Modernising the regulatory framework for agency work: LITRG response

Employment Tax

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LITRG has responded to the ‘Make Work Pay’ consultation, part of which considers how the regulatory framework should be adapted to reflect the role of umbrella companies.

The legislative framework governing the temporary labour market includes the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations). However, these Regulations pre-date the widespread use of umbrella companies, with the result that a number of protections and enforcement mechanisms do not apply directly to workers engaged through such intermediaries.

We know from our work that umbrella workers may be exposed to hidden costs, opaque deductions and uncertainty regarding their rights and pay. Particular concerns arise in relation to the elective deduction model (tinyurl.com/yca53ft6), under which individuals are treated as employed for tax purposes but self-employed for employment rights purposes. Until now, enforcement has often depended on individuals asserting their rights, which can be especially difficult for lower-paid agency workers.

The government has sought to address these issues through the Employment Rights Act 2025, which will bring umbrella companies within the scope of the Conduct Regulations. Nevertheless, in their current form, the government acknowledges that the Regulations are not well suited to regulating umbrella company activity and require adaptation.

The consultation (tinyurl.com/ytp5uatw) spans both high-level proposals – for example, preventing workers from being required to work through an umbrella company – and more detailed questions, including whether umbrella companies should be required to pay workers where funds have not been received from the agency.

In its response, LITRG draws attention to significant recent developments in the tax sphere, including Finance Bill 2026, which introduces joint and several liability to address tax non-compliance within umbrella company supply chains. LITRG supports these new provisions, which have the potential to deliver a material improvement in worker protection.

However, LITRG cautions that an overemphasis on ‘choice’ in relation to how workers are engaged and paid under the new regulatory regime could inadvertently encourage movement away from the strengthened umbrella framework towards less protected arrangements (for example, in-house agency PAYE). We note that workers may be at comparable risk of tax abuse from an agency as from an umbrella company. The compliance issues we see are not necessarily linked to the type of entity involved, but to the function performed, namely the payment of workers.

Our response also considers risks relating to payment. In practice, LITRG receives few, if any, queries concerning discretionary bonus payment models, which are used by some umbrella companies to mitigate the impact of agency payment default. (Where agency payment is late, the umbrella may pay the worker their basic rate

while withholding any ‘commission’ or ‘bonus’ element until the relevant sum is received from the agency.) Conversely, umbrella companies generally have no independent source of income from which to pay workers; requiring payment in the absence of funds would therefore be likely to create cashflow pressures and, in some cases, business failure, an outcome that would be more detrimental to workers than delayed payment.

LITRG recommends that the elective deduction model be prohibited under the new regulatory regime, and emphasises that strong, proactive enforcement by the new Fair Work Agency will be critical. We encourage early and detailed engagement, including with HMRC, on implementation needs and practicalities, including the provision of appropriate support and expertise and the securing of adequate funding. We conclude that enforcement is not merely supplementary; rather, it is fundamental to achieving compliance, protecting workers and improving the current landscape.

The full LITRG submission is available here: www.litrg.org.uk/11208.

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