



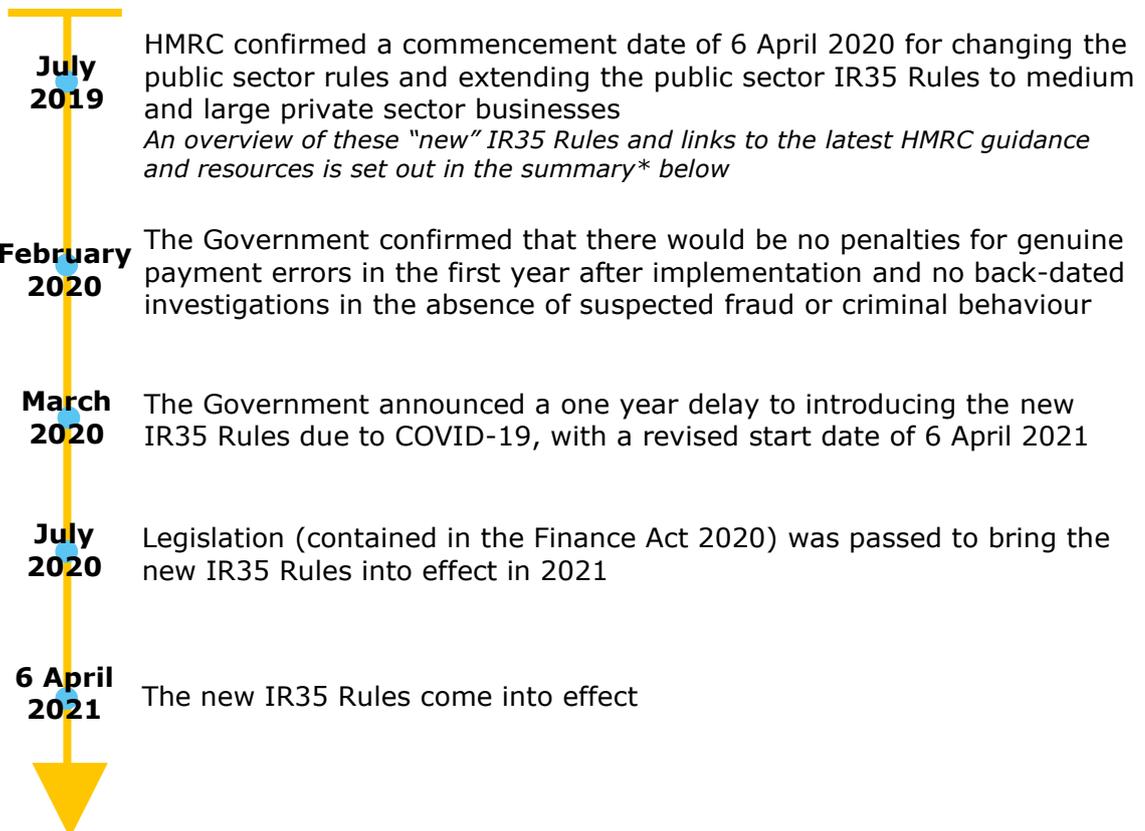
Not too late to act

The off-payroll IR35 changes

The off-payroll working rules, commonly known as IR35, have been in existence since the early 2000's and are designed to ensure that individuals who work in a similar way to employees, such as some contractors, consultants and freelancers, pay broadly the same income tax and national insurance contributions as employees.

Government concerns over non-compliance with the IR35 Rules and, specifically, an underpayment of tax, resulted in a reformed IR35 regime for the public sector in 2017. An extension of these IR35 Rules to the private sector takes effect from 6 April 2021. Below, we provide a brief reminder of the journey so far and consider how private sector businesses should be responding.

The journey so far



Further (minor) changes in 2020/21

The Finance Act 2020 introduced some small but important changes to the new IR35 Rules from April, such as: excluding overseas clients with no UK connection; requiring a client to state whether it qualifies as small company for the tax year; including within the meaning of "intermediary", companies from which the worker is entitled to receive a payment for their services to the client; adding a deadline by which a worker or deemed employer must start the process to disagree with the client's status determination; and, transitional provisions which apply where services are provided across the commencement date of 6 April 2021.

The existing public sector IR35 Rules will also change as part of the process of extending them to the private sector, meaning that the public sector will also experience IR35 changes in April 2021.

HMRC's technical guidance has been updated on its website and a Policy Paper and General Guidance is also available. The former sets out HMRC core "Compliance Principles" and confirms that a lenient approach and moratorium on penalties will apply until April 2022, provided there is no deliberate or dishonest conduct. Information disclosed as part of compliance with the IR35 Rules will also not be used to open new enquiries into pre 2021/22 tax returns, in the absence of suspected criminal behaviour.



How businesses should be responding

Employers need to, as a minimum:

- **audit** their use and assess the deemed employment status of contractors who supply their services via an intermediary such as their personal service company;
- **familiarise** themselves with IR35 principles, e.g. using HMRC website information (any such steps being likely to facilitate demonstration of the exercise of "reasonable care" over the IR35 Rules). See our [IR35 podcasts, videos and guides](#);
- **establish** the integrity and credibility of those within the labour supply chain and whether they are compliant with the off-payroll changes; issue status determination statements, train those involved and ensure that "reasonable care" is being taken in applying the IR35 Rules;
- **amend** or introduce disputes resolution procedures; review and amend engagement, payslip, payroll processes; and
- **review** and amend labour supply contractual liabilities and indemnities to ensure compliance.

There had been speculation that extending the definition of intermediaries (where the worker lacks a material interest in the intermediary but is entitled to receive a payment from that company in respect of the services they have provided the end client), could bring umbrella companies within the scope of the Rules. HMRC has clarified that is not the case and details of legislative changes that will be made later this year to correct this error, as well as to make some other minor amendments to the rules, have been published.

Comment

The recent HMRC Policy Paper highlights essential aspects of the IR35 Rules from HMRC perspective, and includes eight "Compliance Principles" together with seven illustrative "case studies". Whilst simplistic, it is noteworthy in the case studies that an employer who ignores the IR35 Rules incurs a potential tax liability, penalty and suspension conditions, in contrast to the employer who researches what is required and deploys HMRC tools, thereby demonstrating a genuine attempt to exercise "reasonable care". Despite the HMRC support available, there is little doubt that complying with the new Rules is proving challenging for many in the wake of pandemic disruption.

Appraising the makeup of workforces and addressing business needs will be critical and should not be delayed, if organisations are to be compliant and minimise the disruption to their supply chains. For those late preparing for the IR35 Rules, it is time to act.

*The new IR35 Rules – a brief summary

When the new IR35 Rules apply:

- a worker personally performs, or is under an obligation to personally perform, services for a client
- the client is either a public authority or a medium or large private sector entity that has a UK connection
- the services are provided through an intermediary which meets certain conditions (such as a worker's personal services company or certain companies from which the worker receives a payment in respect of the services that they provide to the end client)
- the circumstances are such that, if the contract had been made directly between the client and the worker, then the worker would be regarded as an employee of the client for income tax purposes (or the holder of an office under the client)

NB. The changes to the IR35 Rules only apply to the provision of personal services to the client and do not therefore apply in relation to outsourced services which are fully contracted out to a third party by the organisation. The new IR35 Rules also do not apply where the client is a small organisation in the private sector.

The IR35 Rules require that the client must:

- decide whether the worker would be an employee if the business contracted directly with the worker, exercising reasonable care in reaching this decision
- provide its decision on status, with reasons, via a "status determination statement" to the worker and to the party it contracts with for the supply of the worker
- have in place a "status disagreement process" (statutory minimum requirements apply)
- if they are the fee payer, deduct and pay employment taxes to HMRC. Importantly, even if the client is not responsible directly for
- paying the worker's fees, they could still potentially acquire liability for tax if the person responsible in the chain for such liabilities defaults.

Other implications where the IR35 Rules apply:

- if there is a long supply chain, each party in the chain is responsible for passing the status determination statement to the next party in the chain until it reaches the entity which pays the fees to the intermediary
- as part of their compliance checks, HMRC will review RTI PAYE information to confirm correct payments but also that errors are corrected as soon as possible. Employers therefore need to respond promptly where mistakes are identified
- potential for "deliberate defaulters" to be "named and shamed" on a published list.

How we can help

Examples of the types of support that we can provide include:

• Stakeholder communications

Support with communicating the changes to the management team, stakeholders, current contractors and agencies

• Audit

Assistance with all aspects of an internal audit of individuals currently engaged, including checklist of relevant factors

• IR35 status determination

Advice on the risk profile of individuals engaged and likelihood of IR35 Rules applying to different roles and engagements

• Employment status

Assessing the separate risk of contractors having employment rights, such as unfair dismissal

• Current contracts

Advice on existing contractual terms, including potential to amend or terminate

• New contracts

Advice on new contractual terms, including drafting indemnities

• Internal policies and processes

Review existing processes for the supply of labour and propose changes, including new template policies and documents, including status disagreement processes

• Supply chains

Risk assess labour supply chains and advise on contractual terms including indemnities and information sharing

• Future engagements

Strategic advice on ongoing use of contractor roles or redesign of supply models and how to apply to future engagements

• Training

Staff training on key IR35 changes, including making status determinations

Technical guidance

HMRC expects businesses affected to refer to its technical guidance, which is subject to frequent updates, see links below:

- [HMRC guidance on employment status for tax purposes](#)
- [HMRC technical guidance on CEST](#)
- [HMRC technical IR35 guidance](#)
- [HMRC Compliance principles](#)

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time to act - counting down to ir35