



Making Work Pay

Modernising the Agency Work Regulatory Framework

Introduction

This response is made by Unite the Union. Unite is the UK's strongest trade union, representing over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, hospitality, health, local government and the not-for-profit sector. Unite represents agency workers in a wide range of sectors, across the public and private sectors.

Unite appreciates the opportunity to respond to the DBT consultation on modernising the Agency Work Regulatory Framework.

Executive Summary

Agency working is meant to be a flexible working option allowing workers to balance their work with caring responsibilities. But in practice, agency workers are amongst the most vulnerable workers in the UK labour market.

Overview

As the latest labour market data indicates, agency working is not always a positive choice and is often characterised by low pay, job and income insecurity, and a lack of and poor enforcement of employment rights. For example, recent ONS labour market data and Unite's industrial experience in sectors such as construction and beyond reveals¹:

- *Agency workers are twice as likely to be in temporary work against their wishes.* Around four in 10 temporary agency workers report taking a temporary job

¹ Office for National Statistics. (2026). *Quarterly Labour Force Survey, October - December, 2025*. [data collection]. UK Data Service. SN: 9522, DOI: <http://doi.org/10.5255/UKDA-SN-9522-1>

because they could not find a permanent one (42 per cent) compared with only 20 per cent of other temporary workers.

- *Agency workers are nearly seven times more likely to be employed on a zero-hours contract (ZHC) than other workers* with 22 per cent of agency workers being employed on a ZHC compared to just 3 per cent of all other workers. 34 per cent of all temporary agency workers report being employed on a ZHC. As a result, agency workers face higher levels of income and working hours insecurity than other workers.
- *Agency workers are subjected to regular mistreatment at work*, including unfair deductions from pay, indecipherable pay slips, lack of comprehensible information about their assignments etc. This is due to the lack of basic protection and ineffective enforcement by the under-resourced Employment Agencies Standards Inspectorate (EASI), now replaced by the Fair Work Agency (FWA).
- *Agency workers are five times as likely to have no days of paid holiday compared with other workers*². This is likely due to the prevalence of rolled up holiday pay for agency workers and weaker enforcement of employment rights and conditions in general for agency workers.
- For many agency work is similar to permanent employment, yet due to their employment status and the tripartite employment relationship, agency workers do not enjoy the same job security or employment rights as other permanent workers.

Umbrella companies

The use of umbrella companies in construction and education and beyond is associated with the creation of bogus self-employment, with workers being ripped off through excessive deductions from wages and through a loss of basic employment rights. There is deep concern from workers and trade union representatives across the construction industry that employment agencies are acting as a conduit to deliver workers into casualised employment models such as Umbrella Companies, the Construction Industry Scheme, and Personal Service Companies. This undermines direct employment, industry training and apprenticeships while restricting employment rights opportunities of this workforce.

From Unite's industrial experience common practices by umbrella companies include:

- misleading and unfair deductions from workers take home pay;

² Amongst agency workers who provided information about their paid holiday entitlement, around 21 per cent report having no days of paid holiday entitlement (excluding public holidays), compared to around 4 per cent for other workers. Amongst otherwise valid response estimates, 20% of agency workers and 12% of other workers were unable to provide information about their paid holiday entitlement. These have been excluded, following ONS advice.

- undermining the expected pay rate advertised by the agency and industry wide rates for the job;
- deductions of umbrella company operating costs from a workers' pay;
- payslips that are difficult to comprehend and intentionally ambiguous;
- breaches of holiday leave and pay entitlement with umbrella companies preventing workers from taking their holiday;
- large proportions of agency workers working under umbrellas not receiving the Key Information Document (KID) they have been entitled to since April 2020;
- fragmentation of the employment relationship and workers unsure who their employer is weakening employment rights;
- undermining of national collective bargaining agreements and sectoral pay rates;
- workers caught up in tax evasion schemes operated by the umbrella companies.

Using agency workers to break strikes

Regulation 7 which is designed to prevent employers from using agency workers to break strikes is too limited and is difficult to enforce. Agencies (not hirers) are barred from deploying agency workers to cover the duties directly undertaken by those involved in lawful industrial action and barred from deploying agency workers to backfill for employees who have been redeployed to cover for striking workers.

However, EASI inspectors (and unions) who are not on the duties of employees in a company / organisation and tend to accept information provided by employers. Inspectors are not willing to second guess employers' staffing structures or redeployment strategies. As a result, employers can easily circumvent Regulation 7 to break lawful strikes. This undermines workers' fundamental right to strike and leads to protracted disputes. Such tactics also places agency workers in an invidious position.

The enforcement and remedies for breaches of Regulation 7 are also very weak. EASI responses to union complaints are often delayed, further undermining strike action. The fines provided for in the Conduct Regulations are not sufficiently high to deter employers from using agency workers and unions cannot legally challenge the actions of the hirer or the agency.

Need for improved enforcement

The consultation document refers to "improving enforcement". However, there are no details about how this will be done. The 2021 agency worker survey³ showed that only 62 per cent of agency workers knew of the Employment Agency Standards Inspectorate (EAS), and only 28 per cent were aware of any details of what they do. It is vital that the new Fair Work Agency takes steps to remedy this lack of awareness.

³ Agency Worker Survey (2021), "Report of Findings Experiences and views of agency workers in the UK", Department for Business and Trade.

Key asks:

A review of agency workers' rights and of the legislation regulating employment businesses, employment agencies is long overdue. The law needs to be overhauled and strengthened including by:

- Banning umbrella companies outright. Umbrella companies are designed to exploit workers and to avoid employment rights obligations. In our opinion, the only effective way to prevent the exploitation of workers by umbrella companies is to prohibit their use.
- Rewarding agency workers fairly, by removing the 12 week qualifying period and creating to a right equal pay, and the same holidays and working time arrangements *from day one* of any assignment with a hirer.
- Tackling persistent and systemic problems experienced by agency workers including unfair deductions from pay, indecipherable pay slips, and the lack of comprehensible information about their assignments.
- Ensuring agency work becomes a genuine stepping stone to permanent, secure employment including by banning the use of temp to perm fees.
- Strengthening Regulation 7 to provide that agencies and hirers are prohibited from deploying agency workers to undertake work which is directly or indirectly related to industrial action being taken. The EASI/FWA should be required to prioritise potential breaches to Regulation 7, responding to all union complaints within 24 hours. Regulation 7 should also provide a remedy, enabling unions to legally challenge breaches of Rule 7, seeking injunctive relief and punitive damages against hirers and agencies.
- Reforming the law on employment status to ensure agency workers do not lose out on basic rights at work.
- Properly resourcing the Fair Work Agency to ensure agency standards are rigorously enforced, including through the deployment of additional inspectors. Improving enforcement of agency worker legislation should be a priority for the new Fair Work Agency, including enforcement of holiday pay rights for agency workers.

Unite is seriously concerned that some of the proposals in the consultation appear to be driven by plans to cut regulation by an arbitrary target of 25 per cent. It is vital that the impact of positive reforms set out in the consultation are not undermined by the proposals to deregulate of agency standards under the pretence of cutting red tape for business.

Responses to consultation questions

Chapter 1: Security

Question 1a:

Do you agree that the key objectives listed should underpin the regulations: ensuring fair remuneration; ensuring a wide-ranging coverage of protection; providing assurance for business?

- **No**

Question 1b:

Please explain your answer.

The key objectives should be more precise, robust and should prioritise protecting agency workers from mistreatment. There are also clear omissions in the proposed text. For example:

Objective 1: on ensuring fair remuneration:

- should emphasise agency workers' rights to equal pay under the Agency Worker Regulations 2010. See the response to question 12 b.
- should emphasise agency workers' rights to be paid in full in accordance with legal entitlements, including duties on hirers, agencies and umbrella not to make unfair deductions from wages.
- "Likewise, *employment businesses and agencies should have the autonomy to negotiate agreements with hirers that ensure fair compensation for their services*" must be omitted. This wording implies that hirers and agencies will have the right to contract out of basic agency standards. Allowing for private agreements will also reduce transparency for agency. It is vital that contractual terms between agency/hirer/umbrellas are tightly regulated so as to avoid agencies charging exorbitant fees to hirers which will inevitably be passed on to workers in the form of reduced pay or unfair deductions including by umbrella companies.

Objective 2: ensuring wide-ranging coverage of protection should:

- Emphasise that ALL not just a wide range of agency workers will be protected.
- Emphasise that strengthened regulations will be comprehensive in scope covering all agencies and employment businesses, will be applied uniformly and will be regularly reviewed and updated in response to innovations in business models.

- The key objectives are based on the premise that Umbrella Companies should remain part of the employment framework. Unite’s industrial experience indicates Umbrella Companies exist primarily to exploit workers and prevent employment rights entitlements. Workers also report confusion and a lack of transparency as to who their employer is when operating through Umbrella Companies. Given the longstanding and wide-ranging problems with umbrella companies, the only effective way to prevent the exploitation of workers by umbrella companies is to prohibit their use.

Objective 3: providing assurances for businesses

Unite supports this principle but we are concerned that it will be undermined by consultation proposals (paragraph 46, etc) which imply parts of the key information an agency is currently required to give to a hirer should be removed. We are concerned these proposals could result in unqualified agency workers being placed in roles which could have an impact on their health and safety and the employer’s operations.

Stepping stone to permanent employment: Unite agrees with the TUC proposal for an additional objective to ensure agency work law and practices does not create a barrier for workers to access secure, permanent employment. Existing regulations should be reviewed and where they are found to impede agency workers who wish to from moving into permanent employment, they should be removed or amended.

Question 2a:

In your view, do the current regulations meet these objectives?

- **No**

Question 2b:

How could the current regulations be adapted to better meet these objectives?

The current Conduct Regulations and the Agency Worker Regulations fall short of the proposed objectives and fail to protect agency workers properly.

The responses contained throughout this consultation illustrate how the Conduct Regulations and Agency Workers Regulations fall short of the proposed objectives and should be strengthened. This includes, but is not limited to:

- Unite believes that the only effective way to prevent the exploitation of workers by umbrella companies is to prohibit their use. Additional regulation is likely to prove insufficient.
- Amending the Agency Worker Regulations so that agency workers have rights to equal pay, and to equal treatment in relation to holidays and working time arrangements from *day one* of an assignment with a hirer.

- Tackling persistent and systemic problems experienced by agency workers including unfair deductions from pay, indecipherable pay slips, and the lack of comprehensible information about their assignments.
- Abandoning consultation proposals (paragraph 46, etc) which imply parts of the key information an agency is currently required to give to a hirer about the qualifications of the agency workers should be removed.
- Strengthening Regulation 7 as outlined above.
- Reforming the law on employment status to ensure agency workers do not lose out on basic rights at work.
- Properly resourcing the Fair Work Agency.

Question 3a:

Do you have views on how the government can ensure that the distinction between the activities of employment agencies and employment businesses are clearly defined? For example, changes to regulation 8, or publishing specific guidance.

- Yes

Question 3b:

If yes, please explain your answer.

It is important that a clear distinction is maintained between the activities of employment businesses and employment agencies. In particular, the ban on employment agencies charging for job seeking activities is retained. Any exception to this principal must be minimised to ensure that vulnerable, younger workers seeking employment as models or in the arts, are not enticed into paying substantial fees where there is no guarantee of work.

More significantly there is an urgent need for government to review the law on employment status, to provide clarity and provide increased protection for workers employed in sub-contracting and agency working chains.

In the construction and other sectors where agency worker forms a core part of the permanent workforce, employment agencies are essentially providing a quasi-subcontracting role. The difference between a labour only subcontractor and the agency is essentially blurred. They both exist within the supply chain to provide labour to the end user, usually a Tier 1 or Tier 2 contractor.

The main distinction involves the issue of who is the employer – a question which is critical for determining whether workers have employment rights and whether those rights can be enforced. The picture becomes more confused through the increasing use of Umbrella Companies as outsourcing payroll providers and the growth of bogus self-

employment in construction. Technically the employment relationship exists with umbrella company and/or the agency. However, in practice the worker works for, performs tasks for and will be directed in the workplace by the contractor. Additionally, workers within labour only sub-contractors will often be coerced into signing up to the Construction Industry Tax Scheme, being self-employed for tax purposes even though they embody all the elements of a directly employed workers/employee.

The tripartite employment relationship (and the use of bogus self-employment in construction) means agency workers are some of the most vulnerable of workers in the UK labour market. The worker can rarely - in law and more particularly in practice - enforce employment rights against the contractor, including where they are dismissed or are victimised for union activities. The powers and capacity of enforcement bodies is extremely limited. A reform of employment status law is therefore urgently required with serious consideration being given to creating joint and several liability for hirers / agencies / umbrella companies for breaches of employment law standards.

Question 4a:

Do you think the government should relax restrictions on how and when employment businesses can charge end hirers?

- **No**

Question 4b:

Please explain your answer.

Unite strongly disagrees with the proposition in the consultation that “*wherever feasible, business-to-business arrangements should be permitted to negotiate terms that best meet their specific needs.*”

In our opinion, the contractual terms between agency/hirer/umbrellas should be regulated to avoid agencies charging exorbitant fees to hirers which will inevitably be passed on to workers engaged through a payroll intermediary such as an Umbrella Company in the form of reduced pay or unfair deductions including by umbrella companies. Throughout the last two decades the growth of Umbrella Companies Unite and heritage construction unions have a litany of examples where workers are charged payments which they have no knowledge of or were not informed of on taking up post. We would be concerned that these fees could be passed on to workers.

Unite is also concerned by plans to lift restrictions on the use of temp to perm fees which regularly amount to 15-20% of a worker’s first year salary. Such fees erect significant barriers to agency workers getting into permanent employment.

Question 5a:

Do you agree that the principle that employment businesses cannot withhold, or threaten to withhold, payment for work done should be maintained?

- Yes

Question 5b:

Please explain your answer.

Unite agrees with the government that regulation 12 is one of the key provisions in the Conduct Regulations as it ensures an agency worker still gets paid in the event a hirer does not pay the agency. It is vital that this safeguard is retained and that the worker does not risk a loss of income because of any contractual dispute between the agency and hirer.

Regulation 12 also provides an agency worker with an alternative route to recovering unpaid wages. An agency worker who has suffered unfair deductions can ask the EASI / FWA to recover any wage theft. If this regulation was removed an agency worker's only enforcement route would be via employment tribunal, which can be expensive and time consuming.

Question 6a:

Do you agree that regulation 12 should place an obligation on umbrella companies to pay workers for all work done, including in situations where they have not received payment from an employment business?

- Yes

Question 6b:

Please explain your answer.

Unite is calling for an outright ban on Umbrella Companies. We are not convinced that the proposed regulation of Umbrella Companies will be sufficient to address the longstanding and wide-ranging problems with umbrella companies. From Unite's industrial experience common practices by umbrella companies include:

- misleading and unfair deductions from workers take home pay;
- deductions of umbrella company operating costs from a workers' pay;
- payslips that are difficult to comprehend and intentionally ambiguous;

- breaches of holiday leave and pay entitlement with umbrella companies preventing workers from taking their holiday;
- workers caught up in tax evasion schemes operated by the umbrella companies.

See the Unite response to HM Treasury, HM Revenue and Customs, Department for Business, Energy and Industrial Strategy Call for Evidence: Umbrella company market (contained in Appendix 1) for more information.

These industrial findings have been reinforced by the research of the Low Incomes Tax Reform Group which highlighted that the following umbrella company practices⁴:

- Some umbrella companies take extra amounts from the assignment rate before arriving at a worker's gross pay. There has recently been an example where an extra £2 per pay period was wrapped up in a deduction called 'employment costs' – making it very hard to spot.
- Payroll-fraud: It would appear some umbrella companies calculate and take deductions from people's pay and either do not pay them over to HMRC at all or pay reduced amounts (by understating workers' pay figures in their submissions to HMRC thereby reducing the tax/National Insurance amounts that are calculated and that they pay over).

There is substantial evidence that the existing regulations are failing workers consistently, particular where umbrella companies operate. Unite calls on the government to ban umbrella companies. Failing this, the Conduct Regulations need to be substantially strengthened.

Alongside extending Regulation 12 to umbrella companies, Unite supports the introduction of joint and several liability where both the agency/contractor are responsible for the treatment and fair remuneration of workers currently operating through an Umbrella Company. The best solution is for contractors to employ workers directly on a PAYE basis or alternatively agencies become the employer without recourse for Umbrella Companies to further muddy the employment landscape for a worker.

Question 7a:

Is there additional information beyond requirements or authorisations required by law, and requirements or authorisations required by a relevant professional body or regulator, that should be obtained and provided to hirers under these regulations, rather than agreed to through contractual arrangements?

- **Yes**

⁴ <https://www.litrg.org.uk/working/umbrella-company-workers>

Question 7b:

Please explain your answer.

The requirement to provide information under regulations 19, 20 and 21 should be retained and not diluted. It's important that the hirer has evidence of a worker's experience, training and qualifications. The range of information provided should not be restricted as proposed in paragraph 46.

The existing requirements to provide full information helps to ensure that qualified and experienced staff are always assigned to roles. This protects the safety of the assigned workers, other staff and the customers and the public and also provides reassurance to hirers.

Question 8a:

Where an umbrella company is involved, should the umbrella company be obliged to pass on any information they are aware of, relating to the two areas outlined above, to the relevant employment business (or to the end hirer when there is no employment business in the supply chain)?

- Yes

Question 8b:

Please explain your answer.

As explained above, it is important that regulations 19 to 21 are not watered down or removed. Umbrella companies should also be obliged to pass on any information relating to the required information set out in these regulations.

Question 9a:

Do you agree that additional obligations and safeguards should remain in place where the work-seeker will be required to work with vulnerable persons?

- Yes

Question 9b:

Please explain your answer.

As stated above, the "additional" (existing) obligations and safeguards should be in place for all workers and all assignments. However it is particularly important that the

obligations in regulations 19 to 21 are complied with where a work-seeker will work with vulnerable persons.

Question 10a:

Do you have views on how the processes relating to information gathering and sharing should be streamlined in order to facilitate workers taking up positions quickly and to reduce the administrative costs involved?

- **Yes**

Question 10b:

If yes, please explain your answer.

The consultation has not made a reasonable case for removing the information requirements relating to training, experience and qualifications set out in regulations 19-21. Therefore, we do not believe “streamlining” is appropriate.

EAS guidance⁵ also states that information provided by an agency to a hirer under Regulation 21 can be provided verbally if needed. Therefore, if an agency needs to move at speed to “facilitate workers taking up positions” quickly they can pick up the phone to the hirer, give them the information and then provide it in writing over the next few days.

Question 11a:

In your view, are there any alternatives to these obligations which would give hirers and clients the necessary security and confidence?

- **No**

Question 11b:

Please explain your answer.

Unite believes the existing information requirements set out in regulations 19 to 21 should be retained.

Question 12a:

⁵ <https://assets.publishing.service.gov.uk/media/5fb53e94d3bf7f63def366c3/eas-brief-guide-for-agencies.pdf>

In your view, should the government make changes to the length of the qualifying period (12 weeks) after which agency workers are entitled to equal basic working and employment conditions, including equal pay?

- Yes

Question 12b:

Please explain your answer.

Unite strongly believes agency workers should have a day one right to equal treatment on pay, working hours, and holidays and indeed on all terms and conditions, in line with rights for individuals working part time and on a fixed term basis. The 12 week qualifying period should be removed.

Removing the 12-week qualifying period would:

- Ensure agency workers are paid fairly for work done, are not discriminated against.
- End the two-tier workforce, ensure that agency workers are paid at the same rate as colleagues they work alongside for doing the same job.
- Prevent employers from gaming the qualifying period to avoid paying agency workers the rate for the job.
- Ensure agency work is brought in line with other “atypical workers” such as part-time and fixed term workers.
- Remove the incentive for employers to drive down costs by use agency workers rather than recruiting staff directly.

Extending the qualifying beyond 12 weeks would have a detrimental impact on agency workers, meaning they would have to wait an even longer period before achieving equality on key terms and conditions, despite doing the same job as their permanent counterparts.

Question 13a:

In your view, should the government consider any other changes to the Agency Workers Regulations 2010 to reduce administrative burdens for business?

- Yes

Question 13b:

Please explain your answer.

Unite believes that equal treatment rights for agency workers should not be limited to basic employment and working conditions but should be extended to include all forms of remuneration, and other terms and conditions.

Under Regulation 13 of the Agency Worker Regulations 2010 agency workers have the right, from day one, to be informed by the hirer of any relevant vacancies, to give them the same opportunity as a comparable worker to find permanent employment with the hirer.

This regulation was considered by the Court of Appeal in *Kocur v Angard Staffing Solutions Ltd and anor.*⁶ The Court held that the right under regulation 13 is limited to the right to be informed of relevant vacancies. It does not give agency workers the right to apply or be considered for vacancies on the same terms as the hirer's directly recruited employees. Unite believes the 2010 regulations should be amended to make it explicit that agency workers have to right to apply for vacancies as well as be informed of them.

Giving an agency worker a right to be informed of vacancies, but not apply for them, does not provide those workers with an opportunity to transition to permanent employment. There should also be a provision that collective agreements can permit the employer and unions to negotiate circumstances where the right to apply for vacancies may not apply. For example, in a redundancy situation, where it may be appropriate for permanent staff at risk from redundancy to have first access to any potential vacancies.

Question 14a:

Do you have any views on how the regulations listed above operate in practice, and whether there are any changes that the government should consider?

- **Yes**

Question 14b:

If yes, please explain your answer.

Unite does not agree that regulations 28 to 31 should be amended or streamlined.

These regulations provide important protections for workers. It is vital that regulation 29 is not simplified or removed. This ensures that agencies maintain accurate records which enables workers and FWA inspectors to determine whether legislation has been

⁶ <https://www.boyesturner.com/news-and-insights/agency-worker-regulations-do-not-give-agency-workers-right-apply-internal-vacancies-same-terms-employees#:~:text=It%20does%20not%20give%20agency,fear%20of%20breaching%20the%20AWR>

complied with. For example, under Schedule 4 of the Conduct Regulations agencies are required to retain a copy of the Key Information Document. There is extensive evidence of very low levels of compliance with this legal requirement. Any move to water down this record keeping requirement would make it even more difficult for the new FWA to enforce these provisions.

Regulation 30 should be amended to make it possible for agency workers to bring claims related to breaches of the Conduct Regulations to employment tribunals. Currently the regulations can only be enforced via a civil court or the FWA. The civil court is a costly route for workers and the EAS (now incorporated into the FWA) is under resourced and has often proved ineffective.

Question 15a:

Do you have any views, not already captured, on how the regulations discussed in this chapter should be streamlined to reduce administrative burden for businesses?

- No

Chapter 2: Transparency

Question 16a:

Do you agree that the key objectives listed should underpin the regulations: clarity for workers; pay transparency; proportionality?

- No

Question 16b:

Please explain your answer.

Unite believes that the primary and overarching objective guiding the regulations should be the provision of ethical and fair employment for workers engaged through agencies.

Unite agrees that *clarity for workers* should be a priority but we do not agree that it is sufficient for workers to be simply informed about the hirer and who their employer is. As stated above, the rules on employment status should be overhauled with agency workers being eligible for all statutory employment rights and with hirers/agencies/ umbrella companies having joint and several liability for complying with these rights.

The 2021 Agency Worker Survey Report which is cited in the consultation document confirms that *pay transparency* remains widespread within the agency sector with nearly a third of all workers not receiving a written statement providing details about their assignment. The survey findings underlined that lack of transparency is a major issue in relation to umbrella companies with 22% of workers paid by an umbrella company not being clear about who was paying them (as opposed to 9% of agency workers paid directly by their employment business), and 23% of those paid by an umbrella company had not received a contract. Problems with payslips were also more common for those being paid through an umbrella company, with 9% reporting issues accessing their payslip with 12% of workers having difficulties understanding their payslip.

The objective on *pay transparency* should make clear that agency workers must be entitled to receive full payments for all work done and that agencies / umbrella companies and hirers should face robust penalties for any unfair deductions from pay.

The 2021 Agency Worker Survey Report also confirms that the lack of *clear documentation* remains a serious problem of many agency workers. It is important that information requirements are not watered down under the premise of needing to reduce red tape for employers.

Question 17a:

In your view, do the current regulations meet these objectives?

- No

Unite is concerned that the current regulations fail to respond to the industrial realities of employment recruitment in key sectors. The construction industry is a case in point where in Unite's view a wild west route to employment is the norm through a myriad of self-employment and agency engagement without clarity as to who is the employer.

The recent government review⁷ into the provision of the Key Information Document to agency workers also confirms high levels of non-compliance amongst agencies. In the construction sector a large proportion of agency workers working under umbrellas do not receive the Key Information Document (KID).

Therefore, the current regulations, which are designed to give agency workers greater transparency and understanding, is failing workers.

⁷ 06/02/2026, "Post Implementation Review Report of Regulation 13A – Key Information Documents".

The government review also confirmed that many workers employed via umbrella companies *“still find themselves in complex tax and employment relationships, or do not know who their employers are or who to go to for work-related issues.”*

Workers face misleading and unfair deductions from pay. An agency worker deployed through an umbrella company will often not receive the pay rate advertised by the agency. Umbrella companies also regularly deduct their operating costs, including apprenticeship levies from an agency worker’s pay.

Payslips are often indecipherable particularly those issued by Umbrella companies payslips are more confusing than usual payslips due in part to the inclusion of the ‘contractor statement’ as well as the actual payslip. This contractor statement starts with the contractor’s overall invoiced amount and then lists the employer deductions, including the umbrella company’s margin and employers’ NIC Apprenticeship Levy payments and so on. This is particularly confusing for the many workers who are unaware that they are working through umbrella arrangements or what this entails.

Question 17b:

How could the current regulations be adapted to better meet these objectives?

- Given the longstanding and wide-ranging problems with umbrella companies, Unite believes the only effective way to prevent the exploitation of workers by umbrella companies is to prohibit their use.
- The government must reform the law on employment status to stamp out bogus employment and to ensure all agency workers benefit from the full range of statutory employment rights.
- Agency workers must be informed who their employer is and hirers/agencies/umbrella companies must be held jointly and severally liable for breaches of employment law.
- The current regulations should be enforced effectively. The EASI/FWA must work to ensure that agencies are familiar with their responsibilities and robust enforcement action must be taken where breaches are uncovered.
- The Conduct Regulations should be amended to make it a requirement for agency workers to receive clear, succinct payslips. A template should be developed after consultation with unions.
- The government must avoid the deregulation of the current regulations, under the premise of reducing red tape for business.

Question 18a:

Do you agree that those listed above represent the key pieces of information required to ensure transparency for work-seekers regarding how they will be engaged, how they will be paid and what type of work they will be doing?

- **No**

Question 18b:

Please explain your answer.

It is worrying that the government is proposing to significantly reduce the amount of information that is given to an agency worker before they agree to an assignment. The proposed information requirements set out in paragraphs 70 and 71 are inadequate and constitute a significant watering down of the current information provision requirements stipulated in Regulation 21 of the Conduct Regulations.

Agency workers should also be provided with the information:

- Identifying their employer and details of how to contact them to raise and resolve employment related issues. The law should be amended to ensure hirers/agencies/umbrella companies are jointly and severally liable for any breaches of employment rights. Agency workers should be informed how to contact the hirer / agency / umbrella company where their employer goes insolvent or stops operating.
- Location of assignment, so an agency worker can consider whether transport costs and childcare responsibilities will make the job possible.
- Notice of working hours and shift patterns. It would be important for agency workers to understand how many hours they will be expected to work and how much they can be expected to earn.
- Pay reference periods.
- Holiday entitlement. This will help workers understand how much holiday they can take and also have a written record in case they need to enforce their rights.
- The intended duration of an assignment.
- Information about any experience, training or qualifications needed for the role
- Whether it is proposed to use an umbrella company.

It is important to recognise workers engaged through Umbrella Companies are often vulnerable, exist within long supply chains, provide labour services, are transient workers, and are unlikely to be in any organised trade union workplace.

Future regulations must provide additional safeguards where it is proposed to deploy an umbrella company. The consultation document recognises that:

“[I]n the 2021-22 Call for Evidence on umbrella companies which found that 95% of respondents who worked through an umbrella company did so because they had no choice, and 50% had no option on which umbrella company to work through. 70% of an

IPSE survey respondents reported that they lost independence and control over their work when working through an umbrella company.”

This is a clear sign of a failing market. A survey which establishes that 95% of workers engaged through these companies have no choice in how they are engaged, is a damning statistic that should send worrying signals around the transparency, security and choice within the employment market. To Unite it is clear that the use of Umbrella Companies is about cost cutting for employers, reducing worker entitlement and establishing an unregulated pay as you go labour market. Unite opposes it and calls explicitly for an end to the use of Umbrella Companies.

Failing this agency workers are given a genuinely free choice whether to be deployed via an umbrella company and must not be refused an assignment where they agree.

Unite also has real concern with this statement:

“whether the employment business or employment agency will be subcontracting any of its obligations under the regulations and, if so, to whom”.

This statement encompasses everything that is wrong with the temporary labour market in construction and government attempts to legitimise the role of Umbrella Companies within the agency labour market are not credible. While across Europe campaigns aim at reducing sub-contract chains, the consistent policy adopted by various UK Governments has been to legitimise and regulate the role of these actors in our economy. This is despite the numerous issues identified, and accepted by government, which workers face when being engaged through employment intermediaries such as Umbrella Companies.

Question 19a:

Do you have any views on when or how this information should be provided to work-seekers?

- **Yes**

Question 19b:

If yes, please explain your answer.

Unite sees no reason for streamlining or amending Regulation 21 which sets out when and how this information should be given to a worker. This Regulation already gives the agencies sufficient flexibility, allowing them to provide the worker with information verbally, followed up with a written confirmation.

Question 20a:

Do you agree that where an umbrella company is offered to a worker as a means of providing payment, there should be an obligation on the umbrella company to provide a representative breakdown of how much they will charge for their services, and how deductions will be calculated?

- Yes

Question 20b:

Please explain your answer.

Unite supports and calls for an outright ban on the use of umbrella companies. Failing this agency workers are given a genuinely free choice whether to be deployed via an umbrella company and must not be refused an assignment where they agree.

As highlighted above, agency workers deployed through umbrella companies persistently experience misleading and unfair deductions from pay. An agency worker using an umbrella company will often not receive the pay rate advertised by the agency. Umbrella companies deduct their operating costs, including apprenticeship levies, from an agency worker's pay. This causes both confusion and anger when a worker receives significantly less than agreed and expected.

Importantly there must be an option for agency workers to reject the umbrella payment/employment model if they don't like what they see in the representative example.

Question 21a:

Do you agree that the government should regulate to restrict the use of 'kickbacks' in the umbrella company market?

- Yes

Question 21b:

Please explain your answer.

We agree that the use of "kickbacks" in the umbrella company market usually results in reduced take home pay for agency workers and risks unfair/unlawful deductions being made from their pay.

The TUC has identified anecdotal evidence that agencies often use umbrellas because of these kick back financial incentives, without properly understanding the function of an umbrella company or the implications for the agency and/or agency workers.

There is no justification for permitting “kickbacks” in the agency industry. If the umbrella company is offering a legitimate payroll function, agencies should be expected to pay for the service. The agency worker must not be expected to pay.

Question 22a:

Which of the two options would be, in your view, most effective at restricting the use of ‘kickbacks’ in the umbrella company market?

- Option 1 – regulating to prevent umbrella companies from passing on these charges to a worker
- Option 2 – regulating to restrict employment businesses from charging fees to umbrella companies
- **Other**

Question 22b:

Please explain your answer.

It is welcome the government is proposing to restrict the use of kickbacks in the umbrella sector, which can lead to a seriously detrimental impact on worker’s take home pay.

Given the longstanding and wide-ranging problems with umbrella companies, Unite is not convinced that it would be easy to regulate the use of kickbacks in the sector.

The Loan Charge APPG *Inquiry on ‘How Contracting Should Work’*⁸ exposed that kickbacks can take the form of covert/backhand payments in kind:

“Recruitment agencies demanding ‘kickbacks’ or incentives from umbrella companies for being added to a preferred supplier list/recommended to clients, even sometimes including fitted kitchens and holidays for recruitment agency directors. This then incentivises non-compliant providers (who because of non-compliance have higher margins) to offer large bonuses to gain access to potential clients.”

⁸ <https://www.loanchargeappg.co.uk/news/press-release-2/#:~:text=Recruitment%20agencies%20demanding%20'kickbacks'%20or,gain%20access%20to%20potential%20clients> .

It's not clear that option 2 would be sufficient to tackle such fraudulent conduct.

Similarly, if Option 1 were adopted there is a genuine risk that umbrella companies will still seek to recoup their kickback costs through unfair/unlawful deduction from a worker's pay and relabelling the deduction it as something else.

Unite believes an outright ban on the use of umbrella companies would prove the most effective method to outlaw kickbacks.

Question 23a:

Do you have any views on how the regulations listed above operate in practice, and whether there are any changes that the government should consider?

- Yes

Question 23b:

If yes, please explain your answer.

Unite believes that Regulations 27A which ensures adverts posted in the EEA must also be published in the UK and Regulation 33 which requires agencies to send communications to workers in writing and by email should be retained.

The former ensure that UK based agency workers have an equal opportunity to apply for employment whilst the latter ensures the communication needs of all agency workers are met. Agencies should also be required to communicate with migrant agency workers in their language of choice.

Question 24a:

Do you have any views, not already captured, on how the regulations discussed in this chapter should be streamlined to reduce administrative burden for businesses?

- No

Chapter 3: Choice

Question 25a:

Do you agree that the key objectives listed should underpin the regulations?

- No

25b) Please explain your answer.

A 2023 HMT Call for Evidence⁹ found that a large majority (95%) of workers engaged through umbrella companies “*had no option but to work through an umbrella company if they wanted to take on a particular role with a client and/or employment business.*”

Unite supports a complete ban of umbrella companies. If, however, the government sticks with its current proposals it is vital that agency workers have a genuine and free choice whether they are engaged or paid through an umbrella company.

To this end, the proposed objectives needs to be strengthened in two ways:

- The language should be tightened to say “Choice in engagement: agency workers should not be forced to be *employed*, engaged and paid via an umbrella company.
- The objective should also be amended to confirm that agency workers must not suffer any detriment if they choose not to use an umbrella company, including not being denied work or having an assignment withdrawn.

Question 26a:

In your view, do the current regulations meet these objectives?

- **No**

Question 26b:

How could the current regulations be adapted to better meet these objectives?

The existing regulatory framework is completely inadequate and needs to be strengthened to ensure workers have a genuine choice about whether to use an umbrella company or not.

We agree that Regulation 5 should be amended so that employment businesses cannot make work-finding services conditional upon workers working through an umbrella company.

Question 27a:

Do you agree that the government should regulate to ensure that workers cannot be forced to work through, or be paid via, an umbrella company?

- **Yes**

⁹https://assets.publishing.service.gov.uk/media/647e047d103ca600130399a8/M4027_Call_for_Evidence_SoR_UCs_0103.pdf

Question 27b:

Please explain your answer.

As explained throughout this response, Unite supports a total ban on the use of umbrella companies. We are not convinced that additional regulation will be effective in preventing the abuse and exploitation of workers.

The use of umbrella companies in construction and education and beyond is associated with the creation of bogus self-employment, with workers being ripped off through excessive deductions from wages and through a loss of basic employment rights. From Unite's industrial experience common practices by umbrella companies include:

- Misleading and unfair deductions from workers take home pay. Umbrella companies deduct their operating costs from an agency worker's pay.
- Undermining the expected pay rate advertised by the agency and industry wide rates for the job.
- Deductions of umbrella company operating costs from a workers' pay, including payments for apprentice levies.
- Payslips that are difficult to comprehend and intentionally ambiguous;
- Breaches of holiday leave and pay entitlement with umbrella companies preventing workers from taking their holiday.
- Large proportions of agency workers working under umbrellas not receiving the Key Information Document (KID) they have been entitled to since April 2020;
- Fragmentation of the employment relationship and workers unsure who their employer is weakening employment rights;
- Undermining of national collective bargaining agreements and sectoral pay rates;
- Workers caught up in tax evasion schemes operated by the umbrella companies.
- In some cases, workers are not paid at all and when they try to resolve the problem, find themselves being passed between agency, umbrella and the organisation they are carrying out the work for. Unions have reported umbrella companies going bankrupt and failing to pay their workers. When these workers contacted their recruitment agency, they were told that the umbrella company was their employer and responsible for paying them.

If umbrella companies are not to be banned then it is critical that workers are free to choose not to use umbrella companies, without fear of repercussions, such as losing work.

Question 28a:

Do you agree that the government proposal – regulating to restrict employment businesses from making work-finding services conditional upon workers using an umbrella company – is the most effective way of achieving this?

- Other

Question 28b:

Please explain your answer.

Unite calls on the government to introduce an outright ban on the use of umbrella companies.

Failing this we agree that Regulation 5 should be amended so that employment businesses cannot make work-finding services conditional upon workers working through an umbrella company.

Question 29a:

Do you have any views on when a work-seeker should choose whether they would like to be engaged and paid through an umbrella company?

- Other

Question 29b:

If yes, please explain your answer.

Unite calls on the government to introduce an outright ban on the use of umbrella companies.

Failing this, Unite takes the view that agency workers should be able to decide whether an umbrella company is used after they have been offered the assignment.

Question 30a:

Do you agree that the government should amend the exception for individuals working under a contract of service or apprenticeship to ensure those working through an umbrella company are protected against detriment?

- Other

Question 30b:

Please explain your answer.

Unite calls on the government to introduce an outright ban on the use of umbrella companies.

Failing this, umbrella workers should be brought within scope of this regulation.

Question 31a:

Do you have any views on whether the exception for individuals working under a contract of service or apprenticeship more generally remains appropriate? I.e., where the individual is working directly through an employment business.

- Other

Question 31b:

If yes, please explain your answer.

Unite calls on the government to introduce an outright ban on the use of umbrella companies.

Failing this, regulation 6 should apply to all agency workers regardless of employment status.

Question 32a:

Do you agree that the government should regulate to prevent umbrella companies from opting out of the Conduct Regulations on behalf of workers?

- Other

Question 32b:

Please explain your answer.

Unite calls on the government to introduce an outright ban on the use of umbrella companies.

Failing this, it is vital that umbrella companies cannot contract out of the Conduct Regulations.

Evidence from the 2021 survey data cited above and Unite's industrial experience confirms that umbrella workers are at greater risk from unfair deductions from pay and confusing payslips than other agency workers, so it is vital they are within the protective scope of the Conduct Regulations.

Permitting umbrella companies to opt out of the regulations would drive a coach and horses through government policy to regulate umbrella companies.

Question 33a:

In your view, which of the two options would be most effective at ensuring that the opt-out is not abused by businesses who seek to engage workers?

- **Option 2 - removing the option to opt out entirely.**

Question 33b:

Please explain your answer.

Unite strongly believes it should not be possible for workers to opt out of key safeguards. This is a basic principle of employment law. The existence of an opt-out means that workers will be vulnerable to be coerced into opting-out or will be simply unaware that they have been opted out.

The retention of an opt out for Personal Service Companies (PSCs) under option 1 there would create an incentive for agencies to utilise PSCs in place of umbrella companies and to replicate many of the existing bad practices. As noted above, there is deep concern from workers and trade union representatives across the construction industry that employment agencies are acting as a conduit to deliver workers into casualised employment models including Umbrella Companies and the Construction Industry Scheme, but also Personal Service Companies. This undermines direct employment, industry training and apprenticeships while restricting employment rights opportunities of this workforce.

Unite also believes that PSC agency workers should be entitled to the basic protections provided under the Conduct Regulations.

Question 34a:

Do you think the definition above accurately captures how a personal service company operates?

- **Not applicable.**

Question 34b:

Is there an alternative definition which better defines a personal service company?

- Not applicable.

Question 35a:

Do you have any views, not already captured, on how the regulations discussed in this chapter should be streamlined to reduce administrative burden for businesses?

- No

Question 36a:

For the purposes of drafting the regulations specific to umbrella companies, the government intends to use the payment limb of the definition of “employment business” in the Employment Rights Act 2025 (Clause 36, sub-section 3B(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”) as a basis for applying obligations or any other provision specifically to umbrella companies. Do you see any issues with this approach?

- No

Chapter 4 : Further opportunities for modernisation

Question 37a:

Do you have views on how the regulations listed above should be amended to account for modern working practices and business models, including the use of umbrella companies?

- Yes

Question 37b:

If yes, please explain your answer.

Unite is seriously concerned that the consultation does not include proposals to strengthen regulation 7 which deals with the assignment of agency workers to replacing striking workers.

Regulation 7 which is designed to prevent employers from using agency workers to break strikes is too restrictive and is difficult to enforce. Agencies (not hirers) are barred

from deploying agency workers to cover the duties directly undertaken by those involved in lawful industrial action and barred from deploying agency workers to backfill for employees who have been redeployed to cover for striking workers.

However, EASI inspectors (and unions) who are not sighted on the duties of employees in a company / organisation and tend to accept information provided by employers. Inspectors are not willing to second guess employers' staffing structures or redeployment strategies. As a result, employers can easily circumvent Regulation 7 to break lawful strikes. This undermines workers' fundamental right to strike and leads to protracted disputes. Such tactics also places agency workers in an invidious position.

The enforcement and remedies for breaches of Regulation 7 are also very weak. EASI responses to union complaints are often delayed, further undermining strike action. The fines provided for in the Conduct Regulations are not sufficiently high to deter employers from using agency workers and unions cannot legally challenge the actions of the hirer or the agency.

Regulation 7 should be strengthened to provide that agencies and hirers are prohibited from deploying agency workers to undertake work which is directly or indirectly related to industrial action being taken. The EASI/FWA should be required to prioritise potential breaches to Regulation 7, responding to all union complaints within 24 hours. Regulation 7 should also provide a remedy, enabling unions to legally challenge breaches of Rule 7, seeking injunctive relief and punitive damages against hirers and agencies.

Question 38a:

Do you have any views on how the regulations listed above should be streamlined to reduce administrative burden for businesses?

- Yes

Question 38b:

If yes, please explain your answer.

Unite would be firmly opposed to any attempt to water down the Conduct Regulations on the basis of reducing red tape for employers.



Unite response to HM Treasury, HM Revenue and Customs, Department for Business, Energy and Industrial Strategy Call for Evidence: Umbrella company market

This submission is made by Unite, Britain and Ireland's largest union with over 1 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Summary

Unite opposes the continued use of umbrella companies as a means of employment of workers across all sectors of the labour market and calls for legislation to outlaw them. Agencies and employers must be prohibited from using umbrella companies.

Our comments will not seek to answer all the questions posed, but outline our members' experiences of working through umbrella companies and the issues that arise from them. These include:

- misleading and unfair **deductions from workers take home pay**;
- **undermining the expected pay rate** advertised by the agency and industry wide rates for the job;
- **deductions of umbrella company operating costs** from a workers' pay;

- **payslips that are difficult to comprehend** and intentionally ambiguous;
- **breaches of holiday leave and pay entitlement** with umbrella companies preventing workers from taking their holiday;
- large proportions of **agency workers working under umbrellas not receiving the Key Information Document (KID) they have been entitled to since April 2020;**
- fragmentation of the employment relationship and **workers unsure who their employer is weakening employment rights;**
- **undermining of national collective bargaining agreements** and sectoral pay rates;
- workers **caught up in tax evasion schemes operated by the umbrella companies.**

Introduction

- 1) There is currently a lack of any meaningful regulation of umbrella companies. Labour market enforcement bodies do not regulate umbrella companies despite the Government accepting a recommendation from the Taylor Review into Modern Working Practices that enforcement of umbrella companies should be stepped up¹⁰.
- 2) Unite condemns the continued use of umbrella companies across multiple sectors of the UK economy and the exploitative practices that they create. Our members in the construction sector, where umbrella companies are widely prevalent, have consistently reported a wholly negative experience where the role of an umbrella company has no positive benefit to workers in the sector and exists solely to deliver increased profit and deny workers even the most basic employment rights such as holiday pay, sick pay and can result in workers being dismissed without warning.
- 3) The use of payroll intermediaries **undermines collective bargaining, national industrial agreements and rates of pay, detrimentally impacts the terms and**

¹⁰

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

conditions of workers, and is a barrier to positive employment engagement

where workers rights and entitlements are protected. Our experiences of umbrella companies include not paying overtime rates, reducing hourly rates of pay and skewing working relationships in favour of employers and agencies.

Realities of working through an umbrella company

- 4) The Freelancer and Contractor Services Association (FCSA)¹¹ in its definition of how pay in an umbrella company relationship is calculated admits:

“The umbrella company receives assignment income paid by the agency for the work undertaken. Like any employer, the umbrella must cover employment costs, including Employer’s National Insurance, holiday pay, the Apprenticeship Levy, and pension contributions. These employment costs are deducted from the assignment income.”

- 5) This identifies the problem in many relationships across a range of industrial sectors. Agencies and umbrella companies advertise rates at the assignment income level, workers then suffer major deductions to expected income and take home pay is reduced.
- 6) This expressly highlights that the umbrella company model is content for workers’ rates to be used to pay the expected deductions that any responsible employer would pay. The statement neatly encapsulates that the economic model of umbrella companies is nothing else but a way of from extracting profit from labour.
- 7) Unite’s members rightly view umbrella companies as an exploitative form of employment where workers are forced to pay administration fees to receive their

¹¹ <https://www.fcsa.org.uk/wp-content/uploads/2018/04/Compliant-umbrella-firms-factsheet-2017.pdf>

wages along with deductions made from advertised pay such as employers national insurance contributions and employers pension contributions.

- 8) Evidence in the form of pay remittances regularly shows workers can be charged for anything the umbrella company deems necessary. Even employers' payments of an industry training levy to support apprenticeship training has been passed on to our members and deducted from their pay. It can go as far as charging workers for public indemnity insurance payments which for which no regular employee would be charged.
- 9) A Unite member working in Scotland's rail system on a public sector contract summed the experience of working through an umbrella company:

"I wait for a text every Friday to say if I will be working the following week. If I book a holiday and go away with my family there's a real chance that my place at work will be taken by another worker and I'll have no work. If I take a day off I might be replaced, if I call in sick I might be replaced, if I don't work every shift I'm offered, no matter how short noticed, I might be replaced.

"I pay an umbrella company up to £100 a week to get my own wages. I have no holiday pay, no sick pay, no unpaid holiday pay. I can't work anywhere else if there's no work for a few weeks....My 'holiday pay' is actually a percentage of my net income that's taken off, then when I get it back it's at gross, so is taxed twice. I also pay both employers and employees NI contributions.

- 10) Unite has no reason to be confident in the responsibility for umbrella companies falling under the scope of the Employment Agency Standards Inspectorate (EAS). We are not convinced that the number of inspectors necessary to monitor umbrella companies is available from current resources. Enabling effective enforcement means significantly increasing financial resources to fund more inspectors. To

highlight this point, it was reported that inspections of employers by HM Revenue and Customs, responsible for policing minimum wage laws, and the Employment Agency Standards Inspectorate (EASI) fell by 20% and 50%, respectively, during 2020 compared with 2019. Resources are a major factor and with 40,000 employment agencies covered by only 19 EASI inspectors it is difficult to imagine this having a major impact in preventing exploitation¹².

- 11) Any mention of the role of trade unions have been explicitly left out of the consultation despite representing over six million workers across the UK and being armed with the knowledge of the key sectors of the economy where umbrella companies are prevalent.
- 12) Unite calls for legislation to **end the role of umbrella companies in all their guises in the UK labour market, across construction and all other industries.**
- 13) Abuses are widespread and not helped by the make-up of certain sectors of the UK economy with lengthy supply chains, fragmented sub-contracting, and labour-only providers acting in a similar vein to gang masters in other sectors such as agriculture. Moreover, the **prevalence of agencies and incidence of umbrella companies fosters a widespread culture of fear, precarious work** and sizable levels of labour abuse.
- 14) Another example of the attack on workers by umbrella companies arose during the Covid-19 pandemic when, despite government confirmation that umbrella company workers qualified for the Coronavirus Job Retention Scheme, umbrella companies refused to furlough many of our members because workers would continue to accrue holiday pay. That left low paid workers out of a job, without income, and

¹² <https://www.theguardian.com/business/2021/may/16/hidden-cost-of-umbrella-companies-in-uk-may-top-45bn-a-year>

dependent on benefits, plunging them into poverty. This example of workers being cast aside establishes the false nature of this employment relationship, in effect a financial ruse for employers and agencies from which to exploit workers. Umbrella companies undermine employment conditions through the following, but not exhaustive, exploitative practices:

- non-payment of holiday pay;
- illegal deductions from wages (e.g. in construction CITB levy payments);
- withholding pay slips;
- charging of money for receipt of pay slips;
- no provision of personal protective equipment (PPE);
- non-payment of national minimum/living wage;
- workers being housed in unsuitable, inhumane accommodation;
- undercutting of national wage agreements;
- exploitation of posted workers;
- confiscation of passports;
- administration fees.

Growth of umbrella companies

15) Unite became aware of the umbrella tax scam in the construction industry after April 2014 when the UK Government introduced legislation which prevented agencies and payroll companies categorising workers as self-employed.

16) Although each scheme is slightly different, the main characteristics of the umbrella scheme is that a workers' gross pay is paid into the umbrella company, which then makes deductions and pays the "employee" wages.

17) The umbrella company fee and employers' national insurance contributions are often deducted. The worker can then be paid the national minimum wage and deductions are made for employers' tax and national insurance.

18) The workers' earnings can then be boosted through "performance related pay" and/or "expenses". **Agencies and contractors are also forcing workers to pay the national insurance contributions they should be paying by making these deductions from the top line advertised rates.**

Key Information Document

19) Unite is keen to see any government evidence or evaluation of the effect of the requirement for employment businesses, often through umbrella companies, to provide agency workers with a Key Information Document (KID) in the delivery of workers' rights. We are unaware of any.

20) **Focus is required on what is contained in this document**, and it seems that currently all this does is make it necessary to provide an explainer for continued exploitation.

21) Understanding the **realities of the agency labour market is key. A worker looking for work in an industrial sector is unlikely to choose to walk away from a job whether a KID is provided or not.** Additionally, the document could be considered as only **providing a menu for worker exploitation**, and in many sectors workers will be simply unaware of its existence or presence.

22) It is not uncommon that agency work seekers are required to sign a host of forms or are deemed to have accepted conditions, without knowledge of what is contained therein. We **do not therefore view the KID as a silver bullet in the debate concerning the ongoing influence of umbrella companies in our labour market.**

23) Moreover, the scope of the consultation seems to be about enshrining the role of umbrella companies in the labour market despite major concerns about their lack of regulation, exploitation of workers, and limiting the tax returns to the UK Treasury.

24) Clearly, the House of Lords Economic Affairs Committee understands that, in the context of changes to the IR35 rules, the increased use of umbrella companies was not seen as a positive development in the UK labour market¹³:

*“Although a large number of umbrella companies have complied with the rules....**certain non-compliant entities may still be using disguised remuneration schemes. Several witnesses recommended...stronger regulation of umbrella companies**”*

and

*“...why has the Government not yet implemented the Taylor Review recommendation that **determining employment status must be simpler, clearer....understanding of which rights and responsibilities apply**”?*

Employment status

25) Unite has a straightforward view of employment status that could be used to simplify the current position on intermediaries and outsourced workers. In terms of employment rights and taxation, **Unite is of the view that there should be only one definition provided by legislation to define workers, all of whom must have full employment rights. There is an immediate need for this to happen.**

26) Unite is supportive of **the “Status of Workers Bill”¹⁴ to make provision for the creation of a single status for workers** by amending the meaning of “employee”, “worker” and “employer” in the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996. Unite’s General Secretary, Sharon Graham, highlighted the need for such legislation saying:

“It’s a disgrace that millions of UK workers are the victims of inadequate labour laws which have more holes in them than Swiss cheese. Passing this Bill is an absolute necessity for Britain’s workers.”

¹³ <https://publications.parliament.uk/pa/ld5801/ldselect/ldeconaf/50/5007.htm>

¹⁴ <https://bills.parliament.uk/bills/2876>

27) UK workplace law has many problems but one of the worst is the classification of workers into categories, many of which have none or only a few of the rights.

28) At the same time, while it should be clear that **the organisation that substantially determines the terms on which the individual works is the employer**, a better option would be to **have joint and several liability so that main contractors have a responsibility for the supply chain they contract to deliver works or services**.

Rates of pay

29) While we maintain our position that umbrella companies should be banned, any regulation of activity **should prevent umbrella companies from undercutting widely accepted and understood rates of pay across industries**. For example, an **umbrella company should not be permitted to advertise rates for roles that are less than the rates contained any existing nationally agreed collective bargaining agreements** in an industry. The terms and conditions in the agreements must also be protected.

30) We are aware that the TUC will also be responding to this consultation and support the points it makes about wider regulation including:

- strengthening the conduct regulations to make sure agency workers are always paid the advertised rate;
- agencies paying operating costs of the umbrella company, rather than the worker paying the fee. If agencies use umbrellas then they should pay for the service. Workers should never have to pay a fee to receive their wages;
- increasing the resources for EAS, enabling them to recruit enough inspectors;
- no worker can be forced to use one particular umbrella company (and can always opt for a direct PAYE option with the agency/organisation that they are working for;
- Making those who promote and operate schemes that are deemed to be forms of tax avoidance exclusively liable for any tax avoided;

- Making it unlawful for agencies to receive financial incentives or ‘kickbacks’ from umbrella companies, via timesheet commissions, introductions, or otherwise.

Wider intermediary examples

31) Another issue brought to our attention by Unite members, not specifically in relation to umbrella companies, is the extent to which agencies sub-contract contracts for services of freelance workers. Unite **members engaged in the provision of sign language interpreter services constantly battle being booked by one agency only to find out the booking has been subcontracted by a larger agency who has been unable to fill the booking** (usually due to unfavourable terms and conditions, or by not having the specialist knowledge to be able to book sign language interpreters). This then leads to confusion about who the employer is, can lead to a ‘race to the bottom’ in pay and terms and conditions and disguises the employment relationship.

32) Furthermore, Unite has evidence of **an exploitative use of an intermediary, where a cleaning operative is engaged through PAYE and Class 1 NICs**, yet this worker is told they are **not an employee or worker and have no statutory employment rights**. This encapsulates the realities of the level of misdirection that employers and their intermediaries will go to **in order to avoid employing workers directly, evading holiday pay, sick pay** and other statutory entitlements. Unite will pursue the case on behalf of our member but this type of arrangement is indicative of a government content with an imbalance of power in the relationship between worker and engager or employer.

33) **Elongated supply chains** means cuts made to prices that result in a **race to the bottom on pay and conditions**. We would encourage the **Government to consider the wider role of intermediaries and to look at the detrimental impact on work**

of lengthy supply chains in industrial sectors. This should include **placing limits on the extent of sub-contracting chains.**

34) The reality is that only by forcing companies to comply with legal obligations and **embedding a culture of direct employment supported by collective bargaining will the Government collect the taxation returns due from all workers** and ensure dignity and respect in employment.

Joint and several liability

35) Unite supports an extension of UK law so that **organisations and lead contractors who transfer obligations to other parties can be liable and accountable for any breaches of employment rights in their supply chains of workers.** This would prevent 'phoenix' cases from disappearing along with the companies, giving workers a route to enforce rights. It would **help with sub-contractor engagement,** and could **help incentivize more permanent employment contracts** as companies become more careful about selection.

Construction sector

36) Unite has previously flagged up examples of low paid workers in construction being coerced into using personal service companies and other labour market intermediaries such as umbrella companies, as a pre-condition of securing a job.

This leads to:

- a lack of transparency about who the employer is and who is responsible for making sure that a worker is paid and receives their basic workplace rights;
- a lack of transparency about pay rates. Pay rates will often differ from what is advertised as labour market intermediaries can charge a fee to process payments;
- workers will not be entitled to any basic employment rights, including holiday and sick pay;

- workers being at risk of significant tax liabilities. Some working people will be unaware of the tax liabilities that arise through the use of labour market intermediaries such as personal service companies and umbrella companies.

Case study symptomatic of construction industry engagement process:

Bogus self-employment and umbrella companies

37) Unite won a ground-breaking legal victory at the employment appeal tribunal (EAT) in the battle against bogus self-employment and the use of payroll companies. Unite took the case on behalf of pipefitter Russ Blakely against the employment agency On-Site Recruitment Solutions Limited and payroll company Heritage Solutions City Ltd¹⁵.

38) The case was for the unlawful deduction of wages and employer's national insurance contributions as well as the non-payment of holiday pay. This was the first time that an employment appeal tribunal has considered a bogus self-employment appeal involving the use of a payroll company.

39) Unite appealed the case to the EAT, after the Reading employment tribunal rejected the case, wrongly finding Mr Blakely was not a worker.

40) The fact that the decision was made at the EAT means that it is binding on all employment tribunals and must be applied in other cases.

41) The employment appeal tribunal found:

The tribunal was wrong to decide that Mr Blakely was not a worker

¹⁵ <https://www.unitetheunion.org/news-events/news/2018/february/unite-in-groundbreaking-legal-victory-against-bogus-self-employment/>

When determining whether there was a contract (part of the test of whether someone is a worker) the tribunal must consider the intentions of the worker and all surrounding circumstances, not just the intentions of the employer

*There was a **contract between Mr Blakely and On-Site (the agency) - importantly, the use of a payroll company did not circumvent this relationship***

*Mr Blakely (and therefore other agency workers being paid through payroll companies) could be a worker of the agency, the payroll company or both. **The possibility of being a worker of more than one body provides the opportunity to dramatically reduce the amount of umbrella/payroll company rip offs.***