

↓ Key Points

- Off-payroll reform in the private sector
- Public sector
- Assemble a steering group
- Review your supply chain
- Communicate with your clients
- Understand which supply is business-critical
- Budget for system & process change
- Agree a robust determination process
- Educate staff

Guidance on IR35 off-payroll reform in the private sector

NEW April 2022 marked the end of the 12-month grace period in which HMRC **stated** that as a way of supporting organisations that are trying to comply with the new rules, financial penalties would not be issued for any inaccuracies provided that there is no evidence of deliberate non-compliance.

As the grace period has now come to an end, APSCo recommends that members review our guidance and **other resources** to ensure that they are operating in compliance with the off-payroll working rules.

Background

The reform of the off-payroll working rules (known as IR35) came into force in April 2021. This followed the roll-out of the reform in the **public sector** and the Chancellors announcement in Budget on 29th October 2018 that the government will also reform the off-payroll working rules in the private sector.

The reform moves the responsibility for operating the off-payroll working rules from individual contractors to the organisation, recruitment business or other third party contracting with and paying the contractor (the “fee-payer”).

You can access guidance and webinars on the off-payroll changes on the governments **[‘Resource and support for off-payroll working’](#)** page. This includes information specifically catered towards your clients and contractors, and the **[Employment Status Manual \(ESM10000\)](#)** is particularly helpful and should be your “go to” reference guide.

Public Sector

In 2017 HMRC introduced the **[off-payroll working rules](#)** in the public sector. The off-payroll legislation imposes an obligation on the public sector body (“PSB”) to inform the party it contracts with on the status of the contractor, and whether or not a contractor would be regarded as an employee or office holder of the client were it not for the contractor’s Personal Service Company “PSC” being in the contractual supply chain (i.e. “inside IR35”).

The legislation is clear that the PSB must take “reasonable care” when making this determination. Where the PSB determines that the contractor is “inside IR35”, the recruitment business intermediary will be responsible and liable for levying the PSC contractor’s tax, NICs and employer’s NICs to HMRC.

As part of the changes HMRC has provided an online **[employment status tool \(“CEST”\)](#)** to assist parties in making a determination. There is also an **[Employment Status Manual](#)** available to help use the tool.

Private Sector

Previously in the private sector, the person providing services through their own PSC is responsible for deciding if IR35 applies. As highlighted above, as of April 2021 the responsibility for operating the off-payroll working rules moved from individual contractors to the end-client organisation, recruitment business or other third party engaging the contractor – referred to as the “fee-payer” in the legislation. This change only affects medium and large private sector organisations with a UK connection as there is a “small” company exemption.

The aim of this guidance is to advise you on these changes. Below we have covered the areas that your business should be considering in separate sections.

Steering Group

You need to assemble a steering group to ensure that all relevant parts of your business are involved and kept informed.

You should consider whether your steering group will include representatives from the following parts of your business – this is not an exhaustive list, and will depend upon your structure:

- Senior management
- Sales
- Payroll/HR
- IT
- Legal/compliance

This group should set the timeline; scope; tasks list; and responsibilities for the project. Your steering group should consider the following:

1. Supply chain review and communication with your clients and contractors.
2. Consider new models for your business e.g. PAYE agency worker, statement of work, output-based contracts, consultancy models.
3. Review of your budget.
4. Review of your IT systems and internal processes and whether they are fit for purpose.
5. Review of your internal compliance and onboarding processes.
6. Review with your clients, particularly if you are in an RPO relationship to evaluate their needs, risks and response.
7. Decision on engagement models and approach to legal change.
8. Project management of implementation period.
9. Internal education and training.
10. Contractual changes with your clients, your contractors and your umbrella suppliers.
11. Continuous improvement and review post-April 2021.

Supply Chain Review and Communication with Clients and Contractors

Your steering group will need to decide in respect of the supply chain review:

- Ownership of the supply chain review whether by office, sector, profit centre or team.
- Will a central project team establish a standardised process?
- Who is responsible for the client interface e.g. office manager, team leader or compliance staff?
- Who is responsible for undertaking the supply chain review for each team and/or confirming the status determination made by the client?
- If you don't agree with the determinations your client has made, how will queries regarding status be dealt with and by whom?
- How will contractor communications, requirements/demands be handled and communicated to the client?

Your first priority is reviewing the PSC workforce and their contracts. You will need to review your current or projected contracts and assignments with end dates beyond 6 April 2021. You will also need to understand your exposure to the changes by considering the types of contractors you currently supply and the types of roles you fill across your sectors. Once you have all the data, start to educate and consult with your clients on their approach.

Firstly, to understand your contractor profile, break down your contractors into the following categories:

- a) Agency workers (either on an agency's PAYE payroll or working via a contract for services);
- b) Umbrella workers (essentially on a PAYE payroll);
- c) Contractors working through a Personal Service Company (one in which they hold more than 5% shareholding) or any intermediary in which they have a shareholding and receive a chain payment from it which is not employment income (collectively referred to as PSC); and
- d) Self-employed (freelancer/sole trader).

Payroll models (PAYE & traditional umbrella) are out of scope of the new rules, so your focus should be on off-payroll models only. Some clients have chosen to only work with contractors on a payroll solution from April 2021; in most cases this means switching contractors to outsourced employment solutions (umbrella companies). This requires termination and reissue of contractual documentation.

Be aware that you are likely to have significant numbers of contractors moving to umbrella models and you need to ensure that the umbrella models you work with are compliant (and therefore PAYE models). Please view our ["10 Steps to Umbrella Compliance"](#) available on our website.

Non-compliant umbrellas are a continuing area of concern, so you should be taking compliance action to reduce your risk in this area.

Small Company Exemption

Secondly, you need to understand the impact on your clients. This change only affects medium and large private sector organisations with a UK connection, so "small" companies are exempt - the definition of which is based on the Companies Act 2006 definitions. The government anticipates the changes will not apply to the smallest 1.5 million businesses, which may need flexible resource.

The existing off-payroll working rules will continue to apply for assignments if the client is a "small" company, meaning that the responsibility for making the status determination remains with the PSC.

Under section 382 of the Companies Act 2006, a company qualifies as "small" if two of the following conditions apply **for two consecutive financial years:**

1. Annual turnover Not more than £10.2 million
2. Balance sheet total Not more than 5.1 million
3. Number of employees Not more than 50 employees

In determining the average number of employees, you should only include those directly employed by the company, therefore this would not include deemed employees i.e. PAYE agency workers. [ESM1006](#) has further detail available to help your client determine the size of their organisation in line with the above requirements. Please note that the **small company exemption applies to the end client**, not the fee-payer or the PSC.

Duty to confirm size upon request

Section 60H Chapter 10, Part 2 ITEPA 2003 sets out a requirement for clients to state, in their opinion, if asked, whether they qualify as "small" in a tax year. The "client's agent" (the agency/recruiter with whom you have a contract) or the worker can make the request if they meet the following conditions:

- the worker personally performs, or is under an obligation to perform services for the client;
- the client is not a public authority; and
- the services are provided under arrangements involving a third party ('the intermediary') and not under a contract directly between the client and the worker.

The client must respond to size-related information requests for the relevant tax year within the 45 days. The end of the 45 days would be the later of; a) the end of the 45 day period beginning with the date the request is received, or b) 45 days prior to the start of the tax year specified in the request.

Should the client fail to respond to the request by the deadline, the requestor can apply to the courts for an injunction (or an order for specific performance in Scotland). HMRC have suggested templates available for your clients to confirm their size in [ESM10011B](#).

Groups

Where the company is a part of a group, the size will be determined on its parent company. There is further detailed information available in [ESM1007](#).

A client's company will qualify as 'small' in its first financial year following incorporation, even if it is a part of a group. They will remain small until the beginning of the first tax year, after the period for filing its accounts for the first financial year has ended.

PSC contractors will be impacted by the change if they currently work "outside IR35" and clients are concerned about the impact on their workforce, future access to resource and costs of sourcing off-payroll resource.

You will need to consider the issues below with your clients:

- What tools will be used to confirm the status determination and who will be responsible for making the assessment? Some clients are seeking to outsource this role to the recruiter.
- Will the client engage an external body to assist with status determinations or use an online tool other than the HMRC CEST tool?
- How can the client ensure they exercise “reasonable care” in making the status determination?

Location of Client

Where the medium and large-sized private sector client is based wholly overseas and has no UK connection in the form of being a UK resident or having a permanent establishment in the UK, the worker’s limited company (PSC) will remain responsible for deciding the contractor’s employment status and whether IR35 applies. The legislation on permanent establishment for a company can be found [here](#) and guidance [here](#).

Determining whether an assignment is “inside” or “outside IR35”

As of 6 April 2021, it is the client’s responsibility to determine whether the off-payroll working rules apply, i.e. is this assignment “inside IR35”? See [Appendix 1](#) for more guidance on how to make the determination.

You should refer to the [HMRC guidance and the employment status for tax \(CEST\) tool](#). Although much criticised, the tool does give you a good steer of the approach taken by HMRC and the indicators that they are looking for. As promised, HMRC have enhanced the CEST tool and published the [ESM11000](#) which provides guidance on the specific questions.

The client must produce a Status Determination Statement providing their outcome and the reasons for the outcome, if they do not want to be the “Deemed Employer” with tax/NICs liability. This must be passed by the client to the next party in the chain which could be a Managed Service Provider (MSP), a recruiter or the PSC itself **and** to the worker. This must be done by the date of the first chain payment to be made for the PSC’s services, although practically the parties need to know the status before the start date in order to correctly set up the contracts and supply chain. HMRC’s CEST tool is available to help the client produce an SDS but it is not mandatory. [ESM10012](#) provides further detail as to what constitutes a valid SDS.

“Reasonable care” must be taken in coming to this decision. HMRC have given guidance on this but summarised it means the person or group making the decision must understand the law and the decision they are making, act prudently and have regard to the relevant facts concerning the assignment and the PSC. The client may decide they need to take independent advice, use a tool or sub-contract this decision making – but the statutory duty as to its accuracy and the process remains with them.

During an assignment, it is recommended that you the client regularly checks the existing determination to ensure it remains accurate – this is an indicator of taking reasonable care. The client may wish to have a process in place where the SDS is checked upon each extension for example, or have a set period of time after which they review current SDS’s to ensure they remain correct.

Criticality

Once you’ve identified contractors that are off-payroll and their potential IR35 status, you will need to determine how critical the roles are to each of your clients.



Criticality of the roles will influence the client's decision-making, such as whether to change the contract model to an output-based consultancy contract or whether the client is willing to pay more for the contractor. Disappointingly, the liability remains with the fee-payer if an "outside IR35" assessment by the client (exercised with "reasonable care") is subsequently decided to be incorrect by HMRC. However the client needs to consider the broader reputational risk.

Please note that criticality is not a factor in determining employment status.

Assignments "Outside IR35"

If the client decides that a role is "outside IR35", you will need to review the client's status determination statement to ensure that reasonable care was taken and that the decision itself is reasonable. The client is responsible for making the status determination statement and must take **"reasonable care"** when doing so. If the client does not exercise reasonable care, the status determination statement will not be valid, and the client will be liable as the deemed employer. The liability will pass down the supply chain once each party fulfils its obligations to pass the status determination statement to the next party in the chain.

The fee-payer (usually the recruitment business) will carry the liability in the event HMRC finds the status determination to be incorrect if the client has exercised reasonable care. HMRC have published a [guidance](#) in their Employment Status Manual which outlines the basic principles of what constitutes "reasonable care". It is recommended that the fee-payer should do its own reasonable due diligence on the client's status determination to consider whether it is in line with the likely factual reality of the assignment and that it is not a contrived arrangement. The fee-payer is not compelled to abide by the client's status determination statement.

Status Disagreement Process

Representations that the status is incorrect can be made by the worker or deemed employer at any time up to when the final chain payment is being made for an engagement (Section 61T (1) Chapter 10, Part 2 ITEPA 2003). The client must give a statement to the worker or the deemed employer (depending on who made the representation) that either the SDS is correct with reasons or give a new SDS, stating the date from which they consider that the conclusion in the new SDS became correct and stating that the previous SDS is withdrawn. The deemed employer is deemed to have received the reply from the person above it in the chain of supply.

The client has 45 days beginning with the date they receive the representations to respond. If they fail to meet that deadline then from that date on, they carry fee payer liability until they comply.

There is guidance on how to correct payment submissions in the event of a change of SDS following a status disagreement process in [ESM10015](#).

Remember that although the client carries the responsibility for making the status determination, the recruitment business will carry the tax liability. Therefore, if you do not agree with the "outside IR35" decision that has been made, challenge it via the statutory client-led disagreement process.

Assignments "Inside IR35"

If a role is determined as "inside IR35", you need to understand what options are available in terms of an alternative to an off-payroll model. The options are:

- **PAYE payroll (agency workers)** - Where a recruitment company contracts directly with the worker and operates tax and NICs under agency rules and provides the workers with worker rights, IR35 off-payroll rules do not apply. If you do decide to engage workers directly, AWR applies and Swedish derogation was abolished in April 2020.
- **Umbrella Company** - Where an umbrella company employs the worker directly, the off-payroll working rules do not apply. Some umbrella companies do not employ the worker directly and use intermediaries, so ensure that this is checked as you may unwittingly enter into a PSC contract where the off-payroll working rules will apply.
- **"Inside IR35" PSC** – Should you wish to continue to engage a contractor who is deemed "inside IR35" via their PSC, you will need to calculate a **"deemed employment payment"** using the RTI (Real Time Information) payroll system. The deemed employment pay rate is the income of the worker after deductions, including both employee and employer NICs and the Apprenticeship Levy. Neither worker rights nor stakeholder pension rights apply.

In the event an assignment is determined as "inside IR35", there are several potential outcomes:

- **Option One - client bears the cost of employer's NICs:** rates will increase to fund the cost of the employer's NICs due, however the contractor's net payment will still decrease as there are deductions for the contractor's PAYE tax and NICs from their gross pay.
- **Option Two – contractor/recruiter bears the costs:** the fee payer will fund the employer's NICs but the net payment for the contractor will decrease as the fee-payer needs to deduct the contractor's PAYE tax and NICs from the gross pay. The contractor cannot bear all the costs. A new contract on a lower gross contractor rate, would enable the recruiter to fund the employer's NICs without increasing the client rate.
- **Option Three – contractor becomes a temporary client employee:** the net payment will still decrease as there are deductions for PAYE tax and employer/employee NICs, however the employee will also receive employee benefits and employee rights.
- **Option Four – client bear the costs:** the pay rate is increased to absorb the cost of the employer's NICs and the deduction for all or part of the contractor's PAYE tax and NICs, this effectively absorbs any loss due to the contractor so their net payment via their PSC remains unaffected by the new off-payroll working rules.
- **Option Five – the placement is converted to an umbrella assignment:** the PSC contract will need to be terminated and an umbrella assignment agreed. The rate agreed with the client will need to cover all employment costs, the fee payer's margin and the umbrella company's fee.

Assignment status is 'undetermined'

If the IR35 status of the assignment is unclear, you will need to work with the client to obtain more information in respect of the working practices and the client will need to redo any assessment. It is possible that some minor changes to working practices could give a clearer result. You should work with the client to agree on an approach to the status determination to try and minimise the number of status determinations that you challenge.

Potential New Models for your Business: Output-based Contracts/Statement of Works Contracts

Control is a key issue in respect of IR35 and more broadly in determining self-employment status. Control over how contractors perform the work is particularly relevant. In an assignment where a contractor agrees to perform specific tasks or deliver certain outcomes for a set price and within an estimated delivery time there is less likelihood of the client exerting control over the individual.

Consultancy

Pure consultancy work is where you take responsibility for the delivery and quality of the services, this may involve taking on a larger project and sourcing expert contractors to deliver the work. This will require you to expand your insurance coverage and a consultancy model is particularly risky if you don't have the internal expertise on the type of service are you providing - you may need to hire a project manager. When used appropriately, this type of contract falls out of scope of the public sector off-payroll working rules. From April 2021, if you are operating as a consultancy providing an outsourced service to your end-clients, for the purposes of the off-payroll working rules in the private sector, you will be deemed as the client and therefore responsible for making the status determination.

Statement of Work (SoW)

The second option is a Statement of Work (SoW) or outcome-based contract. If appropriately executed, it is likely to be "outside IR35" compared with the traditional time and materials based contract on a set hourly or day rate. It may be possible for the client to have a direct contractual right to sue the contractor for poor services or failure to deliver meaning your risk is reduced (although clients may often prefer the security of pursuing the recruiter).

These types of contracts are not suitable for roles that are not genuinely outcome, output or delivery-based and independent.

Furthermore, it is more likely that an assignment will fall "outside IR35" if the performance of the services carries a genuine business risk, e.g. payment is conditional upon acceptance of services or satisfactory performance, and rectification of defects or poor performance are made at the contractor's cost.

Although this may seem like an easy option to adapt to the new rules, you remain at risk if the reality of the contractual performance does not reflect the contractual wording.

To run an outcome-based contract model you need to consider the following:

1. How you will specify future roles with your clients to determine whether they are outcome-based.
2. Education and monitoring of the contract delivery to ensure they are treated as independent self-employed contractors on site and during the agreement.
3. Review of your contracts and your insurances to ensure you are insured for the services you are agreeing to perform and the contractual obligations, and that you have passed responsibility and risk to the contractor where appropriate.
4. Review of your internal pay and bill systems and compliance processes.
5. Level of internal expertise required to lead and manage consultancy agreements and identify when either a SoW model or a consultancy model may be appropriate.

Supply Chain Review Summary

Once you have completed your supply chain review, you will have information on each of your affected contractors, role types and the route you and the client think is most appropriate.

Below is a matrix showing different scenarios and the action that might be agreed:

Engagement Model	Off-payroll working rules "Inside IR35"	Business Critical?	Alternative Engagement Model	Client Options
PSC	No	No	SoW	Agree outside IR35, no further action.
PSC	No	Yes	SoW	Agree outside IR35, no further action.
PSC	Not sure	No	Umbrella; PAYE; SoW; or "Inside IR35" PSC?	Obtain further clarification on working practices. Consider changes to contract/role performance. Agree approach and take relevant action.
PSC	Not sure	Yes	Umbrella; PAYE; SoW; or "Inside IR35" PSC?	Obtain further clarification on working practices. Consider changes to contract/role performance. Agree approach and take relevant action. Take a view on the contractor's preference. Recalculate rates under each alternative engagement model, discuss transfer strategy and onboarding new contractors in these roles
PSC	Yes	No	Umbrella; PAYE; SoW; or "Inside IR35" PSC?	Recalculate rates under each alternative option, discuss transfer strategy and onboarding new contractors in these roles
PSC	Yes	Yes	Umbrella; PAYE; SoW; or "Inside IR35" PSC?	Recalculate rates under each alternative option, discuss transfer strategy and onboarding new contractors in these roles Discuss options with critical contractors.

Incorrect determination

Where HMRC disagrees with the determination made, it can investigate and insist on back payment of tax and NICs, as well as fines for late payment and interest from the fee-payer (or deemed employer as applicable).

It is in the interest of both the recruitment business and the client to collaborate for the purposes of making the status determination as this will help minimise the number of disputes and challenges if the parties in the supply chain are aligned in their approach to the off-payroll working rules.

The legislation sets out when an unpaid PAYE debt payable by a deemed employer (the fee payer) can be recovered from others (relevant persons) (Schedule 1, Part 3, Paragraph 19 of the Finance Act 2020 amendment to S688AA ITEPA 2003). If an HMRC officer considers there is "no realistic prospect of recovering



from the deemed employer within a reasonable period” then HMRC can recover from the second highest person in the chain (for example a Managed Service Provider) where that agency is resident in the UK. If they are unable to recover from that party, then they can recover from the client, the user of the worker’s services. There is further detailed information available on recovery of tax in [ESM10031](#).

There is no doubt that recruitment firms are at risk. This will be mitigated by undertaking an appropriate assessment in conjunction with the client, which will likely include the use of the [Check Employment Status for Tax \(CEST\) tool](#).

Budgets and Financial Implications

You should review your budget for 2021 to include a provision for expenditure related to the off-payroll reforms. This may include:

- New engagement model research and setting up costs for each engagement model e.g. agency worker PAYE, “inside IR35” processing, SoW model or consultancy model.
- Cost of human resources completing workforce review and assessments, planning and devising new compliance models and 360 processes, educating internal staff, clients, contractors and other stakeholders.
- Reforecast costs of sale calculating the fixed costs of running different supply models e.g. apprenticeship levy, stakeholder pension, worker provision such as holiday pay and statutory sick pay, PAYE and NIC rates on different day rates. This is essential to ensure that you understand the true cost of sale and hence the accurate client bill rate necessary to preserve a margin and also the accurate contractor pay rates (which must not include employer NICs).
- New or increased external supplier costs, for example to assist you with running PAYE payroll.
- Changes needed to IT systems, new systems, software, interfaces, reporting functionalities.
- Events/marketing for client & contractor education.

Impact on IT Systems and Business Support Services

You need to ensure that your business support service leaders understand the legal changes and your strategic response. Only then are they able to evaluate whether your current systems are capable of dealing with the change.

Issues they will need to consider include:

- Are payroll/finance systems able to process “inside IR35” deemed payments and deductions?
- Do you have or do you need a fit-for-purpose agency worker PAYE system?
- Do you have adequate systems and management reporting functionality?
- Do you need to replace or improve your IT systems, software, online solutions, integrate with your suppliers’ systems and/or revise existing systems to support new models?



What next?

HMRC are providing support and guidance to help businesses implement the off-payroll working rules and ensure the guidance is appropriate to the larger and more diverse private sector. The provisions will be live for services in scope delivered on and after 6 April 2021. You can access their support and guidance [here](#).

APPENDIX 1

Determining whether the role is inside or outside IR35

To determine whether a contractor will be caught by IR35, key criteria are reviewed to establish employment status. A decision is made about a hypothetical contract between the contractor and the end-client, and whether, if those two parties were contracting directly, there would be an employment relationship. However, the route to determining employment status is fact-specific and in some cases, there is no clear outcome.

It is worthwhile working through [HMRC's employment status for tax test](#) and entering different responses to gain an understanding of the different outcomes. This tool is often used in the public sector when establishing IR35 status.

Essentially, if a contractor has similar working conditions, responsibilities and control as an employee of the client would have, then they are likely be classed as "inside IR35" (i.e. the off-payroll working rules apply). Case law is evolving constantly in the tax tribunals, courts and employment tribunals but the key factors that determine a contractor's IR35 status are as follows:

- **Substitution**

A genuine right of substitution has long been deemed to be a very important factor when demonstrating that a contractor's assignment falls "outside IR35". For a substitution to be considered valid, the right to supply a substitute must be a genuine one. This means that the client must agree to it in practice, the contractor must pay for the substitute, and it should be an unfettered right. An unfettered right of substitution means that a client must accept a substitute if the initial contractor is unavailable. HMRC have now qualified the criteria within the CEST question on substitution, which states that a client's need to be satisfied that the substitute has the skills and experience required or to ensure the substitute is approved under their security processes - this does not negate the right of substitution.

- **Control and Direction**

In most cases where professional services are provided, it is important that a contractor can demonstrate a certain amount of autonomy in the way they undertake a project. Both the written contract and working practices must show that the client has no influence over how the contractor performs their services.

Control factors that may point towards an "inside IR35" status include:

- Indicating that the contractor will be supervised;
- Including any "staff" benefits (including holiday or sick pay);
- Including start/end/break times; and
- Contractual clauses that specify any rights of control or supervision over the contractor.

The reality of the situation is that the individual is responsible for the delivery of the services. The individual will determine and control how and when they provide their services to the client, provided that they meet client-specific targets or project completion dates. It is worth noting that any clauses referring to control should be reflected in both the first-tier (between recruitment business and client) and the second-tier contracts (between recruitment business and contractor).

- **Financial risk**

The contractor may take on a level of financial risk in undertaking the engagement. Contractors who do not take any financial risk, for example they don't have to rectify poor quality services at their own cost, are more likely to be "deemed employees" for tax purposes. Contractors taking financial risk would also be expected to maintain appropriate insurances.

- **Mutuality of Obligation**

This is a hotly disputed area of law, as the position of HMRC is different from that of many practitioners and case law. In essence, it is an obligation between the parties to provide and accept work. In an employer/employee relationship, mutuality of obligations is easy to establish. However, in client/contractor relationships, it is less clear. HMRC states that by having a contract agreeing to provide services, mutuality is established but most experts consider the legal picture to be more complex.

Other factors include:

- Provision of equipment;
- Any absence procedures;
- Continuity of the engagement;
- Termination agreements;
- Notice periods; and
- If the contractor has become "part and parcel" of the organisation.

HMRC's Employment Status Manual [ESM10000](#) contains many examples and scenarios. Below are two examples:

HMRC Examples	
Off-payroll working rules apply	<p>Rebecca works through her own PSC as an IT product designer at the Ministry.</p> <ul style="list-style-type: none"> - Rebecca will be working at the Ministry's IT development centre; - She is not required to supply her own equipment; - Rebecca will work under the direction of a senior manager; - Flexible working hours are available, but Rebecca will need to agree time off with her manager.
Off-payroll working rules do not apply	<p>Jasmine is a Website Designer, contracted to a large local authority through a PSC to design and build a website. She will:</p> <ul style="list-style-type: none"> - Deliver the website to an agreed standard by the agreed date; - Visit the council's offices for meetings, but mainly work from own office; - Provide her own equipment needed to do the job in hand; - Employ her own staff to help deliver the contract if she needs to; and - Cover her own costs and expenses. <p>She is not filling a role, but rather providing a whole service, the fee for which covers her equipment, time and staff costs (should she want/need to engage others to assist on the project).</p>





Blanket rulings and reasonable care

There are three instances whereby the client becomes the “deemed employer” and therefore carries the tax liability:

- Where the client fails to inform the supply chain and provide the status determination statement;
- Where the client-led disagreement process is triggered, and the client fails to respond within 45 days;
- Where the client demonstrates that they have failed to take reasonable care when assessing the IR35 status of the contractor; or
- Upon transfer of Debt.

One of the biggest issues to arise from the public sector reforms in April 2017 were blanket “inside IR35” assessments. In some cases, this resulted in large number of contractors being pushed into an umbrella arrangement or leaving and moving to clients who were prepared to assess assignments on a case-by-case basis. The NHS, for example, did a [U-turn over blanket IR35 decision](#) and was forced to back-track on its initial stance of treating all PSC contractors as “inside IR35” as it quickly became clear that such a blanket decision would not meet the obligation to take reasonable care in assessing an engagement under IR35.

There is now a status disagreement process, introduced in light of the 2017 reforms.

Disclaimer

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