

# The delayed Off-Payroll Tax extension to the private sector (IR35)

From April 2021, private sector businesses will become responsible for assessing the employment status of individuals hired on a contingent basis. This change means that the business, agency, or other third party paying the contractor, will be required legally to pay new taxes of employer's National Insurance (NI) contributions (13.8%) and the Apprenticeship Levy (0.5%) on top of contract rates paid out to individuals deemed to be within scope of the Off-Payroll rules. The contractor's earnings are then to be treated as employment income, and subject to income tax and employee's NI deductions, though the legislation does not afford the contractor the requisite rights to accompany their newfound status as a 'deemed employee'.

## What are the Off-Payroll rules and what is their purpose according to HMRC?

1. HMRC claims that the Off-Payroll working rules (Chapter 10 of ITEPA) ensure that limited company contractors pay the same amount of tax as an employee when they are deemed to be working as an employee.
2. HMRC maintains that contractors pay significantly less tax than an equivalent employee. However, following the April 2016 increases to dividend tax, **the difference between tax obtained from limited company contracting and employment income is negligible** [1].
3. Despite HMRC's attempts to vilify contractors, the perceived tax shortfall is caused mainly by firms who, through hiring contractors, **circumvent their need to pay employer's NI or provide workers' rights**. Figures taken from an example in HMRC's consultation [2] show that **roughly 84% of HMRC's perceived tax shortfall is due to missing employer's NI contributions** [3].
4. The Off-Payroll rules seek to reclaim the avoided employer's NI by classing these workers as 'employed for tax purposes only' without granting them the requisite employment rights, effectively forcing them into '**zero rights employment**'. This exploitative practice is the subject of a separate Government consultation [4].
5. The Off-Payroll rules have been heavily criticised in a House of Lords Finance Bill Sub-Committee report, which states: 'Separating employment status for tax purposes from employment status under employment law fails to acknowledge that contractors bear all the risk for providing the workforce flexibility from which both parties benefit'. Elsewhere, the report adds that, through the Off-Payroll rules: '**Government is replacing one unfairness with another**' [5].
6. The Treasury maintains: 'It is fair that two people working as employees pay broadly the same tax and NICs, even if one of them works through their own company and the other is directly employed' [6]. This statement is **inconsistent with the employment status case law underpinning IR35**, and was highlighted by the Finance Bill Sub-Committee, which warned a failure to acknowledge the distinction between contractors and employees '**could eliminate by stealth contractor flexible working**' [5].
7. HMRC purported that IR35 non-compliance costs would have reached £1.3bn a year by 2023/24. No evidence has been provided to support this claim. The Office for Budget Responsibility (OBR) estimates that the new rules will yield £800m [7]. **This figure still has a 'very high' uncertainty rating** as it does not factor in the behavioural impact of the changes.
8. HMRC also **bases its calculations on the false assumption that contractors and employees get paid the same amount**. Contractors can typically charge 30%-100% more than their permanent counterparts, partly to compensate for the absence of employment rights, but also because contractors are on-demand workers with no job security, as COVID-19 has made very apparent. When the higher rates of pay are factored in, **contractors generate more tax than employees**.

## What does an extension of the Off-Payroll rules mean for the private sector?

9. The Finance Bill Sub-Committee noted that **'Government is privatising tax compliance'** by making large and medium-sized businesses 'responsible for enforcing a regime which HMRC has struggled with over the last 20 years', elsewhere adding: 'We conclude that HMRC is imposing a heavy burden on businesses by requiring them to determine status using a complex, fact-specific test' [5].
10. The new rules affect all UK self-employed workers and organisations that source contingent labour to meet otherwise unrealistic work demands. Employer's NI and Apprenticeship Levy contributions must be paid on top of the contractors' fees, **adding an additional 14.3% to the cost of hiring contractors deemed within scope**.
11. However, non-compliance in the public sector has shown that many hirers, agencies and umbrella companies have sought to negate this cost by blanket assessing contractors as 'employed for tax purposes' before **unlawfully attempting to deduct their 13.8% employer's NI liability from the contract rate** [8].
12. This practice has been replicated in the private sector. A March 2020 survey of more than 12,000 contractors by ContractorCalculator found that, of those deemed 'inside IR35' by clients, **79% reported to have had employer's NI unlawfully deducted from their rate** [9].
13. Meanwhile, 45% claimed to have been told by clients or agencies that such a deduction was in line with the legislation, an issue likely compounded by published **HMRC guidance that frequently conflates the Off-Payroll rules with the IR35 legislation** [10]. Similarly, materials distributed to candidates by public body Network Rail and subsequently shared with ContractorCalculator **informed contractors that employment costs would be deducted from their agreed rates** [11].
14. The unfairness of this arrangement was summarised by the Finance Bill Sub-Committee, which stated: **'It seems unfair that the contractor will effectively bear the brunt of the client's NICs in addition to their own, greater, employment taxes'** [5].
15. HMRC's failure to educate the private sector has contributed to inaction and uncertainty over status assessments. Straw poll figures gathered from more than 1,000 agents partaking in a February 2020 HMRC webinar for private sector businesses preparing for the reform found that **49% hadn't taken any steps to prepare for the Off-Payroll rules**. In addition to this, **50% said they were not confident making status determinations** [12].
16. Uncertainty among companies applying the rules has been compounded by HMRC's aggressive approach to IR35. In August 2019, it emerged that the taxman had sent correspondence to nearly 1,500 contractors engaged by GlaxoSmithKline, **contesting that they had been operating 'inside IR35' without examining their working arrangements** [13]. **HMRC also imposed a £4.3m tax bill upon NHS Digital** after challenging numerous 'outside IR35' status assessments that NHS Digital had carried out in good faith using the taxman's own CEST tool [14].
17. Resulting concern over tax liability risk has seen many companies refuse to engage contractors outside of IR35. A survey by inniAccounts found **only 9% of contractors had managed to secure an 'outside IR35' assessment** [15], despite the taxman's estimation that two-thirds of contractors should be outside the scope of the rules.
18. The cost of employment taxes, uncertainty over status determinations, and efforts to negate these issues by hiring firms, has given rise to **contract disputes, recruitment challenges and disruption to projects**. The response in the public sector has also demonstrated that the rules **incite the use of tax avoidance schemes** [16], often among vulnerable low-paid self-employed seeking to escape the effective double-tax charge imposed upon them by their hirers.
19. As a result, **thousands of legitimate contractors have been exploited by Off-Payroll**, despite HMRC's insistence that the rules don't impact the self-employed. Freedom of Information (FOI) requests by ContractorCalculator have revealed that blanket approaches to IR35 resulted in Network Rail deeming 99% of its contingent workers within scope of the rules [17], while 98% of contractors at both High Speed 2 (HS2) [18] and the Met Office [19] were considered caught as a result of similar approaches.

20. Ernst & Young (EY) found that **95% of businesses expected to be impacted significantly by the Off-Payroll rules**, with more than half expecting changes to be disruptive [20]. These concerns were vindicated, as ContractorCalculator's March 2020 survey found that **52% of contractor clients had lost at least half of their contingent workforce** due to the Off-Payroll rules [9].
21. Government claimed small businesses would be exempt from this burden, but this has not proven to be the case. **Small consulting firms have been caught in the net and forced out of business**, following attempts by larger firms to lock down their supply chains by banning the provision of services by limited company contractors.
22. The Treasury has stated that 'the smallest 1.5m businesses' [6] won't be affected by the private sector changes, meaning that **the rules could impact potentially 4.2m of the UK's 5.7m businesses**. This figure is a far cry from the 60,000 hiring firms identified as being affected by the legislation in a July 2019 HMRC policy paper [21].
23. Along with 60,000 hirers, HMRC estimates roughly 20,000 agencies would be affected, and forecasted that a 'one-off impact on administrative burden' on UK business would total £14.4m [22]. When divided between the combined 80,000 entities tasked with enforcing compliance, this works out at an average cost of £180. This is some distance from the £7,550 cost of implementing the Off-Payroll rules per public sector entity, according to HMRC's own IFF research report [22], and the **£1.5m cost incurred by the BBC** [23].
24. Such discrepancies prompted a warning from the Lords that Government had '**severely underestimated the costs to business of implementing the changes**', having failed to take into account the concerns raised by stakeholders [5].

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## Employed or self-employed? Employment status needs to be assessed on a case-by-case basis

Ian would be considered self-employed for this contract




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Ian is an IT contractor who offers his services through a limited company. He is hired by a Government department to design and develop a specific piece of software. The timescales for completion of the project are at Ian's discretion and he has the right to use someone else to complete the services. Ian can work off-site and is permitted to work for other organisations while working on this contract, providing his work with the client department isn't compromised. Ian has complete autonomy over how work is delivered but is required to provide monthly progress reports to his client.

**This is a real-life example. Despite being clearly outside the scope of IR35, Ian was challenged by HMRC at a tax tribunal.** The Jensal Software Ltd v HMRC ruling [24] resulted in a comprehensive victory for Ian, raising concerns over HMRC's ability to police the legislation it is seeking to reform.

Jemima would be considered an employee for this contract




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The NHS needs locum nurses to help alleviate staff shortages across several hospitals and hires Jemima on an ad-hoc basis over six months. She is required to use hospital equipment while working at the hospital and, although she often needs to use her best judgement at work, she needs to adhere to strict health and safety procedures. Because of this, **Jemima's client deems her to be 'employed for tax purposes' and unlawfully deducts its employer's NI liability from her earnings.** Jemima loses roughly a third of her earnings as a result of her new tax status, once the withdrawal of expenses has been accounted for. Jemima considers this decrease in earnings as too significant and looks for work opportunities abroad, thereby stretching the resources at this hospital even thinner.

This example is a scenario faced currently by thousands of locum nurses [8]. **The NHS is one of many public authorities failing to comply with the Off-Payroll rules, subjecting its workers to exploitation as a result.**

## How has HMRC misrepresented the Off-Payroll rules?

25. **HMRC's recent track record in IR35 tribunal cases shows that it struggles to interpret the IR35 rules.** Its defence for *Jensal Software Ltd v Revenue & Customs* [24] was error-strewn and suggests that the taxman's stance on IR35 should not be trusted.
26. Recent tribunal defeats to broadcasters *Lorraine Kelly* [25] and *Kaye Adams* [26] mean **HMRC has only outright won four of the 19 tribunal cases** to emerge between April 2010 and March 2020. Despite this, the taxman continues to spend taxpayer money pursuing lost cases via the Upper Tribunal, and maintains its unsubstantiated claim that "only 10% of PSCs that should apply the legislation [IR35] actually do so" [2].
27. HMRC falsely claims that mutuality of obligation (MOO) exists where one party agrees to work for another in exchange for payment. This interpretation was roundly rejected by IR35 Forum members [27], as well as multiple IR35 tribunal Judges, one of whom stated: "That would be true of every contract, both employment and for services, **otherwise the contract would not exist at all**" [28]. This was also reinforced in the more recent case of *RALC Consulting v Revenue & Customs* in Oct 2019 [29].
28. The Treasury maintains that historical cases won't be targeted [6]. However, a leading tax barrister has warned that these assurances offer little certainty as the taxman is not bound to stand by them [30]. In addition to this, HMRC is embroiled currently in multiple ongoing high-profile IR35 cases where **it is seeking to secure historic income tax and NI payments from broadcasters** [31].
29. As a result, 91% of respondents to inniAccounts' survey stated that they don't trust Government's promise not to retrospectively investigate contractors who agree to work 'inside IR35', a factor that has contributed significantly to the breakdown of many contract engagements [15].
30. The taxman continually denies the issue of non-compliance, whereby public authorities hire contractors through umbrella companies that deduct employer's NI from contractor payslips, **despite evidence to show that this non-compliant practice is rife** [8]. This **double-tax charge had been imposed upon a staggering 79% of respondents** to a March 2020 survey [9], resulting in cuts to take-home pay of circa 25%.
31. Although the legislation requires organisations to assess each engagement on a case-by-case basis, **HMRC actively encouraged NHS Trusts to conduct blanket assessments** in a September 2017 webinar, stating: "You don't have to do an in-depth exercise in each case" [32]. NHS Trusts obliged, and research by the Independent Health Professionals Association (IHPA) later found that **12,000 locum medics left the UK as a result**, contributing to a drop in locum 'fill rates' of more than 50% in many hospitals [33].
32. Network Rail also agreed a non-compliant 'strawman' approach to IR35 assessments with HMRC which resulted in 99% of its contractors being deemed caught by the legislation [17].
33. HMRC has also conceded in a response to an FOI request that **it does not check for accurate status determinations** [34], and admitted to the House of Lords that it **does not monitor non-compliance with the legislation** nor sanction companies applying blanket approaches [35].
34. HMRC's interpretation of the **Government-commissioned IFF research report was condemned widely as unrepresentative and biased** by consultation respondents because it failed to consult with contractors or agencies. Others accused HMRC of cherry-picking preferable statistics from the report to feature within its consultation, to portray the reform in a more positive light [36].
35. HMRC also acknowledged that earlier drafts of the report contained information that was subsequently removed, yet blocked its disclosure, observing that its exposure could impede Governments ability to introduce the rules to the private sector [37].
36. The IFF research report's shortcomings meant its findings were largely rejected by the Finance Bill Sub-Committee, which noted: **'It is regrettable that no proper evaluation has been carried out into**

**the effect of the off-payroll working rules in the public sector’, elsewhere adding: ‘We are not convinced that Government has learnt lessons from the application of IR35 in the public sector’ [5].**

37. The CEST tool, developed by HMRC to help contractor clients assess employment status, **is inconsistent with the employment case law underpinning IR35**. HMRC claims CEST is accurate, though conceded in an FOI response to ContractorCalculator that it has **no evidence to substantiate this claim** [38]. As of April 2020, HMRC is still yet to provide any credible evidence demonstrating its CEST accuracy claims.
38. Of 3,909 contractors across five key public sector bodies, **CEST determined 94% to be ‘employed for tax purposes’**. When challenged on this disproportionately high number, Financial Secretary to the Treasury Mel Stride denied it suggested that CEST was inappropriate [39].
39. When tested against the Lorraine Kelly case, **CEST incorrectly determined IR35 to apply**. This is despite the tribunal Judge noting: “We do not consider this to be a borderline case” [40]. Leading tax barrister Keith Gordon similarly tested the updated CEST tool against the facts of the Kelly case, informing the House of Lords that **CEST had once again failed to return the correct outcome** [41].
40. Following severe criticism of CEST from experts in response to its consultation [36], HMRC pledged to work with stakeholders to fix the tool; in doing so **acknowledging that CEST is not fit for purpose**. The updated version fails to adopt the necessary approach to ensure an accurate status assessment and **continues to omit crucial employment status factors such as MOO**. In addition to this, published usage data for the tool covering the period from 25 November to 31 January revealed that **CEST’s supposed enhancements had left it unable to determine an outcome in 21% of cases** [42].
41. HMRC’s Employment Status Manual states: ‘HMRC will stand by the result provided the information is accurate and it is used in accordance with our guidance’ [43]. However, its actions have consistently contradicted this message. While NHS Digital suffered a £4.3m tax bill concerning numerous CEST assessments [14], HMRC also attempted to have evidence derived from CEST omitted from consideration in the RALC Consulting case, branding the “**application of CEST irrelevant to the issues to be determined by the tribunal**” [44].
42. After a lengthy inquiry, the Finance Bill Sub-Committee’s report concluded that CEST **‘offers limited assistance to businesses, which need to spend considerable time and money clarifying the status of their contractors as a result’** [5].

## What can we learn from the public sector reform?

Question	Facts	HMRC claim
Have the Off-Payroll rules increased HMRC's tax yield from public sector contingent workers?	<p><b>It is unclear.</b> To accurately evaluate the fiscal impact of the Off-Payroll rules, any increase in income tax via PAYE and NI needs to be considered alongside the inevitable reduction in Corporation Tax and Dividend Tax payments. A full compliance cycle, including resolved enquiries into employment status, needs to be considered, as highlighted by the ICAEW amongst others [45]. HMRC has not considered the issue holistically, and so the extent to which the Off-Payroll rules have increased <b>HMRC's tax yield remains unknown</b>. The increased cost of hiring contingent labour to public authorities, which one authority in the HMRC-commissioned IFF report [22] said was between 10% and 15%, also needs to be considered.</p>	The Off-Payroll rules resulted in an additional £550m raised in income tax and NI from the public sector in their first year.
Have public authorities been compliant with the reform and assessed contractors on a case-by-case basis?	<p>There is overwhelming evidence to suggest that public authorities have not been compliant with the rules, with many imposing unlawful blanket rules that render entire contingent workforces 'employed for tax purposes' without receiving an assessment.</p> <ul style="list-style-type: none"> <li>• A survey by the Freelancer and Contractor Services Association (FCSA) found that <b>50% of public authorities had not conducted IR35 assessments</b> for contractors, and 26% applied blanket rulings [46].</li> <li>• A study of 450 healthcare locums by ContractorCalculator and the IHPA found that 60% of NHS locums were subject to blanket rules, while 50% were informed that they would not be hired unless they were on an umbrella company's payroll [47].</li> <li>• A survey of public sector contractors by Qdos found 38% reported having been subject to blanket assessments since April 2017 [48].</li> <li>• FCSA collected evidence that <b>a significant number of public bodies took a blanket approach to status assessment</b>, including NHS Trusts, local authorities and central Government bodies [49].</li> <li>• HMRC claims blanket assessments happen in just 10% of cases. Even with this low estimate, the Association of Recruitment Consultancies (ARC) observes that <b>roughly 100,000 contractors are set to be affected unfairly if the rules are extended to the private sector</b> [60], based on HMRC's estimation that contractor headcount is circa 1m.</li> <li>• Non-compliance within the NHS has resulted in its practices being the <b>subject of a judicial review</b> [61].</li> <li>• Jolyon Maugham QC told a Commons Select Committee on BBC pay that non-compliance among public authorities is <b>forcing contractors into false employment</b>: "They are saying everybody is an employee in circumstances where the law does not support that conclusion" [62].</li> <li>• The Finance Bill Sub-Committee inquiry concluded that: 'As a result of blanket assessments, contractors are likely to have been categorised and taxed incorrectly' [5].</li> <li>• Worryingly, the private sector has followed suit. A study by Brookson Legal found that <b>59% of UK businesses intended to take a blanket approach to compliance</b>, due to time and cost restraints, and 45% haven't taken any steps whatsoever to prepare [63].</li> </ul>	Almost all public authorities are compliant with the reform, having made assessments on a case-by-case basis. The £550m increase in PAYE and NI since the Off-Payroll rules began is evidence of heightened compliance.
Do the Off-Payroll rules made it harder for public authorities to hire contingent labour?	<p>Public authorities have suffered notable difficulties sourcing contractors since the Off-Payroll rules were implemented.</p> <ul style="list-style-type: none"> <li>• According to research from the Association of Professional Staffing Companies (APSCO), <b>70% of recruiters claim contract placements in the public sector have dropped</b> [64].</li> <li>• An August 2017 study conducted by ContractorCalculator found that 27% of contractors left the public sector after the reform went live and 38% of them couldn't be replaced [65].</li> <li>• Harvey Nash also found that 49% of contractors surveyed seek contract opportunities exclusively in the private sector [66].</li> <li>• The IFF study noted that <b>32% of central bodies had reported</b></li> </ul>	The reform has not made it harder for public authorities to fill vacancies.

	<p><b>struggles in filling contractor vacancies</b> [22].</p> <ul style="list-style-type: none"> <li>• A survey of 115 public sector hiring managers by the Chartered Institute of Personnel and Development (CIPD) found that <b>51% of respondents lost contractors immediately following the reform</b>, while 71% reported struggling to retain contractors [67].</li> <li>• A National Audit Office (NAO) report found that several contractors, notably those in IT and project management, left the BBC in response to the Off-Payroll rules [23].</li> <li>• As a result, <b>39% of private sector clients expect there to be fewer contractors available from April 2020 onwards</b>, while <b>48% claim IR35 has encouraged them to engage fewer contractors</b>, according to Brookson Legal [63].</li> <li>• 36% of contractors told an FCSA survey that they would only work on ‘outside IR35’ contracts, while 13% claimed they would quit contracting if they believed they were being incorrectly assessed as ‘inside IR35’ by a client [68].</li> <li>• IHPA analysis of Office for National Statistics (ONS) figures revealed <b>12,000 locum medics had left the UK due to the Off-Payroll rules</b>, subjecting the NHS to intensified skills shortages [33].</li> <li>• The Finance Bill Sub-Committee report acknowledges: ‘Some contractors ceased working in the public sector altogether, causing recruitment and retention problems’ [5].</li> </ul>	
<p>Has the reform increased contractor rates?</p>	<p>There is substantial evidence pointing towards a significant increase in contractor rates following the implementation of the reform.</p> <ul style="list-style-type: none"> <li>• APSCo found that <b>45% of recruiters reported increasing charge rates for contractors in the public sector</b> [64].</li> <li>• Harvey Nash found that <b>42% of contractors claimed to have increased their rates</b> to counter the tax increase caused by their deemed employment status [66].</li> <li>• The IFF also acknowledged that <b>28% of central bodies reported increases in gross hourly rates</b> [22].</li> <li>• A survey by the Association of Chartered Certified Accountants (ACCA) found that <b>96% of private sector contractors would attempt to renegotiate their contract fee to account for the additional tax liabilities</b>, if deemed caught by IR35 [69].</li> </ul>	<p>For the majority of public authorities, the reform has not resulted in an increase in rates charged by contractors.</p>
<p>Have public sector authorities and projects suffered as a result of the reform?</p>	<p>Many high-profile organisations and projects, including National Rail and HS2, experienced difficulties following the reform, while staff shortages within the NHS have resulted in a patient care crisis.</p> <ul style="list-style-type: none"> <li>• ContractorCalculator found that <b>71% of projects were delayed or cancelled in the immediate aftermath</b> [65].</li> <li>• An October report by Transport for London (TfL) attributed a project delay of more than three months to a significant number of contractors leaving after the reform [70].</li> <li>• ContractorCalculator and the IHPA found that <b>roughly a quarter of locums left the NHS following the reform</b>, with 87% of respondents claiming the reform has impeded patient care drastically [47].</li> <li>• According to a survey of more than 800 contractors by IPSE, <b>40% of public sector contractors witnessed project delays and 35% said they had seen costs rise</b> following the public sector reform [67].</li> <li>• CIPD found that 52% of public sector hiring managers reported <b>rising costs, delays and project cancellations</b> following the changes [67].</li> <li>• HMRC’s IFF research report estimated that it cost public bodies on average £7,550 to implement the Off-Payroll rules [22], but the NAO found that costs incurred by the BBC in ensuring compliance totalled £1.5m – <b>almost 200x more than HMRC’s figure</b> [23].</li> <li>• The IHPA found that many <b>hospitals suffered a drop in locum vacancy ‘fill rates’ of more than 50% following the introduction of the Off-Payroll rules</b>, drastically impeding patient care [33].</li> </ul>	<p>The reform has had no negative effects on the labour market, and changes in public sector recruitment were due to natural fluctuations in the workforce.</p>

<p>Can CEST be trusted to help hirers accurately determine IR35 status?</p>	<p>No. There is a large body of evidence indicating CEST is not fit for purpose.</p> <ul style="list-style-type: none"> <li>• <b>Barristers and IR35 legal experts have advised that CEST cannot be trusted for accurate representations of employment status</b> [71].</li> <li>• In a letter to the Financial Secretary to the Treasury, the ICAEW <b>advised that CEST was not suitable for use in the private sector</b> [72].</li> <li>• ContractorCalculator re-tested CEST against 24 employment status cases which HMRC also used to ascertain its accuracy. <b>In only 58% of cases did CEST provide the right answer for the right reasons</b> [73].</li> <li>• Another FOI request by ContractorCalculator found that <b>CEST was not assessed formally under Government’s own Digital Services Standards</b> [74], and that it’s been stuck in beta over two years [75].</li> <li>• <b>HMRC has conceded that it has no detailed evidence to support its claims regarding the accuracy of CEST</b> [38]. Meanwhile, as recently as March 2020, HMRC published testing documentation asserting CEST’s outcomes without providing any credible detail to back its claims [42].</li> <li>• Speaking at a Public Accounts Committee (PAC) hearing, the now CEO of HMRC, Jim Harra, conceded that the experts involved with the tool’s testing were members of HMRC’s employment status team [76], meaning <b>independent expert input was not sought</b>.</li> <li>• CEST was used to assess the status of 663 BBC broadcasters. Though the majority of broadcasters had been assessed previously as self-employed via the BBC’s internal review process, developed by Deloitte and HMRC, <b>CEST now claimed 92% to be within IR35</b> [23].</li> <li>• Use of CEST has resulted in disproportionately high numbers, up to 99%, of ‘inside IR35’ decisions elsewhere in the public sector [17].</li> <li>• Many <b>experts have called for CEST to be either amended or withdrawn</b>, citing its failure to consider MOO and limited scope [36].</li> <li>• This sentiment was echoed in feedback on CEST to HMRC where <b>50% of respondents described the tool as ‘bad’ or ‘very bad’</b> [77].</li> <li>• After hearing substantial evidence from Government representatives and industry stakeholders, the Finance Bill Sub-Committee said: ‘We agree that the support offered by HMRC in determining status – and <b>the CEST too in particular – falls well short of what is required</b>’ [5].</li> </ul>	<p>CEST is aligned with employment case law underpinning IR35.</p>
<p>Has the reform improved compliance with IR35 in the public sector?</p>	<p>Not necessarily. There is evidence to suggest that this scenario is incentivising more contingent workers to engage in tax avoidance schemes. Meanwhile, evidence of blanket assessments from hirers suggests that many of those now working via PAYE shouldn’t be.</p> <ul style="list-style-type: none"> <li>• The Times found that <b>recruitment agencies are encouraging contingent workers into non-compliant umbrella loan-based schemes to counter the tax loss caused by the Off-Payroll rules</b>, with new schemes continuing to emerge [78].</li> <li>• As many as one in ten companies managing the payrolls of locum workers – roughly 60 of the 550 schemes in operation – are being investigated by HMRC for operating outside tax rules [79].</li> <li>• This has prompted <b>a leading UK medical recruitment agency to write to 30,000 locums, warning of the perils of these schemes</b> [16].</li> <li>• During the first 10 months of the public sector reform, HMRC reported that roughly 58,000 engagements each month were found to be within scope of the rules, attributing this to previous high levels of non-compliance. However, FCSA uncovered guidance from numerous bodies incorrectly instructing that sole traders be assessed, suggesting <b>high volumes of sole traders are caught inappropriately</b> [30].</li> <li>• In email correspondence obtained by the IHPA via FOI, HMRC’s IR35 lead Mark Frampton acknowledged that <b>HMRC was “very concerned” by heightened engagement in tax avoidance schemes</b> among healthcare locums following the public sector changes [80].</li> </ul>	<p>The reform has improved compliance with IR35. The fact that there are now more contingent workers engaged on public authority or umbrella company payroll demonstrates this.</p>



## What has already happened in the private sector?

43. The non-compliant approach to Off-Payroll inherent in the public sector is also prevalent in the private sector. ContractorCalculator's survey of more than 12,000 contractors found that **26% of respondents revealed clients had imposed a blanket ban on limited companies**, while **16% had been subject to blanket role-based assessments** and 10% of clients had made blanket determinations without conducting assessments [9].
44. These findings have been supported by an IPSE survey which found that **39% of respondents said their client had indicated that they were not prepared to assess individual engagements** [81]. Meanwhile, inniAccounts found 23% of contractors had been subject to blanket assessments and a further 23% had been banned from engaging via a limited company [15].
45. Despite HMRC's estimation that two-thirds of contractors should be outside the scope of the rules, only 27% of contractors told ContractorCalculator that they had managed to secure an 'outside IR35' engagement, suggesting **thousands are being unjustly subject to 'zero rights employment'** [9]. This issue has been compounded by HMRC's decision to place clients in charge of administering status disputes, with 27% of contractors having **been told by clients that they are not allowed to challenge their deemed status**.
46. Multiple major UK banks, including the like of Lloyds [82] and Barclays [83] have issued highly-publicised draconian blanket bans on the engagement of limited company contractors, resulting in an inevitable loss of flexibility.
47. Despite being a legal requirement, **only 38% of respondents to ContractorCalculator's survey said they had received a Status Determination Statement (SDS)** from their client [9], while even fewer (13%) had according to inniAccounts' survey [15].
48. As a result of the Off-Payroll rules and client non-compliance, **32% of freelancers told IPSE that they intend to leave the sector**, compared to **23% of contractors who told ContractorCalculator that they plan to quit** contracting. In addition to this, 21% of contractors claim they will change career due to the legislation, and 13% are considering an early retirement.
49. While the legislation is yet to be implemented, the impact on private sector projects is already becoming apparent. 59% of contractors reported to inniAccounts that client projects had missed deadline for delivery due to Off-Payroll, while 17% missed regulatory deadlines. Meanwhile, **11% of projects were postponed and 4% cancelled altogether** [15].
50. Multiple accounts of contractor experiences within the defence sector, shared with ContractorCalculator, reveal that the industry is suffering as a result of failure by hirers to meet their compliance requirements. Contractors report that **crucial defence projects are hampered by project delays and heightened costs**, as highly skilled contractors respond to widespread blanket assessments [84].
51. Calculated based on the number of contractors expected to abandon clients, inniAccounts forecasted a consequent **£2.2bn immediate cost to the economy as a result of lost productivity** [15].
52. The problems faced by hiring firms look set to span beyond recruitment struggles and heightened costs, with **58% of contractors indicating to ContractorCalculator they would be willing to take a client to Employment Tribunal (ET) to secure employment rights to accompany an 'employed for tax purposes' classification** [9].

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