Response to

Draft Finance Bill 2025–2026 – Technical Consultation

Tackling non-compliance in the umbrella company market

September 2025

Introduction

The emergence and rapid growth of the well-functioning umbrella market has been a positive contributor to UK growth, productivity and wealth. Compliant bona fide umbrellas – also known as Specialist Payment Intermediaries (SPIs) – provide certainty and security to the workers engaged by them, ensuring that; they receive the full protections required by employment law, their tax affairs are simplified, and all required taxes are remitted to HMRC.

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment (via an Overarching Contract of Employment), self-employed services, accountancy, and business support solutions to the contingent workforce.

At the time of writing, FCSA has more than 80 Accredited Members who collectively represent circa 220,000 workers engaged as employees, making them, collectively, one of the largest employers in the UK. Around 1 in 3 of the workforce represented by FCSA are women. Annually, FCSA members alone collect circa £12.5 billion in taxes and NICs which are timeously remitted to HMRC.

FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently providing labour market intelligence and umbrella regulation advice to directorates in the Department for Business and Trade (DBT), such as Labour Market Enforcement and Employment Agency Standards and HM Treasury, as well as working with HMRC across a number of areas including the off-Payroll Working Forum.

It has also assisted Parliament, giving evidence to the All-Party 'Parliamentary Loan Charge and Taxpayer Fairness Group', 'Modernising Employment Group', and the House of Lords Finance Sub-Committee, as well as being an expert advisor to the DBT-supported JobsAware initiative, the Better Hiring Institute.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. As a representative of a unique subsection of the labour market, it has also submitted various bodies of evidence to Government with market-led recommendations on how to drive non-compliance out of the supply-chain.

This response outlines FCSA's position on the draft legislation and highlights areas that may need further attention for the legislation to fully deliver the intended outcomes.

Executive Summary

FCSA welcomes the draft legislation published on the 21st July 2025 which will feature in the Government's 2025-26 Finance Bill. Many of FCSA's deepest concerns with the original proposals have been addressed – and in some cases, taken off the table.

The legislation outlines how HM Treasury and HMRC intend to implement the Chancellor's Budget announcement that will bring significant changes to the contingent labour market. The stated policy aims will be achieved by making recruiters 'Jointly and Severally Liable' for any unpaid tax, following a "Statutory Debt Transfer (Contingent Liability) Model" as recommended by Rebecca Seeley Harris and supported by FCSA in March 2025. Recruiters are not being "deemed the employer".

This approach means there will be no significant disruption to the operations of compliant umbrella companies – no repapering exercises or software changes are required as previously feared. Crucially, workers themselves will continue to benefit from umbrella employment and the potential huge disruption to that has been averted.

There will, however, be significant disruption for the Payroll Pirates – and rightly so. Joint and Several Liability means that – for the first time – recruitment businesses will be liable for any unpaid taxes of a non-compliant payroll intermediary. This significantly undermines the Payroll Pirates business model, as it will deny them access to workers. This is because recruiters and end-hirers will inevitably move to manage liability risks.

Defining the term "Umbrella Company" was an unenviable task and we are pleased to see a wide definition that includes employment businesses and intermediaries directly employing workers. This is separate from, but a similar approach to Clause 34 of the Employment Rights Bill, which brings umbrellas within the definition of "employment business". FCSA is pleased to see broad alignment between these two definitions.

The draft legislation also creates the term "Purported Umbrella" which appears to be designed to catch both the Payroll Pirates and mini-umbrella company fraud schemes. This definition is very broad and should close compliance loopholes.

We believe the draft legislation largely hits the right balance between targeting undesirable behaviour while allowing compliant businesses to continue to trade, but do have some concerns that there may remain opportunities for non-compliance which we will highlight in this response.

The new rules are set to come into effect from 6 April 2026, and FCSA welcome this. We understand the legislation is still in draft form and subject to technical consultation until 15 September 2025.

The FCSA supports the draft legislation and is grateful to the officials that have taken considerable care to draft it. We believe it will have the intended impact of –

- protecting taxpayers and the Exchequer from significant losses caused by the fraudulent activities of some umbrella companies
- preventing workers facing large, unexpected tax bills
- ensuring the temporary labour market operates on a level playing field by preventing fraudulent operators under-cutting compliant businesses

There are, though, a few areas we would like to draw the government's attention to.

Where does liability rest where the end-client directly contracts with the umbrella (no agency in the chain) and the umbrella engages a 'worker' not an employee?

S61Y(1)(b) states that the worker is "employed" by a third person. What does 'employment' mean in this context and what would be the situation if the worker was engaged under a contract for services (often referred to as a 'limb b worker' contract)? The reason for seeking clarification is that one potential way for a simple 'end-client – umbrella – worker' supply chain to side-step Chapter 11 would be to engage all workers under a 'contract for services' (resulting in a reduction in rights for umbrella workers) as opposed to an employment contract or 'contract of service'.

If we have understood the draft legislation correctly, this would create a supply chain where the liability would not be shared jointly and severally with the end-client. Instead, the liability would rest solely with the umbrella. If this is correct it would undermine the purpose of the legislation and, perhaps even more alarmingly, create an incentive for workers to be moved from an employment contract to a 'worker' contract purely so the end-client can avoid liability, even where it has wilfully engaged a non-compliant umbrella.

We understand the government's view is that workers engaged under a contract for services will be caught by Chapter 7 of ITEPA, but as there is no joint and several liability created by Chapter 7, we remain concerned the 'contract for services' model could become attractive to end-clients looking to avoid liability.

The government's policy paper which accompanies the draft legislation states (under Proposed Revisions) that 'The end client will be liable if contracting directly with an umbrella company.' We fear this could be relatively easy to subvert where a contract for services is used. If there was to be a shift from contracts of service (employment) to contracts for services (worker status) it would also have a detrimental impact on the workers. Their employment contracts would be terminated – potentially after several years of continuous employment - and a 'new' contract for services would begin.

Although the contract may be 'new' the assignment would continue as before so the worker would be forfeiting employment rights for no justifiable reason. Given the complexity of contractual arrangements and employment status rules, it is not difficult to imagine the worker unknowingly entering into a 'new' contract without being made fully aware of the consequences.

It would seem unlikely that the government, with its current focus on the strengthening of employment rights through the Employment Rights Bill, would want to implement measures that might result in some workers being shifted from employment to 'worker' contracts.

We would be grateful if the government would seek to address this potential loophole, either through a legislative fix, or, if the combination of Chapter 11 and Chapter 7 already addresses this concern, through guidance which makes it clear that end-clients cannot avoid liability by contracting directly with an umbrella company that engages workers on contracts for services.

Can joint and several liability apply where a party removes itself from the payment chain, yet still receives income from the supply of workers to the end-client?

One of the responses to the new legislation being considered by the market, particularly Managed Service Providers, is to move out of the payment chain and charge purely a "*margin only*" fee for the introduction of the worker to a client. It is perceived that this results in the business in receipt of the introducer's margin side-stepping joint and several liability.

S61Y(4)(c) appears to extend the remit for joint and several liability to situations where "the provision of the services or of payment or other consideration for the services is also a consequence of that other contract (whether directly or as a result of a series of contracts involving other persons)".

Is this wording intended to extend the remit of joint and several liability to any contract which results in the worker personally providing services to another person i.e. there is no requirement to be in the payment chain? If so, this "*margin only*" response will not work and education will be required through guidance.

Does joint and several liability apply to the supply of services and how is this distinguished from the supply of labour?

S61(Y)(b)(i) limits the JSL legislation to supply chains involving supplies of labour. We see instances in the market of businesses purporting to be supplying services (or

statements of work) as opposed to supplying labour. It would be helpful if guidance around supply of staff v supply of labour was linked to the Chapter 11 guidance.

As an aside, HMRC guidance on supply of staff verses supply of labour requires reviewing and updating to make it more relevant and provide more detail to assist businesses. This is of particular importance in respect of these new rules as well as the off-payroll rules.

Will recruitment businesses (agencies) remove umbrellas from supply chains and engage workers directly? Will this result in workers being shifted from employment contracts to 'limb b worker' contracts resulting in diminished employment rights?

S61Y(1) could result in recruitment agencies engaging workers directly and supplying them to clients, meeting the definition of an umbrella company. The welcome clarification that recruiters and umbrellas will be held jointly and severally liable means that agencies will not be deemed to be the employer, nonetheless, there remains the possibility that some agencies may choose to remove the 'risk' of an umbrella operating the payroll and fulfilling the payroll function internally. This would, in all but the most obscure circumstances, require the agency to contract with the worker directly, which, typically, agencies do on a 'limb b worker' basis.

FCSA believes this would be an extreme reaction from recruitment businesses and that, where compliant umbrella companies provide adequate evidence of tax compliance, supply chains will continue to operate largely as they do now in the majority of cases. At the same time, history tells us that fundamental changes to legislation, particularly where liability is moved from one party to another, will carry at least some unintended consequences.

As noted earlier in this response, shifting workers from 'employee' to 'worker' status will result in a reduction of employment rights, which will become even more pronounced once employee rights are enhanced as a result of the Employment Rights Bill.

Has the government considered this risk and its potential implications for worker protections? Does the government consider this possibility (of workers being engaged by agencies directly and shifted to 'limb b worker' contracts) to be negative, positive or neutral? Is the government still considering introducing a single status of worker, for all but the genuinely self-employed, which might address this risk?

Will the government issue guidance on the interaction of Chapter 11 with the existing Chapter 10, particularly with regard to ensuring non-compliant models do not gain traction as a means to avoid joint and several liability for recruiters and end-clients?

We are aware of discussions around a contractual model that we suspect would be deemed non-compliant. The idea is the worker is engaged via their own limited company on an 'inside' IR35 basis, but the worker will be treated as a self-employed contractor for employment law purposes. Since the income would be treated as employment income under Chapter 10, it would be excluded from the scope of Chapter 11 (unless the arrangement were caught by the "purported umbrella company" provisions).

We are not convinced such a model is compliant under Chapter 10. FCSA calls this an Elective Deduction Model and it is banned under our code. Nevertheless, it has been marketed to the sector as a compliant work-around. We are concerned this model could proliferate as recruiters and end-clients seek to avoid liability and would be grateful if the government would confirm such a model is non-compliant and consider issuing guidance which would serve as a warning to any supply chains that might be tempted to use it.

Could the government provide a detailed explanation of how enforcement will be carried out in practice?

There is some debate among recruiters, Managed Service Providers and umbrella service providers around what will happen in the event of non-compliance. Where payments (of PAYE, NI, Apprenticeship Levy) which are due but are not made (or not made in full) to HMRC, how quickly will HMRC be aware of this and when will it pursue the debt? Within industry there are differences of opinion on this. Some believe HMRC has the capability to know instantly when a debt has been incurred; others believe HMRC will not know until after the tax year has ended. It would be helpful for supply chains to have an understanding of how quickly HMRC will act once a debt has been incurred.

Equally, there is some confusion around which party in the supply chain HMRC will approach first, in the event of a debt. Where, for example, liability is shared jointly and severally between an umbrella (which operates the payroll) and a recruiter (agency) which of those two will HMRC seek payment from in the first instance?

In the event the debt is several years old, and was incurred as a result of a, now dissolved, non-compliant umbrella in the supply chain, will HMRC be able to identify the recruitment business in order to enforce the liability?

Again, we would stress that compliant umbrellas will know what tax payments it needs to make, and by when, to HMRC, and will endeavour to make those payments on time. But it would be helpful to have a clearer view of what specific steps HMRC will take, and when we should expect those steps to be taken, where errors have occurred or where non-compliant operators are flouting the rules.

FCSA is grateful for the opportunity to respond to the technical consultation and we look forward to engaging further with officials to ensure the legislation achieves the desired outcomes.

Contact – Andy Chamberlain, Head of Strategic Policy and Advocacy

andy.chamberlain@fcsa.org.uk