

Government conduct challenged by Lords at Off-Payroll meeting



The conduct of Government in its efforts to extend the Off-Payroll rules to the private sector was called into question during a House of Lords Finance Bill Sub-Committee meeting yesterday afternoon, where [Financial Secretary to the Treasury Jesse Norman gave evidence](#).

Dominating proceedings was debate over the Government's recent tabling of legislation that it knew to be defective and the potential fallout should a solution not be found before April 2021, questions concerning which Norman failed to answer convincingly.

In October, [HMRC was forced to announce plans to resolve a drafting error](#) in an amendment to the Off-Payroll legislation after a [technical report by IR35 Shield](#) revealed that the amendment would classify any party directly remunerating 'inside IR35' contractors as an intermediary, causing significant repercussions throughout the supply chain. Despite this, the taxman went on to repeat this mistake when tabling further legislation in November.

Off-Payroll: What legislative defect has Government introduced?

Introduced to Chapter 10 of the Income Tax (Earnings and Pensions) Act 2003 via the Finance Act 2020, the amendment [identified by IR35 Shield](#) threatened to broaden the legislation's definition of an 'intermediary' so far that umbrella companies and other payroll intermediaries would fall within its scope.

The legislation requires that remuneration be treated for employment tax purposes before reaching the intermediary, which would effectively render the role played by umbrella companies redundant.

HMRC acknowledged this error in on 15 October [via a press release](#). However, just weeks later, the taxman tabled a Statutory Instrument legislating for the treatment of National Insurance Contributions (NICs) containing the same error.

Government conduct draws ire of Lords

The decision by Government to press forward with legislation containing a known defect drew the ire of the Finance Bill Sub-Committee, with many members directing their disapproval towards the Financial Secretary to the Treasury.

Amongst them was Lord Bridges, who took issue with Norman's suggestion that the approach taken was "breaking new ground" in a "sensible and proportionate way", stating:

"We are very concerned that this is beginning to establish a very dangerous precedent, and the fact that you're saying it's breaking new ground really raises an enormous red flag in my mind that you think this is an acceptable way to proceed.

Multiple members questioned why Government hadn't taken alternative approaches, such as refraining from legislating until the necessary amendments had been made or omitting the defective clause from the SI until it had been remedied.

In response, Norman argued that the measures taken were supported by stakeholders and were necessary to help firms affected by Off-Payroll prepare for their impending compliance obligations, stating:

"We wish to amend this, which is well understood by stakeholders. It would be a very radical move to remove the entire Statutory Instrument, and one that would be very badly received by stakeholders who are already preparing themselves accordingly. This is all before you get into the question of timing and parliamentary issues relating to laying a new Statutory Instrument."

Inevitably, it was then posed to Norman that many companies are likely therefore making compliance preparations based on a legislative error, to which he replied:

"The error was picked up, communicated and discussed with stakeholders. We published a ministerial statement in the public domain, and so I don't think there's a great deal of likelihood that many people will have made preparations based on the previous arrangement."

Treasury minister refuses to offer assurances and guarantees

Norman was even less convincing when asked about the Government's contingency plan should it be unable to suitably remedy its legislative issue. HMRC and the Treasury are currently engaged in a consultation with stakeholders to address the issue, with less than four months to go until the Off-Payroll rules are to be extended to the private sector.

Though Norman expressed confidence in the Government's ability to reach a solution, he stopped shy of providing a guarantee when pressed, instead commenting: "What we have done is put a written ministerial statement in front of Parliament. I don't think it would be appropriate to suggest that a stronger guarantee can be given to the committee."

Norman also refused to provide any legal assurances to companies making compliance decisions based on the Government's output, with the SI directly contradicting the subsequent ministerial statement.

When asked by Baroness Kramer whether he thought it was fit and proper for a company to ignore legislation based on advice in a ministerial statement, the Financial Secretary to the Treasury responded: "I have been completely clear on what the Government is doing, and companies can take any advice that they seek as to how to proceed on that basis."

Ambiguity shouldn't prevent firms from preparing

"As the discussions indicated, HMRC and the Treasury knew the legislation contained defects before it was laid before Parliament, but then choose to do so anyway," comments ContractorCalculator CEO Dave Chaplin. "I agree with Baroness Kramer, who described this as 'unacceptable'."

"Whilst the Minister gave promises that the legislation would be changed prior to April 2021, no further detail was provided, other than some vague reference to yet another new tax test. Please, no more tests!"

Chaplin concludes: "Despite the pandemic, there were no signs of further delay or cancellation. The supply chain needs to prepare. Firms that start preparing at least by Jan 2021 should find themselves in a good position and be able to continue hiring the talent they rely on."

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