

House of Commons: Written Statement (HCWS347)

HM Treasury

Written Statement made by: **The Chief Secretary to the Treasury (Danny Alexander)** on 05 Mar 2015.

Public Services

Today, I am announcing the conclusions of HM Treasury's second evaluation of departments' compliance with the rules governing off-payroll appointments in central government.

New, tighter rules were established in May 2012 when I published the review of the tax arrangements of public sector appointees. This review covers off-payroll appointments from the 2013-14 financial year.

Off-payroll workers play an important role in helping departments meet short-term needs for specialist advice and interim service. The majority of these arrangements will have been in place for legitimate commercial reasons. However, it is essential that government departments are able to assure themselves that their off-payroll workers are meeting their tax obligations.

The recommendations of the May 2012 review mean that the departments' most senior staff must now be on payroll, and departments have stronger powers to seek assurance in relation to the tax arrangements of their long-term, high-paid contractors.

I asked the Treasury to evaluate compliance with these rules on an annual basis. The results of this second evaluation are summarised below.

Below board-level off-payroll engagements

The rules for new off-payroll engagements apply where the engagement is for more than six months with a daily rate above £220. All new engagements from 23 August 2012 meeting these criteria must include contractual provisions that allow the department to seek assurance that the worker is paying the right amount of tax and national insurance contributions and to terminate the contract if assurance is not provided. For any individuals where their engagement has either been terminated; ended as a result of the assurance process; or ended after assurance was sought but before it was received, departments have been asked to provide personal details of the worker to HMRC for further investigation of tax avoidance.

In accordance with the guidance, departments adopted a risk-based approach in deciding which contractors to seek formal assurance from. In 2013-14, departments sought assurance on the tax affairs of 2,505 of their contractors and received satisfactory assurances from 2,248 of these engagements. In 257 cases contracts were terminated or came to an end before assurance was received. Further details can be found in the table annexed. This does not include the Department for Education which did not publish its Annual Report and Accounts until 20 January 2015. The Treasury is examining the Department's compliance with the guidance and results will be issued in due course.

A small number of departments have made errors in how they have reported the information or implemented the policy. These include:

- the Ministry of Defence which due to administrative error failed to seek assurance from a number of workers in 2012-13. I will be imposing a sanction of £1 million on the Ministry of Defence.

- the Department for Work and Pensions (DWP) which made errors in the reporting of the policy and has issued a correction to its accounts for 2013-14. After further investigation I am content that DWP has complied with the guidance.
- UK Export Finance where this review has raised a number of concerns regarding implementation of the guidance. I have asked the Permanent Secretary to the Treasury to commission the Government Internal Audit Agency to carry out an independent audit of the implementation of the off-payroll guidance at UK Export Finance, following which further consideration will be given to the need for any sanction.

Notwithstanding these issues, the results of this review suggest that the large majority of central government departments are operating the rules effectively. This has resulted in a number of engagements, where adequate assurance was not provided, being brought to an end and individuals' details being passed onto HMRC for further investigation. Referrals to HMRC occurred in all relevant cases across government, apart from 27 cases at NHS England, where the information necessary for referral was not retained by the organisation. This has now been addressed by NHS England to enable HMRC to undertake future investigations of individuals where required.

Board-level and senior appointments

The guidelines set out in May 2012 also specified that, regardless of their tax arrangements, board-level officials and those with significant financial responsibility should be on the payroll of the department or other employing body. This is unless there are exceptional circumstances, and such exceptions should not exist for longer than six months.

As a result of the recent review, I can announce that HM Treasury has determined two cases which have breached these rules, both appointments at an arm's length body of the Department of Health. As a result, I will be imposing a sanction on the resource budget of the Department of Health of £470,740.

The sanction will be imposed for two breaches at NHS England, which relate to the Regional Director of Finance and the Director of Finance for Central Southern CSU being engaged off-payroll for a year or more. In both cases the individuals provided the necessary assurance to NHS England regarding their tax arrangements.

This review has encountered instances where an off-payroll worker at board level or with significant financial responsibility has been seconded to the department from another organisation. Where the full value of payments from the department to the individual are put through the payroll of the seconding organisation this has not been treated as a breach of the Treasury guidance. In addition, where this review has encountered below board-level appointments with significant financial responsibility that are in place to maintain the delivery of critical and time-limited projects, they have not been required to be on the payroll. This is subject to the strict requirement that all such engagements should be subjected to the assurance process to determine that they are paying the right amount of tax.

The public sector needs to demonstrate the highest standards of integrity and it is essential that government employers are able to assure themselves that their senior and highly paid staff are meeting their tax obligations. Each department is responsible for seeking assurance as to the tax arrangements of the off-payroll appointees in the department and its arm's length bodies, and judging whether the evidence presented demonstrates satisfactorily that the appointee is meeting their tax obligations.

The fines imposed as a result of this review reflect the failure of departments or their arm's length bodies to follow the processes set out in the guidance. However, I do not believe that less funding should be available to the users of the Health Service or our Armed Forces as a result of these breaches, and so I can today announce that the Government will be giving money levied from

these fines to support Armed Forces, Veterans and Health charities.

The Treasury will continue to monitor compliance with the HMT guidelines and will conduct a similar review for the 2014-15 financial year.

Annex 1: New off-payroll engagements between 1 April 2013 and 31 March 2014, for more than £220 per day and for more than six months

				OF WHICH	
	Number of new engagements for whom assurance was sought (as of 31 March 14)	Number for whom assurance was requested and received	Number for whom assurance was requested and not received	The number whose contracts came to an end before assurance was received	The number terminated as a result of non-assurance
BIS	21	21	0	0	0
BIS ALBs	197	196	1	1	0
CO	11	11	0	0	0
DCLG	17	17	0	0	0
DCLG ALBs	2	2	0	0	0
DCMS	30	28	2	2	0
DCMS ALBs	59	58	1	0	1
DECC	13	12	1	1	0
DECC ALBs	24	24	0	0	0
DEFRA	44	37	7	0	7

DEFRA					
ALBs	26	21	5	0	5
DFID	2	2	0	0	0
DFT	68	62	6	6	0
DFT					
ALBs	130	113	17	17	0
DH	23	23	0	0	0
DH					
ALBs	858	779	79	0	79
DWP	78	51	27	27	0
DWP					
ALBs	5	5	0	0	0
FCO	12	12	0	0	0
FCO					
services	80	80	0	0	0
HMRC	15	15	0	0	0
HMRC					
ALBs	6	1	5	5	0
HMT	18	18	0	0	0
HMT					
ALBs	7	7	0	0	0
HO	110	110	0	0	0
HO					
ALBs	30	30	0	0	0
MoD	263	160	103	103	0
MOJ	140	140	0	0	0
MOJ					
ALBs	108	108	0	0	0
NS&I	9	9	0	0	0
OFGEM	0	0	0	0	0

OFQUAL	8	8	0	0	0
OFSTED	0	0	0	0	0
OFT	6	5	1	1	0
OFWAT	11	11	0	0	0
ORR	0	0	0	0	0
TSOL	0	0	0	0	0
UKEF	0	0	0	0	0
UKSA (ONS)	74	72	2	0	2
Total	2505	2248	257	163	94

In 12 additional instances assurance was not requested but was received. These instances are: DfT 4, DfT ALBs 7, BIS ALBs 1.

This table has been compiled using departments' 2013-14 annual reports and accounts, and additional up-to-date information provided by departments to the Treasury during the review. For 2013-14 there were 2,828 contracts in scope. Departments took a risk-based approach in seeking assurance on these.