

Lords slam Off-Payroll proposals in letter to Government

Lords Select Committee



Lords committee investigates the extension of off-payroll working rules



The House of Lords Finance Bill Sub-Committee has condemned the Off-Payroll Tax proposals and reprimanded the Treasury in a [challenging letter to its Financial Secretary, Jesse Norman](#).

Penned by committee chair Lord Forsyth of Drumlean, the letter addresses many of the major issues highlighted by witnesses during numerous committee hearings in February and March, adding:

'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.'

"The Lords have seen the Off-Payroll Tax for what it is – ill-considered, ideologically led, unsubstantiated, cruel, misguided and ultimately not fit for purpose," says ContractorCalculator CEO Dave Chaplin. "The legislation places an undue burden on business and destroys growth.

"With UK industry currently on its knees due to the COVID-19 pandemic, now is not the time to apply a straight-jacket. This letter lays bare the Off-Payroll Tax's numerous flaws and perfectly summarises why a postponement is not enough. The Off-Payroll Tax needs to be scrapped altogether."

Is the Treasury attempting to avoid Off-Payroll scrutiny?

Substantial administrative costs, rife non-compliance, blanket assessments, and the inherent unfairness of the proposals were all among the 'material concerns' highlighted within the Lords' letter. However, the searching questions posed to the Treasury were more notable.

Norman had agreed to appear before the Sub-Committee on 23 March. However, the Treasury inadvertently avoided legitimate scrutiny when the session was cancelled as a result of the coronavirus outbreak.

This was acknowledged within the letter which therefore invited written answers to a number of questions concerning Government's failure to adequately address the issues, and in some cases the sheer fallaciousness of the proposals.

The letter was sent on 26 March and welcomed a response within ten working days to inform the Lords' inquiry. However, with the deadline having long since passed, nothing has yet emerged to suggest that the Financial Secretary has responded to the questions posed.

Government's Off-Payroll admission doesn't go unnoticed by Lords

Whereas Government has continually downplayed the impact of the Off-Payroll Tax on affected parties, the decision to postpone the reform in light of the COVID-19 pandemic was viewed by many as an indirect admission of the difficulties threatened by the legislation.

This was reinforced by Lord Forsyth, who wrote: *'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?'*

The letter then queries whether businesses will have recovered enough from the COVID-19 crisis to be able to bear the additional burden imposed by the Off-Payroll Tax by April 2021. This is a question that nobody can currently answer affirmatively with any certainty.

Elsewhere, the letter acknowledges how, for many contractors, the pandemic has compounded difficulties stemming from the Off-Payroll Tax. *'Before the delay was announced, a large number of businesses had already changed how they engaged with contractors, leading contractors to lose business'*, the letter notes, before relaying concerns that these contractors don't expect to win any new business in the next few months.

Limited company contractors were notably excluded from Government's [Self-Employed Income Support Scheme](#) (SEISS), announced last month, meaning subsequent questions asked by the Lords as to how Government intends to support these individuals are yet to be answered.

Government grilled on inadequate Off-Payroll research

Government's portrayal of the impact of Off-Payroll on the public sector has been accused of being highly misrepresentative and has contradicted virtually every independent study undertaken. Unsurprisingly, the Lords questioned the timing and intended outcome of the Government-commissioned IFF Research report, [which evidence suggests was doctored](#), asking:

'Witnesses argued that this [IFF Research report] 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?'

Government's failure to adequately assess the impact of Off-Payroll has contributed partly to its refusal to acknowledge the issue of rife non-compliance, which often takes the form of blanket 'inside IR35' assessments by clients.

However, this wasn't overlooked by Lord Forsyth, who outlined the financial implications of such measures, which have seen many clients and agencies unlawfully pass their employer's National Insurance Contributions (NICs) liabilities onto contractors.

While the Lords have asked the Treasury what sanctions businesses will face for non-compliance, and what steps will be taken to ensure blanket assessments don't become widespread across the public sector, Chaplin expects a predictable response:

"No doubt the Treasury will point towards the 'client-led status disagreement process' as a measure intended to prevent blanket assessments. This is embarrassing really, given these proposals empower clients to play by their own rules, rendering them judge, jury and executioner without any oversight."

Lords barrage highlights Treasury's lack of forethought

Having explored opportunities to simplify the tax system and support vulnerable gig-economy workers, much of the criticism levied against Government concerns the fact that the Off-Payroll Tax directly contradicts other initiatives.

An example demonstrating the inherent unfairness of the Off-Payroll Tax is its ability to generate 'zero-rights employment', where clients are free to deem contingent workers 'employed for tax purposes' without affording them the rights that employees receive.

Jesse Norman recently suggested that those who wish to challenge their employment status for rights can take their case to an employment tribunal (ET). This is an ill-considered and highly impractical solution, and a suggestion that has ultimately [been deemed invalid by an employment law expert](#).

The Treasury's lack of forethought hasn't been lost on the Lords, who followed an illustration of zero-rights employment with a barrage of questions highlighting Government's failings, including:

- When will Government publish its response to its 2018 consultation on employment status?
- Will Government use the year-long opportunity resulting from the Off-Payroll deferral to review its proposals, using up-to-date labour market information in any such review?
- What assessment has Government made of the impact of zero-rights employment on innovation and flexibility in the UK workforce?
- Why has the Office for Tax Simplification (OTS) not been consulted during the recent review of the Off-Payroll proposals?

- Given Government has stated it will do “whatever it takes” to support UK businesses in light of the coronavirus pandemic, how does pressing ahead with the proposals help UK business?

“The Finance Bill Sub-Committee has called Government’s bluff, and made it clear in no uncertain terms just how ill-considered the Off-Payroll Tax is,” comments Chaplin. “These are questions that the Treasury is yet to even attempt to answer. Until satisfactory responses are provided, any further steps taken towards a private sector rollout would be an affront to the UK’s flexible workforce.”

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