

Contractors threatened by BERR consultation on Conduct Regulations opt-out

Contractors could lose their right to opt out of the [Conduct Regulations](#) if government proposals to change the regulations are adopted later in the year. Removing the opt-out could result in massive increases in the admin' burden and costs for recruiters and clients who require the skills and flexibility that contractors offer.

In a [consultation and impact assessment document](#) containing proposed changes to the Conduct of Employment Agencies and Employment Businesses Regulations 2003, the Department for Business, Enterprise and Regulatory Reform ([BERR](#)) is considering abolishing the opt-out. BERR suggests amending the regulations to protect 'vulnerable workers', a category of workers who simply don't exist in the contracting sector.

The assumptions about how the contracting sector works are breathtaking in their inaccuracy and naiveté, demonstrating a terrifying level of ignorance on the part of the consultation document's creators.

'Operate as limited companies for tax reasons'

BERR's lack of understanding over how contractors really operate is glaringly illustrated by the erroneous and highly misleading assumption that contractors use [limited companies](#) purely for the tax advantages they provide.

Whilst limited companies and, to a lesser extent, [umbrella companies](#) do confer certain tax advantages, the main reason contractors use such trading vehicles is because end-user clients would not engage their services otherwise.

Without the buffer of a limited company or umbrella company, the risks of end-user clients becoming liable for claims of employment rights by self-employed contractors are huge, and clients simply won't take those risks.

If, as the consultation suggests, it is made illegal for end-user clients and the agencies that find workers for them to insist that contractors have a limited or umbrella company trading vehicle as a buffer to any claims for employment rights, then the solution for clients would be to simply stop hiring contractors.

In fact, it would be a strong incentive for them to move the work outside the UK to the many countries where the regulatory environment is not as constricting or costly.

Umbrellas - a convenience for IR35 and the outsourced agency payroll

To condemn all umbrella contractors as 'low skilled' and 'vulnerable', as the consultation appears to, demonstrates the clear gulf of understanding between reality and how BERR views the contractor market. Contractors actually use umbrella companies for three main reasons:

- o They have been advised that their contract is inside [IR35](#), and they therefore want to find the easiest way to pay the full amounts of tax and National Insurance Contributions (NIC) due
- o They do not want the hassle of running a limited company, with all the administration, duties and responsibilities being a limited company director entails
- o Their earnings are not sufficient that they would gain any benefit from running a limited company, given the administrative and accountancy costs incurred in such an exercise.

In addition, for many agencies, umbrella companies are in effect a low risk payroll outsourcing option for the contractors on their books.

Contractors are many things, but vulnerable is not one of them

The overwhelming majority of workers in the UK who call themselves contractors are highly skilled and qualified individuals, often at the top of their profession, who expect high rewards for their outstanding performance, sometimes under gruelling conditions.

Vulnerable temporary or agency workers occupy often specific roles within an organisation and under clear direction, which is a totally different scenario from contractors who provide services on a specific project and work under their own initiative.

Contractors are generally happy with the status quo – they want to be able to opt out and make their own choices. For many, that is precisely why they have chosen to become contractors, because they don't want to be employees.

“ The overwhelming majority of workers in the UK who call themselves contractors are highly skilled and qualified individuals ”

BERR has provided a facility to take responses to the consultation and contractors can make their views known before the 11 June

deadline via the [consultation's web page](#).

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