



Attn Dawn Primarolo.  
Paymaster General  
HM Treasury  
22<sup>nd</sup> December 1999

Dear Dawn.

It is clear from our meetings, correspondence and the content of the Welfare Reform Bill that the Government and the Revenue are committed to using the self-employment tests to judge whether a shareholder/worker of a small, limited company in the knowledge-based sector is a 'disguised employee' of his or her client or not.

The Professional Contractors Group has continuously opposed this approach and has explained why these tests will not work in the modern, flexible knowledge-based economy. We have also explained the damage that will be caused not only to the individual striving to build a business in a new, emerging sector - but also to that sector itself.

The Government's attitude towards entrepreneurs in this sector is probably best summarised by the Revenue's selective use on its website of an extract from a letter from one accountant who believed accountants had created the problem in a minority of cases. We feel this selective 'cut and paste' of a six month old letter is a cheap shot which is not worthy of a Government Ministry and does a disservice to the thousands of contractors who have expressed genuine concerns to their MPs and to Ministers.

In the light of such comments and action, we have found it difficult to understand the Government's attitude to this sector. On the one hand, it seeks to promote e-commerce, IT and flexible working while on the other it is determined to introduce a measure which strikes at the very foundation of the flexible economy.

We note from the Prime Minister's comments and appointments of a e-czar and e-Minister that this sector is one which the Government wants to nurture and develop. But these proposals will place the sector beyond recovery.

In the interests of keeping this document short and to the point we will not rehearse the arguments again here as to why this measure is wrong nor will we seek to offer a 'single PCG proposal'. It is clear to us that, at this late stage, there is no genuine intention on the Government's part to consider workable alternatives to this proposal. If there was, there would have been genuine consultation in line with the terms set out in the Better Regulation Guide.

Despite our continued objections, we have to accept that is the path which the Government wishes to tread and given the current time constraints, we believe that there are now limited options open to the Government. It should be stressed that the PCG believes that any action taken now is one of 'damage limitation' rather than recovery.

We have therefore taken a realistic rather than an idealistic approach based on our understanding of the Government's intentions and attitude.

It would be to misunderstand our intentions if this paper were to be seen as scare-mongering or idle threats. This is submitted in good faith with the sole intention of limiting the damage that will be caused to the emerging flexible economy.

We feel that PCG is uniquely qualified to assess the future repercussions as it is our members who comprise the flexible, knowledge-based sector and have a greater understanding of the situation than any other collective group.

The attached paper examines the options open to the Government and explains the consequences of each one.

Yours.....

A.F.White  
Chairman  
Professional Contractors Group.

## **IR35 - the future**

There are only two alternatives at this stage:

1. Implement IR35 or
2. Delay

If implement, then:

- 1a. In its present form;
- 1b. Provide a transitional arrangement

If delay then:

- 2a Consult

### **Implement - in its present form**

1. Some contractors who run legitimate businesses will face the prospect of being forced into the status of employment without any of the rights and privileges of such a status. Despite the fact that they want to run their own entrepreneurial businesses and the clients do not want them as employees.
2. A significant number of contractors will take their knowledge overseas. Our members are highly skilled mobile IT and engineering contractors whose knowledge are in demand around the world.
3. We estimate that 50 per cent of our members - pro rata approximately 100,000 contractors - will fall into the 'borderline' area. They will seek regular assessments from IR status inspectors.
4. They will mount legal challenges at every opportunity to force the establishment of case law, which is relevant to the knowledge-based sector.
5. We are examining a challenge under the new Human Rights legislation. Our advice is that this could be an issue for the UK and European Courts.
6. Contrary to forecasts in the Government's second RIA, we do not believe that there will be a revenue gain for the Treasury.
7. The knowledge-based economy - particularly the IT sector - will lose its flexible skill base and consequently its position as a global leader.

### **Implement - with transitional arrangements**

1. The knowledge-based sector has evolved during the past two decades. Despite Government claims to the contrary, it is a matter of fact that case law has not evolved due to the manner in which the sector operates.
2. Knowledge-based contractors are in a vacuum. The Government is asking them to weigh something and giving them a ruler to perform the task. Comparisons between knowledge-based workers, such as web designers or off-shore workers, and skill-based workers, such as carpenters or plumbers only serve to highlight the problems and the Government's lack of understanding of the flexible economy.
3. Case law will evolve and will, eventually, come to reflect this modern way of working.
4. In the meantime, fear, uncertainty and doubt will force many legitimate small entrepreneurial businesses to close.

5. If the Government is truly committed to small business then it could assist them in this transitional stage. This would allow genuine businesses to grow and develop while still enabling the Government to target those who abuse the system.
6. A transitional arrangement would be self-regulated and fall within terms outlined by the Government, which could include a variety of indicator tests as to a bona fide business.
7. Obviously, those who did not wish to comply with the Government's transitional arrangements would still be open to challenge by the Revenue and the case law would therefore emerge in a more considered manner.

### **Delay**

1. A period of delay would allow the Government to find a way forward which is more in keeping with its wider objectives.
2. We have heard much about 'joined up' Government and this would be an opportunity to show that the Government is looking at this modern industry in a cohesive manner.
3. During this period, the sector - and more particularly the minority of 'bucket-shop' accountants who have gloated that they came up with this 'wheeze' - would be 'put on notice' - and the majority of contractors who do not operate in this manner would not be unfairly penalised.
4. A period of consultation would allow this issue to be considered either as part of a combined knowledge-based policy with input from the e-Minister; the e-czar, IT committee, Select Committee, or as an overall review of small businesses, including NI, high dividend/salary split.
5. If the Government chooses this route, we believe that a more cohesive policy would develop which would not unfairly discriminate against the knowledge-based sector compared to other businesses.

### **Conclusion**

From our position within the sector, we know these proposals will damage the vision of the UK leading the world in the flexible knowledge-based economy. They will also damage the vision of the UK leading the world in IT skills.

In conclusion, this is not about a minority of individuals paying a small amount of NI because a group of bucket-shop accountants thought they had devised a 'jolly wheeze'. To view it so simplistically is to have tunnel vision.

This is about the right of an individual to grow and develop a business in a favourable climate. It is about the right to compete on equal terms. It is about the growth of a valuable sector of the economy.

The PCG has unparalleled expertise in this field and would welcome any opportunity for constructive dialogue or debate on this.