PROFESSIONAL PASSPORT FORTIS

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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.

Key Points of 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 where the answer of whether the PAYE has been fully paid is a simple yes or no.

If the answer is no and PAYE liabilities are due this can trigger the joint and several liability to the relevant party in the chain.

To be clear, no amount of due diligence checking, payslip checking, RTI verification provides any defence where a liability remains unpaid. All that additional work counts for nothing in relation to the joint and several liability.

It will however provide some 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 the simple question of *has all PAYE liabilities been paid, yes or no,* then the only way to ensure you will always answer yes 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 yes answer in all instances to that binary question.

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

Audience Question:
What is the purpose in demonstrating to HMRC that due diligence has been taken in selecting umbrella suppliers?

HMRC Answer:
There is no requirement to demonstrate to HMRC that due diligence has been carried out. Due diligence is a process to mitigate risk for the agency.

Audience Question:
Is there any proof our umbrella company can provide to us that would eliminate the JSL liability for us?

HMRC Answer:
No. There is no statutory excuse that removes the liability from the agency.

Audience Question:
If an umbrella enters administration owing tax to HMRC, will HMRC wait until the end of the insolvency proceedings, or seek to immediately claim the missing PAYE/NICs from a “relevant party” under JSL?

HMRC Answer:
Where PAYE is not properly remitted to HMRC, HMRC will seek payment from the agency that provides the worker to the end client. Where there is no agency in the chain, HMRC will seek payment from the end client.

Audience Question:
If an umbrella falsifies their proof of payment of PAYE to the agency who has tried to perform due diligence, does the " there is no statutory excuse that removes the liability from the agency" still apply?

HMRC Answer:
Yes. There is no statutory excuse that removes the liability.

Accreditations

Low Risk High Risk

Audience Question:
Can accreditations or certifications provide any protection for an agency under the JSL rules?

> **HMRC Answer:**
> **No**

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.

RTI Submissions

Low Risk High Risk

Audience Question:
if we have an RTI report and payslip check report to confirm that all calculations are correct for our workers, could we use that as proof we paid our PAYE to the umbrella under JSL rules?

> **HMRC Answer:**
> **Agencies and end clients that choose to use umbrella company suppliers in their labour supply chains will want to conduct due diligence on those suppliers to mitigate the risks to their business. This could include checking RTI reports and payslips. However, where PAYE is not properly remitted to HMRC, the agency will remain liable for the shortfall.**

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.

Payroll Accuracy

Low Risk High Risk

Audience Question:
If an agency can show they sent all the money to the umbrella, including the amount to cover PAYE, and the umbrella fails to pay it all to HMRC will the agency still get a liability?

HMRC Answer:
Where an umbrella company fails to properly remit PAYE to HMRC, HMRC will seek payment from the agency that supplies the worker to the end client. Where there is no agency in the chain, HMRC will seek payment from the end client.

Audience Question:
If I have settled the full liability directly with HMRC for my workers and the umbrella fails leaving a PAYE debt, will I have to pick up some of that liability too?

HMRC Answer:
If any relevant party has paid the PAYE liabilities to HMRC there will be nothing to pursue. HMRC will only pursue liabilities from relevant parties if there is amounts outstanding.

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 in to 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

Audience Question:
If we have relied on payslip checks and RTI checks and there is a shortfall in PAYE will these checks be an allowable excuse against JSL or will JSL still apply?

HMRC Answer:
The liability will still apply.

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.

Audit Trail

Low Risk High Risk

Audience Question:
If our umbrella has provided proof to us that the PAYE was paid and then a liability arises, would we still be liable as our umbrella company showed us proof of the payment?

HMRC Answer:
Yes

Audience Question:
What is the purpose in demonstrating to HMRC that due diligence has been taken in selecting umbrella suppliers?

HMRC Answer:
There is no requirement to demonstrate to HMRC that due diligence has been carried out. Due diligence is a process to mitigate risk for the agency.

Audience Question:
If an umbrella company engages with lots of recruitment businesses, how will each agency know if their workers tax is paid in the event the umbrella defaults on only a proportion of the total payment to HMRC (i.e. how to know which agency will owe if only some tax is missed)

HMRC Answer:
The rules limit the extent of an agency's or client's joint and several liability to the amounts that are due to be paid under PAYE in relation to the services provided by the worker to each client. Where a payment by an umbrella company is in respect of multiple engagements, the tax liability will need to be apportioned between each engagement. Any shortfall will also need to be apportioned.

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

Audience Question:
Are there any checks that can be carried out and used as an excuse to avoid JSL where a shortfall applies?

HMRC Answer:
Agencies or end clients that choose to use umbrella company suppliers will want to undertake due diligence to mitigate any risks to their businesses. But there is no statutory excuse that will apply to remove the liability.

Audience Question:
Can an agency pay HMRC the tax due directly before paying the umbrella company therefore eliminating risk?

HMRC Answer:
Yes

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

Audience Question:
Can an end client or agency pay the umbrella company the net pay for the worker and withhold NICs and PAYE taxes and pay it over to HMRC themselves?

HMRC Answer:
Yes.

Audience Question:
If I have settled the full liability directly with HMRC for my workers and the umbrella fails leaving a PAYE debt, will I have to pick up some of that liability too?

HMRC Answer:
Relevant parties are only jointly and severally liable for amounts due in relation to the workers that they have supplied (in the case of recruitment agencies) or used (in the case of clients). If this liability has been settled, then there will be nothing for HMRC to recover from a relevant party.

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.

Audience Question:
If an agency and umbrella are jointly liable who would HMRC come to ‘first’ for the shortfall?

HMRC Answer:
HMRC will pursue the agency to make good any shortfall.

Audience Question:
Have I understood this correctly? - Where there is a shortfall, HMRC will pursue the agency for the unpaid tax, NOT the umbrella that failed to pay the correct amount?

HMRC Answer:
Yes.

Other Considerations

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