think could reduce non-compliance in the umbrella company market?*

16. Policy paper

Tackling non-compliance in the umbrella company market

Published: 30 October 2024

Link to the full Policy Paper

<https://www.gov.uk/government/publications/tackling-tax-non-compliance-umbrella-company-market/tackling-non-compliance-in-the-umbrella-company-market--3>

Introduction

The UK's labour market is not delivering for workers or businesses and is contributing to the UK's economic underperformance. The key to addressing this is improving standards within the temporary labour market.

HMRC analysis

Umbrella Company workers (at least in 2022 - 2023)	700,000
Non-compliant umbrella company workers (at least in 2022 – 2023)	275,000
Lost to disguised remuneration tax avoidance schemes	£500 million

Out of the **700,000**, at least **275,000** of these umbrella company workers were engaged in umbrella companies that failed to comply with their tax obligations.

£500 million was lost to disguised remuneration tax avoidance schemes in 2022 to 2023, almost all of these were facilitated by umbrella companies. Hundreds of millions more were lost to so-called mini umbrella company fraud or MUCs. There are also other fraudulent attacks by people abusing umbrella company structures.

The measure is expected to protect around **£2.8 billion** from being lost to umbrella company non-compliance across the scorecard period 2029 to 2030.

What is being proposed?

The government will introduce legislation to make agencies that use umbrella companies to employ workers responsible for ensuring that the correct income tax and National Insurance contributions (NICs) are deducted and paid to HMRC. This will mean that the agency that supplies the worker to the end client will be legally responsible for operating PAYE on the worker's pay and will be liable for any shortfall, whether they operated their payroll themselves or used the umbrella company to run payroll for them. If there is no agency involved in the supply of the umbrella company worker, this responsibility will be placed on the end client itself.

This measure will only change where tax obligations sit when using an umbrella company to pay a worker. The underlying tax and NICs liabilities will not change and PAYE will operate in the usual way. This will make the tax position for workers employed by umbrella companies the same as for other agency workers.

Since the 1970s, legislation has been in place to treat the agency worker as an employee for tax purposes under Chapter 7, Part 2 of the Income Tax (Earnings and Pensions) Act 2003, s.44 ITEPA.

By amending s.44 to include umbrella companies, and making the agency responsible for PAYE when an umbrella company is used, this measure will make PAYE obligations consistent for agency workers regardless of how they are engaged. *“This measure will ensure that while businesses can continue to do this, they will no longer be able to outsource the underlying PAYE obligation and will be ultimately responsible if the umbrella company operating payroll on their behalf fails to do so correctly.”*

“The government anticipates that businesses that continue to outsource payroll operation to umbrella companies will take steps to ensure that these obligations will be correctly met on their behalf. This could include undertaking due diligence checks or putting in place legal indemnities.”

Who will be liable?

Impact on the agency

The agency who is last in the supply chain and who has a direct contractual relationship with the end client, has the liability. The agency will be responsible for ensuring that the correct income tax and National Insurance Contributions (NICs) are deducted and paid to HMRC.

Agencies who operate PAYE will withhold income tax and NICs before making payments to the umbrella company employing the worker. This will include the employer NICs.

Agencies who choose to outsource the operation of payroll to the umbrella company that employs the worker they are supplying, PAYE will be operated by the umbrella company on behalf of the agency and the agency will be liable for any shortfall.

Impact on the end client

If the umbrella company is in a direct relationship with the end client, it is the end client who will be responsible for accounting for PAYE. The end client can either operate the PAYE themselves or choose to outsource it. If they do outsource it, the end client remains liable for any shortfall.

Impact on the Umbrella Company

Umbrella companies will no longer be legally responsible for operating PAYE on payments to the workers that they employ.

Impact on the worker

Workers will continue to receive their pay net of income tax and NICs following the introduction of the measure, although the business providing their payslips may change.

When will this take effect?

This measure will take effect from April 2026.

17. Government response

Tackling non-compliance in the umbrella company market

Published: 5 March 2025

Link to the full Government Response

<https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market/outcome/tackling-non-compliance-in-the-umbrella-company-market-government-response-accessible>

Government response to questions 34 to 41

3.125 Although the consultation produced conflicting opinions on this option, the largest group of respondents thought this option would increase compliance. Taking on board the responses received, the government believes that this option would do the most to address tax non-compliance in the umbrella company market, improving outcomes for workers and protecting the Exchequer.

3.126 As announced at Autumn Budget 2024, the government therefore intends to introduce legislation to move the responsibility for accounting for PAYE from the umbrella company to the agency that contracts with the end client to supply the worker's services. In the event that there is no such agency in a labour supply chain, which is expected to be a minority of cases, this responsibility will be placed on the end client. The measure will take effect from April 2026. The government will **consult** on draft legislation this year, ahead of introducing legislation to Parliament.

3.127 The government recognises that concerns have been raised about the impact this measure could have on the sector and is grateful to those who raised them in response to the consultation. These concerns largely focused on the changes that businesses might make to how they engage labour, particularly the possible reduction in contracting with umbrella companies. Not all respondents thought that these changes to the way labour is engaged would represent a bad outcome. Some thought that they would improve compliance.

3.128 Whilst many umbrella companies operate diligently, supporting their employees and providing convenience and administrative benefits for agencies, too many are used to facilitate non-compliance including tax avoidance and tax fraud. HMRC analysis shows that umbrella companies were used to engage at least 700,000 workers in 2022-23. This analysis also shows that at least 275,000 of these workers, and likely significantly more, were engaged at some point in 2022-23 by umbrella companies that failed to comply with their tax obligations. This incurs significant losses for taxpayers and can leave workers with unexpected tax bills. In addition to causing significant harm to workers and taxpayers, non-compliant umbrella companies undercut compliant firms, threatening the viability of those businesses that do the right thing, as well as the functioning of the market itself. The government believes that this measure is a

proportionate response to the scale of the problem faced. It is forecast to raise £500m in 2029-30.

3.129 Some respondents raised concerns that the payroll expertise of umbrella companies would be lost if this option were to be taken forward. However, this option will not prevent businesses from engaging other entities to operate payroll on their behalf in the same way that other employers are able to. What this option does is ensure that while businesses can continue to outsource the operation of payroll to umbrella companies (or other, similar entities), they will no longer be able to outsource the underlying obligation and will be ultimately responsible if the umbrella company operating payroll on their behalf fails to do so correctly. It is the government's expectation that those businesses that choose to continue to outsource payroll operation to umbrella companies will take steps to ensure that these obligations will be properly discharged on their behalf.

3.130 In many ways, this option brings the tax position for umbrella company workers into line with other agency workers. Since 2014, the legislation at Chapter 7, Part 2 of the Income Tax (Earnings and Pensions) Act 2003 has placed employment responsibilities for agency workers with the agency that supplies the worker to the end client. These rules do not apply where an umbrella company is used to employ the worker and as such are circumvented by the umbrella company model. This has been cited as a reason for the growth of the umbrella company model. By placing employment obligations for tax purposes with the same agency when an umbrella company is used, this option ensures that the approach to taxation is consistent across these two engagement models.

3.131 Some respondents argued that this option would simply shift the non-compliance from umbrella companies to other entities in the supply chain such as employment agencies. The government expects that placing the PAYE obligations on the employment agency that supplies the worker to the end client should help mitigate this risk. It is expected that these client-facing businesses are the least likely to be structured, and able to behave, in ways designed to frustrate HMRC's compliance activity. HMRC will continue to monitor the temporary labour market and take strong action against those who fail to meet their tax obligations. If necessary, the government will consider further strategic policy options to crack down on tax non-compliance in the temporary labour market.

3.132 The government is grateful to respondents for their views on the potential impacts that this option could have for workers. Respondents pointed out that were this option to be introduced, workers who continue to be employed by umbrella companies could have different employers for tax and rights purposes, leaving them facing additional complexity in their engagements. The government will update its guidance for workers employed by umbrella companies to make clear what these changes mean for them.

3.133 Some respondents also focused on the benefits, such as a continuous employment record, that workers could lose out on if they are moved from umbrella company employment to some other form of engagement. However, views from workers in relation both to this consultation and the previous Call for Evidence

indicated that many people do not find that they receive these benefits in practice due to regularly having to change umbrella company when they start a new engagement. It is not clear therefore that other forms of engagement would provide for less continuity of employment. The Government's Employment Rights Bill also provides for workers to have basic rights from their first day in a new job.

18. HMRC GfC12 – Fraud

Outsourced Labour Fraud (OLF) ¹¹¹

Organised criminal groups operate in labour supply chains. Longer and more complex supply chains can present opportunities to divert the flow of money and try to disguise fraudulent activity. The complexity of the supply chain enables the fraudulent activity because it is difficult to monitor the full chain.

Non-compliant businesses in these models usually operate through a contrived ‘structure’ between a supplier and the workforce.

Organised Labour Payroll Fraud (OLPF)

These models are based on the movement of workers, and payroll responsibilities, from legitimate businesses to supply chains containing entities that perpetrate fraud by either not declaring or paying all of the relevant taxes to HMRC.

The commercial practice of outsourcing payroll activities is exploited by criminals, who acquire or set up companies that act as agencies or payroll providers. They often appear legitimate and charge rates that do not necessarily raise alarms.

The ‘payroll company’ will insist that they are nominated as the ‘employer of record’, either by transfer of the workforce to them or by contractual arrangement. They do this so they can charge VAT on the full value of the supply, maximising the amount of money they will attempt to divert through non-compliance.

Mini Umbrella Company Fraud (MUCs)

An ‘outsourcing’ or ‘promoter’ business, presenting as an umbrella company, splits the employment of temporary workers across multiple small, limited companies. These mini-umbrella companies are set up to fraudulently exploit government incentives aimed at helping small businesses.

Each MUC employs a few workers and there can be hundreds of these companies in a single chain.

‘Stooge or nominee’ directors are usually recruited to ‘front’ these companies in an attempt to try and disguise the real control or ownership of the company. Whilst often involving overseas directors, recruitment through social media adverts is also seen, including in the UK.

¹¹¹ Help with labour supply chain assurance – GfC12- Tax risks <https://www.gov.uk/guidance/help-with-labour-supply-chain-assurance-gfc12/tax-risks>

Labour fraud in construction (LFiC)

Whilst operating alongside genuine construction service supply chains, criminals create artificial chains of companies to facilitate and hide fraud.

The artificial supply chains are used to move tax liabilities related to labour, CIS deductions or both from payments made to workers, into companies. These companies then default, go missing or both.

LFiC can involve:

- VAT not being paid to HMRC
- CIS deductions not being correctly paid to HMRC
- fraudulent CIS GPS applications

It can also result in workers' Income Tax and National Insurance contributions not being covered.

Internal fraud

Employees might participate in fraud internally, by engaging with defaulters in the supply chain. This can involve bribery, corruption and money laundering as well as tax evasion.

The employee may use their position to benefit financially from criminal activity associated with supply chains by:

- setting up a new business as a director or controlling party
- falsifying or short-circuiting the usual due diligence and assurance procedures
- recommending entities for contracts

Employees can also be targeted by organised criminal gangs and coerced into criminal activity.

Other fraud and non-compliance

Tax fraud is not always carried out by organised criminal gangs and can occur anywhere in the supply chain. This might involve:

- fraudulently charging VAT on invoices when the business is not VAT-registered
- correctly charging VAT on invoices but deliberately not remitting it to HMRC
- making Income Tax and National Insurance contributions deductions from workers' pay but deliberately not remitting it to HMRC
- fraudulently claiming CIS deductions

Tax Avoidance Schemes (Disguised Remuneration)

Disguised remuneration schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance contributions. This is done by paying workers who use the schemes their income in the form of loans or other payments, which are claimed to be non-taxable. This is done to increase a worker's take-home pay and attract workers to the business.

Businesses engaging workers through labour supply chains (LSCs) need to be aware of the potential dangers of using and associating with umbrella companies that operate these types of tax avoidance schemes.

Current list of named tax avoidance schemes, promoters, enablers and suppliers:

<https://www.gov.uk/government/publications/named-tax-avoidance-schemes-promoters-enablers-and-suppliers/current-list-of-named-tax-avoidance-schemes-promoters-enablers-and-suppliers>

This page lists the names of tax avoidance schemes, promoters, enablers and suppliers. It also has a useful list of explanatory terms including:

- Accelerated Payment Notice (APN)
- Conduct notice
- Enabler
- Promoter
- Stop Notice
- Supplier

List of tax avoidance schemes subject to a stop notice

<https://www.gov.uk/government/publications/named-tax-avoidance-schemes-promoters-enablers-and-suppliers/list-of-tax-avoidance-schemes-subject-to-a-stop-notice>

This is a list of tax avoidance schemes that are subject to a stop notice. HMRC issues stop notices to promoters of tax avoidance schemes, requiring them to stop selling or promoting the scheme.

Under the Promoters of Tax Avoidance Schemes (POTAS) regime, HMRC can publish information about promoters of tax avoidance schemes that are subject to a stop notice, and details of the scheme specified in the notice.

The POTAS rules apply to promoters of tax avoidance schemes. These rules aim to deter the development and marketing of avoidance schemes.

HMRC can publish details of the arrangements included in the stop notice once the notice has been sent. However, the promoter or other persons subject to a stop notice can appeal, and HMRC cannot publish the name of the promoter or other persons subject to a stop notice before the appeal period has ended.

19. Fraud legislation

Failure to prevent fraud

Economic Crime and Corporate Transparency Act 2023

s.199 – s.206 Failure to prevent fraud¹¹²

The offence will come into effect on **1 September 2025**

Guidance on the failure to prevent fraud¹¹³

19.1 Under the offence, an organisation may be criminally liable where an employee, agent, subsidiary, or other ‘associated person’, commits a fraud intending to benefit the organisation and the organisation did not have reasonable fraud prevention procedures in place. In certain circumstances, the offence will also apply where the fraud offence is committed with the intention of benefitting a client of the organisation. It does not need to be demonstrated that directors or senior managers ordered or knew about the fraud.

19.2 The offence sits alongside existing law; for example, the person who committed the fraud may be prosecuted individually for that fraud, while the organisation may be prosecuted for failing to prevent it.

19.3 The offence will make it easier to hold organisations to account for fraud committed by employees, or other associated persons, which may benefit the organisation, or, in certain circumstances, their clients. The offence will also encourage more organisations to implement or improve prevention procedures, driving a major shift in corporate culture to help prevent fraud.

Note

19.4 Although the offence of failure to prevent fraud applies only to large organisations, the principles outlined in this guidance represent good practice and may be helpful for smaller organisations.

¹¹² <https://www.legislation.gov.uk/ukpga/2023/56/part/5/crossheading/failure-to-prevent-fraud>

¹¹³ <https://www.gov.uk/government/publications/offence-of-failure-to-prevent-fraud-introduced-by-eccta/economic-crime-and-corporate-transparency-act-2023-guidance-to-organisations-on-the-offence-of-failure-to-prevent-fraud-accessible-version>

Offence list for England and Wales

- Fraud offences under section 1 of the Fraud Act 2006 including:
 - Fraud by false representation (section 2 Fraud Act 2006)
 - Fraud by failing to disclose information (section 3 Fraud Act 2006)
 - Fraud by abuse of position (section 4 Fraud Act 2006)
 - Participation in a fraudulent business (section 9, Fraud Act 2006)
 - Obtaining services dishonestly (section 11 Fraud Act 2006)
 - Cheating the public revenue (common law)
 - False accounting (section 17 Theft Act 1968)
 - False statements by company directors (section 19 Theft Act 1968)
 - Fraudulent trading (section 993 Companies Act 2006)

20. S.44 ITEPA

Chapter 7

Application of provisions to agency workers

Agency workers

s.44 Treatment of workers supplied by agencies

- (1) This section applies if—
 - (a) an individual (“the worker”) personally provides services (which are not excluded services) to another person (“the client”),
 - (b) there is a contract between—
 - (i) the client or a person connected with the client, and
 - (ii) a person other than the worker, the client or a person connected with the client (“the agency”), and
 - (c) under or in consequence of that contract—
 - (i) the services are provided, or
 - (ii) the client or any person connected with the client pays, or otherwise provides consideration, for the services.
- (2) But this section does not apply if—
 - (a) it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person, or
 - (b) remuneration receivable by the worker in consequence of providing the services constitutes employment income of the worker apart from this Chapter.**
- (3) If this section applies—
 - (a) the worker is to be treated for income tax purposes as holding an employment with the agency, the duties of which consist of the services the worker provides to the client, and
 - (b) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment, but this is subject to subsections (4) to (6).
- (4) Subsection (5) applies if (whether before or after the worker begins to provide the services)—
 - (a) the client provides the agency with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2)(a), this section does not or will not apply, or
 - (b) a relevant person provides the agency with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2)(b), this section does not or will not apply.

- (5) In relation to services the worker provides to the client after the fraudulent document is provided—
 - (a) subsection (3) does not apply,
 - (b) the worker is to be treated for income tax purposes as holding an employment with the client or (as the case may be) with the relevant person, the duties of which consist of the services, and
 - (c) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment.
- (6) In subsections (4) and (5) “relevant person” means a person, other than the client, the worker or a person connected with the client or with the agency, who—
 - (a) is resident, or has a place of business, in the United Kingdom, and
 - (b) is party to a contract with the agency or a person connected with the agency, under or in consequence of which—
 - (i) the services are provided, or
 - (ii) the agency, or a person connected with the agency, makes payments in respect of the services.]

21. Ducas

HMRC v. Ducas Ltd [2024] EWHC 3132 (Ch)

https://assets.caselaw.nationalarchives.gov.uk/ewhc/ch/2024/3132/ewhc_ch_2024_3132.pdf

Ducas is in a group of companies including an umbrella company and had a turnover of some £564 million in 2023. HMRC was pursuing Ducas for £171 million of employer's NICs that they had failed to pay to HMRC. The tax owed was undoubtedly more than this but the employers' NICs are the easiest to quantify.

Freezing injunction

HMRC pursued Ducas through the High Court to get a freezing injunction on Ducas and its associated companies Enix Services Ltd and FL Capital Holdings Ltd. This is to prevent a risk of asset dissipation.

Fictitious reporting

Ducas supplied about 30,000 healthcare workers to the NHS through various recruitment companies. The recruitment companies did a certain amount of due diligence but were supplied with fraudulent payslips and accounts and the RTI was also fictitious. Ducas was paid gross and contracted with its customers on the basis that it was the employer and should be paying PAYE and ER NICs and EM NICs to HMRC.

Contrary to the contractual obligations and representations made by Ducas, however, Ducas passed these amounts to its associated company Enix who paid in excess of 90% of it to the workers. The turnover, however, was reported to be nearly £564 million in 2023. The workers were paid through a PSC, which was set up for each worker. There was also a so-called 'Contracts for Services' between Enix and Ducas, although this seemed to resemble the kind of contract you would have for a PSC worker.

Some £116 million was paid to FL Capital with no commercial reason for the payment. A further sum of £26 million was paid out in dividends. HMRC argued that no dividends could have honestly been paid since the Ducas directors (who were also directors of Enix and of FL Capital) were fully aware of the wrongful actions made by Ducas.

HMRC's case is based on:

1. **Freezing Injunction Against Ducas Ltd:** HMRC has a good arguable case against Ducas Ltd for a substantial liability of £171,296,046.05 in unpaid Employer NICs, supported by evidence of fraudulent conduct and false accounting.

2. **Risk of Asset Dissipation:** There is a real risk of asset dissipation by Ducas, Enix, and FL Capital, as evidenced by substantial payments made without commercial justification and the common management and ownership of these companies.
3. **Freezing Injunction Against Enix and FL Capital:** HMRC has demonstrated a good arguable case that Enix and FL Capital have received funds representing unpaid Employer NICs from Ducas, justifying the application of the enforcement principle and the granting of freezing orders against them.
4. **Evidence of Dishonesty:** The court found strong prima facie evidence of dishonesty, including the use of fraudulent documents and the extraction of funds intended for HMRC, which supports the need for freezing orders and ancillary orders to preserve evidence.
5. **Interim Order and Damages Undertaking:** HMRC has offered a full undertaking in damages for the interim order, with specific provisions to prevent the destruction of records and to allow the use of funds for legal costs and ordinary business operations, excluding payments to shareholders.

Ample evidence of dishonesty

The High Court accepted, therefore, that there was a serious issue to be tried against Ducas in respect of which HMRC have a good arguable case. There is ample evidence of dishonesty and it appears Ducas has made very substantial payments to its parent company FL Capital. All three companies share the same directors and Mr Monks, who appears to be the ultimate beneficiary, resides outside the jurisdiction in Cyprus.

22. PPS Umbrella

HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2023] EWHC 3308 (Ch) (9 Nov 2023)

HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2024] EWHC 1861 (Ch) (19 June 2024).

HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2024] EWHC 1884 (Ch) (22 July 2024)

HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2024] EWCA Civ 995 (23 August 2024)

This is a case involving an umbrella company, Payroll & Pensions Services (PPS Umbrella Company) Ltd (PPS), its director Mr David-Ajibola, HMRC, three High Court cases, one Court of Appeal case, an apparent labour supply fraud but so far failed liquidation. HMRC have been trying to prove that ultimately PPS should be wound up because they are owed NICs to the tune of nearly £7.3 million on a turnover of £72,904,774 million.

PPS Umbrella Services

PPS provides payroll services to both employed and self-employed workers including over 3,000 engaged through recruitment agencies to work as locums in the NHS Trust. When a worker is registered with PPS he or she is initially treated as employed. This is in order to enable HMRC to have a record of the worker. In respect of the first month's pay, PPS deducts PAYE and Employee's NICs as well as Employers' NICs. PPS then asks the worker whether they want to be treated as employed or self-employed, 98% elected to be self-employed. PPS then pay the worker without deductions for tax.

High Court No.1 – Labour Supply Fraud

In the High Court in 2023, **HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2023] EWHC 3308 (Ch) (9 Nov 2023)**, Mr Parfitt appearing for HMRC, said that the amounts appear to be a rather unsophisticated "labour supply fraud". Sums are charged to customers made up of wages due to the company's employees and employment taxes but, failing to pay the taxes across to HMRC. It appears that a substantial debt is due and the next question is whether the company is able to pay that debt.

The net assets shown at Companies House were £682,662. The net assets shown in the Corporation Tax return were £1,321,791. There is an obvious discrepancy, with no explanation but, it does suggest that the company is unable to pay its debts of £7.3 million.

The company has a bank account balance of £329,012 as of 31 May 2023 but, HMRC's analysis of the company's bank account shows payments of £48,254,584 to Tarfs, the company accountants, and over £458,000 to St James' Place. Subsequently, £17,567,875 was returned to the company, although £24 million of that was paid in VAT. Some £5.8 million has just disappeared from Tarfs, of which Mr Ajibola is a director, and its last filed accounts show just £2,521 in net assets. On a rough calculation, the company has a profit margin of some £54 million.

The court saw evidence that sums received by the director had been used to purchase property, including in the UK and investments in Lagos. In addition, £384,334 had been paid to Mr Ajibola direct further sums for school fees, £282,125 for renovation and decoration and £286,783 for personal expenditure. A further £246,677 was paid to Adenike Adereti who had been an employee but, lives at Mr Ajibola's address.

Without Notice application

The application to the High Court was made 'without notice'. This is so as not to alert the director of PPS to HMRC's activities ahead of the court ruling to appoint a provisional liquidator. As the court pointed out "The appointment of provisional liquidators is a most serious step and may lead to the

death of the Company. Indeed, as is conceded, it is very likely to do so."

Unlimited cross-undertaking for damages

The court then has to consider not only whether a provisional liquidator should be appointed but, also whether it should be appointed without notice and further, whether the company should have a cross-undertaking from HMRC as a protection, to pay damages if it turns out that the order should not have been made.

HMRC argued that they should not have to give an undertaking because they are "the Inland Revenue". The court thought that: "... if they are so highly confident of their position as they contend, it may be thought HMRC will have little difficulty in giving that undertaking." The High Court ultimately decided that an undertaking should be given by HMRC, not only that but that it should be unlimited.

High Court No.2 - Dismissal of the winding-up petition and discharge of the provisional liquidator

In June 2024, there was a final hearing for the winding up order from HMRC and an application from Mr Ajibola to dismiss the petition and discharge the provisional liquidator, **HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2024] EWHC 1861 (Ch) (19 June 2024)**.

HMRC's primary case

The primary case is that PPS has committed a fraud by pretending that the workers were self-employed when in truth they were employed.

Four sources of evidence

HMRC relies on four sources of evidence:

1. Mr Ajibola told the agency that the umbrella workers were employed and produced payslips. This included a promise to inform the agency if the position changed.
2. The contract signed with the agency stated that the workers would be engaged on a contract of employment and all appropriate deductions for tax would be made.
3. 55 payslips showing deductions for PAYE and NICs which HMRC say are forgeries. Fake bank statements and fake RTIs.
4. The agencies were not aware that the deductions were not being made.

The company did not issue P45s to the workers when they moved from employed to self-employed. Mr Ajibola had made it clear to the agencies that the payslips were not to be submitted to HMRC as they were for the agency to pass its audit. Further to this he added that the payslips were for ticking boxes.

Mr Ajibola exhibited a document headed Contract of Service, which he used for the self-employed workers.

The judge was satisfied that the four sources of evidence relied upon by HMRC were strong prima facie evidence of a fraud which was committed by PPS. The judge was, however, reluctant to make a final finding of dishonesty without Mr Ajibola having the opportunity to give oral evidence.

HMRC's primary case: the Workers were employed by the Company

It is not the usual practice of the Companies Court to make a winding-up order on the basis of an alleged debt which is disputed in good faith on substantial grounds. The burden of proof being on HMRC.

Mr Elliott, on behalf of Mr Ajibola, raised a large number of objections to HMRC's primary case, but one of these is determinative. He submitted that, in order for the court to be satisfied that there was no bona fide dispute, it must be satisfied that the workers were employed by the company, despite the contracts which show them to be self-employed.

The conclusion the court reached, despite the court finding that “...there appears to be a fraud of some sort...”, was that there was a bona fide dispute regarding the employment status of the workers.

The judge was also unable to conclude that the specimen contract of service was a sham contract. “In order to be a sham, both the company and the worker should intend to create a set of rights and obligations which are different from those contained in the document.”

HMRC’s alternative case: PPS is the deemed employer

The alternative argument was that the company was a ‘deemed employer’ under s.44 ITEPA 2003. The relevant legislation is actually the equivalent NICs 1978 Regulations. The test is one of supervision, direction and control and again the burden of proof is on HMRC to show that there was no bona fide dispute. Again the court decided that HMRC had failed.

There is a ‘fraud exception’ if fraudulent documents have been presented but, yet again the court decided that there would be two hurdles which HMRC needed to surmount in respect of the fraud exception, one procedural and one substantive.

Ultimately Mr Halpern KC, sitting as a deputy High Court, decided that: “...on the current evidence, HMRC has not satisfied the substantive hurdle of showing (i) that the Workers were not genuinely self-employed and (ii) that the Agencies were defrauded by the Company’s representations that the workers were employed by the company.”

On costs

On 19 July 2024, **HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2024] EWHC 1884 (Ch) (22 July 2024)** the judge gave judgment dismissing the winding-up petition that had been presented by HMRC. The judgment of *HMRC v. PPS Umbrella* [2024] EWHC 1884 (Ch) was given as a matter of urgency before the case commenced in the Court of Appeal which was due to start the next day on 23 July 2024.

This is bearing in mind that HMRC has given an unlimited undertaking of damages in the event that the without notice application for a provisional liquidator was wrongly applied. On what seems like an obvious fraud involving millions of pounds, the defence appears to be that the umbrella company did not employ the workers and, therefore, does not owe the NICs.

Court of Appeal seeking a stay

The question to the Court of Appeal, **HMRC v. Payroll & Pensions Services (PPS Umbrella Company) Ltd [2024] EWCA Civ 995 (23 August 2024)** was whether there should be a stay pending the appeal. The High Court judge granted the stay on a limited basis so as to give HMRC the opportunity to ask the Court of Appeal to continue it.

Unlimited Liability

The Court of Appeal was asked whether the Judge, Mr Steven Gasztowicz KC, was right to require the appellants, HMRC to give an unlimited cross-undertaking in damages when he acceded to HMRC's application for the appointment of provisional liquidators in respect of the respondent PPS Umbrella. The court dismissed HMRC's appeal and Lewison LJ held:

“Departure from the well-established practice of requiring a cross-undertaking in damages on the appointment of a provisional liquidator where the applicant is HMRC seeking to recover unpaid tax would...confer on HMRC an entirely unwarranted public interest immunity for the consequences of unjustified initiation of such proceedings; and would encourage indiscriminate initiation of proceedings at the unjustifiable expense of an individual.”

23. Umbrella worker case law

Case law

Zajota v Umbrella Company Ltd [2022] 2201575/2022 (September 2022)

Binns v. Umbrella Company Ltd [2023] ET 2402352 (March 2023)

Pajpani v. DNS Umbrella Ltd [2023] ET 3309112 (March 2023)

Collins v. Amaze Umbrella Ltd [2023] 2300419 (6 July 2023)

Rankin v. Giant Professional Ltd [2023] (7 July 2023)

Appiah v. 1. Tripod Partners Limited 2. Home Office Judgment [2024] ET 2302929 (November 2024)

Joint employment

23.1 *United Taxis Ltd v. Comolly* [2023] EAT 93 – joint employment “a servant cannot have two masters” – the EAT decided that Comolly was not employed by either United Taxis or Mr Tidman.

Employment tribunal

All these cases were in front of the Employment Tribunal (ET). Judgments from the ET do not set a precedent so other judges do not have to follow them but, they could be considered as persuasive. Indeed, it could be understood that some umbrella companies may not want to appeal a decision because it may go against them at the Employment Appeal Tribunal and then it would set a precedent.

***Zajota v. Umbrella Company Ltd* [2022]**

Late last year the case of *Zajota v. Umbrella Company Ltd* [2022] began by holding that there had been no unlawful deduction of wages. Mr Zajota was claiming that Umbrella Company Ltd had deducted Employer’s National Insurance and the Apprenticeship Levy from his wages. His role was inside IR35 and he had received a contract of employment from the umbrella company.

Assignment rate

He was given an ‘assignment rate’ by Osbourne Richardson, the recruitment agency. The umbrella company then made the employment deductions including Employer’s National Insurance and the Apprenticeship Levy from that assignment rate. The umbrella company then deducts the relevant tax and National Insurance leaving Mr Zajota with his Net Pay. This had all been explained to Mr Zajota in correspondence with the agency.

The Tribunal stated that Mr Zajota had previously worked with the Umbrella Company and knew from experience that deductions would be made from the assignment rate. He commenced work for the respondent fully aware of how the pay system operated. For those reasons the Tribunal held that there had not been any unlawful deductions from the claimant, Mr Zajota’s wages.

***Binns v. Umbrella Company Ltd* [2023] ET 2402352**

In March 2023, there was another case of unlawful deductions again by Umbrella Company Ltd. In *Binns v. Umbrella Company Ltd* [2023] ET 2402352 (March 2023), Mr Binns was claiming for both an unlawful deduction of employment costs, holiday pay under the Working Time Regulations (WTR) and a breach of the Agency Workers Regulations.

Rolled-up holiday pay

This case concerned rolled-up holiday pay and whether it had been included or rolled-up into the agreed hourly rate of pay or whether it had not been paid on top of the agreed hourly rate. Also, whether because of this practice, Binns was denied the entitlement to take annual leave.

Again in *Binns*, the issue was what was the hourly rate Binns should have been paid? The Tribunal found that it was not clearly explained to the claimant by either respondent that his gross hourly pay was to be a figure less than the hourly rate given to him by the second respondent, Morgan Hunt a recruitment agency, arrived at by deducting the first respondent's profit and other "employment costs".

Umbrella Company Ltd was held to be in breach of the WTR for refusing Mr Binns's entitlement for paid annual leave. Umbrella Company Ltd was also in breach of contract for not paying holiday pay at the rate of 12.07% on top of the per hour gross pay.

There was also a breach of the Agency Workers Regulations in respect of annual leave entitlement after 12 weeks of working and a failure to comply with its obligation to provide a written statement of employment particulars.

The Tribunal considered the *Zajota* case and stated that: "...there may be factual differences between Mr Zajota's case and that of Mr Binns which led the judge to reach the conclusions which they did. However, even if the factual situations were similar in material respects, we consider that, for the reasons we have given, our conclusions should stand. Decisions of other employment tribunals are not binding on us, although they may be persuasive. The decision in Mr Zajota's case has not persuaded us that we are wrong in our conclusions."

***Pajpani v. DNS Umbrella Ltd* [2023] ET 3309112 (March 2023)**

In another case in March 2023, it was held that DNS Umbrella made an unlawful deduction of wages and was ordered to pay £29,885.12 back to the worker, Mr Pajpani.

Umbrella company basis

DNS made deductions for Employer's National Insurance and the Apprenticeship Levy. A Key Information Document had been provided and Mr Pajpani had a contract of employment. The rate was stated as '£800 per day on an umbrella company basis'. The term "on an umbrella company basis" was not specifically defined anywhere in documents presented to the Tribunal.

21. The material sections of the Key Information Document are as follows:

- a. Under the heading: “Intermediary or Umbrella Company Pay Information” it states: “The money earned on your assignments will be transferred to the umbrella company as part of their income. They will then pay you your wage. All the deductions made which impact your wage are listed below.”
- b. In the sections below, there was a heading “Deductions from umbrella income required by law” and a list which included “Apprenticeship Levy” and “Employers National Insurance (NIERS)”
- c. The Key Information Document also included an example calculation which included deductions.

Mr Pajpani claimed that he did not understand what being paid “on an umbrella company basis” meant. The Tribunal accepted the Claimant’s evidence that he did not know that the term “on an umbrella company basis” meant that deductions for Apprenticeship Levy and Employer’s National Insurance would be made from his agreed rate.

The Tribunal has considered the ambiguity in the various documents in relation to the deductions that would be made, in particular, the Third Respondent’s (DNS Umbrella) reliance on the statement that the Claimant would be paid “on an umbrella company basis”.

“The Tribunal considers that this ambiguity should be construed against the Third Respondent under the well-established “contra proferentem” rule of construction in contract law. This provides that any ambiguity in a provision should be resolved against the party who seeks to rely on it. In this case, the Third Respondent has not done enough to make the basis of the deductions clear to the Claimant.”

Collins v. Amaze Umbrella Ltd [2023] 2300419

In *Collins* in July 2023, Ms Collins claimed that Amaze Umbrella Ltd had made unlawful deductions from her wages but also, had breached the Working Time Regulations 1998 by paying her rolled-up holiday pay.

Firstly it is worth mentioning that the Tribunal judge found it “...*entirely unsurprised that the claimant found these arrangements confusing.*” The claimant had been given the day rate of £110 (subsequently £120) by the recruitment agency Talent Hub Resourcing Solutions Ltd (THRS). The Tribunal judge, however, found that the day rate was the rate payable by THRS to Amaze and **not** the rate payable by Amaze to Ms Collins.

The pay entitlement of Ms Collins as an employee of Amaze, the respondent, was set out in her contract of employment. It is to be noted that her payslips identified separately her basic pay, her commission, her holiday pay, her student loan repayment, her auto-enrolment pension contributions, the income tax deducted on a PAYE basis and employee national insurance contributions deducted.

The Tribunal held, therefore, that: “...*In light of this analysis of the documentation, the respondent paid the claimant the wages that she was entitled to under her contract of employment and no unauthorised deductions were made from her pay. Her claim of unauthorised deductions from wages therefore fails and is dismissed.*”

In respect of the rolled-up holiday pay, her claim also failed because rolled-up holiday pay had been paid and the terms reflected “...a mutual agreement for genuine holidays representing a true addition to the contractual rate of pay for the time worked.”

Rankin v. Giant Professional Ltd [2023] (7 July 2023)

In the final case of *Rankin* in July 2023, the facts were slightly unusual. The claim was for an unlawful deduction of wages but, the facts were that the worker had not submitted his worksheets on time and as a result, had not been paid at all.

The contract clearly stated that timesheets had to be submitted promptly. The worker worked remotely so the time sheets were the only record of the work that had been done. Unfortunately, Mr Rankin did not fulfil his contractual duty to submit the timesheets promptly and only did so after the client gave two weeks’ notice to terminate the assignment. By this time he had been locked out of the client’s system.

The crux of the question for the Tribunal was what wages were properly payable, and this in turn is a contractual question. Unfortunately, the right to be paid under the contract had been breached by the worker and it was the only way that the parties could verify the amount of work done. Without that evidence, there was no basis on which to say that wages were properly payable to the claimant for the assignment. The Tribunal held, therefore, that there was no unlawful deduction on this occasion.

Appiah v. 1. Tripod Partners Limited 2. Home Office Judgment [2024] ET 2302929

Ms Appiah worked through a PSC as an ‘inside IR35’ contractor. The Home Office paid Tripod gross who then paid Ms Appiah after deductions. What is crucial in this judgment is that Tripod assumed that the phrase ‘employment taxes’ covered ER NICs. The tribunal disagreed and held that the deductions were unlawful and Tripod was ordered to pay Ms Appiah £36,826.65 and a small amount for the Apprenticeship Levy.

Factual matrix

The difference in these cases, including *Zajota*, is the factual matrix. In *Zajota*, the Tribunal found there had been no unlawful deduction of wages because the deductions had come out of the assignment rate and not the wages. In *Binns*, the Tribunal found that it had not been clearly explained that the employment costs would be deducted from the day rate.

In *Pajpani*, the Tribunal found that there was sufficient ambiguity in the phrase ‘on an umbrella company basis’ to hold the umbrella company liable for the breach. And finally in *Collins*, the Tribunal found that the terms had been clearly explained so there was no unlawful deduction of wages.

24. Summary of major reviews (2006 – 2021)

Year	Title (Commissioning Body)	Scope	Key Focus/Outcomes
2006	“Tackling Managed Service Companies” (HMRC/HMT Consultation)	Crackdown on MSC loan schemes	Defined MSCs; proposed PAYE/NIC enforcement to curb tax avoidance
2011	OTS Small Business Tax Review (IR35) (Office of Tax Simplification)	Taxation of small businesses (incl. IR35)	Proposed options: suspend or better administer IR35; long-term align tax/NIC to obsolete IR35 assets.publishing.service.gov.uk
2013	Offshore Employment Intermediaries (HMRC Consultation)	Offshore payrolls avoiding tax/NIC	Introduced liability for UK agencies/clients if offshore employers evade PAYE assets.publishing.service.gov.uk
2013	Onshore Intermediaries: False Self-Employment (HMRC Consultation)	Agencies & “bogus” self-employment	New agency rules: treat controlled workers as employees for tax (shift PAYE to agency) assets.publishing.service.gov.uk
2014	House of Lords Personal Service Companies Committee (Parliament)	Use of PSCs and IR35 effectiveness	Criticised IR35’s complexity; urged HMRC to justify or reform IR35; noted lack of rights for “disguised employees” publications.parliament.uk
2015	OTS Employment Status Review (Office of Tax Simplification)	Employment status tests (tax vs. rights)	Exposed misaligned tests across tax and employment law; recommended clearer guidance, HMRC helpline, explore statutory status test assets.publishing.service.gov.uk
2015	Employment Intermediaries: Travel & Subsistence (HMRC Consultation)	Umbrella companies’ expense schemes	Proposed ending tax relief on travel/subsistence for umbrella workers under supervision (to stop expense abuse). assets.publishing.service.gov.uk
2016	Off-Payroll Working in the Public Sector (HMRC Consultation)	IR35 reform for public sector contracts	Shifted responsibility for IR35 status and tax to public-sector engagers (enacted 2017). Gov.uk
2017	“Good Work: Taylor Review of Modern Working Practices” (BEIS, Independent)	Modern employment (gig economy, etc.)	Called for clearer employment status categories (e.g. “dependent contractor”), aligning tax status with rights, stronger enforcement of worker rights

Year	Title (Commissioning Body)	Scope	Key Focus/Outcomes
			assets.publishing.service.gov.uk
2017	Work & Pensions Committee – Self-Employment and the Gig Economy (HoC Committee)	Gig economy & “bogus” self-employment	Urged protections for gig workers and action on false self-employment; recommended clarifying employment status in law committees.parliament.uk
2018	Good Work Plan (BEIS Policy Paper)	Government plan (response to Taylor)	Committed to legislate on employment status clarity, ending exploitative practices (e.g. agency “Swedish Derogation”), and create a single enforcement body for workers’ rights. Gov.UK
2018	Off-Payroll Working in the Private Sector (HMRC Consultation)	Extending IR35 reform to private sector	Led to 2021 rules making medium/large businesses determine contractor tax status; highlighted compliance gap (only ~10% IR35 compliance prior) assets.publishing.service.gov.uk .
2019	Single Enforcement Body Consultation (BEIS)	Labour market enforcement (umbrella cos.)	Sought views on merging agencies to better police labour abuses; proposed regulating umbrella companies under a new body. Gov.UK
2019	Independent Loan Charge Review (Sir Amyas Morse, HM Treasury)	Disguised remuneration loan schemes	Found loan charge policy partly excessive; recommended limiting scope to loans after 2010 and exempting cases disclosed to HMRC commonslibrary.parliament.uk . Most recommendations adopted, easing retrospective impact commonslibrary.parliament.uk .
2020	House of Lords Finance Bill Sub-Committee – “Off-Payroll Working: Treating People Fairly” (Parliament)	IR35 reforms impact & fairness	Warned IR35 changes unfairly tax “deemed employees” without rights; urged delay and a holistic solution aligning tax and employment law. committees.parliament.uk .
2021	Umbrella Company Market Call for Evidence (HMT/HMRC & BEIS)	Role of umbrella firms & non-compliance	Exposed £[500]m tax loss to non-compliant umbrellas ; strong support for regulating umbrella companies to protect workers. Led to plans for statutory regulation and liability transfer in labour supply chains. gov.uk

25. Resources

Call for Evidence – Umbrella Company Market – November 2021

https://assets.publishing.service.gov.uk/media/61a4c9cb8fa8f503816403b7/Umbrella_Company_CfE_Final.pdf

Call for Evidence – Umbrella Company Market – Summary of Response – June 2023

https://assets.publishing.service.gov.uk/media/647e047d103ca600130399a8/M4027_Call_for_Evidence_SoR_UCs_0103.pdf

Tackling Non-Compliance in the Umbrella Company Market – Consultation 6 June 2023

<https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market>

Tackling Non-Compliance in the Umbrella Company Market – Policy Paper 30 October 2024

<https://www.gov.uk/government/publications/tackling-tax-non-compliance-umbrella-company-market/tackling-non-compliance-in-the-umbrella-company-market--3>

Tackling non-compliance in the umbrella company market - Government response 4 March 2025

<https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market/outcome/tackling-non-compliance-in-the-umbrella-company-market-government-response-accessible>

Help with Labour supply chain assurance – GfC12

<https://www.gov.uk/guidance/help-with-labour-supply-chain-assurance-gfc12>

Help with Labour supply chain assurance – GfC12 Tax Risks

<https://www.gov.uk/guidance/help-with-labour-supply-chain-assurance-gfc12/tax-risks>

Advice on applying supply chain due diligence principles to assure your labour supply chains

Updated 13 May 2021

<https://www.gov.uk/government/publications/use-of-labour-providers/advice-on-applying-supply-chain-due-diligence-principles-to-assure-your-labour-supply-chains>

Responsibilities for employment businesses working with umbrella companies

<https://www.gov.uk/guidance/responsibilities-for-employment-businesses-working-with-umbrella-companies>

Low Incomes Tax Reform Group

Labour Market Intermediaries Report – March 2021

<https://www.litr.org.uk/sites/default/files/litr-labour-market-intermediaries-report.pdf>

Economic Affairs Sub-Committee - Off-payroll working rules have resulted in an increased use of umbrella companies

<https://committees.parliament.uk/committee/230/finance-bill-subcommittee/news/160935/offpayroll-working-rules-have-resulted-in-an-increased-use-of-umbrella-companies/#:~:text=,It%20is%20unfair%20that>

Tax Avoidance loan schemes and the loan charge – Feb 2022

<https://www.gov.uk/government/publications/loan-schemes-and-the-loan-charge-an-overview/tax-avoidance-loan-schemes-and-the-loan-charge>

Working through an umbrella company

<https://www.gov.uk/guidance/working-through-an-umbrella-company#:~:text=An%20umbrella%20company%20is%20a,agencies%20to%20pay%20temporary%20workers>

FCSA Regulating the UK's umbrella market [March 2025]

<https://fcsa.org.uk/documents/the-umbrella-regulation-report/>

26. Terminology

The following is an explanation of some of the terms that are used in this review.

A promoter of a mass-marketed tax avoidance scheme – generally someone who designs or markets the tax avoidance scheme or is responsible for its organisation. Promoters may use a network of enablers to sell their schemes.

Contract of employment – Contract of employment means a contract of service or apprenticeship, whether express or implied, and whether oral or in writing. Section 230 of the Employment Rights Act 1996 states that ‘employee’ means an individual who has entered into or works under a contract of employment.

Disguised remuneration (DR) – contrived arrangements that pay people amounts that are purported to be non-taxable in place of a salary. These amounts are often described as a loan, annuity, or other payment that is said to be non-taxable. These supposedly ‘non-taxable’ payments are no different to normal earnings and are, and always have been, taxable.

Employment agency - a business which finds permanent roles for work-seekers with an employer or supplies employers with work-seekers. For the precise definition, see the Employment Agencies Act 1973, section 13(2).

Employment business – a business which finds temporary or contract roles for work-seekers and supplies them to work for, and under the control of, the end client. The provision of work-finding services (defined in regulation 2 of the Conduct Regulations) is a distinguishing feature of an employment business. For the precise definition, see the Employment Agencies Act 1973, section 13(3). For tax purposes, such as the agency legislation, these are typically known just as agencies.

Employment intermediary – any person who makes arrangements for an individual to work for a third party or pay for work done for a third party. Employment businesses, employment agencies and umbrella companies are types of employment intermediary.

End client – the party who receives the services of the person supplied to carry out the work.

Key Information Document (KID) – the document that employment businesses must provide to work-seekers when they sign up with them and before any work-finding services can commence. It should set out pay-related information for the work-seeker.

Mini umbrella company (MUC) – a small umbrella company, typically only employing a few workers, set up to commit tax fraud.

Onshore intermediaries – false self-employment - This legislation came into force on 6 April 2014 and it amended section 44 ITEPA so if a worker is supplied through an agency and is subject to direction, supervision or control by the end client, they will be treated as an employee for tax purposes and the agency will have to deduct income tax and NICs and report this to HMRC.

Personal Service Company (PSC) – a limited company through which a contractor provides their services. Typically, the contractor is a significant or the only shareholder.

Legislation affecting personal service companies

- IR35 – Chapter 8 of Part 2 of ITEPA 2003²¹⁰ and in the Social Security Contributions (Intermediaries) Regulations 2000, SI 2000/727
Under Chapter 8 the contractor carries out the assessment. IR35 now only exists if the contractor is working with a small company as defined by the Companies Act.
- OPW – Chapter 10 of Part 2 of ITEPA 2003²¹⁰ and in the Social Security Contributions (Intermediaries) Regulations 2000, SI 2000/727
Under Chapter 10, the end client carries out the assessment and has to provide a Status Determination Statement (SDS)
Chapter 10 applies to the public sector and medium and large private sector companies.
- Managed Service Companies - Chapter 9 of Part 2 and section 688A, Part 11 ITEPA 2003
- Agency Workers Regulations 2010 – in or out of scope established by Employment Status Test (no limited company opt-out)
- Conduct of Employment Agencies and Employment Businesses Regulations 2003 (section 32 – contains an opt-out for limited companies)
- Onshore intermediaries – section 44(2) ITEPA 2003, no direct opt-out, but thought not to include personal service companies although it is still unclear whether PSCs will be included in the reporting regulations
- Umbrella companies
- Travel and subsistence

Sole trader – person in business - A sole trader is an individual carrying on business as an unincorporated entity. They may or may not employ any or many others, and may be a skilled or semi-skilled business. They should be registered self-employed with HMRC under a unique taxpayer reference although there is a hidden economy of those who don't register or pay tax.

Registered self-employed – sole trader (SeST) - There is no statutory definition of a self-employed individual, or a so-called 'sole trader', so it is basically an individual who provides their services as either themselves or 'trading as', and not as an incorporated entity.

A sole trader needs to register by 5 October following the end of the tax year that a tax return is sent in for. A penalty may have to be paid for late registration.

Umbrella company – a business which employs a worker with a view to that worker being supplied to work for, and under the control of, the end client. There is no statutory definition of an umbrella company for employment rights or tax purposes.

Umbrella Company Worker - a work-seeker who is employed by an umbrella company in order to complete work for an end client

Worker – a person supplied to carry out work, typically used in this document to refer to someone seeking temporary work, often through an employment intermediary (sometimes also referred to as a contractor). Please note that this term does not refer in this context to the technical meaning of the employment status ‘worker’ or ‘limb (b) worker’ for the purpose of assigning employment rights as set out in section 230(3) of the Employment Rights Act 1996.

Work-seeker – for employment law purposes, this refers to the person to whom an employment agency or employment business provides (or holds itself out as capable of providing) work-finding services.

27. Biography

Rebecca Seeley Harris LLB (Hons) LLM MSc

Rebecca is one of a few people in the country who specialises solely in employment status and off-payroll working. She has been specialising in this area since the inception of the tax initiative IR35, over 25 years ago. She deals with all things to do with employment status such as IR35, off-payroll working, self-employment, s.44 ITEPA - agency tax legislation, PSCs, Office-holders, umbrella company workers etc. This is from both the employment rights perspective and the tax perspective.

Fair Umbrella campaign

The temporary labour supply chain is of particular interest to Rebecca, having been involved with each entity in the chain from the end client through to the contractor. She started the Fair Umbrella Campaign in 2021 to campaign for the regulation of the Umbrella company industry and for the protection of the worker. Rebecca was then asked to Chair the Independent Arbitration panel for the FCSA of which she is still a member along with Neil Carberry (REC), James Collings and Carl Reader. She chaired the first IAP sitting in the Orange Genie case. Rebecca is an independent observer in the umbrella company market as she has no clients in the industry.

Office of Tax Simplification

Rebecca 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. She was part of a small team of experts who drafted the Employment Status Review 2015, then continued for several years to advise on the review of Small Company Taxation leading on the taxation of nano companies and the self-employed. She was also a representative on the Cross-Government Working Group on Employment Status and published the review into the taxation of the Gig Economy with John Whiting CBE in 2023.

Awards

Rebecca won the Contracting Industry Influencer of the Year and before that the FSB Self-employed Sole Trader of the Year, The British Universities Finance Directors Group (BUFDG) Nigel Clothier Award for Special Contribution to University Tax and a finalist for Tolley's Taxation Award for Outstanding Contribution to Taxation 2021.

Rebecca is also a member of the Employment Status Consultative Committee.

LinkedIn profile: www.linkedin.com/in/rebeccaseeleyharris-employmentstatus-ir35expert

Contact details

Re Legal Consulting Ltd

Website: <https://relegalconsulting.co.uk>

Email: umbrellapolicy@relegalconsulting.co.uk

Copyright

Re Legal Consulting Ltd owns the copyright in this publication. Copyright © Re Legal Consulting Ltd 2025.

Crown Copyright

This publication contains public sector information which is reproduced under licence under the Open Government Licence v3.0. (see:

<https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>)