

Off-Payroll Reform in the Public Sector

HMRC Research Report 487

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1 Summary of research approach and key findings

Introduction and methodology

- 1.1 The off-payroll working rules, also known as IR35 or intermediaries legislation, were originally introduced in April 2000 as a counter tax-avoidance measure. The rules ensure that, where an individual would have been an employee if they were providing their services directly rather than through an intermediary, such as a Personal Service Company (PSC), they pay broadly the same tax and National Insurance Contributions (NICs) as an employee.¹
- 1.2 The Finance Act 2017 introduced reforms to how the off-payroll rules operate in the public sector from 6 April 2017. Where a public authority engages a worker through an intermediary, the responsibility for deciding whether the rules apply was transferred from the contractor's intermediary (their own PSC) to the public authority. If the rules apply, and the public authority is directly engaging the contractor's PSC, the public authority are required to deduct the relevant income tax and NICs before making any payments. If the contractor is engaged through an agency, the public authority will pass on their decision and the agency who are paying the contractor's intermediary are then required to deduct the relevant income tax and NICs before making any payments.
- 1.3 Prior to the reform of the off-payroll working rules, HMRC estimated that less than 10 per cent of those who should have operated the rules were actually doing so, resulting in significant non-compliance.² The government sought to tackle this non-compliance by moving the responsibility for determining whether or not the off-payroll working rules apply, to the public authority that the individual is working for. Therefore, the decision of whether employment taxes are due now sits with the public body, removing the opportunity for contractors who were previously non-compliant to continue to be so.
- 1.4 The reforms were expected to increase the employment taxes collected on behalf of individuals who, pre-reform, were off-payroll contractors working through an intermediary, such as their own PSC. Contractors affected by the reforms could pursue a number of alternatives to continuing to work through their PSC within the off-payroll working rules. For example, becoming an employee of the public body or an employment agency, moving to work through an umbrella company, or leaving their role (potentially for a self-employed role in the public sector, a role in the private sector, or stopping working altogether). It is possible that some contractors may have sought increases in their pay rates to cover the relevant employment taxes.

¹ For the purposes of this research, a personal service company (PSC) is a limited company that typically has a sole director, the contractor, who owns most or all of the shares in that company. Under the off-payroll working reforms, where a public authority directly engages a worker through this structure, the responsibility for determining and deducting the correct rates of income tax and NICs transferred to the public authority for payments made on or after 6 April 2017.

² Intermediaries Legislation (IR35): discussion document (2015)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446242/Intermediaries_legislation_IR35-discussion_document.pdf [accessed January 12th 2018]

- 1.5 IFF Research and Frontier Economics were commissioned by HMRC to gather evidence on experiences of the public sector bodies in implementing the reforms. The research looked at the key sectors of Public Administration & Defence, Education and Health & Social Work sectors, and considered implications for employment, costs incurred and any process changes required.
- 1.6 The research consisted of a quantitative survey of 117 central bodies³ (covering 4,095 sites) and 100 individual sites in the public sector, all of which had recent engagement with off-payroll contractors, and qualitative follow-up interviews with 30 respondents whose responses indicated they had been affected by the reforms.⁴
- 1.7 Survey fieldwork took place between August and October 2017. Given that the off-payroll working reforms only came into effect in April 2017, the findings are focused on the bedding-in period immediately after the reform came into effect and so reflect public bodies' very early experiences.

Workforce structures

- 1.8 Survey results suggest that so far, the reforms have had minimal impact on how public bodies recruit, with in year changes primarily attributed to wider factors, such as natural fluctuations in the workforce and long-term financial constraints.
- 1.9 One possible outcome of the reform would be a fall in the number of off-payroll contractors engaged by public bodies and an increase in their employee headcount.
- 1.10 In line with expectations, public bodies reduced their use of off-payroll contractors. Central bodies reported that they employed a mean average of 12 fewer off-payroll contractors in August 2017 than they did in March 2017, while sites reported employing four fewer contractors. The median change suggests the reforms typically had little overall impact on the use of off-payroll contractors (central bodies: zero, sites: one fewer).⁵

³ Throughout this report, the term 'central bodies' refers to organisations who deal with the administration of off-payroll working reforms for more than one site. For instance, an NHS trust could be responsible for managing the reforms across a number of different hospitals and practices. Research findings for central bodies are reported separately from individual sites that are only responsible for the administration of off-payroll working reforms at their own site.

⁴ Site survey figures used in this report are based on interviews among Public Administration & Defence and Education sites only. Eight Health & Social Work sites were excluded for reporting purposes (108 interviews were achieved in total on the site survey).

⁵ Unless stated otherwise, 'average' figures refer to mean averages throughout the report.

- 1.11 However, survey data showed that where public sector bodies provided paid employee figures for both March and August 2017, there was a fall in employee headcount. Central bodies reported employing a mean average of 21 fewer employees in August 2017 than they did in March 2017, and sites reported employing 19 fewer, on average. Nevertheless, the median change between the two periods was zero among central bodies and sites, suggesting the scale of change was negligible overall. Furthermore, ONS public sector employment by industry data should be considered when interpreting these results, as it shows a general downward trend in public sector employment, mainly driven by a reduction in employee numbers in the Public Administration & Defence sector.⁶
- 1.12 While the evidence shows reductions in the number of paid employees and in the use of off-payroll contractors, results show that amongst central bodies off-payroll contractors made up a smaller proportion of the workforce after the reforms came into effect. On average, there were 102 paid employees for every off-payroll contractor in March 2017 compared to 185 paid employees for every off-payroll contractor in August 2017. This indicates that amongst central bodies the number of off-payroll contractors fell at a faster rate than the number of paid employees between March and August 2017.
- 1.13 Conversely, amongst sites, results indicate that the number of paid employees fell at a faster rate than the number of off-payroll contractors between March and August 2017. On average, there were 76 paid employees for every off-payroll contractor in March 2017, compared to 65 employees for every off-payroll contractor in August 2017.⁷
- 1.14 Qualitative interviews showed that in some cases, off-payroll contractors had left public sector bodies after being declared within the rules, but were replaced with other off-payroll contractors willing to work within the off-payroll working rules, resulting in no overall change to contractor numbers. In a few cases, numbers decreased because more off-payroll contractors were moving onto payroll as paid employees, or because off-payroll working reforms had prompted public bodies to review the extent to which they needed to use off-payroll contractors.
- 1.15 The research explored how the impacts of off-payroll working reforms differed between off-payroll contractors who were engaged directly by public sector bodies and those engaged via agencies. Public bodies reported using fewer directly engaged off-payroll contractors in August 2017 than they did in March 2017 and fewer contractors engaged via agencies. However, the size of the changes was not significant in each case.
- 1.16 Most central bodies (75%) and sites (82%) had used umbrella companies at any point in the past but reported no increase in their use since the reforms came into effect. Despite being considered a potentially hassle-free alternative work structure, exempt from off-payroll working rules, only a small minority of central bodies (11%) and sites (6%) had increased their use of

⁶ ONS EMP03: Public sector employment by industry, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/publicsectoremploymentbyindustryemp03> [accessed 18th October 2017]

⁷ The ratio of paid employees to off-payroll contractors was calculated for each public body that reported the number of paid employees and off-payroll contractors at March 2017. Ratios were not calculated for public bodies that were missing data at either point or report zero off-payroll contractors at either point. An average was then taken of all the individual ratios to produce an average ratio of paid employees to off-payroll contractors at March 2017. This same process was repeated for August 2017 data.

umbrella companies, although all of those who reported that they had done this said that this was due, at least to some extent, to the off-payroll working reforms.

- 1.17 The research found little evidence of contractors turning to self-employment (i.e. working through an unincorporated structure) to avoid off-payroll working rules. A majority of central bodies (61%) and sites (64%) reported no change in the number of self-employed workers, and the average change in self-employed numbers from March to August 2017 was negligible (central bodies: one more, sites: two fewer).

Filling vacancies

- 1.18 The research looked at how the reforms affected public bodies' ability to fill vacancies, given that some off-payroll contractors may be unwilling to work inside the off-payroll working rules if they perceive it to impact their take home pay. Most public bodies (central bodies: 58%, sites: 70%) reported that their ability to fill contractor vacancies had not changed since April 2017, when the reforms to off-payroll working came into effect. However, approximately one in three central bodies (32%) and one in five sites (22%) reported that it had been more difficult to fill contractor vacancies. Only a small minority of central bodies and sites (each 1%) said filling vacancies had been easier since the reforms were introduced.⁸
- 1.19 Qualitatively, some of those that had reported difficulties in filling vacancies felt there were fewer suitable contractors available in the marketplace since the reforms and that the process of filling contract vacancies had become more time consuming after the reforms came into effect. It was felt by some that difficulties in filling vacancies were more pronounced among roles where there had been pre-existing challenges with recruitment, for example, for doctors and social workers.
- 1.20 Some public bodies stated that some of the challenges that the off-payroll working reforms presented in filling vacancies were short-term, and that contractors and agencies had become more accepting of the changes after the initial bedding-in period.

Use of off-payroll contractors

- 1.21 The most commonly mentioned roles that central bodies filled were in education, administration and medical roles. For sites, the most common roles were in education, facilities management, and IT.⁹
- 1.22 Typically, public bodies directly engaged off-payroll contractors for roles where only a small number of specialists were required (e.g. engineers and lawyers), while agencies were used to recruit roles required in larger numbers (e.g. nurses and social workers).
- 1.23 Public bodies used off-payroll contractors for a variety of reasons. Some needed them to deliver projects or fill roles which required specialist skills or knowledge, or to fill temporary vacancies. Others mentioned they needed contractors on a long-term basis because of shortages in supply

⁸ 9% of central bodies and 2% of sites did not know what affect the reforms to off-payroll working had on their ability to fill vacancies.

⁹ Data reported on off-payroll contractor roles at site level exclude sites from the Health and Social Work sector, therefore the proportion of sites who reported using medical contractors was low.

in some areas of the labour market, or because it was considered a convenient way to procure workers by offering flexibility in workforce planning.

Contractor rates

- 1.24 The research also explored what impact the reforms had on the gross-hourly rates paid to contractors, due to the potential of off-payroll contractors who fall inside the off-payroll working rules increasing their pay rates to cover relevant employment taxes. The majority of public bodies reported that the reforms had no effect on the gross-hourly rates paid to off-payroll contractors (central bodies: 63%, sites: 78%). A minority (28% of central bodies, 20% of sites) reported that the reforms had led to them increasing the gross-hourly rates paid to off-payroll contractors. Just 1% of central bodies and sites said the reforms had led to a reduction in gross-hourly rates paid to off-payroll contractors.¹⁰
- 1.25 Qualitative evidence showed that where off-payroll contractors or their agencies had requested that rates be increased, it was to cover reductions in take-home pay after contractors were assessed to be within the off-payroll working rules.
- 1.26 Most public bodies reported not increasing the rates they paid. A few public bodies reported that some contractors had put an end to their engagement with them as a result.
- 1.27 Amongst the minority of public bodies that had increased the gross-hourly rates paid, this had typically been done for roles where skills were in shorter supply (e.g. doctors and nurses).

Administration of off-payroll working reforms

Complying with the reforms

- 1.28 Around half of central bodies (49%) and sites (57%) found the off-payroll working reforms easy to comply with. Public bodies were most likely to think that compliance with the reforms had been easy because they had suitable systems in place; this was reported by 45% of central bodies and 28% of sites who found complying easy. It was also common for public bodies to attribute their easy experience to HMRC's online assessment tool (Check Employment Status for Tax Service, also known as CEST), which enabled them to make quick and easy assessments (reported by 34% of central bodies and 26% of sites). Notably, over a quarter of sites (27%) that had found it easy to comply with the reforms said that this was because they were a small establishment.
- 1.29 Conversely, central bodies who found complying difficult most commonly attributed this to difficulties using HMRC's online assessment tool, also known as Check Employment Status for Tax (CEST) (43%), although qualitative evidence suggested its functionality had improved since being introduced and it was now fit for purpose. Sites that found the reforms difficult to comply with most commonly mentioned not being confident in their understanding of the legislation (39%).

¹⁰ 8% of central bodies and 1% of sites did not know what affect the reforms to off-payroll working had on the gross-hourly rates paid to off-payroll contractors.

- 1.30 Qualitatively, some public bodies reported that they initially struggled with implementation due to needing to understand the legislation in a relatively constrained time period, and there was a perception that the guidance had repeatedly changed which made this task more difficult. In most cases, public bodies felt their understanding improved over time, although a few still lacked understanding about rules relating to substitution and the provision of equipment in August 2017.¹¹
- 1.31 The reforms to off-payroll working meant that some public bodies were required to adapt their recruitment process and spend time educating members of staff about what the changes would mean for their teams/departments.

Assessments

- 1.32 The majority of public bodies conducted case by case assessments on existing (central bodies: 91%, sites: 87%) and new contracts (central bodies: 93%, sites: 89%). This is considered a suitable approach by HMRC.
- 1.33 In a few cases, where public bodies had high volumes of contractors working in the same role and under the same terms and conditions, the same assessment result was applied to all existing and future off-payroll contractors working under those same conditions. This approach is considered by HMRC to be compliant.

Sources of advice and guidance

- 1.34 The majority of respondents (central bodies: 91%, sites: 79%) had used CEST since the reforms came into effect. It was the most commonly used source of information, advice or guidance among public bodies.
- 1.35 Whilst some public bodies reported qualitatively that late availability of CEST was problematic at the time, and initially encountered issues with inconclusive assessments and inconsistent outcomes, most agreed that it was now ensuring employment status decisions were more straightforward, as discussed at 1.27.

¹¹ To determine whether the off-payroll working rules apply, it must be considered whether the worker would have been an employee if engaged directly. One of these factors is whether there is a requirement for personal service. If the worker does not personally provide the services, or is not under the obligation to personally provide the services, then the off-payroll rules do not apply. Therefore, if the worker can wilfully send a substitute to do the work, and the substitute cannot be refused by the public sector engager, then the rules do not apply. Source: Employment Status Manual [www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0530]

If the engager provides any necessary equipment to carry out the work this will point towards the existence of a contract of employment. Therefore, if the contractor provides all of the equipment necessary to carry out the work, this could indicate that the rules do not apply (although this factor on its own will not be conclusive). Source: Employment Status Manual [<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0540>]

Disputes

- 1.36 The research also explored the extent to which off-payroll working reforms led to disputes with contractors or agencies, as it was expected that some off-payroll contractors would perceive the reforms to affect their take home pay and therefore show some resistance to the changes. At least half of public bodies had not had disputes with contractors or agencies about the outcome of contractor assessments (central bodies: 51%, sites: 68%).
- 1.37 46% of central bodies and 31% of sites reported having disputes with contractors or agencies about assessments. The remaining 4% of central bodies and 1% of sites were unsure whether they had had disputes about whether or not contractors fall inside or outside the off-payroll working rules. Amongst those that had disputes, most of these concerned contractors being assessed to fall within the off-payroll working rules (central bodies: 62%, sites: 67%).

Staff workloads

- 1.38 Six in ten central bodies (60%) and sites (59%) reported that staff had spent more time on the administration of off-payroll contractors since the reforms. Qualitative evidence showed that time was needed to understand the reforms, disseminate information to staff and implement systems to manage the changes.
- 1.39 Conducting assessments required time and resource in the lead up to the reform, although this reduced once the initial block of assessments had been conducted.
- 1.40 A few public bodies had reallocated work to existing staff in cases where contractors had left because of the reforms and were struggling to fill the vacancies, though generally this was uncommon.

Set up costs and administrative costs

- 1.41 On average, central bodies spent £7,550 setting up the systems and processes required to implement the reforms. Sites spent an average of £3,250.
- 1.42 Around half of sites (52%) and central bodies (56%) experienced either no change (37% and 44% respectively) or a decrease (15% and 13% respectively) in relation to the ongoing administration costs of off-payroll contractors between Q4 2016/17 and Q1 2017/18, while around four in ten central bodies (44%) and sites (41%) reported an increase. The mean average change in costs was an increase of £50 for central bodies (median: £250) and £1,600 for sites (median: £250).
- 1.43 In qualitative interviews, some public bodies said that they expected the administrative costs associated with the reforms to off-payroll working to decrease over time. These public bodies had incurred costs in assessing existing off-payroll contractors and dealing with disputes. However, going forward the volume of work required from staff was anticipated to be much lower.

2 Introduction

- 2.1 The off-payroll working rules, also known as IR35 or intermediaries legislation, were originally introduced in April 2000 as a counter tax-avoidance measure. The rules ensure that, where an individual would have been an employee if they were providing their services directly rather than through an intermediary, such as a Personal Service Company (PSC), they pay broadly the same tax and National Insurance Contributions (NICs) as an employee.¹²
- 2.2 The Finance Act 2017 introduced reforms to how the off-payroll rules operate in the public sector from 6 April 2017. Where a public authority engages a worker through an intermediary, the responsibility deciding whether the rules apply was transferred from the contractor's intermediary (their own PSC) to the public authority. If the rules apply, and the public authority is directly engaging the contractor's PSC, the public authority are required to deduct the relevant income tax and NICs before making any payments. If the contractor is engaged through an agency, the public authority will pass on their decision and the agency who are paying the contractor's intermediary are then required to deduct the relevant income tax and NICs before making any payments. The population in scope of the reforms includes local government, the NHS, police forces, schools and higher education institutions, public sector departments and arm's length bodies.
- 2.3 Prior to the reform of the off-payroll working rules, HMRC estimated that less than 10 per cent of those who should have operated the rules were actually doing so, resulting in significant non-compliance. HMRC sought to tackle this non-compliance by moving the responsibility for determining whether or not the off-payroll working rules apply, to the public authority that the individual is working for. Therefore, the decision of whether employment taxes are due now sits with the public body, removing the opportunity for contractors who were previously non-compliant to continue to be so.
- 2.4 The reforms were expected to increase the employment taxes collected on behalf of individuals who, pre-reform, were off-payroll contractors working through an intermediary, such as their own PSC. Contractors affected by the reforms could in principle become an employee of the public body or an employment agency, move to work through an umbrella company, or leave their role (potentially for a self-employed role in the public sector, a role in the private sector, or stopping working altogether). It is possible that some contractors may have sought increases in their pay rates to cover the relevant employment taxes.
- 2.5 IFF Research and Frontier Economics were commissioned by HMRC to gather early evidence on the impacts of the off-payroll working reform, with a specific focus on how it is affecting public sector bodies in relation to employment, costs incurred and any process changes required.

¹² A personal service company (PSC) is a limited company that typically has a sole director, the contractor, who owns most or all of the shares in that company. Under the off-payroll working reforms, where a public authority directly engages a worker through this structure, the responsibility for making determining and deducting the correct rates of income tax and NICs transferred to the public authority for payments made on or after 6 April 2017.

- 2.6 The research looks at the impact of the reform on public bodies' use of off-payroll contractors, their wider workforce structures, their ability to recruit, the rates that contractors are able to charge and how public bodies have found the implementation of the reform. This will give an indication of the degree to which some of the expected impacts have materialised. However, the research does not seek to explore whether the assessments being made by public bodies are correct, or whether additional employment taxes have collected as a result of the reform.
- 2.7 As well as answering general questions regarding administration of the off-payroll working reforms, prior to the survey, public bodies were asked to collate information on several measures at two different periods in time, before and after the reforms were introduced, to assess what impacts the off-payroll working reforms have had on the use of these workforce structures and costs incurred in relation to managing off-payroll contractors.

Workforce structure measures:

For each of the following workforce structure measures, public bodies provided corresponding figures from March 2017 and August 2017.

- The number of paid employees

Public bodies may choose to take on more paid employees in place of off-payroll contractors, to avoid dealing with off-payroll working rules and avoid the associated administration costs.

- Number of off-payroll contractors

Use of off-payroll contractors may decrease if public bodies choose other available employment structures, such as using employees, unincorporated self-employed contractors or umbrella companies, which are not in scope of the off-payroll working rules.

- Number of off-payroll contractors engaged directly through limited companies, also known as Personal Service Companies (PSCs)

Given that under the reforms, the responsibility for deducting employment taxes for off-payroll contractors transferred to public bodies, in cases where the contractors' intermediary is engaged directly by the public body, it is possible that public bodies could seek to reduce their use of this employment structure. Furthermore, off-payroll workers who fall within the off-payroll working rules may themselves choose to leave the public sector in order to retain control of their own tax assessments.

- Number of off-payroll contractors in PSCs used who were engaged through employment agencies

Under the reforms, where off-payroll contractors work for an employment agency but are engaged by a public-sector body, the public authority will pass their assessment decision to the agency who are paying the contractor's intermediary. They are then required to deduct the relevant income tax and NICs before making any payments. If the cost of this is passed onto public bodies through higher rates, it is possible that public bodies would also seek to reduce their employment of agency contractors. Alternatively, employment agencies may seek to leave the public sector and focus on recruitment for the private sector so that they can avoid dealing with the off-payroll working rules. Furthermore, if the costs of administering the reforms are passed onto the contractors themselves, they may decide to leave the agencies they work through.

- Number of self-employed workers

Given that off-payroll working rules do not apply to the genuinely self-employed, some contractors may think that by working in an unincorporated structure, employment taxes are not due, making this more desirable to off-payroll contractors following the introduction of the off-payroll working reforms. Equally public bodies may seek to increase their use of these unincorporated contractors to avoid dealing with off-payroll working rules and to avoid the associated administration costs.

2.8 The study also explored whether the off-payroll reforms led to an increase in the use of umbrella companies. It was hypothesised that more off-payroll contractors may choose to work under this employment structure instead of working through a PSC as it would enable them to continue to engage with public bodies off-payroll without the administrative burden of running their own company. It could also be beneficial for public bodies to engage contractors via this structure, as they would not be required to consider whether the off-payroll working rules apply to these workers.

2.9 As well as exploring these workforce structure measures, the research also looked at the ongoing administration costs relating to the reforms, such as costs of time spent making determinations and administering the off-payroll working rules. The survey therefore collected corresponding total figures for January to March 2017 (Q4 2016/17) and April to June 2017 (Q1 2017/18).¹³ In addition, the research asked public bodies to provide a breakdown of costs for setting up the systems and process required to be compliant with the reforms.

¹³ These financial quarters were chosen based on information collated from scoping interviews with public sector stakeholders. The interviews found that comparing these financial quarters was preferable to comparing like-for-like Q4 2016/17 with Q4 2017/18, because the 2017/18 data would be easier to collect or recall (given that closer attention was paid to this information in the lead up to the reforms). Nevertheless, this means that potential seasonal impacts should be considered when interpreting the cost data.

3 Sampling and methodology

3.1 This chapter gives a brief overview of the sampling and methodology used for the study. More information can be found in the technical annex.

3.2 The research comprised of three main phases:

- A scoping exercise, to inform the development of the sampling frame for the quantitative survey and to shape the design of the research materials;
- A quantitative survey of public sector bodies who had recent engagement with off-payroll contractors;
- Qualitative follow-up interviews with survey respondents whose responses indicated that they had been affected by the reforms.

Quantitative interviews

3.3 During mainstage fieldwork, it was found to be relatively common for the administration of off-payroll working reforms to be carried out by a centralised body for a number of different sites; for example, a single NHS trust might be responsible for off-payroll working administration for a number of hospitals. In some cases, central bodies represented sites across a variety of sectors (e.g. local councils). It was crucial that a consistent sampling unit was used for analysis purposes, therefore a separate survey was set up for central bodies dealing with multiple sites, to ensure their data could be analysed separately from single sites.

3.4 In total, interviews were conducted with 108 sites across the three key sectors, and 117 interviews with central bodies (covering 4,095 sites in total). A sectoral breakdown of site interviews achieved and site coverage of central bodies is shown in Tables 3.1 and 3.2.

Table 3.1 Site survey interviews achieved, by sector

Industry	No. of interviews
Public Administration & Defence	50
Education	50
Health & Social Work	8
Total	108

Table 3.2 Site coverage of the central bodies interviewed (117 bodies)¹⁴

Industry	No. of sites covered
Public Administration & Defence	868
Education	927
Health & Social Work	1,041
Other	212
Unassigned	1,047
Total sites	4,095

Analysis and weighting

3.5 The site data and central body data was analysed separately for reporting purposes. Site level results have been weighted to the total population according to the latest data from the Inter-Departmental Business Register (IDBR), although Health & Social Work data was excluded due to the low number of interviews achieved among sites in this sector. It was not possible to apply weighting to central bodies results. Further information on analysis and weighting is provided in the technical annex.

Qualitative interviews

- 3.6 This stage comprised of 30 in-depth telephone interviews, recruited via follow up with public bodies who had completed the quantitative survey. Fieldwork took place during September and October 2017.
- 3.7 The research sought to speak specifically to those who had indicated that off-payroll working reforms had had some impact on their organisation. Specific criteria to select these organisations were agreed to ensure a variety of experiences were covered.

¹⁴ Central bodies may represent sites across a variety of sectors, therefore we have shown total site coverage by sector across central bodies to indicate interview spread. Some sites are 'unassigned' because some central bodies did not provide enough information to determine the sector of all of their sites.

4 Use of off-payroll contractors

- 4.1 Public bodies used off-payroll contractors for a wide variety of roles. The six most commonly mentioned roles that off-payroll contractors worked in after the reforms were introduced were:
- Education (e.g. teachers, teaching assistants and coaches);
 - Administration;
 - Facilities management;
 - IT;
 - Medical (e.g. nurses, locum GPs and consultants); and
 - Construction.
- 4.2 As expected, the sector that public bodies operated in influenced the types of professions that off-payroll contractors worked in. For example, public bodies in Health & Social Work predominantly used off-payroll contractors to fill medical and healthcare roles (e.g. locum doctors, nurses and consultants), whilst those in Education mainly used off-payroll contractors for educational roles (e.g. teachers, teaching assistants and coaches). Bodies in Public Administration & Defence were more likely to use off-payroll contractors for housing and infrastructural projects (e.g. planners, surveyors and engineers).
- 4.3 Although the sector that public bodies operated in had a bearing on the roles off-payroll contractors were used for, there were some roles that were common across all sectors. For example, many public bodies across the three sectors used off-payroll contractors for IT support and facilities management.
- 4.4 The qualitative interviews showed that the proportion of off-payroll contractors recruited directly or through agencies varied between public bodies, with no clear pattern emerging. However there was a trend in the type of roles they tended to recruit via each channel. Typically, public bodies recruited roles directly through PSCs where only a small number of specialists were required (e.g. engineers and lawyers), while agencies were used to recruit roles required in larger numbers (e.g. nurses and social workers).

“The default would be an agency, but for the more technical and highly specialised roles the agency route doesn't always work.”

Central Body, Public Administration & Defence, 1000 to 4999 employees

- 4.5 Most public bodies used off-payroll contractors on an ad-hoc basis. This was often because public bodies had a ‘one-off’ project or service to deliver. In these instances, public bodies required specialist skills or knowledge that they were unable to resource internally and so procured them as off-payroll contractors.

“Because of the short-term nature of some of the project work it wouldn't be an option to use permanent staff ... [engagement could be] up to the end of this financial year and some would be a six month or three-month period.”

Site, Public Administration & Defence, 500 to 999 employees

- 4.6 Other public bodies used off-payroll contractors on an ad-hoc basis because they needed to fill temporary vacancies, for example, covering sick leave, a sabbatical or maternity/paternity leave.

“Medical and dental locum staff [are used] to supplement the workforce in times of recruitment challenges or other circumstances so it allows us to tap into a resource while maintaining key clinical services ... we are running something to the tune of 12% vacancies so without these we can't provide services.”

Central Body, Health and Social Work, 10,000+ employees

- 4.7 In addition to ad-hoc roles, many public bodies also reported that they used off-payroll contractors on a longer-term basis. Some public bodies, particularly those in the Health & Social Work sector, said that off-payroll contractors were required long term because of shortages of supply in some areas of the labour market. Consequently, individuals in these roles (e.g. doctors, social workers, IT contractors and lawyers) could demand higher rates of pay through off-payroll working.¹⁵

“We're constantly trying to pursue [medical roles] as permanent substantive bookings. The difficulty is that they are so expensive and we are backed into a corner to make these appointments. The consultant can say, 'Why should I? If I could earn twice as much through an agency, what's the incentive?'. This is the vicious circle we find ourselves in so every time we make an appointment we're shooting ourselves in the foot.”

Site, Health & Social Work, 10,000+ employees

“Social workers are employed through an agency rather than by the council. We have tried to recruit them directly into the council but there is a national issue in attracting them as they get better pay as an agency worker rather than an employee.”

Site, Public Administration & Defence, 1000 to 4999 employees

- 4.8 Some public bodies used off-payroll contractors on a long-term basis because it was perceived to be a convenient way to procure workers for some roles (e.g. facilities management). Engaging with workers in this way offered public bodies flexibility in their workforce management, enabling them to change the number of workers in roles to meet service delivery needs.
- 4.9 Most public bodies felt that off-payroll contractors played an important role in the running of their organisation and the delivery of their services. This was especially pronounced among bodies in Public Administration & Defence and Health & Social Work, with many stressing that off-payroll contractors were integral to service delivery (e.g. medical treatment and housing). A few public bodies did not consider off-payroll contractors to be vital to service delivery. This was more common amongst those in Education, where off-payroll contractors were more widely used for non-essential roles (e.g. providing training or sports coaching).

“[Off-payroll contractors are] very important ... we do depend on them because we have limited revenue and resources at our disposal.”

Site, Public Administration & Defence, 10 to 49 employees

¹⁵ This is not related to the amount of tax paid.

“At senior consultant level, without them the service couldn’t be delivered.”

Site, Health & Social Work, 10,000+ employees

5 Workforce structures

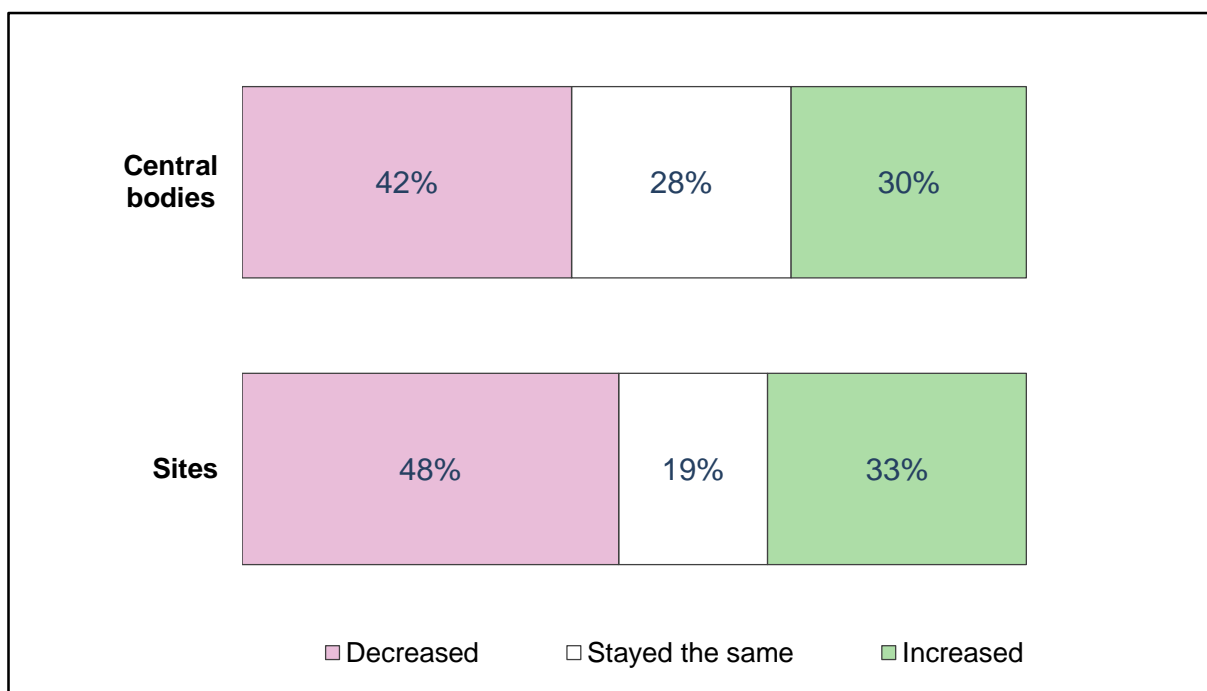
- 5.1 A key element of this study was to assess the impact that the off-payroll working reforms had on employment and workforce structures (see 2.7). Prior to interview, public bodies were asked to complete a datasheet which collected corresponding employment figures from March and August 2017, in order to assess the level of change since the reform came into effect.
- 5.2 Any changes explored in this chapter should be considered alongside existing ONS public sector employment by industry data, which show that there has been long-term retrenchment in public sector employment, mainly driven by a reduction in employee numbers in the Public Administration & Defence sector. Between March 2013 and March 2017, the number employed in Public Administration & Defence decreased by 65,000. By comparison, employment in the Education and Health and Social Work sectors has been flat or grown slightly during the same period.¹⁶
- 5.3 Please note that throughout the section where averages are reported, these are mean averages. Nevertheless, due to the possibility of high or low values skewing the mean figures, median averages are also shown. Throughout the report there were no significant differences found between mean average figures reported in March 2017 when compared with August 2017.

Change in number of paid employees

- 5.4 One hypothesis about the potential impacts of off-payroll working reforms is that it may lead to an increase in the number of employees working for public sector bodies. One possible reason behind this, is that public bodies may choose to take on more contractors as paid employees to avoid dealing with off-payroll working rules and avoid the associated administration costs.
- 5.5 Figure 5.1 shows the proportion of public bodies who reported either an increase, decrease, or no change in the number of paid employees over this period. Where possible, this was calculated using the numerical data provided, however where it was not possible to calculate change using the data provided, public bodies were asked directly what the direction of change was.
- 5.6 42% of central bodies and 48% of sites reported a decrease in paid employees, compared with around a third (30% and 33% respectively) reporting an increase.

¹⁶ ONS EMP03: Public sector employment by industry, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/publicsectoremploymentbyindustryemp03> [accessed 18th October 2017]

Figure 5.1 Change in number of employees on payroll between March 2017 and August 2017



Bases: All public bodies who answered datasheet questions (91); all central bodies (117)
 Central body site coverage: Total (4,095)

5.7 Table 5.1 shows the mean and median average absolute change and average percentage change in the number of paid employees for cases where public sector bodies have provided paid employee figures for both March and August 2017. Central bodies reported employing an average of 21 fewer employees in August than they did in March 2017, and sites reported employing 19 fewer. The median change between the two periods was zero among central bodies and sites.

Table 5.1 Number of paid employees in March 2017 and August 2017

		Central bodies				Sites			
		March 2017	August 2017	Average absolute change	Average percentage change	March 2017	August 2017	Average absolute change	Average percentage change
All	<i>n</i>	110 (3,498 sites)	110 (3,498 sites)	110 (3,498 sites)	110 (3,498 sites)	90	90	90	90
	Mean	4,170	4,148	-21	+1%	794	775	-19	-1%
	Median	2,051	1,981	0	0%	215	220	0	0%

Methodological note

Average absolute change

The change in the number of employees was calculated for each public body that reported the number of employees in March 2017 and at August 2017. The figure was not calculated for public bodies that were missing data at either point or reported zero for both time periods. An average was then taken of all the individual changes that were reported in order to produce the average absolute change figure that appears in the table.

Average percentage change

A percentage change figure was calculated for each public body by dividing the difference in the number of employees from March to August, by the number of employees at March. Where data for either March or August was missing, or where zero was reported for March, cases were excluded in order for a valid percentage to be calculated. Due to the difference in exclusion criteria, the base sizes for the average percentage change and average absolute change may be different.

An average across all valid cases was then taken, generating the average percentage change figure in the table. The calculation method means that the average percentage change cannot be derived from the average number of employees at March and at August which are shown in the table above.

In some cases, the average percentage change appears larger or smaller than the average absolute change. This is because the average percentage change takes into account the relative size of the change. For example, a difference of three employees is proportionally larger for an organisation with ten employees than for an organisation with 100.

For this reason, the average percentage change may be positive even if the average absolute change is negative and vice versa. This happens if, for example, the majority of organisations report a modest reduction in the number of employees, but a handful of organisations report a gain in the number of employees. The average absolute change figure would be negative. However, it is possible that the reductions could be small relative to the size of the organisations which reported them (i.e. small percentage changes), while the gains could be relatively large (i.e. a large percentage change). Under these circumstances the average absolute change figure would be negative, but the average percentage change figure positive.

- 5.8 This evidence was corroborated by findings from the qualitative interviews. Most public sector bodies attributed changes in employee numbers to budgetary cuts or general workforce reductions rather than deliberate organisational change due to the off-payroll working reforms.
- 5.9 Qualitatively, some public bodies mentioned that more off-payroll contractors were being brought onto their payroll because of the reforms. Furthermore, some reported that they had decided to change their approach to filling vacancies by taking on direct employees rather than off-payroll contractors, because it was considered more cost-effective in the long-term. However, these numbers were often not large enough to cause a noticeable impact on overall employment numbers within their organisations.

“We initially went with the off-payroll because it was easier and we could find someone very specific. Now we’ve had to take people and train internally but in the long run it will be cheaper.”

Site, Education 1,000-4,999

Change in number of off-payroll contractors

- 5.10 The research also explored what impact the off-payroll working reforms had on the use of off-payroll contractors, due to the possibility that off-payroll workers who fall within the off-payroll working rules might choose to leave the public sector in order to retain control of their own tax assessments, or that public bodies may avoid using these types of contractors so that they are not required to engage with off-payroll working rules.
- 5.11 All respondents were screened to ensure they employed off-payroll workers in the last 12 months. Overall, 93% of central bodies and 82% of sites said they employed any off-payroll contractors in August 2017, compared with 86% of central bodies and 91% of sites that reported this for March 2017.
- 5.12 Figure 5.2 shows that public sector bodies were most likely to report that their use of off-payroll contractors had decreased since March 2017, although around a third of central bodies and sites reported no change.

Figure 5.2 Change in number of off-payroll contractors between March 2017 and August 2017



Bases: All central bodies (117); all public sector sites that answered datasheet questions (91); Central body site coverage: Total (4,095)

- 5.13 Considering the scale of change, central bodies reported that they employed an average of 12 fewer off-payroll contractors in August 2017 than they did in March 2017, while sites reported employing four fewer contractors. Nevertheless, the median average changes (central bodies: zero, sites: one fewer) suggest that, for most, the scale of the change was unsubstantial. While the use of off-payroll contractors has therefore decreased amongst a large proportion of public

bodies, the scale of the changes does not provide conclusive evidence that this was due to the off-payroll working reforms.

Table 5.2 Number of off-payroll contractors in March 2017 and August 2017

		Central bodies				Sites			
		March 2017	August 2017	Average absolute change	Average percentage change	March 2017	August 2017	Average absolute change	Average percentage change
All	<i>n</i>	79 (1,966 sites)	79 (1,966 sites)	79 (1,966 sites)	77 (1,942 sites)	70	70	70	69
	Mean	102	90	-12	-9%	29	25	-4	-17%
	Median	28	26	0	0%	9	5	-1	-14%

The method used to calculate the average absolute change and average percentage change in the number of off-payroll contractors is the same as was used to calculate the change in the number of employees. This is explained in the methodological note on page 21.

- 5.14 While the evidence shows reductions in the number of paid employees and in the use of off-payroll contractors, results show that amongst central bodies off-payroll contractors made up a smaller proportion of the workforce after the reforms came into effect. On average, there were 102 paid employees for every off-payroll contractor in March 2017 compared to 185 paid employees for every off-payroll contractor in August 2017. This indicates that amongst central bodies the number of off-payroll contractors fell at a faster rate than the number of paid employees between March and August 2017.
- 5.15 Conversely, amongst sites, results indicate that the number of paid employees fell at a faster rate than the number of off-payroll contractors between March and August 2017. On average, there were 76 paid employees for every off-payroll contractor in March 2017 compared to 65 employees for every off-payroll contractor in August 2017.¹⁷
- 5.16 Qualitative evidence suggests that, like the number of paid employees, the changes in the number of off-payroll contractors were usually attributed to natural fluctuations in the workforce or budgetary cuts prompting reductions in the workforce.
- 5.17 Qualitative interviews also showed that in some cases, where off-payroll contractors had left public sector bodies after being declared within the off-payroll working rules, they were replaced with other off-payroll contractors willing to work within the rules, resulting in no overall change to contractor numbers. Of those that reported contractors leaving for the private sector, IT was

¹⁷ The ratio of paid employees to off-payroll contractors was calculated for each public body that reported the number of paid employees and off-payroll contractors at March 2017. Ratios were not calculated for public bodies that were missing data at either point or report zero off-payroll contractors at either point. An average was then taken of all the individual ratios to produce an average ratio of paid employees to off-payroll contractors at March 2017. This same process was repeated for August 2017 data.

reported as a common role for departures, as this group were felt more easily able to move to the private sector due to the high demand for their services.

“We had some IT temps provided to us through an agency who had been doing work for us for a number of weeks, and from the 6th April they had been informed that the agency would deduct their tax and NI. As a consequence, they terminated their agreement to work for us.”

Central body, Public Administration & Defence, 1,000-4,999 employees

5.18 In a few cases, the number of off-payroll contractors decreased because more off-payroll contractors were being brought onto payroll. Furthermore, fluctuation in numbers was also linked indirectly to off-payroll working reforms, in cases where it had prompted a ‘clear out’ of the books. In such cases, public bodies applied more scrutiny to their use of contractors, and considered whether this employment structure was cost-effective for their organisation.

“The senior management team got a list of consultants, not just because of IR35, but obviously the cost as well to the council. The benefit of IR35 has been that payroll has been able to inform procurement about the need to watch what they are doing in terms of paying invoices.”

Central body, Public Administration and Defence, 10,000+ employees

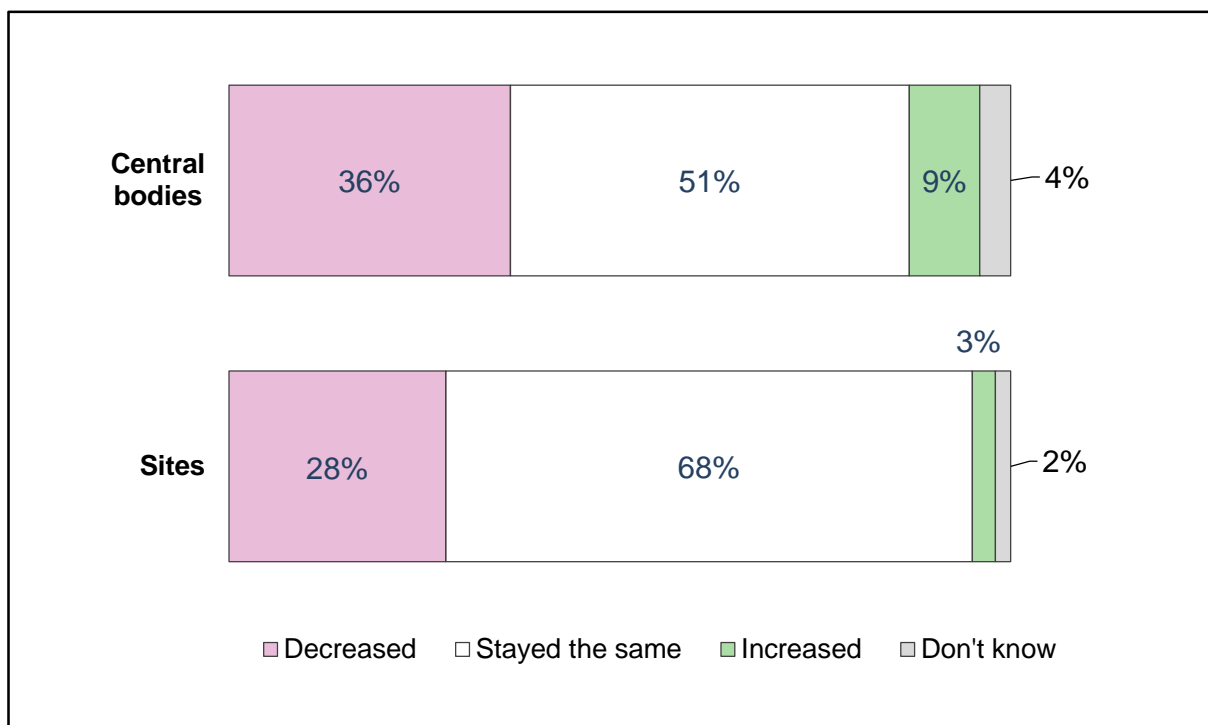
Change in number of off-payroll directly engaged contractors working through Personal Service Companies (PSCs)

5.19 The research also collected data on different types of structure that off-payroll contractors might work through. First, public bodies were asked to provide employment data for the off-payroll contractors they engaged directly who were working through limited companies, sometimes known as Personal Service Companies (PSCs). Given that under the reforms, the responsibility for deducting employment taxes for off-payroll contractors transferred to public bodies, in cases where the contractors’ intermediary is engaged directly by the public body, it is possible that public bodies could seek to reduce their use of this employment structure. Furthermore, off-payroll workers who fall within the off-payroll working rules may themselves choose to leave the public sector in order to retain control of their own tax assessments.

5.20 Overall, 60% of central bodies and 47% of sites that had employed off-payroll contractors in the last 12 months said they engaged them directly in August 2017, compared with 62% of central bodies and 54% of sites reporting this for March 2017.

5.21 Figure 5.3 shows that more than half of central bodies and sites said there had been no change between March and August 2017 in the number of directly engaged contractors, indicating that most public bodies have not been deterred from engaging contractors directly. A sizeable minority of central bodies (36%) and sites (28%) reported a decrease, while just nine per cent of central bodies and three per cent of sites reported an increase in the use of these contractors.

Figure 5.3 Change in number of off-payroll directly engaged contractors working through PSCs between March 2017 and August 2017



Bases: All central bodies (117); all public sector sites that answered datasheet questions (91); Central body site coverage: Total (4,095)

5.22 Considering the average change between figures reported for March and August 2017 (see Table 5.3), the results mirror the patterns for off-payroll contractors at an overall level, with public sector bodies employing fewer contractors directly in August 2017 than they did in March 2017 (central bodies: nine fewer, sites: two fewer). The median average change for central bodies was one fewer directly engaged contractor and zero for sites.

Table 5.3 Number of off-payroll directly engaged contractors working through PSCs in March 2017 and August 2017

		Central bodies				Sites			
		March 2017	August 2017	Average absolute change	Average percentage change	March 2017	August 2017	Average absolute change	Average percentage change
All	n	63 (1,841 sites)	63 (1,841 sites)	63 (1,841 sites)	60 (1,704 sites)	44	44	44	42
	Mean	24	16	-9	-32%	14	12	-2	-36%
	Median	10	5	-1	-15%	3	1	0	-10%

The method used to calculate the average absolute change and average percentage change in the number of off-payroll contractors engaged directly is the same as was used to calculate the change in the number of employees. This is explained in the methodological note on page 21.

5.23 When considering only those who reported a decrease in their use of directly engaged contractors, the average change was larger, with 18 fewer directly engaged contractors for central bodies and four fewer for sites.¹⁸

Change in number of off-payroll contractors in PSCs engaged through employment agencies

5.24 Public bodies were also asked what impact the off-payroll working reforms had on their use of off-payroll contractors who work through employment agencies, in order to compare how these impacts differed from those contractors engaged directly by public sector bodies. Under the reforms, where off-payroll contractors work for an employment agency but are engaged by a public sector body, the public authority will pass on their assessment decision and the agency that are paying the contractor's intermediary are then required to deduct the relevant income tax and NICs before making any payments.

5.25 HMRC sought to understand what impact this requirement for agencies to deduct the relevant income taxes and NICs might have on the use of agency contractors within the public sector. If the associated costs to agencies are passed onto public bodies through higher rates, it is possible that public bodies would also seek to reduce their employment of agency contractors. Alternatively, employment agencies may seek to leave the public sector and focus on recruitment for the private sector so that they can avoid dealing with the off-payroll working rules. Furthermore, if the costs of administering the reforms are passed onto the contractors themselves, they may decide to leave the agencies they work through.

5.26 Overall, 78% of central bodies and 60% of sites that had employed off-payroll contractors in the last 12 months said they employed agency contractors in August 2017, compared with 75% of central bodies and 69% of sites reporting this for March 2017.

5.27 As Figure 5.4 shows, it was most common for central bodies and sites to report no change in the number of agency contractors (41% and 45% respectively). However, a larger proportion among both groups said the number had decreased than reported an increase.

¹⁸ Please note that interpretation of these findings should be treated with caution due to low base sizes of 33 central body respondents and 23 site respondents.

Figure 5.4 Change in number of off-payroll contractors working through employment agencies between March 2017 and August 2017



Bases: All central bodies (117); all public sector sites who answered datasheet questions (91); Central body site coverage: Total (4,095)

5.28 Following a similar pattern to the changes reported in the use of directly engaged contractors and off-payroll contractors more generally, results suggest an overall decrease in the number of agency contractors used between March and August 2017.

Table 5.4 Number of off-payroll contractors working through employment agencies in March 2017 and August 2017

		Central bodies				Sites			
		March 2017	August 2017	Average absolute change	Average percentage change	March 2017	August 2017	Average absolute change	Average percentage change
All	n	73 (1,875 sites)	73 (1,875 sites)	73 (1,875 sites)	70 (1,864 sites)	58	58	58	55
	Mean	73	60	-14	-8%	29	25	-4	-30%
	Median	21	11	0	0%	6	3	-1	-33%

The method used to calculate the average absolute change and average percentage change in the number of off-payroll contractors engaged through agencies is the same as was used to calculate the change in the number of employees. This is explained in the methodological note on page 21.

5.29 Considering only those who reported a decrease in the number of agency contractors between the two periods, central bodies reported employing an average of 36 fewer agency contractors in August 2017 than they did in March 2017, while sites employed eight fewer.¹⁹

Use of umbrella companies

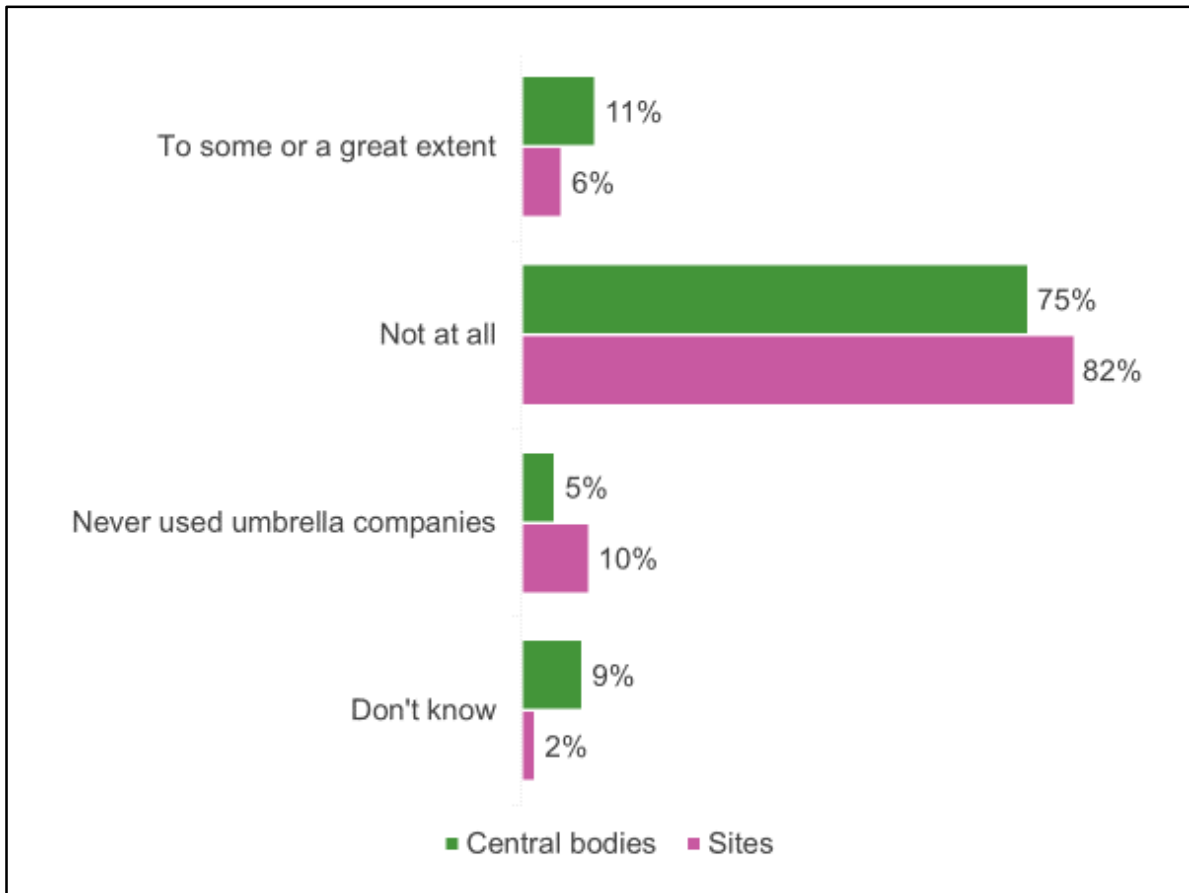
5.30 The research explored whether off-payroll working reforms had any impact on the extent to which public sector bodies use umbrella companies to recruit off-payroll contractors.

5.31 It was hypothesised that more off-payroll contractors may choose to work under this employment structure instead of working through a PSC as it would enable them to continue to engage with public bodies off-payroll without the administrative burden of running their own company. Furthermore, it was hypothesised that public bodies may prefer to engage contractors via umbrella companies as they would not be required to consider whether the off-payroll working rules apply to these workers.

5.32 Survey results suggest the off-payroll reforms had relatively little impact. Most central bodies (75%) and sites (82%) had used umbrella companies in the past but reported no increase in their use since the reforms came into effect. Overall, only a small minority of central bodies (11%) and sites (6%) had increased their use of umbrella companies and all of those who reported this said that this was due, at least to some extent, to the off-payroll working reforms.

¹⁹ Please note that interpretation of these findings should be treated with caution due to low base sizes of 32 central body respondents and 31 site respondents.

Figure 5.5 Extent to which off-payroll reforms led to an increase in the use of umbrella companies



Bases: All public bodies who have used off-payroll contractors since April 2017 – Central bodies (114); Sites (89)

Central body site coverage: Total (3,913)

5.33 One qualitative respondent mentioned a preference for using umbrella companies to source their contractors, because contractors are taxed as employees of the umbrella companies, and therefore the public body is not required to engage with off-payroll working rules. The motivations of this central body are detailed in the case study below.

Central body, Public Administration

Number of contractors halved, increased use of umbrella companies

A local council that used contractors across a range of areas, including IT, social services and specialist consultants.

	Change
Employees	Decrease
Off-payroll contractors	Decrease
PSCs	Don't know
Agencies	Decrease

"We have developed a starter form for IR35 so if they get past all the checks and are a true IR35 and need to go on payroll they come to us and we put them on."

Preparation and support

They aimed to remove any long term contractors employed directly through PSCs before the reforms to off-payroll working came into effect. They developed their own guide to help managers understand the reforms by using technical guidance from HMRC. However, there was a lack of internal buy-in as the HR and Payroll departments and different sites were unwilling to take responsibility for administering the reforms.

Impact on contractors

The number of off-payroll contractors was halved. Some of these went on to be employed by the central body on payroll. They had also increased their use of umbrella companies. The central body encouraged the use of umbrella companies as they thought this would reduce the administrative burden on them.

"The employees are being paid through their payroll so risk is less to the council therefore a good idea to engage that type of person ... they are the fee payer not us. We are ultimately but we know that the employees are engaged properly."

Impact on organisation

There were delays in conducting assessments of existing and new contracts because of a lack of internal buy-in from the HR and Payroll departments and individuals sites. Furthermore, where contractors were assessed to be inside IR35 it was necessary for the central body to disengage with them and then reengage in an alternative employment relationship. This caused the central body to experience delays in projects, particularly IT projects.

Impact on workforce

The organisation reduced the number of contractors they engaged with prior to the introduction of the reforms. The reforms motivated them to 'clear the books' of contractors that had not worked for the central body for a long time. Looking ahead, they expected the number of contractors to fluctuate with service demand.

"[We experienced delays] simply because we haven't been able to engage. What we had to do was disengage some of the contractors and then reengage them in some other form so it was done right."

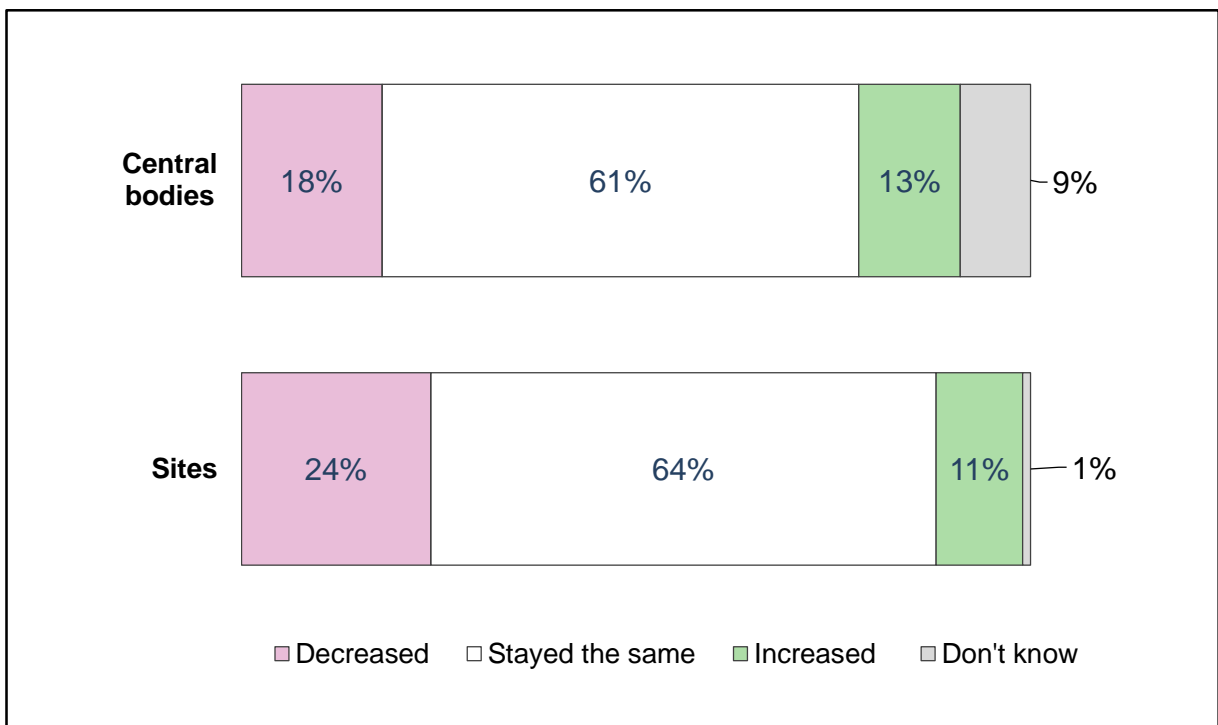
Change in number of self-employed workers

5.34 The research also considered how the off-payroll working reforms affected those who were self-employed. One hypothesis was that the reforms could lead to more individuals changing from working through PSCs, where off-payroll working rules may apply, to an unincorporated self-employed business. Given that off-payroll working rules do not apply to the genuinely self-employed, some contractors may think that by working in an unincorporated structure, employment taxes are not due, making this more desirable to off-payroll contractors following the introduction of the off-payroll working reforms.

5.35 Overall, 51% of central bodies and 58% of sites that had employed off-payroll contractors in the last 12 months said they employed self-employed workers in August 2017, compared with 49% of central bodies and 59% of sites reporting this for March 2017.

5.36 Figure 5.6 shows that a majority of central bodies (61%) and sites (64%) reported no change in the number of self-employed workers used. This is evidenced further in Table 5.5, which shows that the average change in the use of self-employed workers between March and August 2017 was negligible.

Figure 5.6 Change in number of self-employed workers between March 2017 and August 2017



Bases: All central bodies (117); all public sector sites that answered datasheet questions (91); Central body site coverage: Total (4,095)

Table 5.5 Number of self-employed workers used by public sector bodies in March 2017 and August 2017

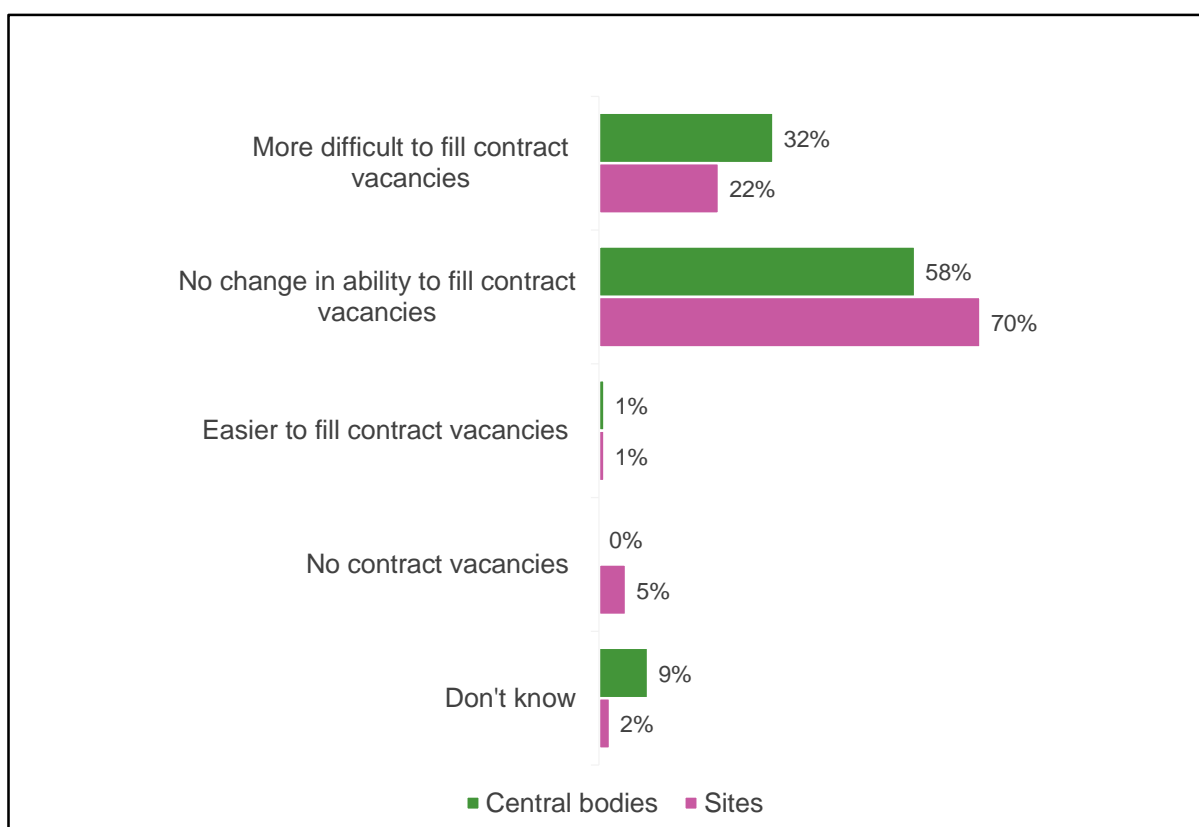
		Central bodies				Sites			
		March 2017	August 2017	Average absolute change	Average percentage change	March 2017	August 2017	Average absolute change	Average percentage change
All	<i>n</i>	56 (1,432 sites)	56 (1,432 sites)	56 (1,432 sites)	49 (1,234 sites)	48	48	48	43
	Mean	20	21	+1	-8%	10	7	-2	-20%
	Median	4	5	0	0%	3	2	0	0%

The method used to calculate the average absolute change and average percentage change in the number of self-employed workers is the same as was used to calculate the change in the number of employees. This is explained in the methodological note on page 21.

6 Filling vacancies

- 6.1 To evaluate the overall impact the reforms to off-payroll working had on public sector bodies, it was important to explore the effect the reforms had on their ability to fill contract vacancies, given that some off-payroll contractors may be unwilling to work inside the off-payroll working rules if they perceive it to impact their take home pay.
- 6.1 Most central bodies (58%) and sites (70%) said that there was no change in the ability to fill contract vacancies after the reforms to off-payroll working came into effect. A sizeable minority however (central bodies: 32%, sites: 22%) reported that it had been more difficult to fill contractor vacancies. Only a very small proportion of central bodies and sites reported that it had become easier to fill vacancies (1% respectively).
- 6.2 Amongst the public bodies that felt that it had become more difficult to fill contract vacancies since April 2017, the majority directly attributed this to the reforms (central bodies: 97%, sites: 88%)²⁰.

Figure 6.1 Experience of filling contract vacancies after April 2017



Base: All public bodies who employed off-payroll contractors in the last 12 months (central: 117, sites: 100). Central body site coverage: Total (4,095)

²⁰ Caution should be applied to interpretation of these results due to low base sizes (central bodies: 37 respondents; sites: 24 respondents)

- 6.3 In line with the finding that most public bodies reported that their ability to fill contract vacancies had not changed, most central bodies and sites had not found it any more difficult to recruit off-payroll contractors with the appropriate skills or knowledge (central bodies: 68%, sites: 76%) or find off-payroll contractors willing to work for them (central bodies: 62%, sites: 67%).
- 6.4 24% of central bodies and 19% of sites agreed that they had found it harder to recruit off-payroll contractors with the right skills or experience since the reforms. Only a third of central bodies (33%) and sites (31%) agreed that off-payroll contractors were less willing to carry out work for them since the reforms came into effect.
- 6.5 Qualitative interviews provided a means to explore the reasons why a notable proportion of public bodies had found it challenging to fill contract vacancies after April 2017. One of the most commonly cited reasons was that there were perceived to be fewer suitable contractors available. Some public bodies felt that this was most pronounced amongst roles where there had been pre-existing challenges with recruitment, for example doctors and social workers.
- 6.6 Some public bodies perceived there to be fewer contractors available in the marketplace because, after being assessed as falling within the off-payroll rules, individuals that had formerly worked off-payroll had begun working on payroll for public bodies or opted to cease engagement with public sector bodies and begin working for private sector bodies instead. It was assumed that these individuals had been motivated to do this because of the effect the reforms would have on their take home pay. A few of the public bodies that had found it harder to fill vacancies said that they had consequently faced delays in projects, particularly those IT projects.

"We have been recruiting and there is nobody to recruit ... we have been relying on off payroll workers where they have got the pick of multiple hospitals."

Central body, Health & Social Work, 10,000+ employees

"If you are an IT consultant and you are impacted by the rules then one of the things you will want to demand is to be paid at a higher rate to compensate you for the tax or you are just going to jump ship and do all your work in the private sector."

Site, Education, 1000 to 4999 employees

- 6.7 Other public bodies said that it had become more difficult to fill vacancies because the reforms had made the process of procuring off-payroll contractors more time consuming. More time was spent recruiting contract vacancies because public sector bodies were required to conduct off-payroll assessments and liaise with contractors, agencies and internal members of staff to explain assessment results and resolve any subsequent disputes. For some public bodies, the increased time spent on the recruitment of off-payroll contractors made the process of filling vacancies more expensive. The case study on page 34 details the experience of a site that experienced difficulties in recruiting contractors after the reforms came into effect.

"It is undoubtedly a more laborious process now ... all the talk around [the assessment] that has to go on so the whole thing about briefing the manager about what the issue is about and quite often talking to the contractor, talking to the agency."

Site, Public Administration & Defence, 10 to 49 employees

6.8 A few public bodies commented that although they initially found it more challenging to fill contract vacancies, these were perceived to be short term issues. Public sector staff have since become more accustomed to the legislation while contractors and agencies have become more accepting of the changes.

“There was probably more difficulty at the beginning but now the reforms are in, it is easier for us to say, ‘this is how we do it’. Initially the realisation among locums that they would be within IR35 was a bit of a hiccup but now they recognise that it is a reality so less impact.”

Central body, Health & Social Work, 5000 to 9999 employees

Site, Public Administration

Longer recruitment process; higher rates

A small organisation that dealt with development and planning law. Contractors tended to be used in construction, surveying, housing strategy and project management roles. They were considered to be crucial for project delivery.

	Change
Employees	Decrease
Off-payroll contractors	Increase
PSCs	Stayed the same
Agencies	Increase

“When you are delivering infrastructure [projects] you need different people at different stages of those projects”

Preparation and support

They became aware of the reforms to off-payroll working in the Autumn of 2016. This long lead time enabled them to seek advice and training before the reforms came into effect. There was still a bit of uncertainty in the organisation as the legislation was not considered to be black and white.

Disputes

They experienced disputes with agencies about the status of contractors. This was attributed to the agencies they were engaged with being predominantly involved in the private sector and so were unfamiliar with the reforms to off-payroll working. These disputes proved time consuming and costly for the public body as they delayed the recruitment of contractors and because they were required to spend time educating the agencies about the reforms. Such disputes were expected to continue.

“I have sent them the links to the government website and they just don’t get it...people think you are making it up to be honest and you are just making their lives difficult without any basis”

Impact on organisation

It took longer for them to recruit contractors after the reforms were introduced due to disputes with agencies. Difficulty in recruiting contractors was also affected by continued competition with other public bodies for certain roles. The site has attempted to entice contractors by offering them higher rates.

Impact on workforce

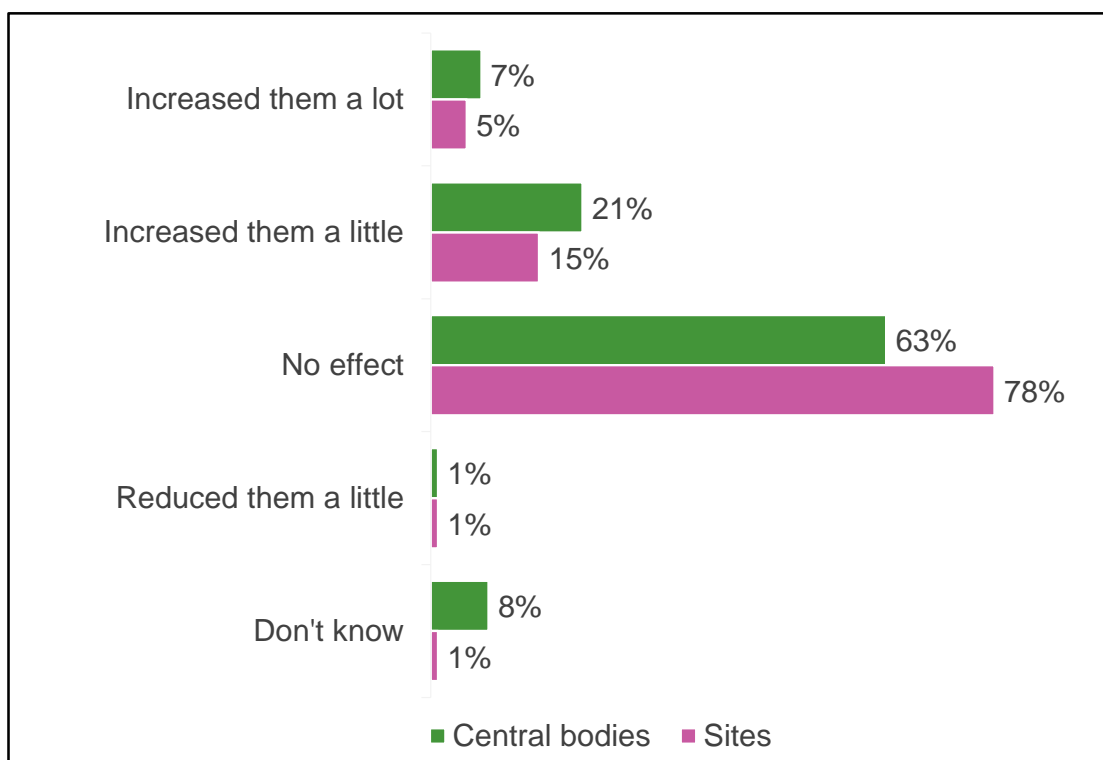
One contractor moved onto payroll. Some contractors were encouraged to work through agencies. Other fluctuations in workforce numbers were not attributed to the reforms to off-payroll working but rather to changes in demand driven by project work.

“We are trying to entice people to work through our payroll [instead] obviously at higher daily rates than they might charge if they were operating through their own company”

7 Contractor rates

- 7.1 An important aspect of this study was to assess the impact the reforms to off-payroll working had on the gross-hourly rates paid to off-payroll contractors due to the potential of off-payroll contractors who fall inside the off-payroll working rules increasing their pay rates to cover relevant employment taxes. As context, in nominal terms, between April and June 2016 and April and June 2017, average weekly earnings increased in Great Britain by 1.1% in the public sector.²¹
- 7.2 As shown in Figure 7.1, the majority of public bodies reported that the reforms to off-payroll working had no effect on the gross-hourly rates paid to off-payroll contractors (central bodies: 63%, sites: 78%).
- 7.3 28% of central bodies and 20% of sites reported that the reforms had caused gross-hourly rates to increase. As Figure 7.1 shows, most reported that the reforms had caused gross-hourly rates to increase “a little” (central bodies: 21%, sites: 15%), with fewer than one in ten reporting that the reforms had caused rates to increase “a lot” (central bodies: 7%, sites: 5%).²² Only a very small proportion said that the reforms had resulted in a reduction in gross-hourly rates (each 1%).

Figure 7.1 Effect of reforms on gross-hourly rates paid to off-payroll contractors



Base: All who have used off-payroll contractors since April 2017 (central bodies: 114, sites: 89).
Central body site coverage: Total (3,913)

²¹ ONS. UK labour market: November 2017

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/november2017#average-weekly-earnings> [accessed 4th December 2017]

²² Respondents were not given a definition of what “a little” and “a lot” mean, and so the results reflect their interpretation of these terms.

7.4 In qualitative interviews, some public bodies explained that their representative agencies had requested that rates be increased to cover reductions in take-home pay after contractors were assessed to fall within the off-payroll rules. However, most public bodies rejected such requests. For some, this was because they had agreed rates with agencies and were not willing to renegotiate them; for others, it was because they decided to seek permanent members of staff to fill roles; and for a few, it was because the higher rates were unaffordable. A few public bodies that had not increased their rates suggested that they may need to in the future.

“We have said ‘no, we are not responsible for paying your tax which you should have been paying before’. That has potentially led to some of the locums in the hard to fill specialties, health board wise, saying ‘if you are not going to pay me more, I don’t need to pay IR35 in Dublin [so I will go there].”

Central body, Health & Social Work, 10,000+ employees

“We refuse to pay more even though the agencies have asked for more... We probably would have considered raising rates if it was a direct relationship, but it is through an agency and we had agreed a rate the beginning.”

Site, Public Administration & Defence, 250 to 499 employees

“I have a sneaky feeling that [rates] will increase. Talking to some of the individuals that do the employment status check with me ... their feeling as well is that anybody who is going to be impacted by the changes is going to increase their fees.”

Central body, Health & Social Work, 1000 to 4,999 employees

7.5 As a consequence of not increasing rates, some public bodies reported that contractors had ended their engagement with them. It was typically assumed that these contractors had sought work as off-payroll contractors in the private sector or in other public sector engagements that fell outside of the reforms. A few public bodies commented that they thought IT contractors were the most likely to move into the private sector due to them having more readily transferrable skills. In cases where contractors had ended their engagement with public bodies that refused to increase rates, the public bodies had filled the vacancies with new contractors or permanent members of staff.

“The people who left us when the legislation came in all said that they were going to increase their rates to absorb taxes & NI.”

Site, Public Administration & Defence, 500 to 999 employees

7.6 Amongst the minority of public bodies that had increased the gross-hourly rates paid since April 2017, this had typically been done for roles where skills were in scarcer supply or where they faced competition from private sector organisations (e.g. doctors and IT contractors). In these instances, contractors and agencies were perceived to have had the ‘upper hand’ in rate negotiations and in order to maintain service delivery, public bodies were forced to increase rates.

“We have had instances around Employers’ NI where locums have argued that our rates need to increase to cover the costs of NI, etc. We have had to have discussions in cases where we need the skills of the individuals involved. It is market-driven in certain areas of specialised medical skills and they know they have the advantage.”

Central body, Health & Social Work, 5000 to 9999 employees

“We’ve found that unilaterally across the board, everything is now coming in more expensive than it was previously. We’ve been working our socks off to drive down these costs and pretty much as a consequence of IR35, although we can’t pinpoint it and prove it, for brand new bookings we’ve noticed a trend that everything has shifted up [in cost by] 10 -15%.”

Central Body, Health and Social Work, 10,000+ employees

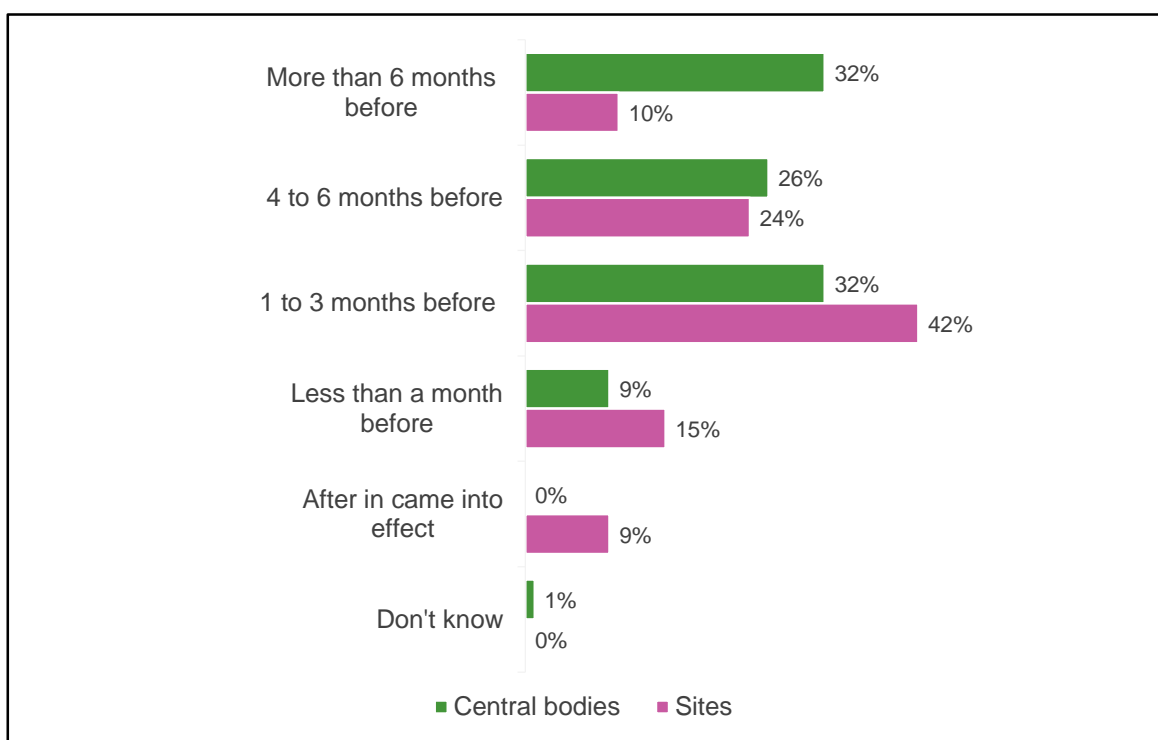
8 Administering the reforms to off-payroll working

- 8.1 This chapter explores the experience public bodies had of administering the reforms to off-payroll working. This includes, among other topics, the extent to which they found it easy or difficult to comply with the reforms and the effect the reforms had on staff workload and costs.
- 8.2 Some public bodies reported having difficulties in complying with the reforms, and experienced an increase in the workload of staff in HR and Payroll and higher costs related to administering off-payroll contractors. However, findings indicate that these issues were predominantly experienced in the run up to and shortly after the implementation of the reforms and have since subsided. For example, by August 2017 nearly all public bodies were confident that they were compliant with the reforms (central bodies: 97%, sites: 90%).

Awareness of the reforms

- 8.3 As shown in Figure 8.1, around six in ten central bodies (58%) became aware of the reforms to off-payroll working at least four months ahead of their introduction. Sites were likely to have become aware of the reforms after central bodies, with four in ten (42%) having first become aware of the reforms between one and three months before they came into effect.
- 8.4 A small proportion of public bodies became aware of the reforms less than a month before they were implemented (central bodies: 9%, sites: 15%). Furthermore, 9% had heard about the reforms after they came into effect. No central bodies had been unaware of the reform after they had been introduced.

Figure 8.1 When public bodies became aware of the reforms



Base: All public bodies (central bodies: 117, sites: 100). Central body site coverage: Total (4,095)

8.5 Related to how much notice public bodies had of the reforms before they came into effect, 47% of central bodies and 42% of sites did not think that they had enough time to prepare for the changes to off-payroll working. However, 39% of central bodies and 48% of sites did think they had enough time.

Complying with the reforms

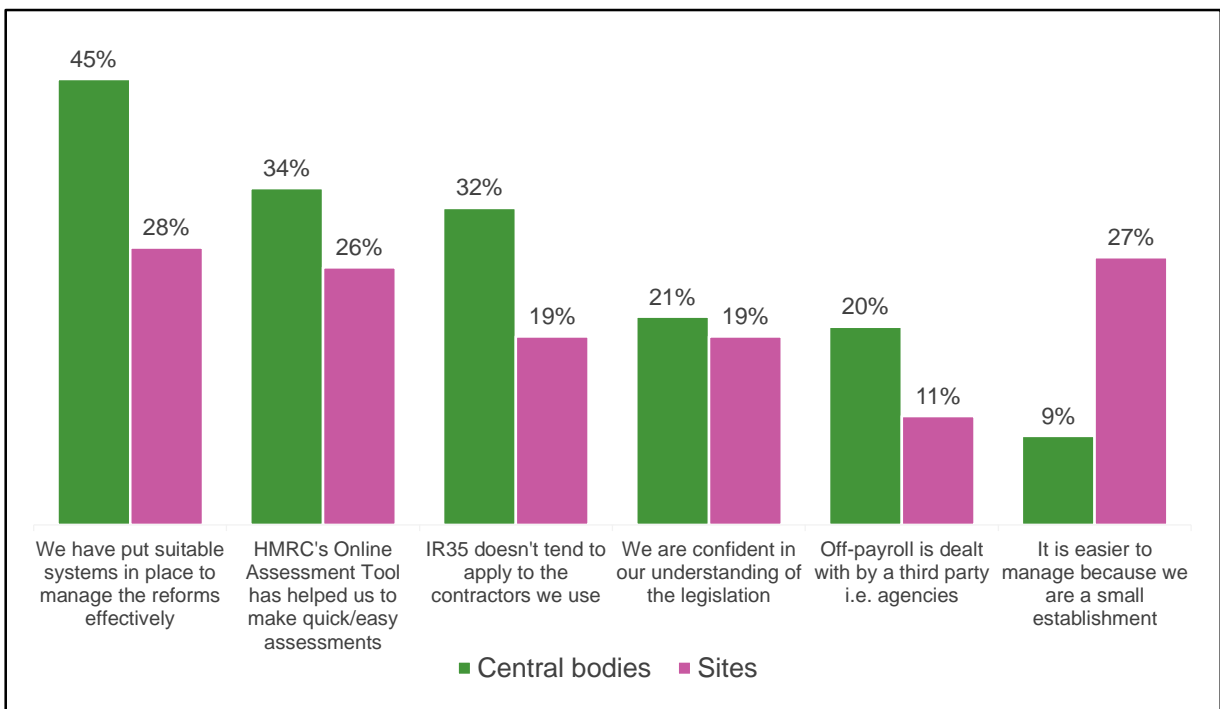
8.6 Opinion was evenly split on the extent to which it was difficult to comply with the off-payroll working reforms. Amongst central bodies, 51% considered it to have been difficult and 49% considered it to have been easy. Amongst sites, 42% considered it to have been difficult and the remaining 57% considered it to have been easy.

8.7 Despite a split in opinion on the extent to which it was difficult to comply with the changes to off-payroll working, nearly all public bodies were confident that they were compliant with the reforms in August 2017 (central bodies: 97%, sites: 90%).

8.8 Public bodies that found it easy to comply with the reforms attributed this to a variety of factors. As shown in Figure 8.2, public bodies were most likely to think that compliance with the reforms had been easy because they had suitable systems in place (central bodies: 45%, sites: 28%).²³

8.9 It was also common for public bodies to attribute their easy experience to HMRC’s online assessment tool (Check Employment Status for Tax Service, also known as CEST), which helped make assessments quick and easy (central bodies: 34%, sites 26%). Notably, more than a quarter of sites (27%) that had found it easy to comply with the reforms said that this was because they were a small establishment.

Figure 8.2 Reasons why compliance with the reforms was easy



Base: All who said it has been easy to comply with changes to off-payroll working (central bodies: 56, sites: 50). Central body site coverage: Total (1,186)

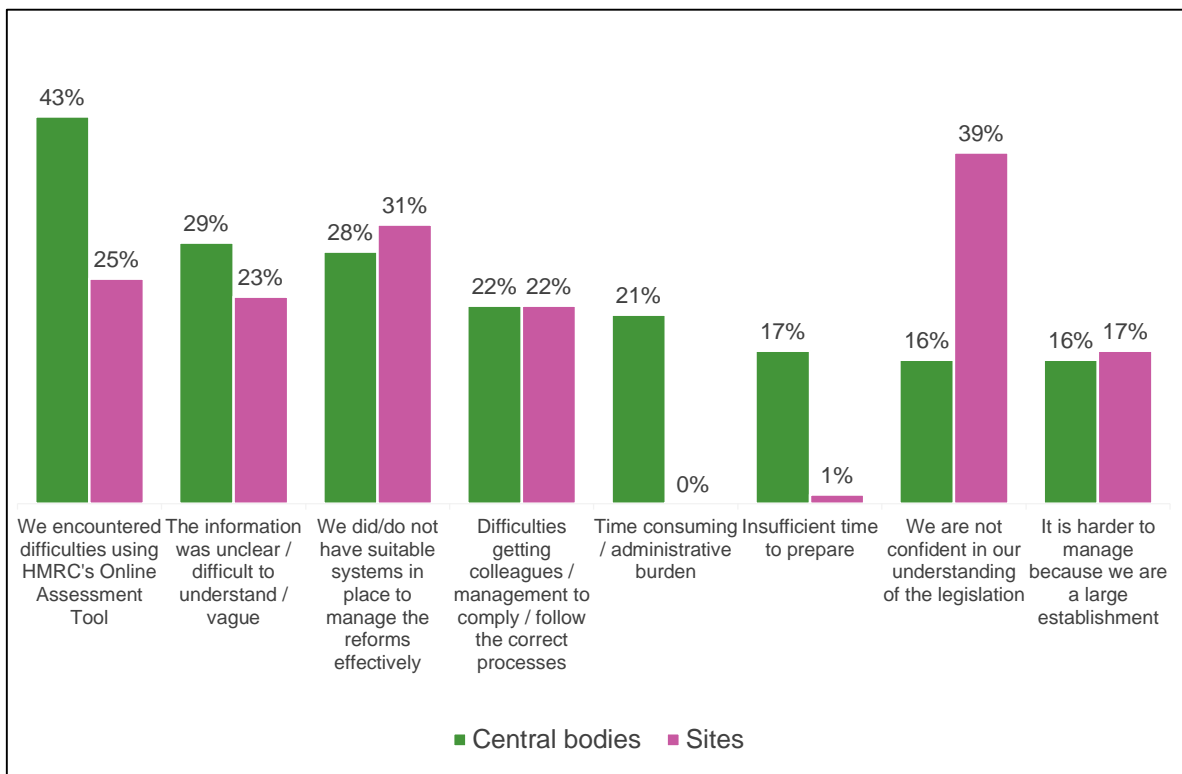
²³ Public bodies could select more than one reason.

8.10 By contrast, Figure 8.3 presents the reasons why some public bodies found it difficult to comply with the reforms.²⁴ 43% of central bodies that found compliance difficult said the most common factor was having difficulties using CEST. Sites on the other hand were most likely to attribute their difficulties to not being confident in their understanding of the legislation (39%).²⁵

8.11 The finding that CEST featured as a prominent reason for both easy and difficult experiences of complying with the reforms highlights that it divided opinion amongst public bodies. However, difficulties with using CEST appear to have been mainly teething issues (see 8.26 for more information). The majority of public bodies that had used it considered to be helpful overall when making assessments (central bodies: 78%, sites: 91%).

8.12 Amongst the subset of public bodies that found compliance to be difficult, other prominent reasons for this included information about the reforms being hard to interpret (central bodies: 29%, sites: 23%) and not having suitable systems in place to manage the reforms (central bodies: 28%, sites: 31%).

Figure 8.3 Reasons why compliance with the reforms was difficult



Base: All who said it has been difficult to comply with changes to off-payroll working (central bodies: 58, sites: 38). Central body site coverage: Total (2,727)

²⁴ Public bodies could select more than one reason.

²⁵ Please note that there is a low base of sites that found compliance difficult (38).

8.13 During qualitative interviews, many of the public bodies that had a difficult experience in complying with the reforms to off-payroll working said that this was because they had difficulty understanding the off-payroll legislation. In some cases, this was attributed to having short notice before the reforms were implemented and because HMRC's guidance changed several times in the run up to, and during the introduction of the reforms. For the most part, public bodies felt as though they had a better understanding of the off-payroll legislation after being involved in administering the reforms. However, a few bodies mentioned that there were aspects they were still not confident they fully understood (e.g. the rules on substitution and the provision of equipment).²⁶

"We're in a good position now. We felt that the changes to the rules were brought in pretty quickly with very little notice... There was a lack of general awareness and education"

Central body, Health & Social Work, 10,000+ employees

"There is quite a lack of clarity in the regulations and interpretation ... There are some areas of clarification that have not been addressed so we have some discrepancy in approach between boroughs."

Central body, Public Administration & Defence, 1000 to 4999 employees

8.14 Some public bodies attributed their difficult experience in complying with the reforms to challenges in implementing the systems and processes required to administer the reforms effectively. The reforms to off-payroll working meant that public bodies were required to adapt their recruitment process and spend time educating members of staff about what the changes would mean for their teams/departments.

"[There were] issues around who takes responsibility to decide who is in and who is outside the legislation and complete the assessment. Some of our managers were unwilling to take on the responsibility of doing the assessment because of the interpretation involved."

Site, Public Administration & Defence, 1000 to 4999 employees

²⁶ To determine whether the off-payroll working rules apply, it must be considered whether the worker would have been an employee if engaged directly. One of these factors is whether there is a requirement for personal service. If the worker does not personally provide the services, or is not under the obligation to personally provide the services, then the off-payroll rules do not apply. Therefore, if the worker can wilfully send a substitute to do the work, and the substitute cannot be refused by the public sector engager, then the rules do not apply. Source: Employment Status Manual [<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0530>]

If the engager provides any necessary equipment to carry out the work this will point towards the existence of a contract of employment. Therefore, if the contractor provides all of the equipment necessary to carry out the work, this could indicate that the rules do not apply (although this factor on its own will not be conclusive). Source: Employment Status Manual [<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0540>]

Assessments

8.15 The majority of public bodies conducted case-by-case assessments on existing contracts (central bodies: 91%, sites: 87%) and new contracts (central bodies: 93%, sites: 89%). HMRC considered this to be a suitable approach to assessments.

8.16 In the qualitative interviews, most organisations said that they conducted assessments on a case-by-case basis because contractor roles were unique and so it would not be possible to make assessments based on standardised roles.

“It’s better to do [an assessment] for each one. And we’re not inundated for this sort of thing. It’s not terribly time-consuming.”

Site, Education, 250 to 499 employees

“Any contractors or consultants we take on, the manager who is responsible for recruiting for that piece of work will sit down with usually myself or payroll lead officer and we will have those discussion and go through that test.”

Site, Public Administration & Defence, 500 to 999 employees

8.17 In a few cases, where public bodies had high volumes of contractors working in identical roles and under the same terms and conditions, assessments were made by role, based on the nature of the working relationship between the contractor and public body, and the result was then applied to all existing and future off-payroll contractors working under the same conditions. HMRC considered this to be compliant behaviour. The case study on page 43 presents the experience of a central body that judged a group of contractors to be inside the rules because they worked in identical roles.

“We took a view pretty quickly that any area within nursing and medical would fall within IR35. We met with specific forums and tested by going through the assessment forms and it always came out within IR35.”

Central body, Health & Social Work, 5000 to 9999 employees

8.18 Only a minority of public bodies had determined whether the reforms to off-payroll working applied to contracts without carrying out assessments. Around one in twenty had determined contracts to fall within off-payroll rules without carrying out assessments on existing (central bodies: 5%, sites: 4%) and new contracts (central bodies: 4%, sites: 4%). Furthermore, a small proportion had determined contracts to fall outside of the rules without carrying out assessments on existing (central bodies: 2%, sites: 1%) and new contracts (central bodies: 1%, sites: 0%).

8.19 Qualitative interviews found that where public bodies had determined contracts to fall within off-payroll rules without conducting assessments, it had typically been done for very short-term engagements (e.g. one-off services).

Central body, Health & Social

Makes assessments based on standardised roles

An NHS Trust which relied on locum doctors and nurses to provide medical care due to difficulties in recruiting permanent staff. Contractors accounted for a large amount of their wage bill. In non-medical roles, the biggest area where contractors were used was in IT.

	Change
Employees	Increase
Off-payroll contractors	Decrease
PSCs	Decrease
Agencies	Stayed the same

"We have worked with [an umbrella organisation] for 18 months around direct engagement. They give us advice on IR35 and have their own legal division that will take a view and indemnify us against risk."

Preparation and support

The central body used the HMRC website and CEST to prepare for the reforms to off-payroll working. They also sought advice and guidance from the NHS and the umbrella organisation that they used to source contractors. The umbrella organisation was considered to be the most useful source of advice and guidance.

Assessments

They initially conducted assessments case-by-case, but they ended up treating all medical locums as within off-payroll working rules as they had the same terms of employment. A few non-standard contracts were assessed individually. IT contractors were assessed on a case-by-case basis within the IT department.

"We took a view pretty quickly that any area within nursing and medical would fall within IR35, as by the nature of the work, they are filling posts that permanent employees could do."

Impact on rates

The need for specialist skills, which were in short supply, meant that nationally set rates could not always be adhered to. They have had to increase rates in a few cases where locums have argued that off-payroll working reforms have affected their take home pay.

"We were initially trying to hold our position that rates shouldn't change... but we have had instances around Employee NI where locums have argued that our rates need to increase to cover the costs of NI etc....It is market-driven in certain areas of specialised medical skills and they know they have the advantage."

Impact on workforce

The number of contractors had decreased, but the reforms to off-payroll working only had marginal influence on this as the Trust had been actively trying to reduce their reliance on contractors. The reforms had no effect on the number of locum nurses as they had always been recruited through agencies. Locum doctors had largely moved from PSCs to umbrella companies. A few locum doctors moved on to payroll because they did not want to work through an umbrella company. The trust was worried that IT contractors would leave for the private sector, but this did not occur.

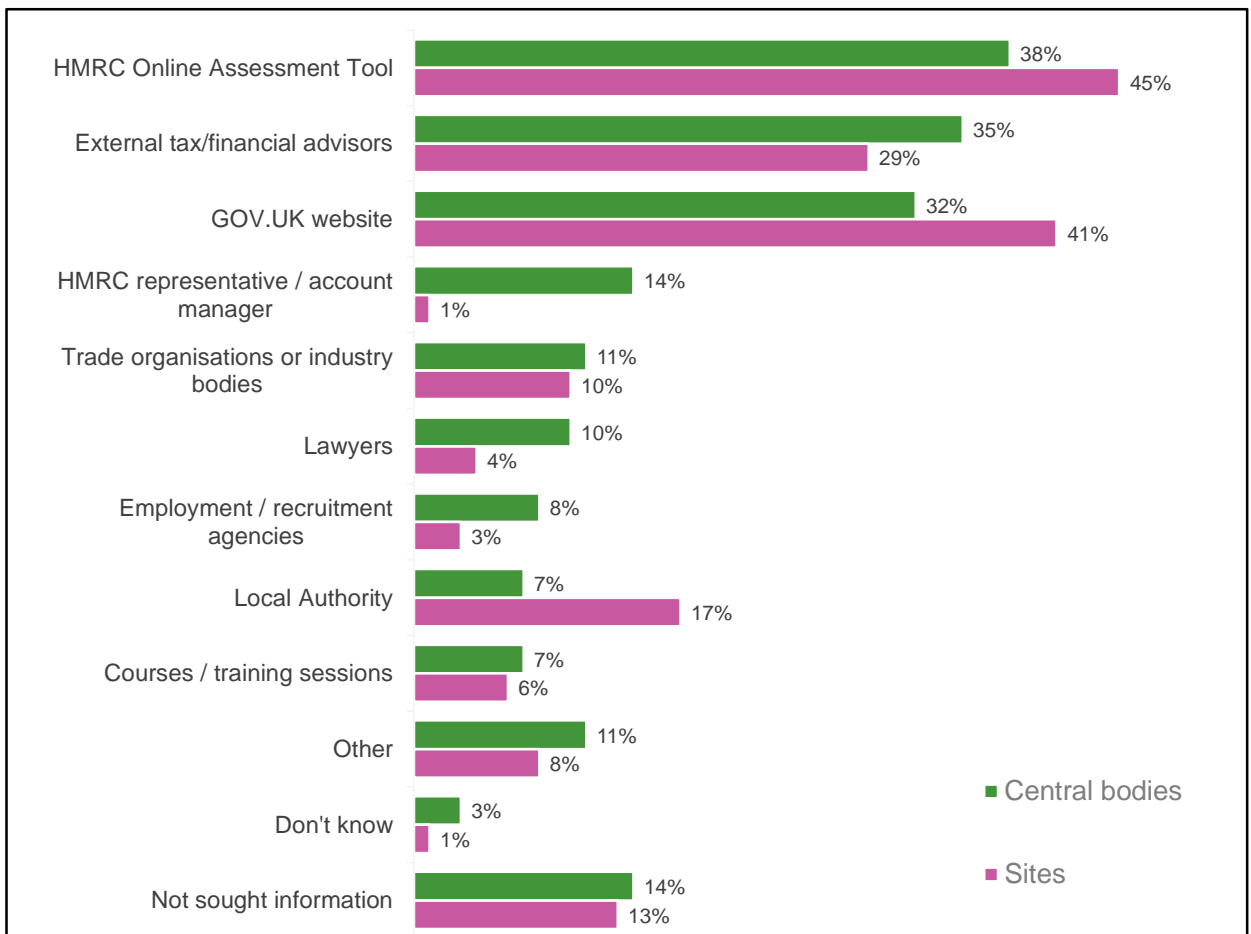
Sources of advice and guidance

8.20 Overall, most public bodies (central bodies: 84%, sites: 87%) had sought information, advice or guidance to help them implement the changes required to be compliant with off-payroll working reforms. Figure 8.4 shows the sources spontaneously mentioned by respondents.

8.21 The most common source of advice and guidance was CEST, used by 38% of central bodies and 45% of sites that had used off-payroll contractors since April 2017. Upon prompting, the proportion who reported using the tool rose to 91% of central bodies and 79% of sites.

8.22 External tax or financial advisors were used by around three in ten central bodies (35%) and sites (29%). General use of the GOV.UK website to help implement changes was also prevalent, although its use was slightly higher among sites (41%) than central bodies (32%).

Figure 8.4 Sources of information, advice and guidance used by public bodies (unprompted)



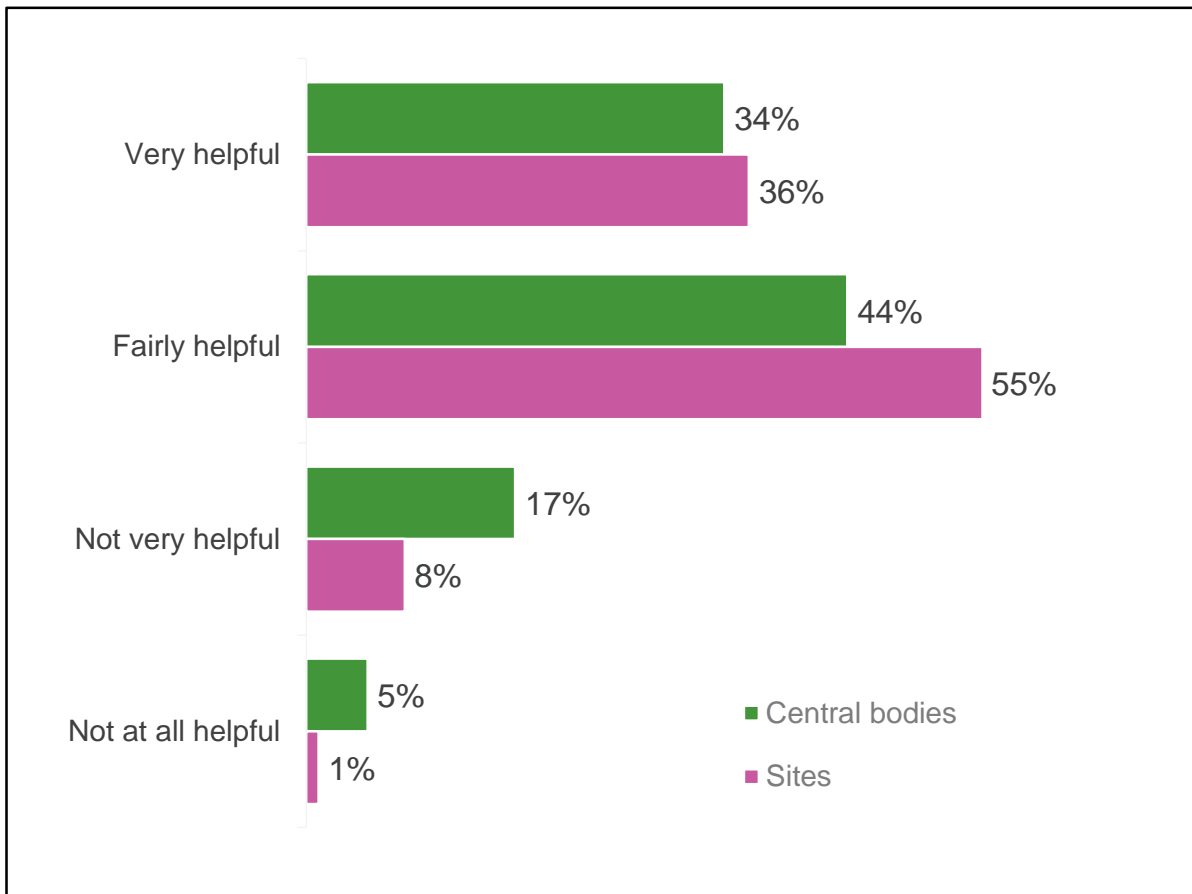
Bases: All public bodies who have used off-payroll contractors since April 2017 – Sites (89); Central bodies (114)

Central body site coverage: Total (3,913)

8.23 Public bodies that had sought information, advice or guidance in relation to off-payroll working reforms were asked which of the sources they had used was most useful. Among central bodies, external tax or financial advisors were most commonly mentioned (27%), followed by CEST (13%). Conversely, sites were more likely to report the CEST as the most useful source of information (28%), followed by external tax or financial advisors (19%).

8.24 Focusing more closely on CEST, those who had used it were asked how helpful they felt the tool had been in assessing whether engagements with contractors fall inside off-payroll working rules. The vast majority (91%) found it helpful, with a third (36%) saying it was 'very helpful'. Most central bodies also found the CEST helpful (78%), although this figure is comparatively low compared to corresponding site results, despite similar proportions finding it very helpful across both surveys. Amongst both sites and central bodies, a small minority said that the CEST had not been helpful at all (central bodies: 5%, sites: 1%).

Figure 8.5 Perceived helpfulness of CEST



Bases: All public bodies who have used off-payroll contractors since April 2017 – Sites (72); Central bodies (104)

Central body site coverage: Total (3,425)

8.25 Qualitative interviews corroborated the finding that CEST was the go-to information source for the purposes of conducting assessments. Many of the respondents mentioned relying on it to make their assessments.

8.26 Respondents mentioned that CEST had arrived late, and consequently encountered teething problems, including inconclusive assessments and inconsistent outcomes.²⁷ One respondent mentioned that HMRC was still making changes to the CEST after it had gone live, which led to them having to re-assess the status of some of their contractors.²⁸

“We did a block of assessments to start with and the tool [CEST] was changing from hour to hour...so you would do an assessment and an hour later the tool had changed. Now it is really easy to use and a really good tool.”

Site, Public Administration & Defence, 500-999 employees

“I have had one or two assessments where they came out that they can’t determine the status and I have to say managers here when they go through the tool [CEST] without me they don’t understand it ... I think it has changed over time; I don’t get any non-determinations now.”

Site, Public Administration & Defence, 100-249 employees

8.27 A few respondents suggested that CEST had not always accounted for all of their contractors’ specific roles and working structures, which potentially led to inconsistencies around how the legislation was being applied across the public sector. Some felt HMRC needed to consult more closely with the public sector to address ambiguities around how the employment status tests are applied.

8.28 In some cases, public bodies highlighted the need for clearer, definitive guidance on the employment status tests. Concerns were expressed over whether the rules were being applied consistently, both internally by their own managers and externally by other organisations in their sector.

“They [HMRC] need to come and talk to us about some of our more difficult roles which don’t fit within an easy to assess framework and allow us to get some consistency between local authorities.”

Site, Public Administration & Defence, 1,000-4,999 employees

8.29 Public bodies also turned to external sources of advice and guidance, such as tax advisors, either to clarify understanding of the legislation and rules, or to consult an external opinion when disputes arose with contractors or agencies. The case study on page 47 details the experience of a site that used external sources of advice and guidance.

“I might not always have the time to look into each individual case. If there is a dispute, if I can get third party corroboration of what was said ... [it adds] more credence to what I was saying.”

Site, Public Administration & Defence, 10-49 employees

8.30 Despite teething problems with CEST, many reported improvements in its functionality and the consensus was that it was now ensuring employment status decisions were more straightforward.

²⁷ CEST was launched in BETA form for public use on 3 March 2017. One significant change was made to the tool, altering the questions around personal service and substitution, which went live on 5 April 2017. Other minor changes were made after this date, however these changes would not have affected customer experiences of the tool or assessment outcomes. The final version of CEST went live on 16 June 2017.

²⁸ HMRC have engaged with public bodies to refine and improve CEST since its introduction. Changes that were made were in response to customer feedback.

Site, Education

Alternative sources of guidance and support

A higher education college that used contractors to cover teacher absences, for short term teaching contacts, IT roles and HR roles.

	Change
Employees	Decrease
Off-payroll contractors	Increase
PSCs	Stayed the same
Agencies	Increase

"I had to do a fair bit of reading up on HMRC and other websites to make sure I understood what was meant by a PSC. That wasn't readily to hand but we did find it."

Preparation and support

They initially encountered difficulties with information and guidance. They used the HMRC website, but found it difficult to understand the terminology used. Instead they also used the websites of employment law agencies, professional accountancy bodies and organisations in the education sector. They found the online guidance available on JISC (an advice service for higher education organisations) to be most helpful.

Assessments

They used CEST to conduct assessments on existing contracts on a case-by-case basis. They also relied on an agency for support. The agency highlighted contractors that would fall inside or outside of the reforms.

"[The agency] provided that assurance. The majority of people, the agency had them directly on their books. There was 1 or 2 where they had a PSC involved. We just said, 'This is what we're looking for', and the agency knew the score."

Impact on rates

There was no change in the rates paid to contractors. Contractors did not request higher rates because of an anticipated change in their income. It was felt that any change in contractor rates would be the consequence of a change in demand or supply.

Impact on workforce

There was only a minimal change in the workforce as a consequence of the reforms. One individual left because they were assessed to be inside the rules and they felt they would have a lower income as a consequence. Aside from this individual there was an increase in the number of contractors used by the college. This was driven by the needs of the college at the time and was unrelated to the reforms to off-payroll working. Looking ahead, they aimed to reduce their use of contractors

"We're looking to see less reliance on agency staff and off-payroll working and swing back towards the Payroll. The overall staff numbers across the organisation are set to reduce."

Disputes

8.31 The research also explored the extent to which off-payroll working reforms led to disputes with contractors or agencies, as it was expected that some off-payroll contractors may perceive the reforms to impact their take home pay and therefore show some resistance to the changes. The majority of public bodies had not had disputes with contractors or agencies about the outcome of contractor assessments (central bodies: 51%, sites: 68%).

8.32 46% of central bodies and 31% of sites reported having disputes with contractors or agencies about assessments. Amongst those that had disputes, most of these concerned contractors being assessed to fall within the off-payroll working rules (central bodies: 62%, sites: 67%). A smaller proportion of public bodies reported having disputes with contractors because they fell outside of the rules (central bodies: 23%, sites: 16%) or reported a mix of both (central bodies: 15%, sites: 17%).

8.33 During qualitative interviews, many public bodies said that they had disputes with contractors and agencies because they disagreed with the outcome of the public body's assessment. In some cases, contractors had assessed themselves using CEST and had different results. In other instances, disputes were said to have been caused by a lack of understanding of the reforms amongst contractors and agencies.

"Some of them have accountants stating to us they are outside the rules but the information and results we're getting are stating otherwise, so there's a conflict there."

Site, Education, 1000 to 4999 employees

"[Agencies] are not aware, or not as well equipped with knowing how IR35 is affecting them ... I have sent them links to the government website and they just don't get it ... they think you are just a bit of a jobsworth and trying to make things difficult for the sake of it."

Site, Public Administration & Defence, 10 to 49 employees

8.34 Some organisations mentioned that disputes with contractors and agencies had been time consuming, and therefore costly. Such an experience is detailed in the case study on page 50. However, it was generally felt that the bulk of disputes had been dealt with as all parties involved were more familiar with the reforms and public bodies had processes in place to manage disputes.

"We don't anticipate further disputes as it is now clearly known what the deal is."

Site, Public Administration and Defence, 1,000 to 4999 employees

"A lot of extra work with queries and conversations on this. 40% extra on my work. People are very sensitive about their money and I have had lots of unpleasant conversations."

Central body, Education, 5000 to 9999 employees

8.35 When faced with disputes over the status of contracts, public bodies would typically check assessments and seek additional information. Once confident with the outcome of the assessment, public bodies did not usually agree to the demands of contractors. If contractors were assessed to fall within the off-payroll working rules then they were expected to take the terms offered to them. If they declined, then there was usually no further negotiation and the contractor stopped engaging with the public body.

“Sometimes people are adamant they are self-employed and are not prepared to listen to what you are telling them. Ultimately, what we do is ask them to do the employment status test and submit their results and then I’m spending time reviewing them against my results and, if we need, seeking additional information and writing to the individuals to tell them whether we’ve changed our view.”

Central body, Public Administration & Defence, 5000 to 9999 employees

“Where we couldn’t reach an agreement and they can’t agree to the terms, they leave. About six people have left.”

Site, Public Administration & Defence, 500 to 999 employees

“We have come up with one view and the individual and their locum agency came up with a differing view where we said we felt they were within IR35 ... some of those weren’t resolved and the locums we lost to elsewhere. Other locums accepted it.”

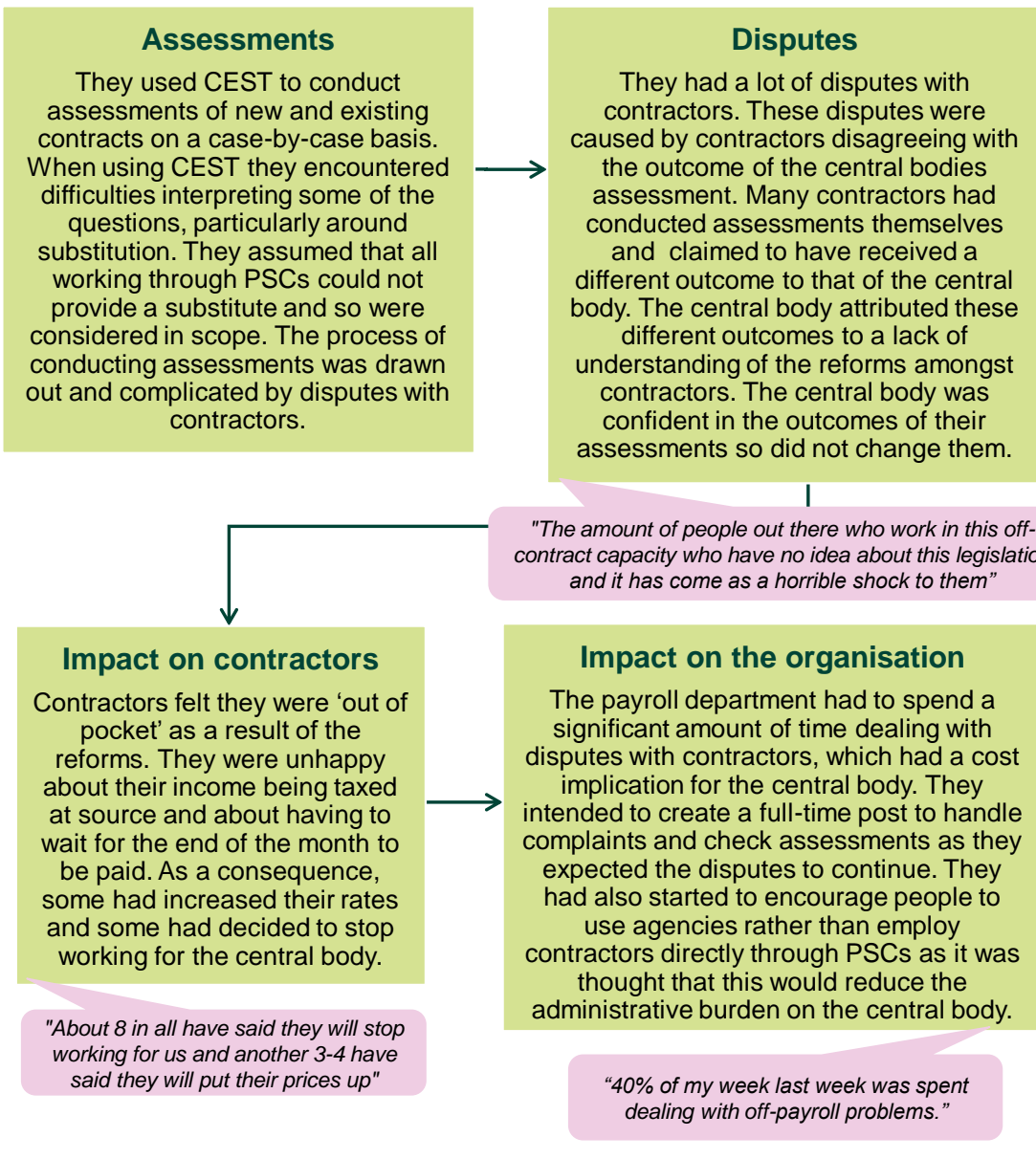
Central body, Health & Social Work, 10,000+ employees

Central body, Education

Negative impact due to disputes

An organisation that provided pupil support services to schools. The organisation depended on off-payroll contractors to provide specialist teaching.

	Change
Employees	Decrease
Off-payroll contractors	Don't know
PSCs	Don't know
Agencies	Don't know



Staff workloads

8.36 Six in ten central bodies (60%) and sites (59%) reported that their staff had spent more time on the administration of off-payroll contractors since the reforms.

8.37 Many public bodies experienced an increase in the workload of finance and HR staff because time had to be spent understanding the reforms, disseminating information to internal members of staff and implementing systems to manage the changes.

“We didn’t bring any additional resource in to actually manage the implementation so it fell onto existing staff and clearly myself to understand what the new rules were and what it meant for us.”

Site, Education, 1000 to 4999 employees

“I have spent quite a lot of time on research, writing policy reports for management, making people aware of the changes across the authority and communicating to managers.”

Site, Public Administration & Defence, 500 to 999 employees

8.38 Conducting assessments of existing contractors in the run up to the reforms was another task that increased the workload of finance and HR staff.

“It’s not something I’ve accounted for time-wise ... About 5 hours a month. The set-up was the longer, more painful thing, assessing everyone to start with and making the off-payroll Payroll [entries].”

Site, Education, 500 to 999 employees

“Each of the consultants that were coming through the system, across those of us that are dealing with it, it has got to be an hour a person by the time you have sat down, done the assessment, had the conversation with the management about the spec, the contract and the rest of it and setting them up on payroll.”

Site, Public Administration & Defence, 10 to 49 employees

8.39 Some organisations said that there had been an increase in the workload of finance and HR staff because time had to be spent communicating with contractors/agencies, colleagues and government departments. This was especially time consuming when there were disputes over the status of a contract.

8.40 Many public bodies that said the workload of finance and HR staff had increased due to the reforms felt that it had improved over time. Now that the necessary systems and processes had been set up and had time to bed in, and existing off-payroll contractors had been assessed, the time needed to conduct tasks related to the administration of the reforms to off-payroll working was considerably lower.

8.41 While the workload of those administering the reforms increased, it was uncommon for the reforms to impact the workloads of other staff. Only 18% of central bodies and sites reported that more work had been allocated to existing permanent members of staff rather than contractors since the reforms to off-payroll working came into effect.

8.42 In qualitative interviews, it was frequently commented that the roles that off-payroll workers filled could not be taken up by permanent members of staff because they did not possess the necessary skills or knowledge. However, a few public bodies had seen work allocated to permanent members of staff, due to challenges in filling vacancies since introduction of the reforms (e.g. because of shortages of supply or unaffordable rate demands).

“It’s not really possible [to allocate more work to existing staff]. A lot of the off-payroll work we’re processing is done by people who wouldn’t work for the organisation. We don’t have face painters or barristers.”

Central body, Public Administration & Defence, 1000 to 4999 employees

“There are fewer doctors and we’re asking them to do more as a consequence of a decision not to appoint an expensive locum.”

Central body, Health & Social Work, 10,000+ employees

Set up costs and administrative costs

8.43 Public bodies provided a breakdown of the costs of setting up systems and processes required to be compliant with the reforms to off-payroll working. 50% of central bodies and 39% of sites had faced set-up costs to prepare for the off-payroll working reforms.

8.44 Central bodies spent an average of £7,550 setting up the systems and processes required to be compliant, while sites spent £3,250. By comparison the median average cost was relatively low for central bodies (£250) and £0 for sites.²⁹

8.45 Table 8.1 presents a breakdown of the amount of money spent on specific types of systems and processes to prepare for the reforms.³⁰

²⁹ Total figures have been calculated only using data where a figure was provided for every prompted cost type.

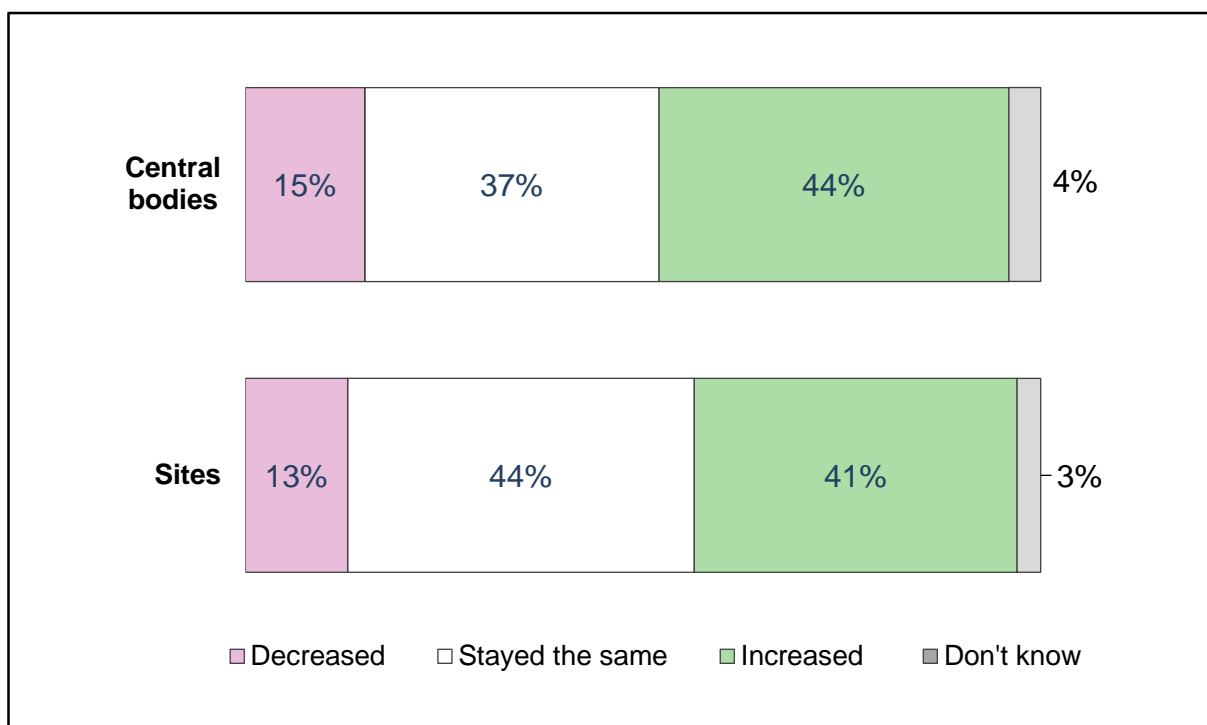
³⁰ These statements were presented to public bodies as a pre-coded list.

Table 8.1 Average costs incurred in setting up the systems and processes required to be compliant with reforms to off-payroll working

		Central bodies	Sites
Implementing or integrating IT systems	<i>n</i>	103	79
	Mean	£1,850	£350
	Median	£0	£0
Implementing or integrating non IT-based payroll or invoicing systems	<i>n</i>	102	81
	Mean	£1,550	£650
	Median	£0	£0
Recruitment costs for additional staff	<i>n</i>	106	81
	Mean	£600	£150
	Median	£0	£0
Initial staff training costs	<i>n</i>	104	83
	Mean	£1,650	£650
	Median	£0	£0
Purchasing guidance materials	<i>n</i>	104	83
	Mean	£50	£50
	Median	£0	£0

- 8.46 In addition to set up costs, public bodies estimated the total costs incurred in relation to the administration of off-payroll contractors between January to March 2017 (Q4 2016/17) and April 2017 to June 2017 (Q1 2017/18). These costs included refresher training on off-payroll working reforms, and time spent making assessments and ongoing payroll processes for off-payroll contractors.
- 8.47 Overall, 58% of central bodies and 57% of sites incurred some costs in relation to the administration of off-payroll contractors in Q1 2017/18, compared to 41% of central bodies and 42% of sites in Q4 2016/17.
- 8.48 As presented in Figure 8.6, around half of central bodies (52%) and sites (56%) experienced either no change or a decrease in relation to the ongoing administration costs of off-payroll contractors between Q4 2016/17 and Q1 2017/18, while four in ten central bodies (44%) and sites (41%) reported an increase.

Figure 8.6 Change the costs related to the administration of off-payroll contractors



Bases: All central bodies (117); all public sector sites that answered datasheet questions (91); Central body site coverage: Total (4,095)

8.49 Table 8.2 shows that central bodies spent an average of £50 more on the administration of off-payroll contractors in Q1 2017/18 than in Q4 2016/17, while sites spent £1,600 more. The median change in costs between Q1 2017/18 than in Q4 2016/17 was £250 for both central bodies and sites.

Table 8.2 Total ongoing costs in relation to the administration of off-payroll contractors between in Q4 2016/17 and Q1 2017/18

		Central bodies				Sites			
		Q4 2016/17	Q1 2017/18	Average absolute change	Average percentage change	Q4 2016/17	Q1 2017/18	Average absolute change	Average percentage change
All	<i>n</i>	55 (1,466 sites)	55 (1,466 sites)	55 (1,466 sites)	37 (1,114 sites)	43	43	43	29
	Mean	£6,050	£6,100	+\$50	+38%	£2,050	£3,600	+\$1,600	+120%
	Median	£500	£1,500	+\$250	0%	£150	£1,000	+\$250	+11%

The method used to calculate the average absolute change and average percentage change in the number of off-payroll contractors engaged directly is the same as was used to calculate the change in the number of employees. This is explained in the methodological note on page 21.

8.50 In qualitative interviews, some public bodies said that they expected the administrative costs associated with the reforms to off-payroll working to decrease over time. These public bodies had incurred costs in assessing existing off-payroll contractors and dealing with disputes.

However, going forward the volume of work required from staff was anticipated to be much lower.

“

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Chart House
16 Chart Street
London N1 6DD
Tel: +44(0)20 7250 3035
Website: iffresearch.com

Contact details: Rob Warren and Alistair Kuechel
Rob.Warren@IFFResearch.com
Alistair.Kuechel@IFFResearch.com