



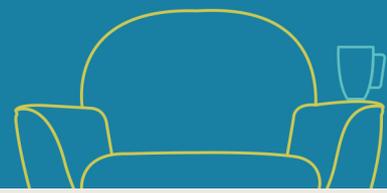
Legal Update

IR35 Off-Payroll Worker Rule

March 2020



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****Please note** - the IR35 changes have now been delayed until 2021. Find out more [here](#).**

Significant changes to the IR35 taxation rules are due to come into force, which affects the use of off-payroll workers. In this legal update, we consider who the new rules will impact and what they mean in practice.

What is IR35?

IR35 is a law which allows HMRC to collect additional tax where a person is an employee in all but name. Many businesses use self-employed contractors/consultants and agency workers, whether in order to supplement its own employee pool, or to perform certain specific services for which the business does not have the necessary expertise in-house. These contractors and workers often work through limited companies, often referred to as “personal service companies”.

However, in order to be considered a legitimate self-employed person, the individual must be independent and have control over how they operate and perform the services. If they do not have that independence - meaning they would effectively be deemed an employee of the client if it weren't for their limited company - IR35 allows HMRC to require the usual employer/employee liabilities, such as income tax and National Insurance, to be paid.

IR35 affects all private and public businesses and institutions. In order to avoid falling foul of the rules, it is important for written agreements between a client and their self-employed contractor to clearly define the relationship between the parties, and the extent of the contractor's freedom to operate in their own way (e.g. decide where/when to work, how to work, provide their own equipment and materials).

Who do the latest changes affect?

The new rules already apply in the public sector. From 6 April 2020, the rules will also apply to medium and large private sector businesses that meet two or more of the following conditions:

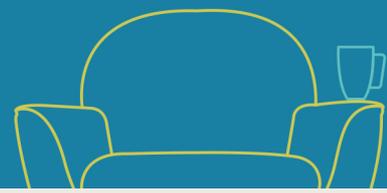
- 1) an annual turnover of more than £10.2 million;
- 2) a balance sheet total of more than £5.1 million; and/or
- 3) more than 50 employees.

This means that those businesses which fall under the small companies' regime will not be required to comply with the new rules.

The rules apply to group companies so that, if a parent company satisfies two or more of the conditions above, its subsidiaries must also comply with the rules.



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What are the changes?

The changes mean it is now the client's (i.e. the business hiring the worker) responsibility to determine whether or not a contractor should be treated as an employee for tax purposes. If so, the responsibility for paying tax and NI contributions will now fall to the client and not the worker. If your business falls within the rules, you must:

- 1) make a determination before, or as soon as possible after, you decide to take on a contractor;
- 2) pass the determination on to the contractor or agency (via a so-called "status determination statement") you're working with;
- 3) keep detailed records of your determinations and fees paid to contractors (and deductions made if you determine the off-payroll rules apply); and
- 4) have a process in place for dealing with any disagreements with contractors/agencies regarding your determinations.

You must take reasonable care when making a determination. Failure to do so will result in the relevant worker taxes and contributions becoming your responsibility.

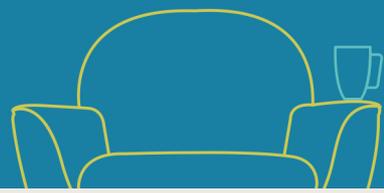
What to do?

If you fall within the new rules, here are a few things you can do to help you comply with the new rules:

- 1) Review your existing worker relationships. Do you use any worker agencies or independent/self-employed contractors?
- 2) If you do, you will need to review the arrangements with those agencies and contractors and make an assessment as to whether the off-payroll worker rules apply. Even if you use an agency for temporary workers, consultants and/or contractors, the determination is ultimately your responsibility.
- 3) HMRC have provided a self-assessment tool to help businesses make a status determination, available via <https://www.gov.uk/guidance/check-employment-status-for-tax>. HMRC has said that, provided your answers are accurate, they will stand behind the result provided by the tool.
- 4) Review your written contracts with the agencies/workers. Historically, such agreements have specified that the worker is acting as an independent contractor and is therefore responsible for



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their own income tax, NI and other liabilities. However, as explained above, it is not that simple. Therefore, your contracts will need to be updated to reflect that the tax liability position will depend on the status determination you have made.

- 5) Consider how you work with your workers. If they are genuinely independent and self-employed, the new rules will not have any effect on your arrangements and you won't have to start accounting for tax and NI. Legal advice should be sought on the specifics but generally speaking, an independent contractor is one who is free to decide how, where and when they work, is able to appoint a substitute if necessary, and is free to work with other clients as well.
- 6) Prepare a template 'status determination statement' with the potential determinations and reasons, to make it quicker and easier to issue statements to contractors as and when you agree to work with them.
- 7) Develop and implement a policy for dealing with any queries or disagreements concerning your status determination and ensure you have the relevant people adequately trained to comply with that policy.
- 8) Consider any changes necessary to your accounting and payroll functions to deal with the tax & NI deductions and accounting for those to HMRC.

How we can help

We can help you as much or as little as you need with the action points we have listed above.

If you work with a lot of independent/agency workers, and you're not sure of their status, our contract audit service can help. This involves a full review audit questionnaire to pull out the relevant information about how you work with independent/agency workers, as well as a review of the relevant contract documents. We would then report on whether or not, based on your contract terms and your actual ways of working, the off-payroll rules are likely to apply to any of your working relationships.

We can also help update your contracts to account for the new rules. As mentioned above, a blanket clause saying the worker is responsible for their own tax & NI won't do the job anymore, so any standard templates may well need an update.

Finally, we can help you put together a template 'status determination statement' and a policy for issuing that statement and dealing with any queries.

If you would like to discuss any of the above legal solutions, please do not hesitate to contact us at commercial@roxburghmilkins.com or on 0117 928 1910.



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