

## Contractors: don't wait to seek advice on MSC's

The [Lawspeed](#) Seminar yesterday on the [managed service company](#) legislation included in the Finance Bill, which will go into effect on April 6, 2007, made one point very clear: there is still a lot of uncertainty about how the new legislation will be applied. That means contractors need to take advice, and they should not wait: remaining with your current contract could mean accepting a high level of risk.

### It's All About Risk

If proof were needed that this issue is white-hot for agencies, recruiters--and just about everyone else in the contracting business--the seminar would have convinced the most hardened skeptic.

The room at the London Chamber of Commerce was packed out as [Lawspeed](#) managing director Adrian Marlow discussed the new law with Robin Wythes, of the Inland Revenue's Policy Team for the HMRC PAYE, SA, and NICs Directorate, and commentary was provided by Peter Clayton, chief executive of the [Association of Professional Recruitment Consultants](#). Their task was made more complex by the fact that consultations on these issues are ongoing--the Finance Law doesn't get passed by Parliament for another few weeks. So there could be changes, although there won't be major ones at this stage.

The reason for the packed house is largely that the new law allows the Revenue to transfer liability for [MSC contractor tax](#) not only to scheme providers, but also to associates of providers. Almost everyone in the room wanted to make sure that they didn't fall into either of those categories. Running an agency or an administration service would become quite risky in that case, so it's all about reducing risk.

“ remaining with your current contract could mean accepting a high level of risk ”

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We can't reconstruct the discourse in its full complexity, because as with most legal subjects, the devil is in the details. But a few points did become clear to us that contractors should take into consideration.

### Review Ongoing Contracts

First, if you have an ongoing contract with a company that could be considered an MSC provider, you should try and change it as soon as possible.

There was a complex discussion at the seminar of the issues involved in making this change, and it's not at all clear--to the layman or to the jurist--how all the issues involved may be resolved. Go to your scheme provider and ask to make changes. If you agree on them mutually, and if you take legal advice, you have a good chance of getting through all this without difficulties.

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### Now Only Two Choices

Then, if you are not under contract, make sure the status of any administration service that you deal with is clearly not that of a managed service company.

Contractors now have two choices: either they form their own limited company--and this in itself does not protect you, so be certain your contracts with agencies and clients are outside [IR35](#)--or you sign up with an [umbrella company under the PAYE regime](#). [There is no other choice with the current legislation that will make you compliant.](#)

[Should anyone propose a different option to you, pay no attention. As Wythes of the Inland Revenue made clear at the seminar, there is no other compliant option. The risk of anything else will be quite high.](#)

### Soon Advice Will Be Costly

[There is another reason, one stemming from the current legislation, for contractors to move to seek advice quickly. One of the qualifications of an managed service company provider under the new legislation is someone who is in the business of "promoting or facilitating" service companies. Although accountants and employment providers are specifically excluded from the legislation, they aren't excluded if they promote or facilitate \(see, I told you it wasn't simple\). And if they engage in these activities, they become liable for MSC contractor tax.](#)

[The lawyers are still splitting hairs about this part of the legislation, but our view is that professionals of all shapes and sizes are going to think twice before they give advice to contractors, lest they find themselves lodged with tax liability. That means advice is going to become more expensive. So go get some now.](#)

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