



Creating the right workforce regulatory environment

Enabling conditions to drive both
growth and good work practices



Overview

Following the changes to the way we live and work since the pandemic, including many people now working from home and requiring greater flexibility, a new policy focus is needed to ensure legislation keeps up with the speed of change we are witnessing to working practices and workers' rights.

This is particularly pressing after the Government made the decision not to proceed with an overarching Employment Bill as originally planned and instead is supporting Private Member's Bills, covering a number of key employment issues such as workers' rights, maternity leave, holiday entitlement and redundancy protections.

Whilst we welcome addressing these crucial areas in employment legislation, there remains a concern that without one holistic Employment Bill there may be areas of employment law that require reform which are missed. We therefore believe that a more joined-up approach is needed to ensure legislation continues to work well for, and protects, employees, businesses and recruiters – ensuring the UK labour market is as strong, dynamic and fair as possible.

APSCo is keen to ensure that these pieces of legislation cumulatively produce the right regulatory business environment which benefits the UK economy, protects workers and incentivises corporate and contractor innovation. Employment and recruitment legislation must aim to improve protections and transparency for workers regarding pay and working conditions, whilst not overprotecting and disincentivising skilled individuals wanting to work independently.



Ensure greater support for self-employed and independent contractors


To resolve labour market complexity, self-employed status must be defined in legislation. Such legislation must differentiate self-employed independent professionals from dependent contractors, workers, other variants of self-employment and the lower skilled, less independent elements of the gig economy.

Legislative reform will also facilitate the necessary thinking and debate required around how workers and the self-employed can be financially assisted and adequately access benefits, currently largely enjoyed by employees: enhanced pensions, life insurance, family and dependent related paid leave, training, and development.

APSCo recommends:

The Government should review the definitions of employment status by clearly defining the self-employed worker and resolve the complexity of statuses for tax and rights, primarily driven by a 'worker' only existing as an employment status for employment rights.

Agency Workers Regulations 2010 should be updated for professional self-employed contractors, to reduce complexity at the professional end of the contracting market.



The Retained EU Law (Revocation and Reform) Bill (the EU Reform Bill) risks damaging workers' rights if measures such as the Working Time Regulations, agency worker rights, data protection rights and holiday pay are not incorporated into UK law in time. However, it is also an opportunity to review whether the law is fit for purpose for the modern flexible labour market.

The application of the law in respect of holiday pay and leave for agency workers set out in the Working Time Regulations and accompanying case law is not fit for purpose for the flexible agency worker sector, APSCo is therefore calling on the Government to progress reform in this area.

Further, the Agency Workers Regulations 2010 (AWR) is not needed for the professional self-employed contractor, who earn rates many multiples of the National Minimum Wage. The AWR also creates unnecessary complexity and administration at the professional end of the contracting market.

APSCo recommends that the AWR is expressly excluded if an hourly rate exceeds a set multiple of the National Minimum Wage, which is fair and easy to apply.

Update the legal definitions for umbrella company employment and provide more rigorous regulation

Umbrella companies have many advantages and offer workers continuous employment such as bringing advantages on access to competitive credit rates and employee rights and benefits.

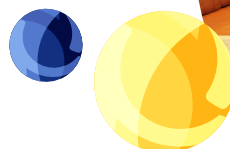
APSCo recommends:

Government must be ambitious and futureproof the legislation, considering licensing of the umbrella market, the mandatory use of client accounts as well as the introduction of statutory compliance codes.

Tackling rogue umbrellas also needs to be a higher priority with a bigger budget to ensure the recruitment landscape is fair and works for all.

APSCo member recruiters and outsourcers generally build long term, mutually beneficial relationships with a Preferred Supplier List (PSL) of accredited umbrella companies, working together to make sure their supply chains comply with employment and taxation legislation such as the Criminal Finances Act 2017 and Income Taxes (Earnings and Pension) Act 2003 and differentiating themselves on service offering rather than pay.

However, 'umbrella companies' is itself a widely misunderstood term, not helped by the growth of online comparison sites and umbrella companies, offering different levels of 'take home pay,'



and potentially creating large tax liabilities for workers through involvement in tax avoidance schemes such as mini umbrella schemes.

The Government is aware that more action is needed and the lack of clarity in the law and regulation surrounding umbrella companies risks the global attraction of the UK recruitment industry and labour market. Defining 'umbrellas' more clearly in law and through more rigorous regulation will help to protect the rights of workers who are employed by umbrellas, thus ensuring the most compliant and attractive supply chain the UK can achieve.

Ensure Off-payroll (IR35) is kept under constant review

APSCo is a founding member of HMRC's IR35 Forum, expanded and renamed in 2022 to the Employment Status and Intermediaries (ES&I) Forum, and held the lay chair role from 2017 to 2022. Off-payroll is unsatisfactory law due to the lack of legal clarity around highly skilled self-employment, creating false deemed employment due to clients' adverse approach to risk taking, which has led to skilled experts leaving the labour market in many skills short sectors.

APSCo recommends:

Off-payroll legislation should be kept under constant review to enable a flexible, agile and independent professional workforce. This includes tackling the issue of determining whether someone is an employee or self-employed.

Government should continue to work with the sector to help overcome these challenges and remove the current burdens of Off-payroll on the professional recruitment sector.

Further, recruiters have the uncomfortable role of deemed employer, whilst not being responsible for the employment status decision or having control over the client site.

Current drafting unfairly penalises recruiters, as the fee payer, on a reassessment of employment status by HMRC and creates a double taxation situation. HMRC and HM Treasury should prioritise a speedy, fair and efficient solution to this problem, which they have been considering with the forum.



About APSCo Global

APSCo Global is an international trade body offering global services with local delivery to the international recruitment sector through our offices in Australia, Germany, Southeast Asia and the UK.

APSCo helps differentiate the professional recruitment market by raising standards and delivering expert support and market intelligence to members of APSCo around the world.

APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo United Kingdom as well as APSCo OutSource, the trade body for the permanent and contingent outsourcing sectors.

APSCo and OutSource members range from SMEs to the largest global, listed recruiters and outsourcers. Members recruit professionals into permanent and contract roles across STEM, accountancy, legal, finance, marketing and media in addition to highly regulated sectors such as qualified social work, teaching and clinical healthcare.

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