



HM Revenue  
& Customs



HM Treasury

# Off-payroll working in the private sector

## **Summary of Responses**

29 October 2018

# Contents

1	Introduction	4
2	Responses	6
3	Next steps	19
4	List of stakeholders consulted	20

**On request this document can be produced in Welsh and alternative formats including large print, audio and Braille formats**

# Foreword

I am pleased to set out the government's response to the consultation on tackling non-compliance with the off-payroll working rules in the private sector.

I am very grateful to the large number of people and organisations who took the time to respond to this consultation and engaged with HM Treasury and HM Revenue and Customs at consultation events held up and down the country over the summer. This has been crucial in helping the government understand people's views on the off-payroll working rules.

Responses to the consultation have underlined the value that businesses put on being able to engage workers in a way that suits both the business and the worker. I fully recognise that the UK's flexible labour market supports job creation and allows more people to participate in work. The government values this flexibility and fully intends to protect it. However, it is fair that people should pay the right tax for their circumstances, so people who work like employees should be taxed as such, even when they work through their own company. The off-payroll working rules do not affect people who are genuinely self-employed.

This consultation built on what we learned from the introduction of the reform to the public sector and I hope that you will see from our response set out in the document below that we are taking action to address the legitimate concerns expressed by businesses.

The government has carefully considered all of the responses received and we are now in a position to propose extending rules similar to the April 2017 public sector off-payroll working reform to the private sector. Having listened to concerns, the changes for the private sector will be introduced from April 2020 for medium-sized and large businesses only.

The government will provide extensive guidance and support to customers including enhancements to the Check Employment Status for Tax service, to support the needs of the private sector and help them prepare to implement the changes, building on the experiences of public sector reform.

Mel Stride MP  
Financial Secretary to the Treasury and Paymaster General

# 1. Introduction

## Background

- 1.1. The off-payroll working rules – commonly known as IR35 – are intended to ensure that individuals who work like employees pay broadly the same employment taxes as other employees, regardless of the structure they work through.
- 1.2. Evidence suggests that the current rules are not working effectively with only 10% of personal service companies (PSCs) that should be applying the rules doing so. Furthermore, the cost of non-compliance in the private sector is increasing and is projected to reach £1.3bn in 2023-24. This is not a fair outcome and the government is clear that people who work in a similar way to employees should pay broadly the same amounts of employment taxes. It is fair to those who are already complying with the rules.
- 1.3. In April 2017, the government reformed the off payroll working rules to address non-compliance in the public sector. The reform moved responsibility for determining whether the off-payroll rules apply from the PSC to the public sector body engaging the worker through a PSC. This change did not introduce a new liability and simply ensures that the existing rules work as intended. The evidence suggests that the public sector reform is working and compliance is improving.
- 1.4. The government remains committed to supporting business and ensuring the UK remains an attractive place to start and grow a business. Access to a flexible labour market, which can support growth and rapidly meet increasing demand, is a key part of that commitment. The off-payroll working rules do not affect the genuinely self-employed and do not stop anyone working through a company. However, it is right that individuals working as employees should be taxed in a similar way to employees, regardless of whether or not they work through a company.

## The consultation

- 1.5. At Autumn Budget 2017, the government announced that it would consult on how to tackle non-compliance with the off-payroll working rules in the private sector. This consultation was published on 18 May 2018 and closed on 10 August 2018. A copy of the consultation document can be found at <https://www.gov.uk/government/consultations/off-payroll-working-in-the-private-sector>
- 1.6. The consultation received 275 responses. Responses were received from a range of stakeholders including individuals working through PSCs, businesses, representative bodies, tax professional bodies, law firms and charities. HMRC and HM Treasury also received a number of items of correspondence expressing views about the off-payroll rules. Although these letters did not

explicitly state that they were intended as responses to the consultation, they have nevertheless been considered alongside the formal responses received. HMRC and HM Treasury officials also met with a number of stakeholder groups during the consultation process.

- 1.7. The government is grateful to all of the individuals and groups who took the time to engage with the consultation process. A list of stakeholders consulted is provided at annexe A.
- 1.8. While several respondents provided answers to all of the questions posed in the consultation document, a substantial number provided only general comments focusing on broad themes. To ensure that the views of all respondents are reflected, the summary of responses is therefore structured in a similar way. The summary of responses is set out in the following chapter.

## 2. Responses

### The compliance challenge

2.1 This section of the consultation sought views on how the off-payroll compliance process could be improved more generally irrespective of any other reforms introduced following the consultation.

Q1. What could be done to improve the compliance enquiry process to reduce non-compliance, whilst safeguarding the rights of customers?

2.2 Respondents suggested that HMRC could make better use of existing compliance and information gathering powers to improve the compliance process. A number of respondents felt that HMRC could make better use of information it already gathers from businesses to better identify compliance risks. Several also suggested that the Making Tax Digital programme could present an opportunity for improving compliance.

2.3 It was suggested that targeting off-payroll workers in particular sectors thought to represent higher risk of non-compliance would be beneficial.

### Government response

HMRC has already created a specialist Employment Status and Intermediaries Team to better focus its resources and expertise to address non-compliance with the off-payroll working rules. However, enquiry and enforcement activity focused on individual PSCs is both costly and drawn out. The use of PSCs has increased in recent years, and the scale of non-compliance with the off-payroll working rules in the private sector means that compliance activity alone cannot solve the problem.

With respect to suggestions on better use of data and Making Tax Digital, data which HMRC currently collects cannot be used to tackle many of the challenges in enquiring into individual PSCs where HMRC still needs to establish the facts for each case, which can only be done through an enquiry and the co-operation of the engager of the PSC.

The government believes that it needs to consider other options to improve compliance with the off-payroll working rules.

## Extending the public sector rules to the private sector

2.4 This section of the consultation sought views on extending the reforms already operating in the public sector to organisations engaging off-payroll workers in the private sector.

Q2. Could the public sector reform better fit the needs of businesses? How?

Q3. What if any, changes could help make the administration as simple as possible?

Q4. If the private sector rules were changed, do you have any evidence that there are parts of the private sector where the administration of any regime may need to vary, even though the basic principles including for determining status, remain the same?

Q5. Is there any evidence that parts of the private sector will not have, or be able to acquire the administrative capacity, knowledge and resources to enable them to implement any changes in relation to off-payroll workers?

Q6. How could these difficulties be mitigated?

Q7. What aspects of policy design might be adjusted if similar changes were brought in for the private sector? Should we bring in a specific penalty if agencies fail to comply?

Q8. What action should be taken in the case where the fee-payer hasn't acted upon the client's conclusion that the worker would have been regarded as an employee for income tax and NICs purposes if engaged directly? Should an obligation be placed upon the fee-payer to adopt the client's conclusion and should there be sanctions for failing to do so?

Q9. What action should be taken if the worker or PSC is knowingly receiving income that has not had the right amount of tax and NICs deducted?

Q10. What systems and process changes would businesses need to make?

Q11. Would there be any process and administrative cost implications for businesses? Can you provide evidence of the scale and nature of these?

Q12. Can you provide any evidence that these costs would vary depending on how much notice businesses were provided for the introduction of any reform?

Q13. Is there anything else HMRC could do to ease the implementation for businesses, and can you provide evidence of how this would ease implementation or administration for businesses?

2.5 Respondents recognised that there is a problem with non-compliance with the off-payroll rules, which deprives the Exchequer of revenue which should be used to fund vital public services. Many respondents, including several large representative bodies, agreed that this non-compliance should be tackled.

2.6 While there was general agreement that the government should take steps to address non-compliance, there were differing views as to how this should be achieved. Several respondents did not think that the responsibility for addressing non-compliance should be put on businesses.

2.7 A small number felt that rather than putting the responsibility onto businesses, HMRC should focus more resources on making better use of the data it gathers to identify workers who should be taxed as employed rather than self-employed.

**Quote**

*“Businesses understand and fully support the rationale behind a change to the intermediaries’ legislation. It is right that the government is looking to address non-compliance, which leads to a loss in revenue which funds vital public services. Businesses also understand the government’s desire to re-level the playing field between the public and private sector. However, it is vital that both certainty and simplicity for businesses remains.”*

- Business representative body

2.8 The vast majority of respondents were concerned about the increased burden that the changes would impose on businesses. They felt changes were likely to be more onerous for smaller or new businesses than larger or established businesses. These respondents suggested businesses would need to change a number of their systems in order to apply the new rules, including onboarding, invoicing, payment and payroll processes, all of which could be costly. A sufficiently long lead-in time would allow businesses to build and test their processes as well as review existing contracts.

2.9 Several respondents also called for small and micro businesses to be exempted from any changes.

**Quote**

*“[We] believe that government should exempt smaller businesses from IR35 reforms as they will struggle more than larger businesses to adjust to the changes. Small firms typically do not have HR, legal and finance advisors in-house. If the reforms solely affect larger businesses in the first instance, it will allow an opportunity for their impacts to be understood and next steps to be planned carefully.”*

- Business representative body

2.10 Several respondents identified a need for support and training because of the concern that many businesses currently know little about the off-payroll rules and are ill equipped to make decisions concerning employment status. Clear guidance that can be relied upon was seen as essential.

2.11 A number of respondents commented that any changes should not create burdens that would make the process of hiring staff too onerous or complicated as this could have an adverse effect on recruitment.



### Quote

*“If the public sector changes were to be rolled out to the private sector, there would be a significant increase in the administrative burden of tax for private sector engagers. Further, a lengthy implementation period would be required and considerable support and guidance would have to be provided.”*

- Accountancy representative body

2.12 A number of respondents suggested that HMRC’s existing guidance should be improved. Several expressed concerns around the Check Employment Status for Tax (CEST) tool. A number of respondents expressed concern about the compatibility of CEST determinations with recent tribunal decisions, suggesting that the tool would require refinement and improvement if it was to be used for the private sector.

### Quote

*“...there is a real concern that CEST (and related guidance in HMRC’s Employment Status Manual) does not necessarily give due weight to indicia suggesting that IR35 is not in point. In our view this is borne out by the cases that have been argued in the courts over the years on when IR35 applies/when it does not...”*

- Tax Professional body

2.13 Respondents were concerned that businesses would take a risk averse approach and make blanket decisions rather than reviewing cases individually. Some suggested that blanket decisions are already being made by the public sector and that there is no penalty or disincentive to discourage them from doing so. Some respondents proposed that businesses should be penalised if they wrongly classify someone as being an employee. A large number of respondents suggested the introduction of a dispute resolution process and an appeals mechanism to allow workers to challenge incorrect determinations. It was also suggested that there should be a safeguard to confirm that the engager has met their statutory requirements.

2.14 There were mixed views on what action should be taken where the fee-payer hasn’t acted upon the client’s decision or where the worker or PSC knowingly receive income that has not had the right amount of tax and NICs deducted. Suggestions included the introduction of fines, a penalty regime and joint liability between the fee-payer and the worker/PSC.

2.15 Some stakeholders called for further evaluation beyond the independent research which was published alongside the consultation. To further supplement the research, the government engaged with public bodies during the consultation process to understand the impact of the reform and any lessons that can be learned from the public sector experience.

2.16 Public bodies reported experiencing challenges in implementation, due to the short time available for familiarisation, setting up appropriate systems and reviewing existing contracts. Some suggested that lack of awareness among some contractors of the rules or the reform exacerbated disputes about determinations. In terms of the impact on the use of flexible labour, some public bodies suggested

that recruitment was more challenging where contractors provided specialist skills and had the option to move to private sector contracts.

2.17 The government also received a number of submissions and correspondence from individuals about the impact of the public sector reforms on the labour market and on workers themselves. A number of respondents raised concerns that the public sector reform has led to new avoidance schemes being marketed to individuals, and increased reliance on alternative models for engaging labour such as umbrella companies.

### Government response

The government considers extending reform to the private sector to be the most effective way of tackling the tax gap created by non-compliance with the off-payroll working rules in the private sector. Extending reform to the private sector will enable HMRC to more effectively enforce the rules and ensure the right tax is paid at the right time.

Concerns were raised about the implementation of reform in the public sector. The government has learned from the public sector implementation and continues to monitor the impact of the public sector reform. Based on evidence and engagement with stakeholders, the government considers that overall the reform is working well in the public sector. There are concerns that the reform has introduced new administrative burdens for public bodies and has resulted in some organisations changing their approach to recruitment. Tax receipts and independent research suggest that the reform has increased compliance and has not had a widespread impact on public bodies engaging flexible workers where it is in the best interest of both parties to work in this way.

The government is committed to learning from the public sector reform in taking forward similar reforms in the private sector. Based on the feedback received, the government will ensure that organisations have sufficient time to prepare for the changes by implementing the reform in April 2020, rather than April 2019. This is in recognition of the need for organisations to set up systems to comply with the reform and review existing contracts. HMRC's approach to implementation and education will also reflect the views of stakeholders who called for education for the sector, including provision of guidance which addresses the needs of the diverse private sector market. Further, the government intends to refine the design of the reform to help businesses to make the correct determination and ensure that they are not incentivised to make the wrong determination. The government will publish a further detailed consultation on the full proposals next year to ensure stakeholder needs inform the legislation.

The government acknowledges concerns raised about the ability of private sector business to implement the changes proposed under the lead option of extension of the public sector reform into the private sector. The government agrees that it is important to consider the administrative burden on businesses and their capacity to implement change. This is why, having listened to feedback, the government has decided that for services provided to small businesses, the responsibility for determining employment status and paying the appropriate tax and NICs will remain with PSCs. Small businesses

will not need to consider the employment status or deduct employment taxes from the fees of people they engage in this way.

This will address concerns about small businesses' capacity to implement the proposed reform, while ensuring that businesses which are best placed to determine whether the rules apply take responsibility for doing so. The government intends to use similar criteria to define small businesses as is found in the Companies Act 2006.

However, it remains the case that individuals working for small businesses should pay the tax appropriate to the way they work. Therefore, the responsibility of determining employment status and paying the appropriate tax and national insurance contributions will remain with personal service companies, for the services they provide to small businesses. As a result, over 95% of businesses will not need to apply the reform.

The government also recognises that medium-size and large businesses will need time to make changes within their organisations in order to implement these changes. That is why the government announced that the reforms to the rules will not take effect until 6 April 2020. This will allow businesses time to review existing contracts and make the changes needed to their systems and processes.

The government is aware of concerns that businesses may use blanket decisions for the employment status of groups of workers in similar roles without recourse, should those decisions be incorrect. The government intends to further explore options for the consequences of businesses failing to use reasonable care in making their decisions.

HMRC will publish detailed guidance and provide support and education to help customers understand and implement the changes. The guidance will aim to support businesses to make employment status decisions with confidence, which people working through personal service companies will be able to see and understand. HMRC will also set out what people should do when they do not agree with the business' decision on their employment status.

HMRC will work closely with representative bodies and agents to help them support and educate customers and clients to implement changes.

To support the public sector off-payroll working reform in April 2017, HMRC developed the CEST service, as a simple digital tool to help public authorities determine employment status. CEST was developed in consultation with stakeholders, including public authorities, tax specialists and contractors. HMRC is looking at where the CEST tool, along with wider guidance, might be improved, both as part of normal good practice and to ensure it reflects the needs of the larger and more diverse private sector. HMRC will work in collaboration with stakeholders to better understand the concerns about CEST raised in response to this consultation; these included saying more about mutuality of obligation, how to treat multiple contracts and clarifying the language used in places. Using this better understanding, HMRC will continue to work with these stakeholders, including tax experts and businesses to develop CEST and associated guidance.

## Encouraging or requiring businesses to secure their labour supply chains

2.18 This section of the consultation sought views on alternative approaches to tackling non-compliance, rather than changing responsibility for determining whether an engagement falls within the scope of the off-payroll working rules. This section proposed requiring businesses to ensure that off-payroll workers provided through their labour supply chains complied with the intermediaries legislation.

Q14. Overall, what are your views on this option? Would it be a proportionate response to the issue?

Q15. If the government were to pursue this option, what checks should the client be required to perform?

Q16. How should different views on employment status be dealt with? For example in the public sector, disputes should be resolved between the client and the worker, which ultimately allows either party to walk away if they do not agree.

Q17. How would HMRC best enforce compliance with securing labour supply chains, keeping in mind the need to mitigate or reduce dealing with each PSC individually?

Q18. Should the requirement be underpinned by some form of penalty?

Q19. Should the requirement be underpinned by denying the client a deduction for the cost of labour from an unchecked supply chain?

Q20. Should the requirement be underpinned by the risk that the client could be named as having used a non-compliant supply chain?

Q21. Would such penalties effectively change behaviour within labour supply chains, helping to ensure the correct income tax and NICs are paid?

Q22. What would the impact (including the effect on administrative burdens) of this option be on affected businesses, agencies, and individuals?

Q23. How effective would this option be in addressing non-compliance with the off-payroll working rules in the private sector?

Q24. Is there any way to improve this option which would make it more effective?

2.19 The majority of respondents who chose to answer these questions were not in favour of this proposal. While a number of respondents - particularly larger businesses - expressed support for carrying out due diligence on supply chains more generally, the vast majority felt that the proposal would impose a disproportionate administrative burden on businesses.

### Quote

*“The option of assuring compliance of the supply chain and confirming/verifying worker’s status would create a significant administrative burden for end users.”*

- Large Financial Services organisation

2.20 A significant number of respondents were also concerned that it would be difficult or impossible for firms to comply with this proposal, particularly where labour supply chains are particularly complex or involve multiple suppliers. It was suggested by one respondent that firms could mitigate the costs associated with this proposal by consolidating their suppliers and systems but that such activity would require a significant lead in time. A number of respondents also felt that the proposal could lead to disputes between the various parties involved, which would ultimately be damaging for business.

2.21 Several respondents expressed concern that this proposal would impose a further misalignment between the public and private sectors, introducing complexity for off-payroll workers.

### Quote

*“Implementation of securing the supply chain would cause misalignment between the public and private sector off-payroll working measures. This would inevitably create difficulties and confusion between the two when engaging with contractors through a PSC.”*

- Business representative body

2.22 A small number of respondents expressed concern about the compatibility of this proposal with businesses’ obligations under the General Data Protection Regulation.

2.23 A minority of respondents commented that it was difficult to express an opinion because the current proposal lacked sufficient detail.

### Government response

The government acknowledges this option is less well-defined than the proposals to extend the public sector reform to the private sector.

The government supports better due diligence within labour supply chains but considers the administrative burden of carrying out such checks on what can be complex labour supply chains is disproportionate, especially for smaller businesses.

It is also recognised that this option may have data protection concerns, especially around the exchange of financial or personal information related to parties where there is no contractual relationship.

The government also considers that this option on its own will not tackle the growing tax gap created by non-compliance with the off-payroll working rules in the private sector.

The government does not intend to pursue this option further at this stage.

## Additional record keeping

2.24 This section of the consultation sought views on imposing additional record keeping requirements on clients engaging off-payroll workers. The purpose of this requirement would be to improve the efficiency of the HMRC enquiry process, reducing the time spent by all parties on such enquiries and providing greater certainty to the firms and individuals involved.

Q25. Overall, what are your views on this option? Would it be a proportionate response to the issue?

Q26. If the government were to pursue this option, what information should be required to be gathered?

Q27. How could the government ensure that others in the labour supply chain pass accurate and timely information to the client?

Q28. What penalties should fall on the client or others in the labour supply chain if they fail to comply with the requirement?

Q29. What would the impact (including the effect on administrative burdens) of this option be on affected businesses, agencies, and workers?

Q30. How effective would this option be in addressing non-compliance with the off-payroll working rules in the private sector?

Q31. Is there any way to improve this option which would make it more effective?

2.25 Responses to this proposal were mixed. The majority of respondents who chose to comment on the proposal were concerned that the introduction of additional record keeping requirements would necessarily impose an increased administrative burden on businesses. However, a smaller number of respondents felt that the additional administrative burden would not be disproportionate and in many cases would just formalise what many firms already do in practice.

### Quote

*“We think that the reality is that such records are for the most part already retained by business in relation to PSC cases [...] we do not think this would represent a disproportionate burden on business - for many this is what they already do at the moment..”*

- Tax Professional body

2.26 While a few respondents were attracted to the proposal and provided suggestions around what records should be collected, a far more substantial number - including several large businesses - were not convinced that the solution would significantly improve compliance with the existing off-payroll rules. There was also criticism from a very small number of respondents that the proposal would effectively require third party organisations to collect and retain data on behalf of HMRC.

### Quote

*“This would be a significant burden to businesses in the private sector and would not, in our view, lead to a reduction in non-compliance.”*

- Large Financial Services organisation

2.27 As with the proposal to require organisations to secure their labour supply chains, a small number of respondents expressed concerns about how any additional record keeping requirements would work alongside an organisation’s obligations under the General Data Protection Regulation.

### Quote

*“There must also be consideration of the General Data Protection Regulation and Data Protection Act 2018 and whether there would be a requirement to obtain consent to comply with the due diligence requirements”*

- Small Business Advisory firm

### Government response

The government has considered the points raised regarding this option. It recognises that increasing the record keeping requirement on all businesses would disproportionately increase administrative burdens, whilst not directly tackling non-compliance with the off-payroll working rules.

The government thinks the requirement to maintain additional record keeping for off-payroll working engagements in the private sector will not, on its own, tackle the growing tax gap created by non-compliance with the off-payroll working rules in the private sector.

The government recognises that this option could also create data protection concerns.

The government does not intend to pursue this option further, at this stage.

### Other options to consider

2.28 This section of the consultation solicited alternative options for tackling non-compliance with the off-payroll rules in the private sector.

Q32. Are there other options, within the scope of this consultation as set out in Chapter 2, that would be effective ways of tackling non-compliance in the private sector that the government should consider (for example, possibly drawing on lessons from other countries)?

Q33. Would these, or any of the other options outlined above, be more effective than extending the public sector reform? If so, how would they be more effective and on what grounds would they be preferable to extending the public sector reform?

2.29 A substantial number of respondents offered alternative proposals for tackling non-compliance with the off-payroll rules.

2.30 Many of these proposals, including deeming individuals to either be in or out of scope of the off-payroll rules by virtue of the length of the engagement, introducing a flat-rate withholding tax similar to the Construction Industry Scheme and the development of a new Freelancer Limited Company structure, were deemed to be out of scope of the consultation. The government explained its reasoning for de-scoping these options in chapter 6 of the consultation document. Consequently, whilst noting the comments of those proposing such reforms, these suggestions have not been considered further as part of this consultation exercise.

2.31 A number of respondents – including several who identified as being self-employed – suggested that one of the main motivations for working through a PSC is the tax advantages. They therefore proposed reforming the tax system to remove as far as possible the tax advantages gained by working through a PSC rather than a direct employee. Respondents suggested that such a reform, although necessitating a substantial review of the UK tax system, would ultimately render the off-payroll rules redundant. Similarly, a small number of respondents suggested introducing new taxes or charges for off-payroll workers to reduce the tax differential between employees and off-payroll workers.

#### Quote

*“Once money is paid into a limited company, it can only be taken out as pay or dividends, so HMRC should look at making sure that the level of PAYE tax, national insurance, corporation tax and dividend taxes are set so that the advantage of working via a limited company is not too disproportionate to working PAYE.”*

- Self-Employed individual

2.32 A large representative body for tax professionals suggested requiring organisations making payments to PSCs to submit regular information returns to HMRC, including copies of the CEST determination for the engagements concerned. It also suggested requiring workers employed through PSCs to submit similar information alongside their Self Assessment tax returns. This approach – combined with an enhanced penalty regime – would allow HMRC to more easily police the existing off-payroll rules.

#### Government response

The government welcomes the suggestion of other options to tackle non-compliance with the off-payroll working rules in the private sector.

Some of the suggestions proposed are the same as, or similar to options that have already been ruled out by the government. These options are out of scope for this consultation as they are either designed to change the tests that determine employment status and whether the off-payroll working rules apply, or to change the tax or NICs treatment of those who are found to be inside, or outside of the rules.

The government also notes proposals to reduce the tax differential between employed workers and those who provide their services through personal service companies, or are self-employed.



The government recognises that the tax system can create incentives for companies and individuals to work in a way that limits tax liability, and that the tax differential puts pressure on the boundaries in the tax system between different forms of labour.

The government is taking action to strengthen these boundaries. The government believes that increasing compliance with the off-payroll working rules is the right approach to ensure that individuals working like employees pay the right tax, without preventing individuals and businesses from using a structure that best suits their needs.

As set out in the government's response to the Taylor Review, the government has no plans to revisit the difference in rates of NICs paid in respect of employees and the self-employed. The government will continue to monitor changes in the labour market and their impact on tax receipts. Any future policy proposals will be guided by considerations of fairness, fiscal sustainability and promoting productivity and economic efficiency

The government is considering what enhancements should be made to the information customers provide to HMRC regarding payments to personal service companies.

## Other issues

2.33 This section of the consultation provided respondents with the opportunity to raise any issues not otherwise covered in the consultation document.

Q34. Are there any other issues which businesses or individuals who may be affected would like to raise?

2.34 A number of respondents raised other issues that they wanted the government to consider as part of the consultation. These included changes to simplify the employment status test and better education and support for contractors to get things right. It was also suggested by a number of respondents that the off-payroll working rules could be tweaked to put the burden of proof on to the worker to prove they are self-employed.

### Quote

*"The option is to reverse the [the existing] rules such that the default position is that [those rules apply] and taxes due under it are due unless the contractor can demonstrate otherwise."*

- Recruitment industry representative body

2.35 A number of respondents suggested the difference in tax and national insurance contributions from an employee and a non-compliant personal service company worker was largely due to unpaid employers' secondary national insurance contributions.

2.36 To mitigate that, respondents suggested the government could introduce an 'engager's levy' not linked to employment status, which the client would pay to HMRC when they take on people working through PSCs. It was also suggested, to protect low-paid workers that there could be a statutory limit on businesses engaging freelance workers if the day rate was below a set limit, above the level of the minimum wage.

2.37 Several respondents raised concerns about the timing of any reform for businesses to implement. There are a number of changes that are coming for businesses in the UK, and respondents were concerned about adding additional administrative burdens. These concerns included the UK's expected departure from the European Union in March 2019 and the introduction of Making Tax Digital for VAT.

**Quote**

*"This also comes at a time when organisations are making, or are anticipating having to make, changes to systems and processes for other reasons, such as implementing Making Tax Digital (MTD) for VAT purposes. In our view, Brexit is likely to be the single largest event in the last 20 years to impact the UK's talent pool and operating models, presenting significant challenges for many organisations, workforces and mobility."*

- Large multinational tax advisory firm

2.38 It was noted by a number of respondents that the government has recently consulted on employment status. Many suggested that any reform to the off-payroll working rules should be postponed until the government has decided on changes to the employment status rules more generally.

**Government response**

The government values the input from respondents who have taken the opportunity to raise other issues.

The government has separately consulted on employment status rules and will publish its response to that consultation in due course. As such, the government has not considered options that would change the fundamental rules on employment status as part of this consultation. The government is separately considering its response to the consultation on employment status and what long-term changes it might make to reflect changing work patterns and environments. However, it is right for the government to tackle the immediate risk to revenue presented by non-compliance with the off-payroll working rules.

The government is aware of the upcoming changes that businesses will need to engage with and implement over the next few months. That is why the decision has been taken to bring in these changes in April 2020, and to apply the new rules to medium-sized and large businesses only, as these businesses should have the resources to implement the new rules.

## 3. Next steps

3.1 The government announced at Budget 2018 that it intends to extend the reforms to the off-payroll rules. A further consultation on the detailed operation of the new rules will be published in the coming months. This consultation will inform the draft Finance Bill legislation, which is expected to be published in Summer 2019. The new rules will be given effect from 6 April 2020.

3.2 HMRC will continue to work with stakeholders to improve the CEST digital service and the detailed employment status guidance. Enhancements to CEST will be introduced in advance of the new rules coming into force.

## Annexe A: List of stakeholders consulted

This list only includes organisations. Responses from individuals or on behalf of organisations for which no name was provided are not listed.

365 Consulting Services Ltd	Chartered Institute of Taxation
Abbey Tax	Citi
Accountax	Client Server
Adecco Group	Clydesdale Bank
Alexander Mann Solutions	Confederation of British Industry
AMS Accountancy	Contractor Co-operative
Arras People	ContractorCalculator
Aspire Business Partnership	Crunch Accounting
Association of Accounting Technicians	CWC Solutions
Association of Chartered Certified Accountants	DAC Beachcroft LLP
Association of Independent Professionals and the Self Employed	Danbro Group
Association of Labour Providers	Datapro Consulting Ltd
Association of Professional Staffing Companies	David Kirk & Co
Association of Recruitment Consultancies	Deloitte
Association of Taxation Technicians	Dryden Consultants Ltd
Atkins	DWF LLP
Aviva	ECR Consulting Ltd
BAE Systems	Electrical Contractors' Association
Balfour Beatty	Employment Taxes Industry Forum
Bamooli Consulting	Energy Resourcing Group
Bauer & Cottrell Ltd	E-Resourcing Ltd
BDO LLP	Ernst & Young
British Chemical Engineering Contractors Association	FastTrack Recruitment Software Ltd
Brookson Group	Federation of International Employers
BT	Federation of Small Businesses
Business Application Software Developers' Association	Freelancer and Contractor Services Association
Buzzacott Chartered Accountants	Galago Group
Centrica	Grant Thornton
ChangeWork HR Services	Greybridge Search & Selection Ltd
Charity Tax Group	Hayes Ltd
Chartered Accountants Ireland	Hays PLC
Chartered Institute of Payroll Professionals	HR4U UK
Chartered Institute of Personnel and Development	Imex Consultancy Ltd
Chartered Institute of Public Relations	Impellam Group PLC

Independent Health Professionals Association	Practicus
Innov8or Solutions Ltd	PricewaterhouseCoopers
Institute of Chartered Accountants in England & Wales	PRISM
Institute of Chartered Accountants in Scotland	Prisma Recruitment Ltd
Institute of Financial Accountants	Pro Unlimited Global Ltd
Institute of Interim Management	Producers Alliance for Cinema and Television Ltd
Intouch Accounting	Prospect
IPPM Ltd	PSR Solutions
ITV Plc	Qdos Contractor
Johnston Carmichael LLP	Randstad UK
JOLO Consulting	RCalc
JSA	Recruitment & Employment Confederation
JT Exec Consulting	Road Haulage Association
KCA Deutag Drilling Ltd	Robert Walters and Resource Solutions
Kingston Smith LLP	RSM
KPMG	RSPCA
Law Society of Scotland	Saffery Champness LLP
Legal & General	Seagrave French
Lloyds Banking Group	Serocor Solutions Ltd
Low Incomes Tax Reform Group	Shan Risk Consulting Ltd
Matravers	Simmons & Simmons LLP
MBO Partners	Sky PLC
MHA	Sopra Steria Recruitment
Morson International	Squirrel Squared Ltd
Mouse's Intelligent Computer Engineering Ltd	SThree Partnership
MPI Ltd	TaxAssist Group
Musicians' Union	Telefonica
MyPay Ltd	Tesco
National Farmers' Union	The Philosophy Man Ltd
National Grid	Tilney Group Ltd
Nationwide Building Society	Trades Union Congress
NES Global Talent	Trubbshaw Associates Ltd
Odgers Interim	UK Finance
Oil & Gas UK	Unite the Union
Orange Genie Group	URENCO Group
Osborne Clarke LLP	Whitefield Tax
Paul Traub Associates	WTT Consulting
Penna	Zurich
PHI-Tech Architecture	
Pinefire Ltd	
Pinsent Masons LLP	
PKF Littlejohn LLP	

