



HOUSE OF LORDS

Economic Affairs Finance Bill Sub-Committee
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26 March 2020

The Rt Hon Jesse Norman MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Dear Jesse,

Thank you for your letter of 18 March 2020 about the Government's decision to defer the extension of the off-payroll rules to the private sector as part of its package of support for business and contractors during the coronavirus outbreak.

The Sub-Committee welcomes this announcement. The Government's decision offers some much-needed reassurance to freelance workers for the difficult months ahead – many have already written to the Sub-Committee to welcome the delay.

You state that the Government will reintroduce the rules unamended next year, with a new start date of 6 April 2021. Our witnesses had a number of material concerns about the proposed changes. We put some of these concerns to officials in your department and HMRC during our evidence session on 16 March 2020. Had the outbreak not occurred, the Sub-Committee would have argued that the reforms should be delayed, and we now urge the Government to postpone the eventual implementation of the new rules until it resolves the difficulties that we have identified.

We were most grateful that you agreed to appear before the Sub-Committee on Monday 23 March. Following the session's cancellation it would be very helpful for our inquiry if you were to answer the questions below. A response in ten working days would be welcome, and would enable the Sub-Committee to consider your response before finalising its report.

Cost of off-payroll reforms

As you are aware, the Sub-Committee has received a significant amount of evidence about the administrative burden that the off-payroll working rules will place on business. We also heard that preparing for the rules will impose substantial start-up and running costs. Witnesses reported that the combined cost for just six businesses has already been as much as £3 million.

We were told that the reforms might result in contractors leaving freelancing, losing business, and facing a decline in pay rates, as clients pass down the additional costs that they would incur. And

since the beginning of the COVID-19 crisis, stakeholders have written to us that of their fears that such losses will be permanent.

- Does the Government stand by HMRC's original costing of the proposals? Is it still complete and accurate?
- Before the delay was announced, a large number of businesses had already changed how they engaged with contractors, leading contractors to lose business. Contractors have told us that the coronavirus pandemic means that they do not expect to win new business in the next few months. How will the Government support these people? Will they be compensated for any business lost because companies terminated contracts in anticipation of the implementation of the new rules in April 2020?
- The Government's decision to delay the implementation of the reforms seems to acknowledge that the reforms indeed represent a significant additional burden for business, one that they will be unable to shoulder during the present crisis. Is this a fair assessment?
- By April 2021, will businesses have recovered enough from the COVID-19 crisis to be able to bear the additional burden imposed by the new off-payroll working rules?

Evidence on existing measures in the public sector

Witnesses stated that the introduction of off-payroll legislation to the public sector was not as successful as HMRC had suggested. We heard that a number of public sector bodies made blanket status determinations; this was particularly true within the NHS.

Such blanket determinations led many contractors to cease working for public sector bodies. In turn, this meant fewer resources for public sector projects. In other instances, it led to increased costs for the public sector because contractors increased their rates.

- What steps will you take to ensure that such problems – particularly around blanket assessments – will not be replicated when the rules are extended to the private sector?

We are aware that in autumn 2017 HMRC commissioned external research into the implementation of the public sector rules. But witnesses argued that this research came too soon after the rules' introduction for it to consider the full impact of the reforms.

- Why was a full, independent evaluation of the public sector rules not carried out before extending the reforms to the private sector?

Blanket assessments

Witnesses told us that since the announcement of the new off-payroll working rules, many private sector companies have made blanket determinations, and some large companies have decided not to engage contractors at all. Numerous witnesses outlined the financial implications of blanket determinations, such as clients passing employer NIC burdens to workers (thereby reducing pay), taking work offshore, or losing contracts.

- How will HMRC identify businesses which are not operating the rules correctly, for example by making blanket assessments, and what sanctions will such businesses face?

Role of umbrella companies

Many witnesses felt that the reforms would lead to an increase in the use of umbrella companies, as has happened in the public sector since the introduction of the off-payroll working rules there. Although a large number of umbrella companies have complied with the rules, we have heard that certain non-compliant entities may still be using disguised remuneration schemes. Several witnesses recommended that the proposed reforms should not be implemented without stronger regulation of umbrella companies.

- How will you prevent the use of non-compliant umbrella companies once the off-payroll working rules are extended to the private sector?
- Have you or your officials met stakeholders to discuss concerns about the increased use of umbrella companies? If not, do you plan to consult stakeholders ahead of the implementation of the reforms?

The Check Employment Status for Tax (CEST) tool

Witnesses felt that the CEST tool was discredited. We heard that CEST gives an answer in only 85% of cases, does not take sufficient account of factors such as mutuality of obligation, and is heavily reliant on subjective judgements. Several witnesses said that they had run tribunal cases through the tool, and found that it produced a different answer to the outcome of the tribunal. However, the work carried out in November 2019 to update CEST was welcomed by many.

- In light of the difficulties experienced with the CEST tool, is it reasonable to impose the burden of making status determinations on businesses? What will the Government do in the coming year to improve CEST's reliability, accuracy and user-interface?
- Why does CEST still fail to reflect mutuality of obligation?

“Joined-up Government”

The Government's aims are to support the growth of the gig economy, to make the tax system simple, and to support businesses as they overcome the impact of coronavirus.

- How do the proposals support the growth of the gig economy? What discussions have taken place between HMT, BEIS and DCMS about how the proposals will make the economy more competitive, and especially in the digital realm?
- The Office for Tax Simplification told us that they had not been consulted during the most recent review of the proposals. Why was this? How precisely will the proposals help to simplify the tax system?
- Given the considerable impact that coronavirus will have on the economy, the Government has stated that it will do “whatever it takes” to support UK businesses. How, precisely, does pressing ahead with these proposals help UK business?

Fairness of the proposed changes

Many witnesses argued that the new off-payroll rules create unfairness because they identify individuals as employed for tax purposes without providing the benefits and protections that come

with employment. There was concern that the reforms were proceeding before the Government had implemented the recommendations on employment status made by the 2017 Taylor Review.

Witnesses did not feel that the new rules represented a sensible solution to challenges posed to the economy by new types of working. They were therefore disappointed that Government consultation on the new rules was narrowly focused, and suggested that a better approach would have been to consider new types of working from first principles.

- The Government states that the reforms will help address an unfairness in the tax system. However, a number of witnesses told us that the reforms will in fact create a new unfairness regarding employee rights. Do you agree that a contractor falling within scope of IR35 will be treated in the same way in the eyes of HMRC as an employee, but will not enjoy or be protected by the same rights as that employee?
- Following on from this, why has the Government not yet implemented the Taylor Review recommendation that “determining employment status must be simpler, clearer, and give individuals and employers more information, a greater level of certainty and an understanding of which rights and responsibilities apply”?
- When will the Government publish its response to its 2018 consultation on employment status?
- Will the Government use the year-long opportunity resulting from the deferral of the extension of the off-payroll rules to the private sector to review its proposals, using up-to-date labour market information in any such review? Will it consider any alternative options?
- What assessment has the Government made of whether those engaged with contractors who are treated as employees for tax purposes but not for employment rights will cancel contracts rather than keep contractors on under the COVID-19 job retention scheme? If such contractors have been using PAYE, will they be able to benefit from any measures that the Government puts in place to protect self-employed people during the coronavirus outbreak?
- What assessment has the Government made of whether the strategy of treating contractors and freelancers as employees for tax purposes, but not for employment rights purposes, will diminish innovation and flexibility in the UK workforce? How will any such diminution enable the UK workforce to respond in the short term to the economic impact of COVID-19, and in the longer term to the challenges of the Fourth Industrial Revolution?

We look forward to receiving your response in ten working days.

Yours sincerely,



The Rt Hon. the Lord Forsyth of Drumlean
Chair, Finance Bill Sub-Committee