

## The IR35 (Off-Payroll) landscape for 2019/2020



2019 stands to be the most important year in the [history of IR35](#), and one which will shape the future of flexible working in the UK. If HMRC and Government's aspirations for an extension of the Off-Payroll rules into the private sector are realised, 6 April 2020 will likely be the date that cataclysmic legislative change affects contractors and UK plc.

The Off-Payroll rules threaten a colossal reduction in workforce mobility and access to key skills, in addition to substantial administrative and cost burdens for those required to assess and process income for contractors.

The fallout of this threatens to leave an indelible mark on the contracting sector and UK industry as a whole. The forecast for the year ahead doesn't have to be all doom-and-gloom, but the industry needs to take immediate action if it is to secure a better outcome.

### How will Off-Payroll impact contract engagements?

As the public sector has demonstrated, the negative effects of Off-Payroll will be felt throughout the supply chain. Contractors face the risk of excessive taxation from inaccurate and misguided IR35 assessments by hiring firms. Meanwhile, the denial of tax relief on expenses will compound the inevitable reduction in workforce mobility, causing many contractors to reassess the costs and benefits of flexible working.

And despite being considered 'employed for tax purposes', those who agree to work 'inside IR35' contracts won't even be compensated with the employment rights that their status warrants. Many contractors will use this as leverage in court. What better evidence in an employment tribunal for a contractor than a client's IR35 assessment asserting them to be an employee?

The [Good Work Plan](#) signalled the potential for the much needed alignment of employment rights and tax, so ultimately this may be a cost that firms assessing contractors as 'deemed employees' are forced to pay.

The repercussions for hirers will be similarly drastic. For contractors deemed caught by the rules, hiring firms will be lumbered with heavy employer's National Insurance (NI) costs. Our [Off-Payroll \(IR35\) Calculator](#), which provides an overview of the fiscal impact of Off-Payroll, shows that the annual hire cost of a contractor to a client will increase by roughly 12% as a result of the new rules.

The incentive to assess contractors as being outside of the rules would be an appealing one if it wasn't hampered by the risk of HMRC action, and potential backdated tax bills and penalties. This is a crippling prospect for any firm, given the size of bills and penalties, and the cost of a legal defence.

This lingering threat will likely encourage many firms to apply blanket bans on 'outside IR35' contracts – an outcome I have no doubt the legislation intended to achieve. Firms that take this path must brace themselves for rising costs and recruitment struggles, as contractors increase their rates to counter the tax hike, while gravitating towards hirers that are prepared to engage contractors outside of IR35.

In between the two, we have recruitment agencies, whose job description may soon need to include dispute resolution in the list of required soft skills. While the tax risk may deter hirers from engaging contractors on an 'outside IR35' basis, recruiters who attempt to misrepresent the status of an engagement to a contractor risk losing the individual altogether.

To avoid a complete breakdown of the supply chain, agencies have no option but to convince clients to engage contractors outside of IR35, where the working arrangement warrants. This means biting the bullet and assuming responsibility for the accompanying tax risk.

The Off-Payroll rules in their current proposed format create an unfairly burdensome scenario which toxifies the entire engagement process between contractor, client and agency. It's the mother of all [drama triangles](#) that will need defusing on a regular basis. The good news is, for the private sector, they aren't yet a reality.

## Help change the course of IR35, before it's too late

With the rules expected to be legislated in the private sector in a little over a year, contractors have only a matter of months to prevent or mitigate the change. A consultation on the measures will be published in February 2019, with Government expected to submit its draft clauses for the Finance Act 2019 in July. The Finance Act will be published alongside the Autumn Statement in November, which is the point of no return.

The sector must take action right now to influence the consultation and alert MPs to the crippling effects of this legislation. ContractorCalculator has been actively lobbying against the Off-Payroll rules since their inception in the public sector. A repeal of the legislation is unlikely, but there are numerous potential amendments which could restore some parity among those affected, including:

- Equivalent rights for contractors deemed 'employed for tax purposes'
- Ensuring contractors are subject to fair IR35 status assessments
- Enabling contractors to appeal assessment decisions and subsequent tax
- Preventing clients from deducting employer's NI from the contractor's income
- Mandating that clients share status assessment information with contractors
- Introducing penalties for all types of incorrect status classification
- Requiring agencies to provide contractors with 'key facts' sheets, to provide complete transparency over pay.

Several of these recommendations are included in the Good Work Plan, while all are geared towards preventing exploitation of the rules among hirers and agencies which has proven so prevalent in the public sector.

To achieve any of these outcomes, we need your immediate backing. We ask that contractors arrange to meet with their MPs urgently, armed with our 32-page [Off-Payroll fact pack](#). To support our campaign, email the name of your MP to [info@contractorcalculator.co.uk](mailto:info@contractorcalculator.co.uk) and we will send you the documents you need.

To support our efforts in exposing further the Off-Payroll rules for what they are, [ContractorCalculator also requires financial support](#). Contributions will go toward hiring investigative journalists and a campaign manager. We believe that these new posts will prove critical to holding HMRC Government to account and ultimately help to preserve the future of flexible working.

## Off-Payroll: preparing for the worst

If the Off-Payroll proposals are legislated in their current format, contractors, agencies and hirers need to be prepared to mitigate their impact. Companies that ignore their compliance requirements, while refusing to engage contractors outside of IR35, risk a recruitment car crash from now on until April 2020, as contingent workers will simply find work with alternative, compliant firms.

Absurdly, being compliant means accepting an unavoidable tax risk – an indicator of how backward the proposals are. However, the risk is well worth the reward in terms of continued access to essential skills.

Organisations that forward plan and get compliance practices in place will minimise their risk, while ensuring that they remain an attractive proposition for contractors. Courtesy of our [IR35Testing](#) offering, [comprehensive guidance on the compliance process](#) for clients and agencies is readily, and freely, available.

Accurately assessing the IR35 status of contingent workforces will be viewed as the main obstacle, and for many a deterrent from complying

with the rules. Nonetheless, it is an essential requirement, for which accurate, automated solutions are available. IR35Testing's [Volume Audit](#) enables organisations to assess entire workforces in a single day. Once that is quickly completed, firms can begin the hard task of formulating an implementation plan.

As well as firms and agencies, contractors entering into 12-month contracts after 6 April 2019 will need to take stock to clarify and understand their position. Parties found by HMRC to be in a dubious engagement following April 2020 face significant tax risk.

Likewise, contractors who have been working inside IR35 for a long-term client may wish to consider ending their engagement, to avoid attracting HMRC's attention and the threat of historic tax risk.

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