



Campaign Briefing – July 2019

Support the UK's flexible economy - Stop the Off-Payroll Tax!

Contracting in the UK – and the many businesses who rely on contractors – are facing a devastating blow from Government plans to introduce the 'Off-Payroll Tax' this year.

The **#StoptheOffPayrollTax** campaign, launched by ContractorCalculator, supported by contractors and freelancers, small businesses, trade and professional organisations, is campaigning to prevent what would be the most damaging change to contracting and freelancing since the inception of the flawed IR35 legislation, and we need your support to help to Stop the Off-Payroll Tax.

The UK's flexible workforce is worth millions to the UK economy and British business – yet this Government is instead waging a War on Contracting – which is damaging business and driving skilled work abroad.

Draft legislation published 11th July

The Government have announced that they intend to publish the draft legislation next week – on the 11th July.

As things stand, the legislation for the Off-Payroll Tax will be introduced in the Finance Bill this Autumn, 2019 to go live in April 2020.

Off-Payroll Tax – already damaging the public sector & NHS

Having imposed the 'off-payroll working rules' upon the public sector, the Government is intent on extending them to the private sector and plans to do this by April 2020. This is despite the evidence showing that its already damaging impact on public sector projects including the NHS – evidence that the Government are deliberately ignoring.

- Many freelance and contract workers in the public sector have been victimised and forced to pay higher tax rates than employees, despite not getting employment benefits – which is wrong and unfair.
- Many locum doctors and nurses have left the NHS altogether as a result, leading to staff shortages in the NHS in some areas.
- The reality is that many public sector contractors are being wrongly classified as 'deemed employees' through unlawful blanket assessments of all workers as such.
- Although the legislation requires organisations to assess each engagement on a case-by-case basis, HMRC actively encouraged NHS Trusts to conduct blanket assessments in a September 2017 webinar, stating: "You don't have to do an in-depth exercise in each case" ¹.

¹ [Leaked HMRC webinar suggests taxman has misled the NHS on IR35](#), October 2018, ContractorCalculator.

What are the off-payroll rules and what is their purpose according to HMRC?

From April 2020, private sector businesses are to become responsible for assessing the employment status of individuals hired on a contingent basis. This means that the business, agency, or other third party paying the contractor, will be legally required to pay employer's National Insurance (NI) contributions of 13.8% and Apprenticeship Levy of 0.5% on top of what they pay the contractor. This is a total cost increase of 14.3% when hiring contingent labour.

HMRC claims that the off-payroll working rules ensure that contractors pay the same amount of tax as an employee. They claim that contractors pay significantly less tax than an equivalent employee, **but this is simply not true**. Following the April 2016 increases to dividend tax, the difference between tax obtained from limited company contracting and employment income is negligible².

A new double stealth tax on business

The Government claims the Off-Payroll Tax doesn't mean any extra costs – but this is false. The Off-Payroll Tax is in reality a new “double stealth tax” – on businesses and contractors which will slap a huge 14.3% new tax on UK businesses that use contractors. The ‘fee-payer’ (client or agency) must pay employment taxes on top of the payment made to the contractor. This means additional tax of employer's National Insurance (NI) (13.8%) and the Apprenticeship Levy (0.5%).

This cannot be legally deducted from the current contractually agreed fee with the contractor. Therefore, as things stand, it is a new amount of tax that needs to be paid by the fee-payer, which is leading to companies saying they will stop using contractors and slashing rates of pay.

So the misguided Off-Payroll Tax will not bring in anything like the amount predicted by HMRC and is unfair to workers who don't enjoy employment benefits.

Treasury and HMRC War on Contracting

Despite HMRC vilifying contractors, the perceived shortfall is caused mainly by corporations who hire workers falsely as self-employed to circumvent their employer's NI and workers' rights liabilities. **Figures taken from an illustrative example in HMRC's own consultation³ show that roughly 84% of HMRC's perceived tax shortfall is due to missing employer's NI contributions⁴.**

The off-payroll rules seek to reclaim the avoided employer's NI by classing these workers as ‘employed for tax purposes only’, while denying them employment rights. This type of practice is exploitative and is the subject of a separate Government consultation⁵. However, HMRC refuses to consider this issue within the remit of the off-payroll consultation.

HMRC purports that non-compliance costs will reach £1.3bn a year by 2023/24 but incorrectly bases its calculations on the assumption that contractors and employees get paid the same amount.

Contractors typically charge 30% more than their permanent counterparts, partly to compensate for the absence of employment rights and job security. When this is factored in, contractors, in fact, generate **more tax than employees**.

² [Comparing taxes: contractors versus employees](#), April 2018, ContractorCalculator

³ [Off-payroll working in the private sector](#), May 2018, HMRC & HM Treasury.

⁴ [Off-Payroll \(IR35\): 84% of perceived tax avoided is by hirers, reveal HMRC examples](#), July 2018, ContractorCalculator.

⁵ [Good work: the Taylor review of modern working practices](#), July 2017, Department for Business, Energy & Industrial Strategy.

What impact will the Off-Payroll Tax have?

If the Government's plans go through, the roll-out of the Off-Payroll tax will:

- Significantly drive up project costs for businesses
- Deprive UK industry of essential access to key skills and the skilled flexible workforce
- Force thousands of contractors into false employment
- Expose the self-employed and businesses to excessive and unfair taxation
- Lead to tax non-compliance and the danger of people being lured into avoidance schemes

A loss to the UK Economy – pushing the work offshore

Despite the evidence-free claims of the Treasury, already contractors are being told that they are not wanted from next April – and that large banks and other institutions will get round the Off-Payroll Tax by instead engaging “offshore resource”, in other words contractors based in other countries out of the reach of HMRC.

So, far from bringing in more revenue, the Off-Payroll Tax will decimate the UK's flexible workforce – who already pay their fair share of tax – and replace it with contractors from elsewhere who don't need to pay a penny of UK tax!

HMRC and Treasury Misinformation

The Treasury and HMRC's reasons for bringing in the Off-payroll tax are deeply flawed and based on misinformation and misrepresentation. The Treasury has become known in the contracting sector as the ‘Ministry of Disinformation’.

HMRC consultation documents are deeply flawed and misleading, they include ‘factsheets’ containing multiple questionable claims and mistruths, providing an inaccurate representation of the impact of the changes. The Stop the Off-Payroll Tax campaign has called on the Government to listen to consultation responses and halt plans to introduce the Off-Payroll Tax to the private sector.

The Government are falsely claiming there is no evidence of the damage to the public sector. A study by the Independent Professionals and the Self Employed (IPSE) and the Chartered Institute of Personnel and Development (CIPD), found more than half (51 per cent) of public sector hiring managers thought they had lost skilled contractors because of April 2017's changes to the IR35 rules, while nearly three-quarters (71 per cent) were facing challenges in retaining their contractors.⁶

Meanwhile it has been revealed by a series of Freedom of Information (FOI) requests that HMRC have been caught doctoring a supposedly independent research report. The **Government-commissioned IFF research report was condemned widely as unrepresentative and biased** by consultation respondents because it failed to consult with contractors or agencies. HMRC have been cherry-picking preferable statistics from the report to feature within its consultation, to portray the reform in a more positive light ⁷.

Then HMRC were forced to admit that information was omitted from published research into the implementation of Off-Payroll in the public sector, which it admits could otherwise impede its

⁶ <https://www.peoplemanagement.co.uk/news/articles/ir35-damaging-unintended-consequences-public-sector-employers>, June 2018, People Management

⁷ [Off-payroll working in the private sector: Summary of responses](#), September 2018, ContractorCalculator.

ability to introduce the rules to the private sector. In a response to a Freedom of Information (FOI) request from ContractorCalculator, the taxman conceded that earlier drafts of the IFF Research report, 'Off-Payroll Reform in the Public Sector', contained information which was subsequently removed.

The final report, data for which was gathered two years ago, focused on a small portion of the public sector during the early days of implementation and controversially failed to consult with both recruitment agencies and freelance workers. Despite this, it is being heavily relied upon by the Treasury and HMRC, who have continually alluded to its questionable findings in an effort to vindicate the private sector proposals.

Responding recently to a constituent's concerns over reports of widespread blanket assessments resulting from the Off-Payroll rules, a letter from (the then) Financial Secretary to the Treasury Mel Stride reads: 'Independent research suggests that this has not generally been the case in the public sector – the vast majority of public bodies are making assessments on a case-by-case basis, which is simply not the case.'

Addressing a constituent's concerns in separate letter, HMRC chief executive Jonathan Thompson noted: 'The Government has monitored the public sector reform through independent research and feedback from the public sector. Evidence shows that compliance is increasing without affecting market flexibility.' Once again, this statement is disproven by the genuine evidence of the impact – the reforms have driven contract workers out and driven down pay.

HMRC's own Consultation says stop the Off-Payroll Tax!

HMRC invited responses to their consultation entitled Off-Payroll working rules from April 2020. 29 consultation responses from a range of professional bodies including the Institute of Chartered Accountants in England and Wales (ICAEW), the Confederation of British Industry (CBI), the Recruitment and Employment Confederation (REC) and the Association of Independent Professionals and the Self Employed (IPSE) all criticised the plans.

The summary of the responses identifies several fundamental flaws with HMRC's proposals, with experts from the tax, contracting, recruitment and legal sectors warning of the damage that legislating these changes for April 2020 would inflict on the flexible workforce and the UK economy.

The very strong recommendation from the consultation is that the Treasury should halt reforms and address the many issues and flaws. There is also consensus that deemed employees must receive employment rights if they are to be taxed as employees, something that has not happened in the public sector.

If the consultation was genuine, then the Treasury should listen and stop the Off-Payroll Tax and then work with the contracting sector rather than attacking it.

HMRC's woeful record in court

HMRC claims that 90% of contractors do not comply yet has only fully won three of the last 11 cases in court. They are wasting taxpayer's money taking cases that they should never take – and keep losing.

HMRC's recent track record in IR35 tribunal cases shows that it struggles to interpret the IR35 rules. Its defence for *Jensal Software Ltd v Revenue & Customs*⁸ was error-strewn and suggests that the taxman's stance on IR35 isn't to be trusted.

HMRC falsely claims that mutuality of obligation (MOO) exists where one party agrees to work for another in exchange for payment. This narrow interpretation was roundly rejected by IR35 Forum members [10], as well as an IR35 tribunal Judge, who stated: "That would be true of every contract, both employment and for services, otherwise the contract would not exist at all"⁹.

HMRC claims that historic cases won't be targeted, but nobody trusts them, which is leading to huge disruption in the market as firms terminate contractors, and contractors leave existing client projects¹⁰. The taxman is also embroiled currently in multiple high-profile IR35 cases where it is seeking to secure income tax and NI payments from broadcasters - the most recent cases of which it has lost, again - further reinforcing that their interpretation of the law is misaligned with the reality¹¹.

The taxman continually denies the issue of non-compliance, whereby public authorities hire contractors through umbrella companies that deduct employer's NI from contractor payslips, despite evidence to show that this non-compliant practice is rife¹².

The CEST tool doesn't work – and HMRC know it!

The CEST tool created by HMRC has been shown to be inaccurate and biased, giving contradicting results to judges decisions in tax tribunals.

The tool, supposedly introduced to help contractor clients assess employment status accurately, is inconsistent with the employment case law underpinning IR35.

HMRC maintains that CEST's results are accurate, though it conceded in a Freedom of Information (FOI) response to ContractorCalculator that it has no evidence to substantiate this claim¹³. In a recent response to the Public Accounts Committee, when Jim Harra of HMRC was asked for proof of their test scripts for the tool, the response was that the test data was not kept, and neither did they even know who conducted the testing - displaying a highly irregular approach to software development - leading to the conclusion that the test data could not have ever existed in the first place.

In the latest absurd twist in the scandal around the flawed "off-payroll" plans to force contractors into deemed employment, HMRC refused to stand by the result of its own Check Employment Status for Tax (CEST) tool - having tried and failed to have this evidence dismissed in an ongoing IR35 tribunal case. In the case of *RALC Consulting Ltd v HMRC*, concerning the case of HMRC's legal representatives contested the findings of the CEST assessment, which had determined that IR35 should not apply. HMRC's legal counsel had submitted that the tool was "*of no assistance to the tribunal in determining the issue*".

⁸ [Jensal Software Limited v Revenue & Customs](#).

⁹ [Latest contractor IR35 tribunal win suggests HMRC knew CEST was flawed upon launch](#), June 2018, ContractorCalculator.

¹⁰ [Budget 2018: Increasing compliance with the off-payroll working rules in the private sector](#), October 2018, HM Treasury.

¹¹ [BBC presenters fighting IR35: the final day in court](#), May 2018, ContractorCalculator.

¹² [Can umbrella companies deduct employer's NI lawfully?](#), April 2018, ContractorCalculator.

¹³ [HMRC holds no detailed evidence to prove CEST accuracy claims, reveals FOI requests](#), April 2018, ContractorCalculator.

HMRC are acting in bad faith. They have consistently said they would stand by the outcomes of CEST, yet here they are arguing in court that these findings are irrelevant when it doesn't suit them.

This whole farce confirms fears that an 'outside IR35' CEST assessment doesn't provide the certainty that HMRC and the Treasury have insisted it will - showing it is deeply flawed, something that many experts have been raising warnings about, warnings that so far have been ignored by Treasury Ministers. This shows that the Government must now listen and halt plans to roll-out the controversial and flawed Off-Payroll Tax and launch an investigation into the way HMRC are behaving, before they waste any more public money on this ill-conceived war on contracting.

#StoptheOffPayrollTax Campaign Objectives

The #StoptheOffPayrollTax campaign has two key objectives:

1. To stop the introduction of the damaging off-payroll rules to the private sector.
2. For the Government to instead launch a much-needed review into the deeply flawed IR35 legislation and devise a correct way to recognise contracting in the tax system.

As well as the two key objectives, the campaign is also seeking:

3. To remove the flawed CEST (Check Employment Status For Tax) tool from the tax system, it has never worked and has been exposed as being flawed in tax tribunals.
4. To ensure that workers assessed as "deemed employees" are not forced unlawfully to pick up the "deemed employers" National Insurance tax bill*.
5. To ensure that any workers assessed as "deemed employees" **obtain full employment rights**, aligning with the intentions in the Good Work Plan.

We hope that MPs and the Government will listen and act, stop The Off-Payroll Tax and instead support the flexible workforce and the UK's economy.

**Stop the Off-Payroll Tax Campaign
July 2019**