



Response of the Road Haulage Association to HM Revenue and Customs and HM Treasury

Off-payroll working in the private sector Consultation Document

10 Aug 2018

Summary

1. HMRC and HM Treasury are consulting to evaluate the off-payroll working rules for engagements in the public sector and options for changes to the off-payroll working rules for engagements in the private sector.
2. HMRC and HM Treasury are asking for comments on how best to address the compliance challenges with the off-payroll working rules in the private sector. As well as responses on all options discussed in the document they are particularly interested to hear how the off-payroll working rules as they apply in the public sector could be adapted to fit the needs of the private sector, if appropriate.

Background about the RHA

3. The RHA is the leading trade association representing road haulage and distribution companies, which operate HGVs as profit centres. Our 7,000 members, operating near to 250,000 HGVs, range from single-truck firms to those with thousands of vehicles. These companies provide essential services on which the people and businesses of the UK depend.
4. We proactively encourage a spirit of entrepreneurship, compliance, profitability, safety and social responsibility. We do so through a range of advice, representation and services, including training.
5. We would like to thank HMRC and HM Treasury for the call for consultation and the opportunity to comment on the issues raised.

In Answer to the Consultation

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

The burden for compliance should not be laid at the foot of the end user, in most cases in the Road Haulage sector the need for temporary employees is a last-minute decision due to unforeseen issues. If every time temporary workers are required, a compliance check has to be carried out then the added administration burden will be too much to comply with.



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Checks will not be carried out and any noncompliance would then be down to the employer to pay. This may simplify for HMRC but does not so for the private sector

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

For Public Sector employers to comply they can use the excuse that it is a new taxation regime. For the private sector any added administration will cost money, the Road Haulage sector works on very limited margins in some cases as low as 2%, adding to the costs of a private sector business will see increased costs with no apparent outcome.

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

Any added administration to a private sector employer will be a negative cost. Whenever HMRC put out new or update IR35 legislation then new ways around it appear very quickly, placing the burden on employers to carry out the administration on what is a complicated issue will just add a further layer of bureaucracy which could be very costly if not completed correctly.

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?

In the Road Haulage Sector many businesses use temporary labour at short notice or when no other option is available. In most cases this means calling a dedicated 24 hour line and requesting temp staff to cover a one off assignment. That is the end of the administration for that businesses whose primary business is road haulage or warehousing

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?

No private sector employers, employ staff to check employment status, if anything it is normally a short and sharp check on passport at the present time, in fact anything in excess of this impacts on the employees rights especially for EU nationals. Any increase in workload for most HR departments (where they have HR depts) will mean an increase in costs for that business.

Q6. How could these difficulties be mitigated?

Assistance to the business, maybe a Tax break as they in fact doing the work of HMRC

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?

n/a

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 there be sanctions for failing to do so?

In the Road Haulage Sector there is very limited scope for an HGV Driver to be self-employed, therefore any Agency or fee payer should ask to check whether the worker has his or her own Vehicle and Operators License.

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?

They should pay the outstanding and any interest.

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

N/A

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

As stated earlier businesses do not have this type of staff so increase in administration would require further employees to undertake. Road Haulage Operators are in some cases micro businesses and do not have the ability to carry out these checks, they would expect them to have been made by the Agency who they hired the worker from.

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?

No

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?

Do not place the burden on the fee payer, they are looking to hire a worker who already has the necessary checks carried out, this is the responsibility of the agency.

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



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In essence the whole option is not acceptable, small businesses are not geared up to be able to carry out this level of administration when all they require is a temporary worker, in most cases in the Road Haulage sector this is for a one-off job.

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

None why use an agency to hire your temporary staff and then have to do the work they are required to do.

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.

The Agency should inform the fee payer or business prior to engagement.

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?

Make the penalties for non-compliance of PSC's or Agencies so high that they any breach is prohibitive.

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

Yes

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

Yes

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

What if they are unaware?

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

Yes, if the penalties are high enough

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



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Businesses should not be penalised if they are unaware, agencies and individuals should know that if they do not comply and caught they will be made to pay higher levels of penalties. One issue that has been seen however is that some Agencies and Umbrella Companies dupe workers into believing they are self-employed.

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

Hard to say until finalised and published

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

N/A

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

It will make the necessary change but only time will tell, as in previous dealings there are many willing to take chances, HMRC need better and more common compliance.

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

N/A

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

Make them aware of the penalties, use social media to market any changes and make it regular

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

This should be based on the level of deceit, at least any monies owed, interest and a fine.

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

Hopefully they will learn quickly that they should comply. Any extra work given to a businesses will impact profitability.

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

Hard to judge.

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

N/A

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)?

This should be done by HMRC, with full and regular compliance.

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?

N/A

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

There are particular issues in the Road Haulage Sector, in most cases HGV Drivers are never Self-Employed, unless they own or lease the vehicle and hold the Transport Managers Certificate in Professional Competence and have registered for an Operator's License.

What has been seen in the sector is that agencies have offered HGV drivers work and informed them if they register as self-employed they can offer better rates of pay and can claim back travel to work and other benefits. However, they do not fully register and are therefore operating outside of legislation.

The Road Haulage Sector has some 10,000 businesses, 90% of which are SME's. Placing any extra burden to have to check temporary labour will cause even more disruption to a sector already under increased pressure through legislation.

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