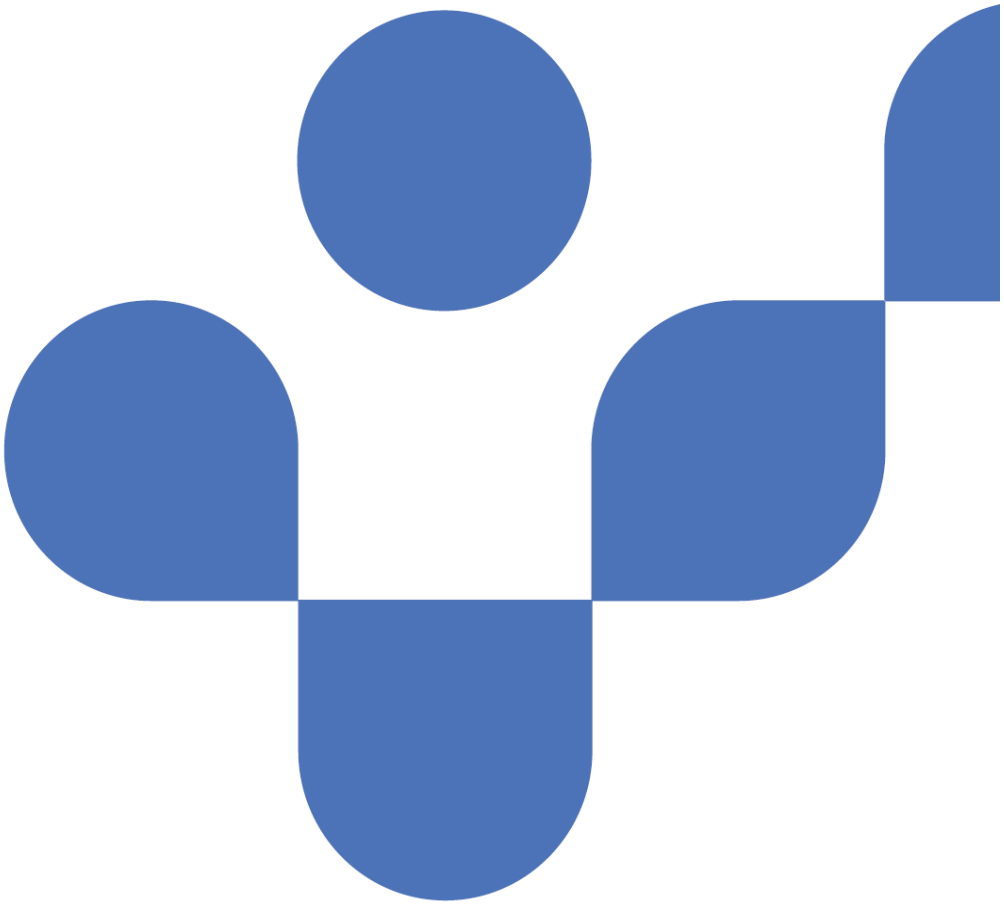
Consultation on tackling non-compliance in the umbrella company market

A response by the Recruitment & Employment Confederation

29 August 2023



Executive summary

The REC has long called for regulation of the umbrella market and we are pleased to work with government and all policymakers as they set out to achieve progress on this agenda. As so often acknowledged in the stakeholder engagement sessions organised by EAS, HMRC, REC and other colleagues, there is an absolute need to ensure that agency workers' rights and the practices of compliant businesses are better protected. Strong measures should also be put in place to tackle tax avoidance. But the burden of dealing with tax avoidance concerns should not be shifted to actors other than the authorities and certainly should not sit with employment businesses. As an immediate next step to this consultation, we are keen to work with government to ensure the central roles of EAS and HMRC, in their proactive and reactive capacities around enforcement of the whole labour supply chain are recognised, that they are resourced effectively, and that HMRC should be empowered to tackle tax avoidance as the most appropriate body for dealing with those concerns.

Summary of REC key recommendations

Mandating due diligence to the correct authorities

Employment businesses are limited as to how much information they can ascertain and verify. In some cases, they are being provided with false payslips by Umbrellas which suggest the correct tax is being deducted, when it is not.

Given employment businesses do not have sufficient powers to obtain any tax information, or the tax expertise to spot tax non-compliance we strongly believe due diligence should remain with and be enforced by HMRC. This consultation should not be used to pass these responsibilities onto employment businesses who do not have the powers of investigation or enforcement afforded to HMRC.

Transfer of tax debt

We strongly disagree with the proposal to transfer tax debt that cannot be collected from an umbrella company to an employment business or client. If you look across all businesses, they do not shoulder the burden of liability for any other supplier in their supply chain - and umbrella company liability should be no exception. Exposing compliant businesses to additional tax risks when engaging with an umbrella company has the power to undermine the UK's flexible and responsive labour market.

Employment businesses deemed employer for tax purposes

While this option would allow employment businesses a far greater degree of control and, as a result, would expose them to less risk of tax avoidance, it would create an additional burden for our members, which might ultimately drive down the purpose of using umbrella companies.

Defining an umbrella company

The REC believes that a tried and tested definition of umbrella companies already exists in the form of the temporary work agency definition contained within the Agency Workers Regulations 2010. We see little point in drafting alternative and untested definitions such as those suggested in the consultation and are concerned that they would not be broad enough to withstand the constant evolution of umbrella company activity.

On umbrella company standards

A more robust and comprehensive set of regulations are required from the outset. We agree with the three areas suggested in the consultation as a start to regulation but given the length of time it has taken to get to this point, see little point in providing for minimum regulation.

Enforcement options

The REC continues to advocate for a Single Enforcement Body (SEB) to enforce any legislation relevant to umbrellas and are therefore concerned that this isn't an option that is being consulted upon. In the absence of a SEB for now, we agree that the Employment Agency Standards Inspectorate (EAS) would be the most appropriate enforcement body. To remain effective, it is crucial that they are given further resources as they will not be able to cope with enforcing standards for thousands of additional businesses that would fall within their remit.

That said we do not believe all enforcement should fall to EAS. We are surprised not to see a greater role around enforcement for HM Revenue and Customs (HMRC) in an area largely relating to tax non-compliance. We strongly believe that tax evasion and avoidance, as an area of their expertise, should remain with HMRC to be properly regulated and enforced.

The wider context of Agency Work

The changing nature of the UK's employment supply chain, along with changes to "IR35", has seen a proliferation in the use of umbrella companies over the last 20 years. That's why it's important that umbrella company regulation keeps pace with wider market and legislative changes. We appreciate that government is open to such shifts in the market. As a result of the Retained EU Law (Revocation and Reform) Bill, for example, some legislation relating to agency work, like elements of Working Time Regulations 1998, holiday pay calculations and rolled up holiday pay are being changed. It's a welcome start but it doesn't go far enough. Our labour market has changed significantly, particularly since the Covid-19 pandemic, and legislation needs to be updated to work effectively for every type of worker, including those working in a temporary, flexible way. The REC has been calling for umbrella company regulation for many years, and although we are pleased to see government consulting on how to better tackle non-compliance in the umbrella market, now is the time to get on with introducing that long overdue regulation.

We know from experience that umbrella companies are always evolving and changing - whether that's a Mini Umbrella Company or Joint Employment Model - and therefore whatever conclusion government comes to on regulating this market, there should be a

definition of what amounts to an Umbrella firm which can be adapted to ensure it meets current and future requirements. With the ability of Umbrellas to morph into different entities, it is imperative that any regulations allow the definition to be updated through secondary legislation rather than primary legislation. This will also protect the legitimate payroll providers and umbrella companies and level the playing field.

Without a clear definition, umbrella companies, including many non-compliant organisations, will be able to continue arguing that they fall outside scope of regulation, putting workers and businesses at risk, and costing the Exchequer millions in lost revenue. The government has a unique opportunity, through this consultation, to finally develop a definition and ensure standards and compliance are enhanced and maintained. This will safeguard workers, businesses, and boost economic growth.

Consultation Questions

Q 1. Which of the options would be the most effective way to define umbrella companies to ensure only they are brought in scope now and ensure future regulations/standards can be targeted to the right business in the supply chain?

The REC recognises that a legal definition of an umbrella company is a necessity if they are to be regulated, however, these definitions will inevitably open the door for those deliberately non-compliant businesses to restructure their arrangements to ensure they aren't in scope of the definition.

Neither of the definitions provided in the consultation will catch all models that umbrella companies operate under now - or in the future. Instead, we believe the recommendation we are setting out below will help future proof against some of the metamorphosis that occurs with Umbrellas.

The REC would strongly advocate, as we have done in previous representations, for the tried and tested definition of a Temporary Work Agency in the Agency Workers Regulations 2010. This was drafted to specifically cover both the traditional employment business and umbrella company. TWA:

"Means a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of—

(a)supplying individuals to work temporarily for and under the supervision and direction of hirers; or
(b)paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

(2) Notwithstanding paragraph (1)(b) a person is not a temporary work agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers."

This definition:

- refers to parties in the supply chain
- confirms that the workers must be supplied and will work under the supervision and direction of the hirer
- adds the key component of the umbrella company's function of receiving payment or forwarding payment for the worker's services, and
- refers to the requirement “whether or not operating for profit, and whether or not carrying on such activity in conjunction with others".

We note that there may be some businesses, such as factoring companies which might be concerned about being inadvertently defined as umbrella companies, but this could be resolved with minor amendments to paragraph 2 of the TWA definition.

As the TWA definition is drafted so broadly, it should make it more difficult for umbrella companies to structure a model that would fall outside its scope. Furthermore, given that it already exists in legislation, its efficacy is already tried and tested. We are not aware of litigation or umbrella companies seeking to avoid this definition. For these reasons and because of the potential problems with the two proposed definitions contained in the consultation, the REC believes this would be a more suitable definition of an umbrella company.

Problems with the consultation's suggested definitions

While we see very little point in using a new and untested definition and would instead advocate for the use of the TWA definition, out of the two proposed in the consultation, we would be most in favour of the first option. But only if it is not separated from the 4 models of permitted engagement as set out in the consultation.

Evaluation of option 1
The definition provided includes engagement of a corporate work-seeker. Regulation 32 of The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) provides:

"(1) (a) any reference to a work-seeker, howsoever described, includes a work-seeker which is a company;"

Therefore, an umbrella company when in the supply chain becomes a corporate work-seeker. However, under the definition in option 1, if an umbrella company wants to avoid being defined, they could alter their operating model to no longer meet the definition of corporate work-seeker, for example by becoming a partnership instead. Of course, this would come at the expense of being exposed to personal liability which may be sufficient to deter the prevalence of such models emerging, but it is certainly not a guarantee.

Similarly great care would need to be taken when defining "employ or engage" in the legislation.

The REC does not believe this definition should be considered as a standalone, but rather synonymous with the 4 permitted models of engagement to capture all models currently being used. For example, we are aware of the growing prevalence of the Joint Employment

model which is particularly apparent in sectors such as Health, Social Care and Education. The REC are concerned about the compatibility of this model with the Conduct Regulations and the difficulties it presents for workers in knowing what the nature of their relationship is with the employment business and the umbrella company.

Whilst there is currently no legal definition of joint employment, it is typically between a recruitment agency and an umbrella service provider offering joint employment of the worker. In this arrangement, the agency retains its responsibility for finding work for the workers and the umbrella processes the payroll and carries out any duties relating to HR. Where a worker is engaged under a joint employment arrangement, their employment status is reflected through their employment contract, which will specify both the agency and umbrella company as the employers. Having joint employers is always problematic for a work-seeker.

Under definition 1, for the purposes of the joint employment model, the umbrella company is not "engaged as a corporate work-seeker by the employment business" but rather they are in something akin to a partnership and as a result this model would not be caught, save under the permitted engagement models. In this regard the permitted models allow only for direct employment of the worker (model 2) or direct engagement of a corporate work-seeker (model 3). As this is a joint employment, it would fall outside both permitted methods of engagement and therefore not be allowed.

Whilst the REC recognises the importance of providing methods of engagement with this particular definition, we are concerned that the use of these will inevitably limit the ability of our members to innovate. We welcome the curtailing of non-compliant umbrella company activity but an unintentional byproduct of this could restrict employment businesses and compliant umbrella company activity too. For example, the rise of artificial intelligence and new technologies could have a significant impact on the way recruitment businesses conduct their business in the very near future. Therefore, there would need to be sufficient discretion within the regulations to update this definition without having to go back to primary legislation.

The REC is also concerned about the proposals contained in clause 3.22 which seeks to pass on the responsibility for ensuring compliance with the umbrella companies and Personal service company (PSC) engagement models to employment businesses. This would be extremely impractical and put the worker at risk, not to mention onerous on our members. As we shall discuss in more detail when answering questions around the proposal of mandatory due diligence, an employment business can only rely on information it receives from an umbrella company, and if the umbrella chooses to engage in non-compliant activities, they can easily hide this from anyone in their supply chain, including employment businesses. We agree compliance in this regard should be enforced, however, the responsibility for enforcement should not lie with employment businesses but rather the appropriate enforcement body who has the requisite powers of inspection.

Equally, PSC compliance should be a matter for the enforcement body to regulate, not a responsibility shouldered by an employment business. Furthermore, in the absence of a legal definition of a PSC and no suggestions proposed in the consultation, it would be

impossible to say how difficult it would be for our members to do this. If a PSC is going to be defined in law, this would require further consultation.

Q 2. Which of the definitions would be the most future proof? Please explain your answer.

As stated in our response to question one, the REC believes the definition of temporary work agency in the Agency Workers Regulations 2010 is most appropriate.

This legislation has been in place for over a decade, and we have seen very little action by umbrella companies to argue that they are beyond the scope of this definition or to alter their operating model to fall outside it. On that basis it has already demonstrated its efficacy as a definition.

Q 3. Are there any unintended consequences of either option and/or are there alternative ways of defining umbrella companies the government should consider? Please explain your answer.

Please refer to answers 1 and 2.

Q 4. What aspects of the umbrella company's role in the supply chain should the regulations cover?

The REC would be in favour of the second option which proposes umbrella company regulations should be made to cover minimum standards in a wide range of aspects regarding umbrella company involvement in the agency work supply chain. They should be far more comprehensive than simply limiting them to three areas of focus set out in option 1.

Whilst we agree that the three areas proposed in option 1 should be included within the regulations, we would point out that in terms of the requirement to pay, the obligation should extend to not only the obligation to "pay money owed for the hours worked" but should also include "and all monies that they are due" to ensure workers are paid things like money owed for holiday pay. It is clear from the title of the Department's proposed regulation this is meant to cover holiday pay, however, the suggested wording means umbrella companies would only have an obligation to pay for the hours worked and this would not sufficiently capture the intention to include an obligation to pay holiday pay.

As discussed above, the REC believes that the three options should not be the full extent that the regulations cover. For example, it would be logical for umbrella companies to have similar obligations to those as employment businesses that operate within the Conduct of Employment Agencies and Conduct of Employment Business Regulations 2003 in terms of their relationship with the individual worker.

These could include:

Regulation 5 - Restriction on use of additional services
An EB cannot require a worker to use a paid for service provided by the EB in order to access work-finding services.

Regulation 6 - Restriction on detrimental action in relation to work-seekers working elsewhere
EBs cannot take detrimental action against a worker if e.g., the worker resigns. Also post termination restrictions are not allowed.

Regulation 12 - Prohibition on withholding payment to work seekers on certain grounds
EBs cannot withhold payment from workers if, for example, they fail to submit a signed time sheet (although other evidence of hours worked can be requested).

Regulation 13 - Notification of charges and the terms of offers
Where an EB is permitted to charge workers, there are strict rules that require the EB to provide information in advance about the goods/services and a right to withdraw from those services.

Regulation 13A - Key information document EBs must provide a KID.
This obligation should principally remain with the EB to provide the KID as the first document that the worker receives prior to registration with the EB, but there should be a legal requirement for an umbrella company to also provide similar information regarding payment from the umbrella company when they engage the worker.

Furthermore, the regulations should provide a legal obligation on the umbrella company to provide all of the information that the employment business needs to provide a compliant KID and to update the information if it changes. This should be done in a timely fashion in order for the employment business to meet its obligations.

Regulation 14 - Requirement to obtain agreement to terms with work-seekers
EBs are required to agree the basic terms and conditions on which the worker will be engaged before any work-finding services are provided. Although this obligation is duplicated by the requirement to provide a written statement of particulars as per the Employment Rights Act, ideally this EB obligation should also fall on umbrella companies to enable the EAS to take action if terms are not provided to the worker. (The remedy for failure to provide Written Statement of Particulars under the ERA is ET action).

Regulation 15 - Content of terms with work-seekers: Employment businesses
Specifies the provisions which must be included in a work seeker's contract.

Furthermore, and whilst this is not specifically a question in the regulations, one thing that has proved challenging is the contracts that an employment business needs to issue to comply with regulations 14 and 15 of the Conduct Regulations. It is obviously important that the individual work-seeker receives information to clarify the basis on which they are going to be engaged and supplied but this is complicated when there is an umbrella company in the supply chain which is also currently treated as the work seeker. Once umbrella companies are defined for the purpose of regulation, the provisions should also state clearly that an umbrella company is not a 'work-seeker' for the purpose of the Conduct Regulations.

Regulation 27& 27A- Advertisements
It is important for workers to understand what their take home pay will be from the very beginning of the recruitment process. For most people, this will be when they engage with a job advert. Where an umbrella company is used by the employment business/client, a calculation of minimum take home pay should be understood by all parties, most particularly by the work-seeker from the outset.

We know that an employment business and umbrella may have an agreed hourly rate that is inclusive of the worker's pay, fees charged for the service provided and potential future bonuses. The pay rates set out in any job advert issued by the employment business should be consistent with what a worker will be entitled to receive taking into account any umbrella/intermediary arrangements that will be offered to them.

Regulation 32 - Corporate work-seekers
The REC believes that regulation 32 should be amended to specifically exclude umbrella companies opting out of the Conduct Regulations. At present not only are limited company contractors deemed to be the Employment Business' work-seeker but as a "company" umbrella companies are caught by this too. If they are not working with vulnerable people, they can remove the application of all of the Conduct Regulations, with the exception of regulation 13A (the provision of the key information document) from any supply chain.

This is because if a worker works through a limited company, they are entitled to opt out of the Conduct Regulations applying to them. The provision was intended to be used by contractors working though their own companies to reduce administrative burden but is often incorrectly used by umbrella companies. The individual and the limited company each have to agree to opt out, but umbrella companies often seek to opt out on a worker's behalf without the worker even being aware of how their rights or obligations will be affected by being opted out. That decision by the umbrella exposes the employment business to a risk of non-compliance. Once umbrella companies are brought into regulation, they should not be allowed to do this. The opt out provision should be retained only for contractors who work through their own limited company (that they have majority control of and are a director of) and where this has been thoroughly explained to them.

SCHEDULE 4 - Particulars to be included in their records
Clause 10 of the schedule that requires records to be kept in relation to charges made to the work-seeker, including statements of dates and amounts deducted from them.

The REC would also suggest the regulations should cover:

1. Transparency of fees and payment in the supply chain. One of the issues that threatens the reputation of the recruitment industry and their use of umbrella companies, is the lack of transparency in relation to fees and payments that may be received by employment businesses, umbrella companies, and potentially clients, when an umbrella company is selected. The REC would like to see similar provisions that apply to consumers when buying financial products/services be applied to the rules around procuring umbrella services. This would mean a

disclosure of referral fees, and any other incentives offered to Employment Businesses or any other client by umbrella companies.

2. In accordance with Section 6 of the Employment Agencies Act, employment Businesses cannot charge direct fees for providing work finding services. It is an offence under the Employment Agencies Act. The REC is not advocating that umbrella companies should be prohibited from charging a fee to work-seekers where they perform a specific task not related to work-finding services, however, as umbrella fees are not always made obvious to workers, transparency and simplicity of pay slips is key to ensuring that workers are clear about the cost of umbrella company fees. This would require a tightening up of regulation 13A Conduct Regulations (provision of a key information document). In addition, workers should not see deductions from their pay for any charges that are the employer's responsibility, such as:

- Employer (auto enrolment) pensions contributions
- Employers NI
- Apprenticeship Levy.

Q.5 Is there a rationale for starting with limited regulations and reviewing them before potentially expanding them to cover other areas of umbrella company involvement?

No.

Umbrella company regulation is long overdue, and any further delay would be wholly unnecessary. Whilst the three areas proposed are a starting point, they would not be productive in regulating umbrella companies by themselves. For umbrella companies to be properly regulated, an extensive list of regulations covering the entirety of an umbrella company's activities should be in force from the outset.

Q.6 Are there reasons that the Employment Agency Standards Inspectorate should not enforce umbrella company regulations? And if so, are there other bodies or approaches the government should consider? Please explain your answer.

In the absence of a SEB the REC agrees that the Employment Agency Standards Inspectorate should enforce umbrella company regulations.

The REC has long campaigned for a SEB and we are still of the view that this would be the most effective way to enforce umbrella company regulation. Whilst legislative changes over recent years have made the sharing of intelligence between enforcement bodies slightly easier, there is still no open flow of information from one body to the next. A SEB would make intelligence sharing far more effective and provide a single point of reference when things are reported. This would also result in greater efficiency and value for money for the taxpayer.

However, we understand this would require primary legislation and to avoid any further delay, we agree with the proposal for EAS to be responsible for umbrella company enforcement. EAS would however require sufficient additional resources to effectively cope with the added responsibility this would bring.

We are surprised, given that much of this consultation is devoted to tax non-compliance, to see no enforcement mechanism suggested which lends itself to the expertise of HMRC. The EAS should not be expected to enforce umbrella company regulations that require expertise outside of their remit. Ultimately regulation to reduce and prohibit tax avoidance and evasion should sit firmly with HMRC.

Q.7 Does the Employment Agency Standards Inspectorate have sufficient enforcement powers to regulate umbrella companies or would changes need to be made?

Yes. The REC believes that the EAS's current enforcement powers would be sufficient to regulate umbrella company activity to the extent of EAS's remit within the regulations. This is not the same as resources at their disposal - as we have argued in our response to question 6. Given the level of tax non-compliance in the sector, the EAS would also need to work in conjunction with HMRC to rely on their tax expertise and powers of enforcement.

Q.8 Should EAS mirror its current enforcement approach for employment agencies and employment businesses if it enforces umbrella company requirements?

Yes. The approach should be the same as it is currently for employment businesses and employment agencies, which is a mix of proactive and reactive enforcement. The REC does not believe an ombudsman style approach would lend itself to successful regulation of umbrella companies, especially given the tax expertise that would be required to uncover much of the non-compliance.

Q.9 Do you agree that a requirement to undertake due diligence upon any umbrella companies which form part of a labour supply chain would reduce tax non-compliance in the umbrella company market, and to what extent?

We do not agree. To a large extent the requirement for employment businesses to undertake due diligence is already mandated in legislation. The requirement to implement "reasonable prevention procedures" to prevent the facilitation of tax evasion is contained in the Criminal Finances Act 2017. This is one of the reasons why the REC advises all members who engage with umbrella companies to conduct due diligence prior to and during an engagement. Our advice takes the form of a detailed checklist for our members to work through, much of which is to be completed with information supplied by the umbrella company and requires production of documents such as payslips.

Despite having a contractual agreement to audit, many of our members have reported how difficult it can be to obtain the necessary information from an umbrella and even when information is provided, documents have turned out to be falsified. In the absence of passing an obligation onto umbrella companies to provide employment businesses with the required information, stating due diligence should take please is liable to be as ineffective in the wrong hands as what we have now. Even when relevant information is provided, this is not an absolute guarantee that the umbrella will not engage in non-compliant activity.

However, the REC would be in favour of an obligation on employment businesses to report where there is obvious or suspected tax avoidance taking place. An expectation that goes further than this would be wholly impractical.

The consultation suggests that the government "recognises the need to have certainty around due diligence requirements" however then goes on to say that the legislative requirement will not be prescriptive. This is confusing and leaves a grey area. The REC strongly believes it would be unjust to potentially penalise our members for not conducting sufficient due diligence when there is no benchmark in legislation of what that due diligence should look like and include.

Also, employment businesses do not have the tax expertise to determine whether an umbrella is involved in a sophisticated tax avoidance scheme. So mandating employment businesses to detect if this is occurring is unlikely to reduce tax non-compliance. As said above, that responsibility should lay firmly with the HMRC.

Q.10 Would a mandatory due diligence requirement focused on tax non-compliance also improve outcomes for workers engaged via umbrella companies?

No, please see answer to question 9.

Q.18 What impacts would this option have on the labour market and on the umbrella company market specifically?

Mandating due diligence by employment businesses would have very little impact on clamping down on unethical practices by umbrellas.

Our members already do due diligence on umbrella companies. Employment businesses engage with umbrellas rather that dealing with PAYE and where used, umbrellas are often the selected option by workers. Having consulted with REC members, they felt this would be the least likely of the three options in the consultation that would make them question the use of an umbrella company model of engagement.

Q 19: Would this measure lead users and suppliers of temporary labour to move away from the umbrella company model of engagement? If so, how would end clients and employment businesses engage workers instead?

The consultation does not provide any information in terms of what mandated due diligence would include and therefore it is difficult to give a meaningful answer to this question. However, based on the current level of due diligence our members undertake prior to and during their engagement with umbrella companies, we have seen very little, if any, change in the levels of umbrella company engagement. It follows therefore that any future due diligence that may be mandated would also be likely to have very little impact on engagement levels.

Q.21 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?

The REC strongly disagrees that a transfer of tax debt would address tax non-compliance. It would merely shift the burden of the debt to the employment business or end client rather than dealing with the issue of tax avoidance/fraud/evasion.

This option does not serve the purpose of this consultation which is meant to deal with the issue of tax non-compliance. Furthermore, it would be grossly unfair and disproportionate for employment businesses, who have no control whatsoever over the actions of a completely separate legal entity, to be penalised for another's non-compliance.

As has been pointed out in the consultation, establishing and liquidating an umbrella company can be done very easily. A transfer of tax debt provision may have the opposite effect for which it was intended and actually encourage umbrella companies to withhold tax payments knowing that this will be picked up further down the supply chain.

Q.22 Would this option improve outcomes for workers engaged via umbrella companies?

In the long term, no.

There are many reasons why temporary workers like to engage with an umbrella company but one of the main reasons is that doing so gives them employee status. This provides them with additional protection and access to financial products and services which they would find difficult to access as a temporary worker. If the tax debt was to be passed to an employment business or end client, this may result in alternative models of engagement such as a contract for services being used to mitigate the risks of tax debt transfer. As a result, workers may be engaged under a contract for services - as opposed to a contract of employment - leaving them in a worse long-term position.

Q.29 Would businesses stop using umbrella companies as a result of the introduction of a transfer of debt? How many businesses would do this and what wider impacts would there be?

Potentially but it would depend on individual business' risk appetite.

While all members we consulted agreed that this would be an additional risk and burden, none suggested it would ultimately deter them from using an umbrella company. This risk is something our members are familiar with when engaging with other intermediaries that fall within IR35 legislation and has not deterred many working under this engagement model.

Q.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?

Yes, we agree. If the responsibility for making deductions of income tax and national insurance was to shift to the employment businesses, then this would likely take away the ability for non-compliant umbrella companies to run disguised remuneration schemes. Whilst we appreciate that this will put an added burden on our members, it does not expose them to the risks associated with the other two options as it will put them firmly in control of the deductions, and reduce, to a certain extent, the requirement to perform unnecessary due diligence. It would also reduce the risks they currently face in regard to the Criminal Finance Act 2017.

Q.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?

If the employment business was the deemed employer, it would create an additional burden for our members, which might ultimately drive down the purpose of using umbrella companies.

Q.37 Would businesses stop using umbrella companies as a result of this change? How many businesses would do this and what wider impacts would there be?

The REC believes this would have a significant impact on the use of umbrella companies by employment businesses.

When consulting with our members one of the main reasons they cited for using umbrellas is for the payroll services they offer, given the complexities of running a

payroll system for temporary workers. If there was no longer an option for our members to outsource this burden to an umbrella company, it would be very likely that they would no longer use their services. Instead, they may choose to opt for an outsourced payroll provider rather than an umbrella company, but this would result in employment businesses still retaining control and far more transparency than they currently have with the umbrella company engagement model.

Q.39 Would this option improve outcomes for workers engaged via umbrella companies?

From a tax perspective this would very likely improve outcomes for workers engaged via umbrella companies.

Given the prevalence of tax non-compliance in the umbrella company market, taking away control of a worker's income tax and national insurance deductions should reduce the historic abuse of disguised remuneration, "loan" schemes, etc. In turn, this will mean that HMRC is no longer chasing unpaid contributions from the worker, many of whom have no idea that this has occurred, and therefore would certainly improve outcomes for them.

Q.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?

The consultation appears to focus completely on passing the burden of regulating tax non-compliance onto employment businesses - which seems odd given it is within HMRC's scope to determine if any business is or isn't properly accounting for tax. It is well within HMRC's existing powers to do this and is not something which should be passed to either EAS or employment businesses, not least because neither have the expertise required.

At a basic level, and provided correct information has been supplied to the employment business, it would not be unrealistic to expect employment businesses to periodically check payslips and potentially have spot checks with workers by way of an interview. Anything beyond that would require tax expertise or additional powers and would not be practical or effective in tackling tax non-compliance. Indeed many REC members already perform these checks - and yet the problem of non-compliance persists.

Instead, HMRC should be more proactive in regulating umbrella company activity. Simple changes like cross-referencing Real-Time Information (RTI) and intermediaries' reports could have a significant impact on curbing tax non-compliance. This, coupled with proactive EAS enforcement, should be the approach taken to reduce umbrella company non-compliance without unfairly burdening employment businesses or putting the worker at risk.

Q.42 What more could HMRC do to prevent abuse of the scheme? Are there any specific options that you believe the government should consider?

Whilst we are by no means experts in tax, we have seen submissions and proposals by tax experts who would suggest removing both the VAT flat rate scheme and the employment allowance scheme - as both are being largely abused and / or not being used correctly.

If the Government moves forward with the proposal to make the deemed employer for tax purposes the employment business as set out in chapter 4, then umbrella companies would no longer benefit from creating mini umbrella companies in order to be eligible for the employment allowance as they would no longer be the deemed employer for tax purposes.

About the Recruitment & Employment Confederation

The Recruitment & Employment Confederation (REC) is the professional body for the UK recruitment industry. We represent over 3,000 recruitment businesses and 11,500 individual recruiters. The UK recruitment sector places over a million people into permanent jobs each year and ensures that a further one million are working flexibly through temporary assignments on any given day.

The professional staffing sector is bigger in scale than either law or accountancy and contributed £43 billion to UK GDP last year. Our members work as advisors, planners, and partners with business across all sectors on recruitment, retention and productivity.

As the professional body for the sector, the REC is responding to this consultation on behalf of REC members.

For more information on this submission, please contact:

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The REC is the voice of the recruitment industry, speaking up for great recruiters. We drive standards and empower recruitment businesses to build better futures for their candidates and themselves. We are champions of an industry which is fundamental to the strength of the UK economy. Find out more about the Recruitment & Employment Confederation at www.rec.uk.com