

The Association of Recruitment Consultancies (ARC) response – Make Work Pay: Modernising the Agency Work Regulatory Framework Consultation

1st May 2026

About ARC

The Association of Recruitment Consultancies (ARC) is a membership organisation for recruitment businesses. Our members are employers as well as providers of introduction and supply services to other employers and hirers, in both the public and private sector. Many of our members will utilise the services of umbrella companies as part of their supply services.

Introductory Statement

Here ARC sets out its introductory thoughts in principle, answers to individual questions following accordingly.

ARC's response is from the perspective of a representative of recruitment businesses that service a considerable number of employers in the UK. ARC believes that choice and flexibility is single most important benefit of a strong recruitment sector, contributing significantly to growth and employment opportunities – and this is a major asset. ARC agrees that a balanced regulatory framework is important to ensure fairness and protections for all parties and to this end, regulation should be fit for the modern employment and recruitment market.

ARC welcomes the approach taken in the consultation to consider relaxing current regulations that interfere with businesses; however, ARC is concerned about the ever increasing burden of regulation in the recruitment supply sector, this exacerbated by recent tax rules relating to umbrella company non-compliance and the anticipated guaranteed hours rules. These latest rules are being applied or proposed at a time when businesses generally are stretched to meet higher wage costs and other overhead. Rather than feel relieved by prospective regulatory relaxation, many feel overwhelmed by the volume of change, which in turn raises pressures that could cause compliance concerns.

Although the current system is outdated, it is familiar and well understood; frequent changes risk creating uncertainty and increasing the likelihood of non-compliance as businesses adjust to new requirements. There is a concern that unnecessary change may create disruption where stability already exists. This response is curated using feedback gathered from ARC members, and our legal adviser Lawspeed which has over 28 years experience servicing the industry. A recent joint seminar ARC held to discuss the proposals, which was attended by recruitment businesses from a wide range of disciplines, and at which DBT representatives were also present, was particularly informative. Many key concerns were highlighted suggesting dangers to the industry from too much change, most of which are reflected in this response.

Premise

ARC welcomes the consultation and supports the government's plan to regulate the umbrella marketplace. However, ARC believes the approach proposed in the consultation does not comprehensively achieve this objective, as it is based on data relating to umbrella companies from 2022 and 2023. This data can no longer be valid or relied upon since the imposition of Chapter 11 ITEPA which anecdotally has already resulted in increased compliance and a large reduction in the number of umbrella companies. Regrettably a consequence of this legislation seemingly will focus umbrella services into the hands of just a small number of larger players with disproportionate influence in the sector.

Further in relation to the data the sources are mainly not very authoritative and are from industry organisations that have a specific subjective interest. Those advising or servicing contractors have a different interest in recruitment business, often based on achieving better tax avoidance. This should have no relevance to recruitment regulation.

Although this consultation does not discuss Chapter 11 ITEPA, it is inevitably relevant. ARC members have raised considerable concerns regarding the definition of Employment Businesses (EB) which suggests that a recruitment company (agency) employing its supplied workers is also classified as an umbrella company. This is clearly incorrect, as such agencies are not umbrella companies. The classifications of agencies that directly employ their workers as umbrella companies is therefore manifestly inaccurate and suggests that perhaps there is a general misunderstanding of what constitutes an umbrella company.

Both umbrella companies and recruitment supply businesses are defined as EBs under s.13 EAA 1973 (currently applying). However, there is a key distinction. Recruitment supply businesses provide work-finding services to candidate and job filling services to clients, whereas umbrella companies on the whole do not provide work-finding services to candidate (save to the extent necessary to claim expenses) they certainly do not provide job filling services to clients. A review of the proposed definition relevant for new

regulation based on this distinction would be welcome to avoid the risk of conflating umbrella companies and genuine “work-finding” EBs.

Guaranteed hours

This concept as set out in the ERA 2025 has generated a significant contention within the recruitment sector. ARC members have expressed that guaranteed hours undermine valued flexibility while increasing financial risk and reducing hiring confidence. This has to be considered in the wider context of this consultation as it is likely to affect the outcome of any planned new regulations and the future viability of agency worker supply.

While the guaranteed hours provision is intended to address exploitative zero-hours work, its scope is broader in practice and extends to agency workers across the sector. It is clear that agency workers who genuinely wish to remain temporary, and value flexibility, can reject the offer of guaranteed hours at the end of the reference period – however long this may be. However, ARC members have reported that this introduces yet another compliance exercise to be contended with; many highlight it as an unnecessary administrative burden – effectively a check box exercise, diverting resources away from core recruitment activity. Any impact on transfer fees will change charging structures, so affecting the value of temporary agency work.

The measure is ‘guaranteed’ to interfere with rules relating to transfer fees, which is one of the subjects considered in this consultation. With no current proposal on the table for the qualifying reference period, it is difficult to be definitive about the extent of the interference at this stage both as regards transfer fees and the application of the 12-week AWR rule. See more on transfer fees under our answer to 4a).

Unfortunately, although the thought process in the consultation is predicated on relaxing the rules, the fear in the industry is that more or changed regulation will only lead to additional overhead and cost when most businesses have their systems already optimised. The expression, ‘the better the devil you know’ springs to mind.

RESPONSE

Chapter 1: Security

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?

Yes, subject to our comment below.

Whilst ARC generally agrees that the stated objectives are reasonable, it should be noted that agency workers generally have all the protections offered to workers in any other sectors, including significant protections under the Employment Rights Act 1996, The Working Time Regulations 1998 and The National Minimum Wage legislation. In some cases, they have more benefits than equivalent employees, for example under the Agency Worker Regulations 2010. In the 2022 survey referred to in the consultation, 84% of agency workers surveyed indicated they were content.

The main issue is understood to be caused by umbrella companies, as highlighted in the consultation. Many of those issues are likely to be resolved by virtue of Chapter 11 ITEPA. Therefore, it is hard to agree that anything further is required to achieve the key objectives, save to remove duplication and unnecessary regulation wherever it exists.

Fair remuneration and protection

It is acknowledged that there may be specific risks associated with agency work when compared with full employment, but the flexibility afforded by agency work is key to our economy. Agency workers may well be better off than workers under other worker type arrangements for example, gig workers (limb b) who may have no additional protection. There is already an imbalance. If agency work becomes overregulated, ARC fears it may risk more exploitative employment models being developed.

Assurances for business.

To the extent that regulations prohibit business or simple straightforward processes, then ARC agrees that they should be adjusted to allow for choice or a more sensible way forward. For example, a requirement to check suitability (see R.18) (distinct from identity and right to work checks) could be dealt with by way of contract, with the client or agency agreeing which party is responsible for those checks. Clearly, there is no advantage to an agency to supply an unsuitable candidate, nor any advantage to the client or the worker. The only assurances that businesses require generally relate to payment. The imposition of guaranteed hours rules will interfere with transfer fees. Thus, assurance that agencies can

charge a transfer fee if chosen to do so and accepted in their contracts, should be supported by a clear regulatory entitlement.

2a) In your view, do the current regulations meet these objectives?

No.

It is considered that regulation in respect of employment agencies (EA) could be considerably streamlined. As an EA is essentially simply introducing potential candidates to be considered for employment by a hirer (whether temporarily or permanently), the hirer should in all cases have responsibility for ensuring that all employment requirements are fulfilled before engaging. For example, that employer will always be required to ensure that the employee has the right to work, has any necessary legal qualifications etc. If a hirer requires, as part of its own commercial arrangements, that an agency conducts screening on its behalf, then that should be a matter of contract and between the parties. Accordingly, this should not be a matter of regulation, save perhaps in the limited circumstances of roles involved working with vulnerable persons. It is therefore suggested that R.18, 20, and 21 be amended to the extent that they no longer apply to EAs.

With respect to EBs given that all workers must now be given particulars of employment in accordance with s.1 of the Employment Rights Act by the time the employment begins, R.14 and 15 may be redundant. To the extent that other regulations provide for further information to be given, this information should be carefully and definitively expressed, and the timing of its provision should reflect reality. For example, R.13a timing is inappropriate; the 'who' will pay and the value of pay for example is never really known until a deal is struck. Types of work and minimum pay rates, even before work-finding services are provided, seems unnecessary and provides little by way of protection for workers. Setting out a minimum rate at the outset often simply results in a statement that 'this will be no less than the minimum wage' and, in any event, can only lead to confusion particularly if a lower rate than expected is offered. Indeed, agencies may be deterred from offering a job at a lower rate, so denying the worker choice.

Additionally, in respect of health and safety information, all employers are required to take steps regarding health and safety, conduct risk assessments etc towards employees and others. Moreover, often they will not provide health and safety information to an agency as the person responsible for this is often different from the person dealing with procurement. The requirement is far too broad. For example, consider what health and safety risks should be identified for a nurse to be supplied to a hospital. The need for this regulation seems unnecessary save perhaps in very specific circumstances.

The involvement of MSPs further complicates the ability of an EB to obtain information as required by R.18. Information is commonly transferred via portals, with EBs having limited or no opportunity to liaise directly with the hiring client.

See also our response to 5a) which is relevant to this question.

R.6 protects work-seekers from detriment where they work elsewhere or threaten to work elsewhere; this does not apply where the worker is engaged as an employee. The exclusion with respect to employed workers R.6(3) means that umbrellas (even if regarded as EBs) would generally be free to include such restrictions. Again, you may then have the position where an EB cannot restrict an umbrella business but the umbrella may restrict the actual worker. This distinction should therefore be removed.

The same regulation also precludes making enquiries regarding the identity of any other employer. It is submitted that this be amended to the extent that such enquiries be permissible where such enquiries are made in order to ensure compliance with any statutory obligation the agency/business may be subject to, for example maximum working hours, or rest breaks, under the Working Time Regulations 1998.

Additionally, it is noted that EBs are often asked to agree hirer terms which seek to require the EB to restrict the supplied worker, for example, from working for competitors or otherwise where this would create a conflict of interest. Here the request is quite normal in the commercial world. This puts the EB in conflict with R.6. This is unreasonable, you would not expect any hirer to engage someone who may be acting in conflict of interest of the hirer, and there could always realistically be confidentiality issues if the workers also work for a competitor. R.6 should therefore be adjusted, perhaps to allow for consent to be obtained from the worker for such a clause to be valid during an assignment.

Further to the extent that an umbrella company does not provide work-finding services, it will not be subject to regulations that would otherwise apply.

2b) How could the current regulations be adapted to better meet these objectives?

See response to 2a).

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.

The distinction between EAs and EBs is not with respect to who pays the candidate. The definition of each is found in s.13 of the Employment Agencies Act 1973, and these are quite clear.

It is therefore submitted that R.8 is not required to be amended to distinguish EBs from EAs.

If the question is whether the restriction in R.8 should be maintained, ARC would say that removing it could be beneficial.

For example, EAs could then be free to offer payroll agent services to smaller clients as part of their services, particularly to small hirers. By removing this administrative burden, it may remove a barrier to employment. Further, many EAs will supply work-seekers for direct engagement on a temporary 'margin only' basis. Provided that it is clear that the work-seeker remains engaged by the hirer, there appears to be no good reason why the actual payments may not be made by the EA as agent for the hirer, which may be more convenient for all parties and lead to better business. The only confusion may be identifying who the party responsible for the payment is and so the regulation could address the requirement for a clear statement that the agency in this regard acts as legal agent for a named hirer.

However, it needs to be appreciated that many recruitment businesses operate both as EAs and EBs and often with respect to the same hiring client. The regulations could therefore be clearer when the regulations as applicable to EBs may be applied where, for example, there may be an initial intention to supply a work-seeker as an EB however, there is a change before any period of temporary supply commences and the hirer engages directly. This is particularly relevant with respect to R.10, which is unclear as to whether in this situation the EB would be restricted from charging a fee as an EB or would effectively be operating as an EA and the terms of any fee arrangements should be a matter of contract only.

4a) Do you think the government should relax restrictions on how and when employment businesses can charge end hirers?

Yes.

This question appears only to apply to R.10. ARC members would welcome a reduction in regulation in this area. This should be a matter for the parties to the contract. There is confusion over the current periods, 8 week and 14 weeks. A simple single period after the end of an assignment would work much better if regulation is needed in this area at all. The extended period of hire simply doesn't work nor assist anyone. This is subject to what ARC says below about the impact of guaranteed hours.

The current regulations further provide that a term which is not compliant with R.10 will be unenforceable. However, this regulation appears unnecessary where terms are issued by hirers or MSPs. Terms issued

to EBs can often be on a take it or leave it basis, with scope for negotiation significantly limited. If a hirer or RPO issues terms which are not compliant with R.10, it would seem absurd that such terms would be unenforceable. ARC therefore asks that if restrictions on EBs are to be continued, that new regulation should allow terms issued to an EB by any other party as opposed to by an EB should be enforceable at the instance of the parties.

There is however significant concern that the introduction of the right for agency workers to be offered permanent guaranteed hours by hirers will make these points rather moot. Whilst the precise details of these changes are yet to be decided, if introduced and the reference period at which the offer must be made is too short, this will effectively undermine the entire EB model.

EBs and EAs commit considerable time and expense to sourcing and, in the case of EBs, engaging work-seekers. EAs charge an introduction fee, typically based on a percentage of annual remuneration payable by the hirer. EBs charge a margin, or similar, based upon the work-seekers pay rate. In order to recoup sufficient funds to cover costs and make their operation viable, EBs will rely on assignments of a certain length; where the client engages directly after relatively short assignment, EBs can normally rely on a transfer fee to protect their business model. If it were the case that hirers could effectively take the worker on assignment, in the knowledge that after the reference period they are obliged to make an offer to that worker, hirers will argue that a transfer fee would be inappropriate.

This would also affect EAs whose sole business is to charge fees for introducing a candidate. This would be particularly affecting EAs that also operate an EB service. In that case, rather than pay the usual introduction fee based on an annual remuneration, hirers could simply take the worker on a short assignment up to the end of the reference period, and, depending on the length of that period, then pay a significantly smaller supply fee than would have been the case under an EA introduction fee.

Therefore, the transfer fee model is crucial for protecting recruitment business, both EAs and EBs. Diminishing these protections either by imposing further restrictions or by the introduction of guaranteed offers could have catastrophic impact on the sector. It is considered that this would be the case if the reference period is less than 12 months. This would ensure that EBs could still potentially rely on achieving the same level of profit by supply as an EA would through introduction, and hirers could not use the EB route as a way of driving down recruitment costs at the expense of the recruitments sector, which ultimately can only damage flexibility and choice in the employment market.

In the absence of detail on guaranteed hours proposals for the reference period, ARC is unable to comment further. However, if the period is at least 12 months, our arguments may fall away to some extent albeit ARC shall consider them again when the guaranteed hours reference period is proposed.

5a) Do you agree that the principle that employment businesses cannot withhold, or threaten to withhold, payment for work done should be maintained?

Yes, subject to qualification as suggested below.

It is unsatisfactory that there are restrictions on EBs from withholding payments when the same principles do not also apply to umbrella companies and MSP/RPOs. There should, in our opinion, be a broader restriction on withholding elements of pay throughout the supply chain. This would mean that the element of pay for the worker would need to be identified, and this element should not be withheld by anyone in the chain. The restriction should focus on the element of pay rather than the payment to 'a work-seeker'.

The rationale for this is that it is common practice for MSP/RPOs to negotiate long payment terms or impose pay-when-paid clauses. This means that the MSP can delay payment of the amount down the chain, and where the client withholds, the payment may never be made. This applies unnecessary financial pressure on the 2nd tier business with consequent knock-on effect. Careful regulation to limit pay-when-paid clauses is particularly important for supply chain compliance, and this would probably necessitate regulation on agreement to lengthy payment terms.

Whilst on this subject, low margin charges imposed by MSPs agreed with hirers may also be relevant. These often lead to low rates of pay for workers and sometimes non-compliant actions by agencies such as the use of mini umbrellas. This requires some thought as it is difficult to regulate against low margin charges or rates, but the inordinate power that some MSPs have does, in our opinion, need addressing.

In other circumstances there should be clarity when an EB can withhold payment. For example, where there has been an overpayment, or the actions or failures of the worker have led to loss such as failure to return equipment as requested. Bear in mind that any deductions will in any event always be subject to s.13 of the ERA and rights under the minimum wage legislation.

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. See above.

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?

No.

There should be no additional requirement on the EB beyond these minimum requirements. However, for consideration ARC contends that the EB obligations could be subject to contract only with the regulation removed altogether. The benefit of the regulation is open to question given that deliberate supply of a non-qualified person who maintains their qualification exists could arguably be fraud.

There is also the argument that EAs should not be subject to this regulation as hirers are either not subject themselves to such an obligation when hiring direct, with no EA or EB involved. Or if there are other obligations on the hirer in this regard, that the hirer should always in any event make the checks themselves.

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)?

No.

Whilst umbrella companies may be within scope of the regulations overall; umbrellas should not be undertaking any recruitment business. This means supplying recruitment services either to workers or hirers. Therefore, umbrellas should not be subject to this process.

There is a key point here under the heading of assurance for business. There should be a restriction on umbrella companies being involved in employment arrangements that include the provision of work-finding services or locating or placing workers into jobs for hirers. In the absence of such a restriction, genuine recruitment businesses may be unable to distinguish an umbrella that is a genuine payroll employer from one that is acting in direct competition with the recruitment business. Bear in mind that when using an umbrella, the recruitment business must pass over to the umbrella its hard-won information about the hirer and the worker which would otherwise be confidential, thus giving the potential competitor umbrella business information which would otherwise be protected.

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.

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. A single centralised information bank containing verified details of the worker, accessible by all recruitment businesses would enable faster information gathering and reporting.

ARC have no ideas on how information gathering from hirers could be streamlined. Most recruitment businesses have their own processes in this regard which they are satisfied with.

As regards R.13a the timing for giving of Key Information Documents (KID) is inappropriate and should be streamlined. Actual information is usually not known until a job is actually on offer and the candidate has decided whether to engage personally or through a company. Once that position is achieved, that would be the correct time for a KID to be provided.

Similarly R.14 and 15 contract terms, if these regulations are retained given the duplication with s.1 ERA, need not be provided until the same position is achieved. To require contracts to be issued at an earlier stage would always be unnecessary where the worker may not even get to the point where they are offered a job.

Work-seekers commonly push back on agreeing terms before there is any definite work available leading to delay and non-compliance. A person applying for a job with a hirer does not enter into a contract to do so and there are no obligations on a hirer to issue terms at that stage. EBs should be in the same position

11a) In your view, are there any alternatives to these obligations which would give hirers and clients the necessary security and confidence?

Yes, see above.

11b) Please explain your answer.

As expressed above.

12a) 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.

Because of the introduction of guaranteed hours in respect of which the reference period is yet to be determined. If the relevant reference period for guaranteed hours were the same 12-week qualifying period under the AWR, this would be catastrophic for recruitment supply business as currently formulated, as it would mean that no business could rely on any booking beyond the reference period. The charge for supplying only for 3 months with no potential transfer fee would result in an economically unviable model due to significantly higher supply charges. It is assumed that the government will recognise this.

ARC argues that the relevant reference period for guaranteed hours should be 12 months. A qualifying period of 12 weeks for AWR rights would in those circumstances remain acceptable.

ARC members specifically raised that the AWR creates significant administration in both time taken in obtaining information sometimes it not being provided at all, and then calculating and applying the information. If a worker ends up on new and better terms this affects the charges made by an EB incurring further cost on the hirer which is particularly unacceptable in the current economic climate.

13a) In your view, should the government consider any other changes to the Agency Workers Regulations 2010 to reduce administrative burdens for business?

Yes.

There are often difficulties in establishing relevant terms and how these apply exactly. For example, with respect to holiday entitlement. Often a comparable worker will be a salaried employee, and it may be difficult to precisely apply equivalent holiday entitlement to hourly paid agency workers who commonly receive a higher level of pay yet only receive statutory holiday entitlement.

So, where an equivalent employee on the client site is paid £30,000 with 35 days holiday and the agency worker is paid £40,000 equivalent with 28 days holiday, there should be clarification that the package should be broadly equivalent rather than each individual term must be not less.

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. See above.

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

16a) Do you agree that the key objectives listed should underpin the regulations: clarity for workers; pay transparency; proportionality?

Yes, subject to below.

16b) Please explain your answer.

These are clearly desirable objectives, but the key objectives should include support for the business aim of streamlining regulation.

17a) In your view, do the current regulations meet these objectives?

No.

17b) How could the current regulations be adapted to better meet these objectives?

The current regulations create a significant amount of duplication; protections are often found elsewhere. As well, many of the protections which exist today did not exist either in 2003 or 2016 (when they were last amended).

Please see answers to the previous questions as ARC have suggested where changes could be made.

Therefore, when considering the objective of proportionality, it would be disproportionate to continue with a situation where recruitment businesses are subject to additional obligations when in effect this adds nothing to protection of workers as it is adequately provided for under other legislation.

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?

Yes generally, but see below.

R.13 - 15 – see our answer above.

As regards R.13a our comment is that the information will be precise when the position is reached that a job is being offered. Instead of issuing a KID, the information should be included in the R.14 and 15 terms, which should also include the umbrella details. Again, bear in mind the potential duplication with s.1 ERA.

As regards the details of R.15, both employees and limb b workers have the same entitlement under s.1 ERA and to holiday and sick pay as well as minimum wage. Therefore, this regulation can be reduced accordingly:

- R.18 – 21 please see our answers above.
- R.22 is not relevant to this section.
- R.23 is unnecessary. It is not clear when subcontracting could occur such that it may create confusion or lack of transparency. However, this regulation does not cause any harm.
- R.24 – 26 not relevant to this section.
- R.27(3) reference to the rate on offer could be clarified. The expression 'rates of pay' should be clearly specified to avoid confusion if this is to be retained. A reference to a 'headline rate' may achieve the objective (which is to provide an indication of pay rate) better to take into account the different ways a worker could, be engaged (e.g. via umbrella etc). Then what is required should specify any particular qualifications or status only.

Otherwise, ARC would suggest that R.27(3) should be abandoned for lack of clarity.

ARC members felt strongly that regulation, if retained, must reflect practical reality as regards the information that is actually available prior to a work finding service being provided. At this stage specifics relating an individual are unlikely to be available as the actual method of engagement, rates etc will depend upon the actual role sourced for the individual; accordingly if information is to be issued at the outset prior to a work finding service being provided, it must be limited to generic information regarding the service, engagement models and options that may be available, and how they will be determined.

It is impossible for an EB to provide accurate specific information on any pay rate that would end up as gross pay for the worker whether operating through an umbrella or otherwise because calculation is

dependent on so many different factors. For example, salary sacrifice, pensions, allowable expenses this is particularly the case where umbrellas, which apply their own different charge rates, are involved.

Most EBs using umbrellas will have an approved supplier list, so even gross pay rates to an individual may be dependent upon the choice made by the work seeker.

19a) Do you have any views on when or how this information should be provided to work-seekers?

Yes. At the point of job offer in any clear and convenient manner agreed with the worker.

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. The umbrella as the employer is the party in the chain best placed to confirm this information and therefore offer the work seeker the greatest level of transparency. ARC would add that the main role of the umbrella is to be the employer rather than just the payroll provider.

21a) Do you agree that the government should regulate to restrict the use of 'kickbacks' in the umbrella company market?

No.

It is not known what is meant by 'kickbacks'. If this is a reference to purported bribery, the Bribery Act 2010 already applies. There is no reason why recruitment and umbrella businesses should be treated any differently from any other business.

ARC assumes this is reference to a charge added by the umbrella, which is then paid to the agency, as set out in paragraph 72 of the consultation.

22a) Which of the two options would be, in your view, most effective at restricting the use of 'kickbacks' in the umbrella company market?

To include any option here would require there to be clear distinction between an umbrella EB and a work-finding EB. Neither option here could work since the umbrella will always be paying the agency from its margin profit charge. However, if the umbrella is required to specify its charge calculation separately from the workers' pay element in its invoice to the agency, and apply the same charge calculation to the workers' pay calculation disclosed in the payslip explanation and the KID, this could achieve the objective.

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?

This refers to R.27a. This regulation is now largely redundant given that most vacancies are advertised via websites and similar platforms which are accessible globally.

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

25a) Do you agree that the key objectives listed should underpin the regulations?

No.

Choice in work offer should not be determined by regulation. Businesses can choose to offer work as they see fit and candidates can always choose to apply or not. A candidate has no obligation to accept any methodology.

This issue can be coloured by those who want to operate through companies to avoid tax. For example, someone complaining that they didn't want to operate via an umbrella because they had their own company, when the agency does not want to be subject to the tax burden of IR35. This should not be relevant in any respect. Freedom to choose is a major principle for individuals and businesses as they see fit.

Workers should not have freedom to choose which umbrella they work through. This would place EBs into an impossible position as they would then be forced to work with an umbrella which may not meet the EBs compliance standards required to offset risk under Chapter 11 ITEPA. Rather than face that risk agencies are more likely to simply refuse to work with the worker concerned. No business ever allows its customers to dictate how it works and EBs should not be subject to exception to this principle. As well, EBs may not be able to offer direct engagement PAYE options and certainly should not be forced to do so.

26a) In your view, do the current regulations meet these objectives?

Yes.

26b) How could the current regulations be adapted to better meet these objectives?

No comment.

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?

No.

The premise of this question is inappropriate. Freedom of choice for all should be paramount provided there is transparency. Candidates can choose to reject and look elsewhere for work; they have no entitlement to force themselves into work for any particular position.

If an EB indicates clearly that they do not offer a PAYE option, and that engagement will therefore be through a PSC (subject to an IR35 determination) or otherwise via an approved umbrella, the worker has choice whether to apply for that role or not. It is difficult to see how the arrangement is any different from a work-seeker deciding whether to progress with an application based on hours, location, pay or a job description.

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?

No. There should be no regulation here.

To make such a regulation would force EBs to offer a PAYE model, in which case that removes choice from the EB. This would not be an option.

Recruitment is a growth promoting industry. There are relatively low barriers to entry and competition is healthy. It is common for those working in recruitment to set up other own businesses after working with a larger organisation, but for administrative and cost reasons most start-ups are likely to start with umbrella engagement rather than operating their own PAYE. Such a condition would therefore be a barrier and limit entrants to the market.

The position is the same for many SMEs, for whom the prospect of running their own PAYE for their temporary workforce creates a significant additional administrative and cost burden.

Some responses may indicate that businesses can outsource their payroll. However, operating a PAYE option is about so much more than just payroll. It requires engaging the workers on direct contract as workers or employees, with all the additional resulting compliance obligations and HR management. The proposed regulation if introduced will have a significant impact and detriment on SME's resulting again in higher cost and a consequent negative effect on growth as overhead charges are pushed up the chain to the hirers. In addition, as the consultation refers to choice of umbrella, EBs must be able to determine which umbrellas are acceptable to them. This in fact may be determined by the hirer or an MSP and in any event, will be subject to arrangements the EB has in place to limit liability under Chapter 11 ITEPA.

ARC objects to any regulation which forces any particular model of operation. Again, there is no current distinction in definition of a work-finding EB and an umbrella EB, so how could this work when a hirer wants to use an umbrella EB direct?

As regards the proposal that EBs and umbrella should be regarded as 'connected', ARC strongly objects to this concept. Most EBs and umbrella companies have an arms length business to business relationship, with no other connection. EBs have no control over the operations of the umbrella company and vice versa. Members were concerned that using the term 'connected' might be suggestive that the two parties are linked or that the EB may be liable for the umbrella's actions, and this is wholly rejected.

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?

Yes. See above. There is no reason why agency workers should have any greater options here than any other kind of worker including those in the gig economy.

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?

This is a reference to R.6. Yes.

30b) Please explain your answer.

See above.

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.

The question is not understood.

31b) If yes, please explain your answer.

Please see above.

32a) Do you agree that the government should regulate to prevent umbrella companies from opting out of the Conduct Regulations on behalf of workers?

No.

Umbrella companies are to be classified as EBs themselves. Under current regulations umbrellas are companies that are work-seekers. Only if they are defined as work-seekers can they opt out anyway.

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 1 restrict to PSCs only is sensible. PSCs are businesses and do not need protections suitable for individual workers if they are happy to opt out.

Option 2 to remove opt outs entirely is not sensible. PSC should be able to continue to opt out.

It would be easier if the regulations are stated simply not to apply to PSCs as opposed to other companies (e.g. umbrellas) that have opted out. This would be in keeping with other regulations such as the AWR and WTR.

34a) Do you think the definition above accurately captures how a personal service company operates?

No.

A company may have more than one shareholder. ARC suggests that a better definition would be that of a relevant intermediary under Chapters 8 and 10 ITEPA (Off Payroll Rules) which uses a material interest test. Recruitment businesses are subject to a number of laws and commonly there are different definitions included. Businesses would welcome a consistency of approach in this regard.

34b) Is there an alternative definition which better defines a personal service company?

See 34a)

34c) Please explain your answer. For example, do you think there are any other characteristics of a PSC that the definition should cover?

See 34a)

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?

Yes. See above.

Chapter 4: Further opportunities for modernisation.

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?

Yes. In our view the approach is entirely incorrect.

Referring to s.13 of the EAA 1973 as now amended the section quoted refers to subsection 3B(b) but this is not appropriate. This subsection refers to paying for etc.... the service of persons.....in consideration of receiving.....a fee from the person.

Umbrellas do not receive a fee from the person they are paying or forwarding pay for, whether direct or indirectly. The suggestion that they do is wrong. The person they are paying or forwarding payment for is the candidate employee worker, employed by the umbrella company. Even the reference to ‘forwarding payment to’ is incorrect. As employers they are obliged to pay the candidate directly.

Instead, subsection 3B(a) more accurately reflects the activity of an umbrella.

The other subsections in our view more accurately reflect the activity of recruitment businesses that fell into the original definition of an EB. Such EBs could also fall into (a) but those that employ their agency workers are few. If you use (b) as the basis for applying regulations to umbrella companies, the vast majority - if not all - umbrella companies would escape any regulation since they do not receive payment from anyone save an agency or hirer.

In our opinion there should be a clear distinction between an umbrella and an EB. By classifying umbrella companies also as EB surely muddies the water. Each and every one of the definitions (a) to (d) could apply to all and every current EB. If you carve out one of these definitions, as suggested in this question, to distinguish regulations only applicable to umbrella companies you will have to create a further definition or distinction to ensure those umbrella regulations do not apply to all EBs. The same would apply in reverse.

Further, at our recent seminar ARC members expressed considerable regret at the decision to classify umbrellas as EBs in the way done. In our opinion the original definition included umbrellas within the scope of the original definition, yet the conduct regulations only applied to recruitment EBs because the regulation only applied to those providing work-finding services. Umbrella companies do not supply work-finding services in the same way, searching for jobs and entering into placement arrangements with hirers.

Following the lead from the existing regulations, the distinction of an umbrella, to which specific new regulations could apply, should be based on the nature of the service in terms of finding placements. Since some umbrella companies do provide limited work-finding services to enable them to claim tax free expenses, the test should be whether the umbrella provides job filling services to hirers.

There is an additional issue. In using the definition proposed as the basis, there is a risk that other businesses such as MSPs and RPOs will fall to be classified as umbrella companies subject, to the new regulations. Agencies that are currently entitled to charge a fee to a worker under R.26 would also fall to be umbrella companies.

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. See all our points above relevant to umbrella regulations.

38a) Do you have any views on how the regulations listed above should be streamlined to reduce administrative burden for businesses?

No.

There is constant overregulation in the industry with additional burdens on compliant businesses. The system in place now is not perfect but, changes need to be significant and justified. The streamlining proposed does not achieve that objective. Nothing in the proposed promotes growth.

Extra compliance and extra change do not address any fundamentals of the recruitment sector such as employment costs and how difficult it is becoming to run a recruitment business.

Questions about points made or to arrange any follow up meeting should be addressed to Adrian Marlowe (adrianm@arc-org.net).

The Association of Recruitment Consultancies

1st May 2026

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