



PROFESSIONAL PASSPORT FORTIS

CONTROL + SIMPLICITY

**REMOVING THE RISKS OF JOINT
AND SEVERAL LIABILITY**

**Risk Profiling under
Joint and Several Liability**

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Introduction and Background

Umbrella Companies and the 2026 Finance Bill: What's Changing and Why

The umbrella company model has long been a fixture of the contingent labour market. These intermediaries employ temporary workers and contractors, handle payroll, deductions, tax, National Insurance, holiday pay, and other employment rights and liabilities, while the worker is supplied to clients via recruitment agencies. For many workers and agencies, umbrella companies offer convenience and predictability. But in recent years, the umbrella market has been under increasing scrutiny — and the Finance Bill 2025-26 (operative from 6 April 2026) introduces significant legislative reforms aimed squarely at addressing non-compliance, tax avoidance, and unfair practices in the umbrella sector.

Several factors have pushed the government to intervene:

1. **Scale of non-compliance and tax loss**
HMRC estimates that hundreds of thousands of workers are engaged through umbrella companies, and that a sizeable share of these companies operate in ways that circumvent proper tax, PAYE or NIC obligations. In 2022-23 for example, HMRC estimated that about one-third of umbrellas could be non-compliant, contributing to losses in unpaid PAYE, NICs and other revenue.
2. **Distortion of competition and market unfairness**
Non-compliant umbrella providers are able to undercut compliant ones by cutting corners — sometimes by failing to pay full statutory entitlements, manipulating payroll, delaying payments, exploiting “purported umbrella” loopholes, or simply dissolving without meeting obligations. The result is a market where legitimate agencies and umbrellas are disadvantaged, and the overall tax system and labour protections are undermined.
3. **Difficulty of enforcement under the old regime**
Although HMRC has powers to investigate and act, the ease with which new umbrella companies can be formed, or existing ones restructured, has made enforcement costly and slow. Non-compliance was often discovered after the fact, and recovery of unpaid tax was challenging. There has been concern that the existing risk-identification, regulation, and supply chain due diligence were insufficient.

What the Finance Bill 2025-26 Introduces: Key Legislative Changes

To address these problems, the draft legislation (published mid-2025, to take effect from 6 April 2026) introduces important new rules. Some of the headline changes are:

1. **Joint and Several Liability (JSL)**
Under the new law (amendments to ITEPA 2003, introducing a new Chapter 11), recruitment agencies (and in certain cases end clients) will be jointly and severally liable with the umbrella company for PAYE income tax liabilities that the umbrella fails to remit. Essentially, if the umbrella does not pay what it should, HMRC can pursue the agency or client for the entire shortfall.
2. **Relevant Parties Definition**
The legislation defines “relevant parties” — those who may share liability. Typically, this is the agency with the contract closest to the client. But in situations where the umbrella contracts directly with the client, or where the agency is connected (e.g. ownership, overseas entities), the client may also be liable.
3. **Purported Umbrella Companies**
To counter attempts to evade the rules via creative structuring, the bill includes a concept of “purported umbrella companies”. That means even where an entity claims not to be an umbrella (or where workers hold a “material interest”) if the arrangement in practice looks like one, the liability can still attach. This is intended to prevent loops or loopholes being exploited.
4. **Dual liability for National Insurance Contributions**
While the initial focus is on PAYE income tax deductions, the legislation also provides HM Treasury with the power to bring NICs under joint and several liability by regulation.
5. **Policy Implementation and Timing**
The draft legislation and policy papers were published in July 2025; the operative date is 6 April 2026. There is also anticipation of further regulation of the umbrella industry itself in 2027 via the Employment Rights Bill.

Conclusion

The Finance Bill of 2026 marks a turning point for umbrella companies and labour supply chains in the UK. By introducing joint and several liability, targeting non-compliant and “purported” umbrella arrangements, and giving HMRC the power to pursue liability up the supply chain, the legislation aims to protect workers, restore fairness to the market, and shore up tax revenues. While the new rules pose challenges for agencies, umbrellas and end clients alike, those who act early — improving compliance, documenting processes, and choosing partners carefully — are likely to be best placed once the law comes into force.

Understanding the PAYE Cycle

In this explanation we will use an agency with workers operating through an umbrella company that results in a weekly PAYE bill of £20,000.

PAYE liabilities accumulate over a period of weeks that make up monthly cycles. The settlement of each monthly cycle is due on the 22nd of the following month.

When PAYE is paid it generally takes 7-10 days for this to show on the providers HMRC portal, but for the purposes of this example I will ignore that time lag.

So, on a weekly payroll multiple pay runs have been reported and RTI returns submitted to support these.

The day before payment is due there would be an outstanding liability in this example of around £160,000.

Once payment had been made there is still an outstanding amount due, as pay runs have already been reported for the second period that don't need to be settled until the 22nd of the next month. So, the day after there still could be around £60,000 of liability reported but not yet due and not paid.

So, the reality for this agency is that where they are happy to pay all the money to the umbrella for the umbrella to settle the PAYE liability directly with HMRC they carry a potential rolling liability of between £60,000 - £160,000.

If anything happens that causes that umbrella to fail, that is nothing to do with this agency, there is now an unpaid liability. The agency has sent all the money to the umbrella but this hadn't been paid as it's not due. So, if this event happens, the agency will face an additional bill of between £60,000 and £160,000 depending on timings of the event.

This is an additional cost as the PAYE monies have already been sent with the original funds.

Of course, if the umbrella pays the PAYE immediately then this significantly reduces any risks although there will be some, due to the time lag of systems to record this payment.

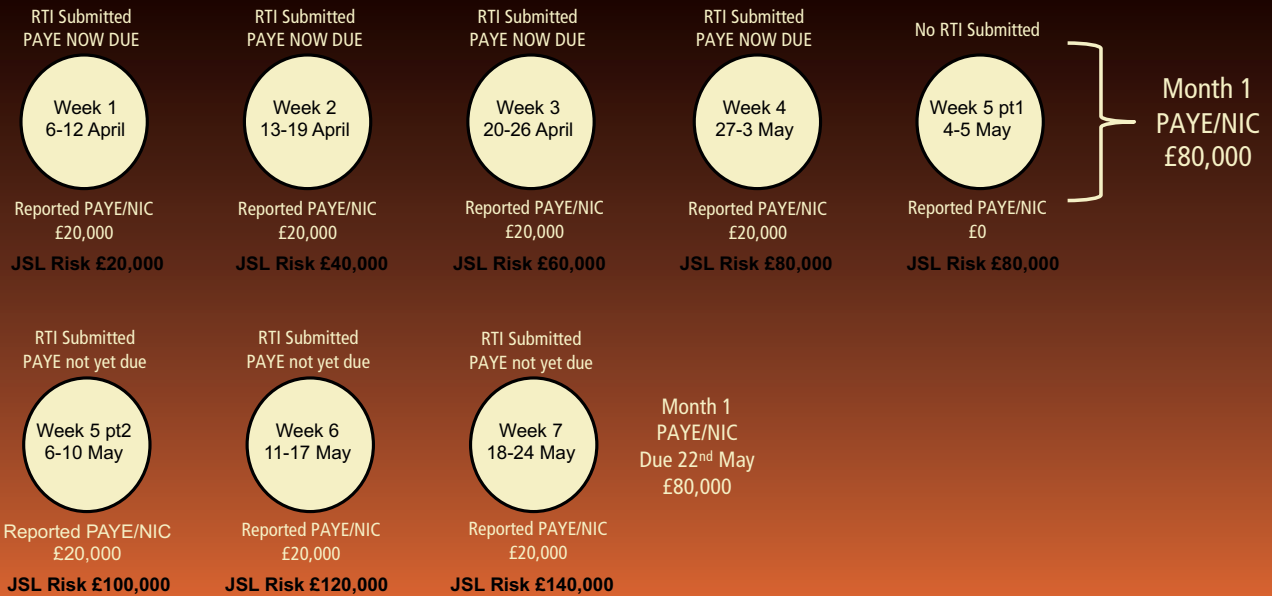
Even HMRC has given a clue to the answer in their own guidance:

'It does not matter which party pays or how much each party pays as long as the amount is paid in full.'



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SENDING ALL THE MONIES TO THE UMBRELLA AND
RELYING ON PAYSIP CHECKS & MONTHLY
PAYMENT VERIFICATIONS



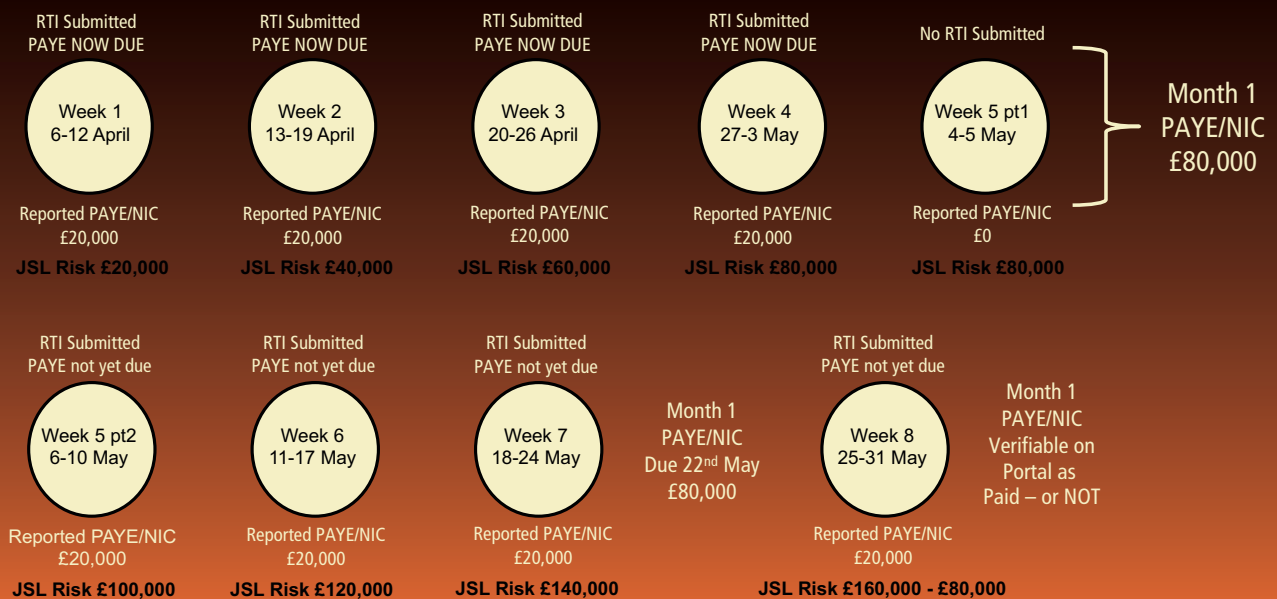
7 weeks payroll has been run before the first month's cycle is due for settlement on 22nd May.

At this point there is a rolling liability of £140,000 in this example.



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Typically it takes at least 7-10 days for the payment to be confirmed by HMRC as paid through the employer's portal. If there is an error or delay in this showing each further week of payroll increases the rolling liability by £20,000.



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PAYMENT VERIFICATIONS

RTI Submitted
PAYE NOW DUE

Week 1
6-12 April

Reported PAYE/NIC
£20,000

JSL Risk £20,000

RTI Submitted
PAYE NOW DUE

Week 2
13-19 April

Reported PAYE/NIC
£20,000

JSL Risk £40,000

RTI Submitted
PAYE NOW DUE

Week 3
20-26 April

Reported PAYE/NIC
£20,000

JSL Risk £60,000

RTI Submitted
PAYE NOW DUE

Week 4
27-3 May

Reported PAYE/NIC
£20,000

JSL Risk £80,000

No RTI Submitted

Week 5 pt1
4-5 May

Reported PAYE/NIC
£0

JSL Risk £80,000

Month 1
PAYE/NIC
£80,000

RTI Submitted
PAYE not yet due

Week 5 pt2
6-10 May

Reported PAYE/NIC
£20,000

JSL Risk £100,000

RTI Submitted
PAYE not yet due

Week 6
11-17 May

Reported PAYE/NIC
£20,000

JSL Risk £120,000

RTI Submitted
PAYE not yet due

Week 7
18-24 May

Reported PAYE/NIC
£20,000

JSL Risk £140,000

RTI Submitted
PAYE not yet due

Week 8
25-31 May

Reported PAYE/NIC
£20,000

JSL Risk £160,000 - £80,000

2 Potential Outcomes

Verified as paid

JSL liability
drops to
£80,000

OR

Unverified and NOT PAID

Likely JSL Liability
£160,000

Where payment is confirmed the rolling liability drops to £80,000. If not confirmed it continues to grow at £20,000 per week from a base of £160,000 until paid or liability passed to relevant party.



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SUMMARY:

THERE IS ALWAYS A POTENTIAL LIABILITY

THE SIZE OF THE LIABILITY IS DETERMINED BY THE TIMING OF THE FAILURE IN THE PAYE ROLLING CYCLE

YOUR MAXIMUM EXPOSURE IS THE DAY BEFORE PAYE IS DUE, AND VERIFIED, AND YOUR MINIMUM LIABILITY IS THE DAY AFTER PAYE IS DUE AND HAS BEEN VERIFIED AS PAID

ANY LIABILITY MEANS YOU HAVE EFFECTIVELY PAID THAT PAYE TWICE

YOU ONLY FIND OUT **AFTER** THE EVENT

IT IS OUTSIDE YOUR CONTROL AND COULD BE TRIGGERED BY THE ACTIONS OF OTHERS

This is a summary of how the new legislation interacts with the traditional way agencies send money through to the umbrella. In this example we illustrate the issue with verifying amounts due and paid and the underlying effects.

Key Points of the Draft Legislation

Joint and Several Liability

The rules on joint and several liability means that this is a strict liability where there is no defence or excuse allowed.

It effectively is a binary situation.

The Question:

Is there an unpaid liability?

Answer: NO

Liability does not arise; compliance checks and accreditations are essentially irrelevant because all taxes have been correctly paid.



Answer: YES

Liability does arise, and HMRC can pursue the relevant party in the chain, regardless of whether they carried out checks or obtained accreditations.

So the existence of an unpaid liability is the switch.

Once it flips to 'YES', the protective value of due diligence, accreditations, or RTI checks no longer prevents exposure - they only help reduce penalties or demonstrate good faith.

These checks can also provide some element of risk profiling on the umbrella selected where you're relying on the umbrella to make this payment on your behalf.

Where you rely on the umbrella to make these payments, and due to how the PAYE cycle operates, at no point is there zero liability, you are always exposed if the umbrella fails. There is no safe harbour in these instances.

With joint and several liability being the answer to this simple question then the best way to ensure you will always answer NO is to take control and make the payment for those liabilities directly to HMRC under the Umbrella PAYE reference.

This is exactly what we designed the Fortis system to achieve, providing a NO answer in all instances to that binary question.

Seems a Simple Answer - So Why All The Noise?

With the relevant party paying the liabilities direct to HMRC this means that there would be no risk of a downstream default, so in theory joint and several liability could never arise.

This approach has not been openly embraced by the sector for a number of reasons, we would suggest the main two being:

1. Systems
2. Loss of control

If we look at SYSTEMS first.

This is the Elephant in the room!



The current systems used by umbrella companies to manage their payroll have predominantly been built to calculate the total PAYE/NIC per worker with a single RTI return made for these. They are not built to generate granular reports that would allow a third party, e.g. an agency or end client, to identify their proportion and pay this directly to HMRC using the Umbrella Employers Reference.

To develop systems to report in this way would require a reengineering of current systems that would be both expensive and take considerable time; time that is likely to exceed the required dates of implementation to meet April 2026 deadlines.

Over and above this, systems are built to report through one PAYE reference for an Umbrella, which was one of the objectives the sector had in making their representations to HMRC to allow reporting to continue under the Umbrella Employers PAYE Reference. This limits the ability for the new split settlement reporting that is required where the relevant party seeks to settle direct with HMRC.

So the technical incapacity of the payroll systems is driving and restricting the solutions being offered to the supply chain to address the new legislation.

If we then look at HMRC's systems, these also have constraints adding background complexity to achieving the split reporting.

Employers generally work with a single Employer PAYE Reference Number and this adds complexity in the confirmation and reconciliation required through split reporting. What most do not appreciate is that an employer can hold more than one PAYE Reference, although to do so there are specific requirements that would have to be demonstrated to HMRC for this to be allowed. The split reporting is one such acceptable requirement.

FORTIS has been designed with all these issues addressed and specifically in line with the new legislation requirements.

FORTIS operates the split reporting system allowing relevant parties to understand exactly what their liability is, supported by all calculations and reports to demonstrate to HMRC, if ever it was required, that the payroll calculations are correct.

It provides a report, by Umbrella Provider, of the amounts due and the relevant PAYE reference these amounts should be paid under.

In all cases we will establish a separate PAYE reference for providers that is exclusively used for FORTIS operations. This removes complexity and eases their reconciliation process by segmenting FORTIS operations from their other clients.

This brings us on to the second issue: Loss of Control

This predominantly centres around the financial risks faced and concern over the situation where a relevant party fails to settle the liability, leaving the umbrella with that debt.

Many umbrella companies offer payment terms to their recruitment partners that would far exceed any potential risks faced through a liability not being settled. The responsible operators would have a credit loss insurance in place to cover a situation where an agency failed, this would also cover the situation where non payment of liabilities occurred.

Once a payroll has run and an RTI submitted the actual payment to the worker crystallises that and creates a liability that is not yet due. In the old world the agency paid all the money to the umbrella prior to payment of the worker but this changes when operating split reporting.

The agency deducts the amount due to HMRC from the total money it sends to the umbrella. Once payment to the workers has been carried out the agency would then pay HMRC the amounts due, they would not hold this until the due date.

Operating in this way would allow the umbrella to verify the liability had been settled prior to the next pay run and so cap any level of risk at the weekly liability per agency. If an agency went into administration during this point, credit insurance generally pays out in a short period and well before that money is due to be settled with HMRC.

Purported Umbrella

The rules also apply where the entity is a purported umbrella company — i.e. it is held out, or reasonably believed, to be the employer of the worker but fails to account properly for PAYE.

This ensures that liability cannot be sidestepped by disguising, restructuring, or mischaracterising umbrella arrangements.

Connected Parties

The draft legislation defines a “connected party” under Section 61Z of ITEPA in relation to umbrella company arrangements. If an agency or intermediary is connected to the umbrella company (by ownership, control, directorship, or via non-UK residence in certain structures), the end client may become a “relevant party” liable under joint and several liability.

These rules are aimed at closing loopholes where liability might otherwise be avoided through intermediaries.

Agencies and clients need to understand their own supply chain, check connections, and build contractual safeguards to protect against unintended liability under these new rules.

Relevant Party

“Relevant parties” remain:

1. The first agency in the chain;
2. The end client where no agency exists, or where the agency is connected to the umbrella.

Even where relevant parties voluntarily pay PAYE directly, the statutory definitions are unchanged — JSL still applies in principle, but there will be no practical liability if the PAYE has already been fully settled to HMRC.

False or misleading information

The JSL regime remains strict liability for the umbrella company obligations under section 61Y. That means that where an umbrella fails to remit PAYE (or other obligations), relevant parties (agencies, clients) are liable unless the umbrella company has already had the liability discharged (e.g. by direct payments to HMRC under the umbrella PAYE reference).

HMRC Penalty Regime and Duty of Care

Whilst JSL is a strict liability, where this is applied other aspects of due diligence could serve to reduce any penalties HMRC seeks to apply.

Risk Profiling



Do Nothing



Combined with Monthly
Payment Verifications



Combined with Professional
Passport Fortis

Accreditations

Low Risk

High Risk



Accreditations provide no value in direct relation to JSL.

They should still be required as part of the wider due diligence requirements.

Part of the onboarding process for an umbrella into Fortis is to ensure this wider review of their operational processes and procedures is present and aligns to our exacting requirements.

Payroll Accuracy

Low Risk

High Risk



Ensuring the accuracy of the payroll is a critical step under JSL as this drives the RTI submissions to HMRC. If the original payroll has errors then so will the RTI which in turn could result in additional liabilities.

Over and above this, checks should be made in high risk categories within the payslip calculations such as:

Tax Free Expenses

This is not common in the modern umbrella but some providers still seek to apply. If the rules on these expenses are not followed correctly they can be disallowed by HMRC resulting in further liabilities.

Salary Sacrifice Pensions

This is cost effective for workers who have surplus funds and wish to invest further into their pensions. Checks need to be made to ensure these are real payments and not a way of diverting monies into disguised remuneration arrangements.

Fortis will always highlight any areas that are high risk within the process and seek to understand your approach on these to ensure your risk profile is reflected in the operation of the Fortis system.

Payslip Checks

Low Risk

High Risk



There are 3 critical parts required to validate a payslip check:

1. How much was sent to the umbrella
If this is unknown the payslip check becomes low value as whilst the calculations may be correct the starting point for these remains unknown.

Fortis handles this by requiring all users to submit through our system the amounts being sent to the umbrella for each worker.

2. The calculations
A payslip check should be able to verify the calculations are correct based on the gross taxable pay and workers tax code.

Payroll systems once set up correctly should always return the correct results. The challenge for processes relying on third party software is that they have to operate a far higher degree of checking.

Fortis uses its own dedicated system where we control the code. We have further obligations placed on us to ensure its accuracy under the promoters of tax avoidance and marketing tax avoidance. This legislation is being bolstered as part of the wider measures within the Finance Bill 2026 and now contains the risks of criminal liabilities.

3. The actual payment to the worker
We have seen many situations where payslips have not reflected the reality of the payments made to the workers and reported to HMRC. With JSL being a strict liability this increases the risks significantly if full visibility of the process is not available.

Fortis addresses this issue by seeing the process from end to end. This way we can control the application of the payroll knowing what has been sent. By splitting the money between the umbrella and paying HMRC directly for the PAYE liabilities we remove these risks from the cycle.

RTI Submissions

Low Risk

High Risk



As covered above, ensuring the correct calculation of PAYE and filing a RTI submission that aligns to this is critical.

Fortis handles this directly through the end to end processing.

Audit Trail

Low Risk

High Risk



As there are no excuses within the JSL and it is a strict liability, the only way to avoid the liability is to ensure this is paid and can be demonstrated to HMRC should an issue arise.

Fortis deals with this by having access to every one of your workers' pay calculations through all umbrellas as well as the RTI submission aligned to this.

Making the payment directly to HMRC for the stated amounts results in there being no liability and where there is no liability JSL is not triggered.

Liability Risk

Low Risk

High Risk



Making due diligence checks on an umbrella, as well as reviewing their RTI submissions and payments delivers a lower risk than doing nothing. As highlighted in the section covering the PAYE Cycles there will always be a rolling liability should an umbrella company fail. The size of the liability will be entirely driven by the timing of the failure. The day before PAYE is due will result in the highest level of JSL, the day after will be the lowest.

One of the major risk factors with this approach is where an allocation error happens within HMRC systems, which is not uncommon, you would have to decide how you deal with these situations as ongoing use of the umbrella will result in increasing liabilities for each pay run. The alternative to protect this would be to move all workers to a different umbrella.

As you pay the liability directly to HMRC with Fortis this issue never arises and ensures that at no point in the cycle do you hold a liability.

Control

Low Control

High Control



Relying on the umbrella to make the payments to HMRC provides little, if any, control to the relevant party. You will only ever find out after the event.

Fortis provides complete control to the relevant party as it is them that pay the amounts due.

There is no better way to gain this level on control in relation to this legislation.

Other Considerations

Insurance

We are aware that the current day systems, in an attempt to address shortcomings for the new world are looking to roll out a form of tax loss insurance for the relevant party. Tax loss insurance has been in the sector for years, most notably with IR35.

Insurance companies are commercial and are unlikely to offer an insurance via the provider where it is the provider themselves that can trigger a claim by failing to pay. Furthermore the levels of claims could be substantial so the premium is likely to be restrictive.

With IR35 tax loss insurance it worked, as there were fewer than 20 enquiries a year, so the risks were more than manageable. In many cases the insurance failed to cover a potential tax loss due to the terms of the policy which allowed the insurers to revert the policy to a tax enquiry fees policy.

The key lesson with any insurance is read the terms as often these allow insurers to claim foul and you can end up only being insured where everything is done correctly and so there is no liability.

Our approach has been different. We are suggesting the umbrella company holds a credit risk insurance that would pay out if an agency went into administration and failed to settle their PAYE. This is a well established policy across many markets, in fact many of the sensible umbrellas that offer credit terms to agencies already have these policies in place.

Our position on insurance will result in little if any additional cost to the provider.

HMRC Employment Status Manual Update

HMRC has taken the unusual step of releasing the ESM updates before final legislation. They do state that this may be subject to change based on the final legislation but serves as a strong indicator that changes are likely to be minor.

It also indicates that HMRC themselves see the impact of these changes and want to provide as much information as possible, as early as possible, to allow the market to plan, prepare and implement the required changes in the time frames required.

This information can be accessed here: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2420>



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