

MPs challenge Off-Payroll (IR35) as debate reaches Parliament



Contractor concerns regarding the Off-Payroll rules were heard in Parliament yesterday as [MPs met in Westminster Hall](#) to debate the public sector rules and private sector proposals.

Among the issues raised were public sector non-compliance, challenges to HMRC's Check Employment Status for Tax (CEST) tool, the impact of the proposals on workforce mobility, and the need to align employment status in tax and employment law.

"We welcome the decision by MPs to stand up for the contracting sector and expose the issues and pitfalls of this ill-conceived policy in Westminster," comments ContractorCalculator CEO Dave Chaplin.

"Yesterday's debate is evidence that [our IR35 campaign](#) is gaining traction, and that MPs are taking note. As we approach a critical juncture for the future of flexible working, we encourage all contractors who haven't already done so to join our campaign and help prevent a disastrous change at the hands of the new Off-Payroll tax."

MPs call on Government to address public sector non-compliance

Several MPs were vocal in their assertions that Government has failed to heed multiple warnings from the public sector in proposing near-identical private sector plans.

[Anneliese Dodds MP](#) argued that none of the main issues faced by the public sector had even been considered during the private sector consultation phase, an issue which [Ged Killen MP](#) warned would result in unforeseen consequences: "If we can't get it right in the public sector, these issues are only going to be amplified in the private sector."

One such problem is widespread non-compliance among hiring organisations by way of blanket assessments. [Ruth Cadbury MP](#) relayed the concerns of a recruitment agency owner providing staff to the NHS, whose business had declined by 60% in recent years as a result of this:

"What I'm being told is 99% of this agency's workers are being unlawfully blanket assessed as 'inside IR35' and forced into unlawful employment without a fair assessment", noted Cadbury, who acknowledged that many had subsequently abandoned the sector.

Loan Charge poses ominous warning

Cadbury had earlier been debating the contentious Loan Charge in the House of Commons, where she highlighted IR35 as a root cause of the adoption of loan schemes, before warning that many others are now at risk as a result of Off-Payroll:

"Many professionals went into loan schemes because their accountants advised them that, due to the regulatory complexity and

disproportionate cost burden of IR35, it would be best to enter into a loan-based remuneration scheme.

“There is another group of more recent joiners following the introduction of the public sector Off-Payroll rules in 2016. The word loan was never mentioned to them by the scheme providers, and they were often signed up by recruitment companies. It’s possible that many of these people don’t know that they are caught up in this.”

Chaplin, referring to the Loan Charge debate yesterdays, says: “There is now unanimous cross party consensus that the Loan Charge breaches the rule of law and is retrospective. For years the victims of these schemes have been sitting on Loan Charge Death Row, and both HMRC and the Treasury have no compelling reasons why they should not now be set free.”

HMRC and CEST grilled by MPs

HMRC’s intended compliance solution has arguably intensified the problem of blanket assessments, due to its wildly inconsistent and often biased outcomes. Cadbury, addressed CEST’s shortcomings and its [failure to consider mutuality of obligation \(MOO\)](#), the significance of which she highlighted in alluding to the recent [Naryan tribunal ruling](#).

Acknowledging [HMRC’s own poor track record contesting IR35 in court](#), she added: “How can HMRC implement a tool to return a correct IR35 result, when they can only get it right 50% of the time when they go to court?”

[Paul Sweeney MP](#) also took issue with HMRC’s questionable understanding of IR35. Commenting on the taxman’s pledge to educate and prepare the entire private sector on how to assess the status of their contractors, he summarised: “Should a teacher who consistently fails their own exams be the one chosen to teach the lessons?”

“If HMRC cannot get assessment decisions right, is it fair to put these into the hands of firms who have a vested interest to avoid tax risk?” added Sweeney, highlighting HMRC’s proposals that hiring firms administer an appeals process when a contractor disputes a status decision.

“What’s to prevent firms from incorrectly claiming that the worker is caught by the legislation? HMRC has suggested firms should manage the appeal process themselves, but asking the perpetrator to judge their own situation is hardly a valid appeal.”

Treasury’s ‘complex cases’ claim refuted by Kelly case

Responding to MPs regarding the taxman’s tribunal history, Economic Secretary to the Treasury [John Glen](#) commented: “Many of these cases are very complex, and it’s only the very complicated cases that make it to court.”

As Chaplin highlights, Glen’s claim is dubious: “HMRC was [comprehensively beaten in the recent case involving Lorraine Kelly](#). As the Judge highlighted, this was far from complex and ‘not a borderline case’ – the outcome was as clear as day.

“Of major concern is that, as was reported in [Private Eye](#) yesterday (page 36, “Failing the CEST”), CEST also returns the taxman’s flawed outcome [when tested against the Kelly case](#). This is definitive proof that the tool needs an overhaul or withdrawal.”

Removal of meagre expenses concession risks huge fallout

Many issues raised centred on the proposed withdrawal expense allowances for contractors deemed within scope of the rules. Killen highlighted that, for many small businesses, the ability to claim relief on expenses can prove the difference between success and failure.

Meanwhile, various MPs stressed the detrimental impact that the removal of this concession would likely have on workforce mobility, the effects of which Cadbury noted are already being felt within the NHS:

“Due to the inflexibility of NHS employment, many choose to work on a freelance basis. These people incur significant travel costs which they can no longer reclaim. As a result, they make themselves unavailable to the NHS.

“We are hearing that, along with Brexit, this is one of the main causes of chronic staff shortages within the NHS, because it’s no longer worth the while of these individuals to provide their services flexibly.”

For many firms, the alternative to suffering talent shortages will be to meet the additional cost, which won’t be cheap, as Chaplin highlights: “We recently advised a contractor who travelled and stayed away from home four nights each week. We calculated that, were the contractor unable to claim expenses and assessed as a deemed employee, that the cost to the client would need to increase by an additional 43% to retain that contractor without a drop in their take home pay after costs.”

Treasury ‘reads from same old script’

MPs were unconvinced by the Treasury Minister's response. While many questions went unanswered, others were met with standard robotic responses which have emanated from HMRC and the Treasury throughout the consultation phase.

Cadbury questioned Glen after he attempted to downplay concerns over blanket assessments by referring to the [HMRC-commissioned IFF Research report](#) into the public sector – a two year old piece of questionable research which famously asked public bodies about their own compliance while failing to consult with contractors or agencies.

Killen noted that he wasn't comforted by Glen's response concerning the criticisms levied at CEST, which essentially reiterated HMRC's laboured and flawed interpretation of the tool's accuracy.

"It was disappointing to see that, in response to some important questions, the Economic Secretary to the Treasury read from the same old script," notes Chaplin. "Much of what we heard were typical stock responses that we have repeatedly heard from the Treasury of late, and which have been [debunked in our recent whitepaper](#)."

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