

In a radical move that seems bound to increase labour costs, the government is clamping down on temporary site workers claiming to be self-employed. And as if that wasn't bad enough news for construction companies using this kind of labour, they've only got two weeks to prepare for the change. **Joey Gardiner** reports

**G**eorge Osborne used last week's Budget to confirm the go-ahead for a clampdown on tax avoidance which looks set to have far-reaching consequences for the way the construction industry operates. He confirmed measures, first outlined in December, that will in most cases prevent temporary site workers from claiming to be self-employed, potentially adding up to 30% to the cost of employing site labour.

And what's more, there is no transition period to help the industry get used to this change in the rules. Indeed, the government will only publish legislation on what it calls false self-employment, estimated by HM Revenue & Customs to affect up to 200,000 construction workers, on Thursday this week. It will then take effect from 7 April.

The cynics may say we have heard all this before: the government has made numerous attempts to tackle this problem over the last 20 years, with the most recent made in 2009. All of them have either failed to be implemented or been pulled at the last moment. This time, however, it seems different. Well-known labour intermediaries - basically specialist agencies - which have made a

business out of contracting "self-employed" workers for construction sites are already shutting up shop. The remaining intermediaries are having to adapt fast, with their clients telling them they will be moving wholesale away from using "self-employed" labour. So is this finally the time when everything is going to change? And what does it mean for the industry if it is?

That the construction industry still operates with a large proportion of its workers registering as self-employed marks it out as an anomaly. Around 10% of the workforce is registered as self-employed via intermediaries. This means they benefit from a wholly legal system to govern how subcontractors pay tax - the Construction Industry Scheme (CIS) - despite the fact the Treasury suspects that most of these "self-employed" individuals are actually employees.

The biggest difference the CIS makes is that the employer is not expected to make national insurance contributions (NICs), saving 13% on the ultimate cost of employing them, and meaning these workers are often able to command a higher pay rate than those classed as employed, who are paid via PAYE. In return for this potential benefit, workers sacrifice all basic employment rights, including holiday pay, sick pay, redundancy pay and notice periods. Many work in this "self-employed" no-man's land for many years for the same firm.

From 2007 construction employers have had to confirm workers are genuinely self-employed, a rule designed to discourage bogus self-employment. Instead, this stipulation has simply led to the creation of myriad intermediary agencies who manage their workers' tax status, protecting their ultimate employers from this tax risk.

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According to an HM Revenue & Customs consultation on this issue late last year, these intermediary companies - around 10,000 of them - are now used on an "industrial scale" to place workers, via employment agencies, in jobs on construction sites. Some of these intermediaries are large businesses, with the likes of Gabem and the Sterling Group simply the best known.

Liz Bridge, secretary of the construction industry's Joint Taxation Committee (JTC), says: "In other industries it would be regarded as an odd question to ask if the employers provided holiday and sick pay - of course they do. In construction it's not an odd question."

The system is designed to give the industry maximum, and necessary, flexibility to respond to the need for project teams to be quickly assembled and dismantled as projects go ahead.

However, many in the industry, including the construction unions, feel that the situation has to

change as it takes advantage of the desire for what are mainly young, relatively poorly educated men to get the highest possible salary they can, at the expense of their employment conditions.

Phil Whitehurst, national officer for construction at the GMB union, says: "They're preying on people's natural greed, but it's just a way for employers to circumvent their employees' rights. The workers don't realise they haven't got any rights or Ts and Cs. It's rife in the construction industry, rife."

While for the unions the issue is one of workers' rights, for the Treasury the issue is largely financial: it estimates making the change will net it around £520m in 2014/15, mainly in additional National Insurance contributions. Essentially it is saying that from April any worker who can be told how to carry out a task and will be supervised, is a form of employee. Only those who are simply told what outputs they need to produce and are left to do that in their own way and in their own time, will be judged to be self-employed. In total the Treasury thinks this simple change will bring in £2.2bn to its coffers over the next five years.

Neil Hollister, managing director of one of the most successful of the intermediaries, Gabem, says that in response recruiters are planning to change the way they supply staff wholesale. For Gabem, which contracts staff both on a self-employed basis, and under another system whereby they are employees of Gabem acting as an "umbrella company", it will mean moving nearly all its workers over to this second system in very short order. "Having spoken to all our major clients what I'm seeing is a wholesale attempted migration from self-employment to »

# THE SQUEEZE IS ON

» the umbrella model,” he says.

This is despite the fact that the impact of the legislation is only finally to be determined by future legal challenges to the new rules. Hollister says they feel it is not worth the risk that they will be liable for full PAYE and NICs from April. “The government’s got a big enough baseball bat that the industry is not going to compete against this, even though operating a compliant self-employed model is theoretically possible for some,” he says.

The problem for the wider industry is that if the changes are successful (from the Treasury’s point of view), this money will have to be found from within construction contracts – many of them already signed and priced. Bridge says: “Basically the government is looking to take another 13% from within the process. There’s another dog eating at the same bowl. Undoubtedly others will get squeezed, meaning possibly higher costs to the construction client, or the wiping out of the intermediary firm, or maybe lower take home pay for the worker.”

While none of the major contracting bodies are objecting in principle to the changes – which don’t stop firms from having temporary workforces – they are objecting strongly to its implementation without a transitional period. Stephen Ratcliffe, director of the UK Contractor’s Group, says the industry is “disappointed” about the move, arguing its introduction should be “delayed so that costs did not rise on contracts where the price was already fixed.”

The submission to the HMRC consultation by the Building & Engineering Services Association said the proposals would “undoubtedly raise the costs of individual construction projects” – and raised concerns about doing this during a period when the industry is still recovering from recession. The submission also said main contractors may refuse to pay these additional costs, thereby putting pressure on specialists, and leading to “supply chain tensions” and “employment relations problems” on “major, high-profile (publicly funded) projects”.

Rod Pettigrew, the organisation’s chief executive, says: “We’re talking about the effect of this starting from a week’s time. The reality is that for those who are using this system, the change could

## SELF-EMPLOYMENT CHANGES – WHAT YOU NEED TO KNOW

### How does the system work now?

Recruitment agencies locate staff who want to work on a self-employed basis. An intermediary is brought in who contracts with the worker, and manages his or her “self-employed” status. The worker is then placed, via the recruitment agency, in the job itself.

### How much tax do “bogus self-employed” staff pay now?

Around 20% of a self-employed workers’ pay is withheld to cover tax, which the intermediary deals with at the end of the year. The worker often has the responsibility to pay his own NICs, albeit at a reduced rate. However, the system sidesteps the requirement for the employer’s national insurance contributions — worth another 13% of the salary. The intermediary’s fee is between 13 to 30%.

### How will this change?

Because of HMRC’s redefinition of self-employed workers, it will be almost impossible for this system to work. Anyone who is supervised and told how to deliver a task will be deemed to be employed, however temporary the contract. Only those who are

completely in charge of how they deliver a task will be able to persuade HMRC they are self-employed. HMRC has a list of examples in its consultation, *Onshore Employment Intermediaries: False Self-Employment* available on the Gov.uk website.

### When will this come in?

The annual finance bill is published on Thursday this week, and will be enacted following debate in parliament in the summer. Measures in the bill take effect from 6 April, the start of the financial year, with the effects of the finance bill backdated to 6 April when it is passed. The interpretation of the changes, however, will only finally be decided following legal challenges in the courts.

### What are the remaining options for workers?

Construction workers without permanent employment will have three principle options: employment directly by an agency; employment by an intermediary acting as an umbrella company; and setting themselves up as a Personal Services Company. None of these routes are as tax efficient for those at the bottom end of the labour market.

impact seriously on their costings on projects.”

Gabem’s Hollister says the impact is likely to be most serious for those employing the least skilled, least well-paid labour – those earning less than £8.50 an hour. For workers earning more, he says the umbrella scheme, while forcing them down the PAYE route, allows them to offset tax against expenses, mitigating the additional PAYE costs. But he says this is impossible for those on the lowest rates. “For those working around the minimum wage level there is no doubt that employers will face a significant increase in costs to employ them. Many in the industry estimate it as in the region of 25-30%, once they include the impact of Agency Worker’s Regulations. That’s why intermediaries are wondering if they now have a business model.”

According to consultant Core Five, site labour costs typically make up 35 – 40% of the cost of a construction project. So if these rises come about, the impact will be significant.

Hollister calls the two-week timescale for introduction “utterly ludicrous” and “just impossible” – and he is already hearing of a number of intermediaries that are choosing to throw in the

towel. “I know of two businesses myself who have chosen to shut down. Others are scrabbling to launch an umbrella service, but they won’t all be able to do that. It puts the industry in an impossible situation.”

And while labour campaigners support the government’s move, some workers will resent the likely squeeze on wages. Bridge says: “In some ways the admin part will be the least of these firms’ problems. The real difficulty will be in trying to explain to someone who has always considered themselves self-employed that he’ll be getting less money next week. Whichever place you look to recover the cost, no one will want to hear.”

Despite all these problems, there are many who support the government’s actions, not least employment agencies who regard the “self-employed” market as bogus and refuse to work in it – but have therefore often found themselves priced out of contracts. For the GMB’s Whitehurst, the changes can’t come soon enough – he describes the industry’s complaints as “utter nonsense.” But contractors and subbies, already working on wafer-thin margins in many cases, will feel justifiably aggrieved.

