



Off-payroll working rules (IR35) in the public sector: Know the facts for contractors for 2020-21

Changes to the rules outside the public sector will now apply from 6 April 2021

The off-payroll working rules, commonly known as 'IR35,' changed in April 2017 for any contracts you have where you provide services to the public sector.

Changes to the rules for the private and third sector were due to apply from 6 April 2020. These have now been delayed until 6 April 2021 in response to COVID-19, to help you and organisations who might engage you deal with the economic impacts of the pandemic. This is a deferral of the changes, not a cancellation.

The off-payroll working rules are designed to ensure that if you work through your own limited company, normally a personal service company (PSC), or other intermediary, and work like someone who is employed directly, you pay broadly the same income tax and National Insurance Contributions (NICs) for that contract as those individuals who are employed directly.

You may have contracts for clients in both the public and private sector. For the tax year 2020-21:

- **Private and third sector clients:** You will continue to be responsible for determining your employment status for tax of contracts in these sectors, and deducting the relevant tax and National Insurance Contributions (NICs).
- **Public authority clients:** Your client will continue to be responsible for determining your employment status for tax and they, or the agency who pays your fees, will be responsible for deducting the relevant income tax and NICs if they determine your contract is inside the off-payroll working rules.

How the rules are changing in 2021

If you contract for a public authority then your client is already responsible for determining your employment status for tax for the services you provide them, and they will continue to be responsible. There will be additional responsibilities for public authorities which were due to apply from April 2020, which will now apply from 6 April 2021.

From 6 April 2021, public authorities will be required to provide you with a 'Status Determination Statement' setting out their decision if the off-payroll working rules apply, and the reasons behind it. They will also be required to set up a status disagreement process where you can raise your concerns if you disagree with the decision made by your client.

If you contract for a medium or large sized business or third sector organisation then your client will be responsible for deciding your employment status for tax for the services you provide them. They will need to provide you with a 'Status Determination Statement' if

the rules apply, setting out their decision and the reasons behind it. They will also be required to set up a status disagreement process where you can raise your concerns if you disagree with the decision made by your client. If the rules apply the client, or the agency who pays your fees, will also be responsible for deducting income tax and NICs before they pay you for that individual contract.

If you contract for a small business or small third sector organisation you will remain responsible for determining the employment status for tax of your contract, and accounting for and paying the relevant income tax and NICs.

If you are not sure if your client is small or medium or large, you will have the right to request information from them about the size of their organisation.

Off-payroll working arrangements in the public sector before 2017

Since 2017, it has been the responsibility of public authorities to operate the off-payroll working rules. If the rules apply, then the public sector end-client or the agency who pays your fees will also be responsible for deducting income tax and NICs before they pay you. If your client or agency do not meet their responsibilities, then they are liable for any underpaid income tax and NICs.

Following the 2017 changes HMRC has focussed on ensuring public sector end-clients comply with the off-payroll working rules, rather than on opening new compliance checks into the PSCs of contractors who worked for public sector end-clients in tax years prior to the 2017 change.

If a public authority has determined that your contract is inside the off-payroll working rules, or you are now paid via a payroll, this will not be used to open an enquiry into your contracts for earlier tax years, unless there is reason to suspect fraud or criminal behaviour.

HMRC has never opened an enquiry into the compliance of a contractor's PSC with the off-payroll working rules in tax years prior to 6 April 2017 because of the decision of a public authority under the 2017 reform.

The off-payroll working rules apply to each separate engagement. A decision by a public authority under the off-payroll reform introduced in 2017 does not determine whether the off-payroll working rules apply on your other contracts.

HMRC made a similar commitment ahead of the changes being rolled out to the private sector before the decision to delay the changes:

HMRC will not use information resulting from changes to the off-payroll working rules to open a new compliance check into personal service companies (PSCs) for tax years prior to 6 April 2020, unless there is reason to suspect fraud or criminal behaviour.

Contractors are not all self-employed

Your employment status, whether you are employed or self-employed, is not a matter of choice. It depends upon the terms and conditions of a particular engagement and your actual working practices. The fact that you supply your services through your own limited

company is not necessarily relevant to whether you are employed or self-employed for tax purposes.

The off-payroll working rules will only apply to your contract if you are working like someone employed directly under the current employment status tests, and do not apply to the self-employed. For example, if you work predominantly for the same client, at their premises and following their policies and procedures, you cannot send a substitute to work on your behalf and would require permission to seek additional work elsewhere, then you are more likely to resemble an employee.

The rules do not apply to those that are self-employed

The off-payroll working rules only apply to your contract if you are working like someone employed directly under the current employment status tests, and do not apply to the self-employed. If you operate your own business structure and do not work in the same way as an employee, for example you have your own business premises, employ other workers or work for a wide range of clients, you will continue to be outside of the scope of the off-payroll working rules. In these circumstances you will continue to be responsible for paying tax through Corporation Tax Self-Assessment (CTSA) and Income Tax Self-Assessment (ITSA).

Clients cannot apply a blanket rule across all contractors

Your client must take reasonable care when making a decision about whether the off-payroll working rules apply. Applying the same decision to you and other contractors may be permissible in some circumstances, providing you are engaged under the same contractual terms and conditions, and in practice work under the same terms and conditions, but it is not right to rule all engagements to be within or outside of the rules irrespective of the contractual terms and actual working arrangements.

It is natural that businesses will consider whether PSCs are the best way to engage you, and other contractors, if you are working like employees. This is a business decision for organisations to make, and organisations will be free to decide how they engage their workers. Some organisations might decide to move you on to an employment contract, while other organisations may choose to continue engaging you through your own limited company where this suits their business model.

Watch out for off-payroll avoidance schemes

Don't be tempted by tax avoidance schemes, including those that claim to ensure that you are not affected by the off-payroll working rules or that otherwise offer to increase your take home pay. If something looks too good to be true, it probably is. HMRC has published a number of articles on how to spot tax avoidance schemes. For more information, read:

Tax avoidance schemes aimed at contractors and agency workers

<https://www.gov.uk/guidance/tax-avoidance-schemes-aimed-at-contractors-and-agency-workers>

Umbrella companies offering to increase your take home pay

<https://www.gov.uk/guidance/umbrella-companies-offering-to-increase-your-take-home-pay-spotlight-45>

Tax avoidance promoters targeting returning NHS workers

<https://www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54>

Support to those affected by COVID-19

The delay to the off-payroll working rules changes from April 2020 to April 2021 was announced in response to COVID-19, to help you, and organisations who engage you, deal with the economic impacts of the pandemic.

Government has also announced a package of support for businesses to deal with lost income and the costs of absence due to COVID-19. Information on further support available can be found at <https://www.businesssupport.gov.uk/>.

The Cabinet Office has also issued guidance on contingent workers impacted by COVID-19 who supply their services to a Central Government Department, an Executive Agency of a Central Government Department or a Non-Departmental Public Body. This can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877221/PPN02_20-Contingent-Workers-Impacted-by-Covid-19-2.pdf.

Government support for those impacted by COVID-19 will not be a definitive factor for determining employment status. If you need to access Government support because you have been impacted by COVID-19, this will not determine whether the off-payroll working rules apply to your contract.

Support for the 2021 changes

Due to the delay, HMRC has paused the customer support and education programme it has been delivering to help you, and organisations who engage you, get ready. HMRC will resume education and support activities at the appropriate time ahead of the reform in April 2021.

HMRC developed a wide range of guidance and support to help you, and organisations who engage you, prepare for the changes in April 2020, which are now delayed. These products will be updated in due course and remain available to access to help you prepare for the changes due in April 2021.

Information which may be helpful for you can be found at:

<https://www.gov.uk/government/publications/off-payroll-working-rules-communication-resources>.