

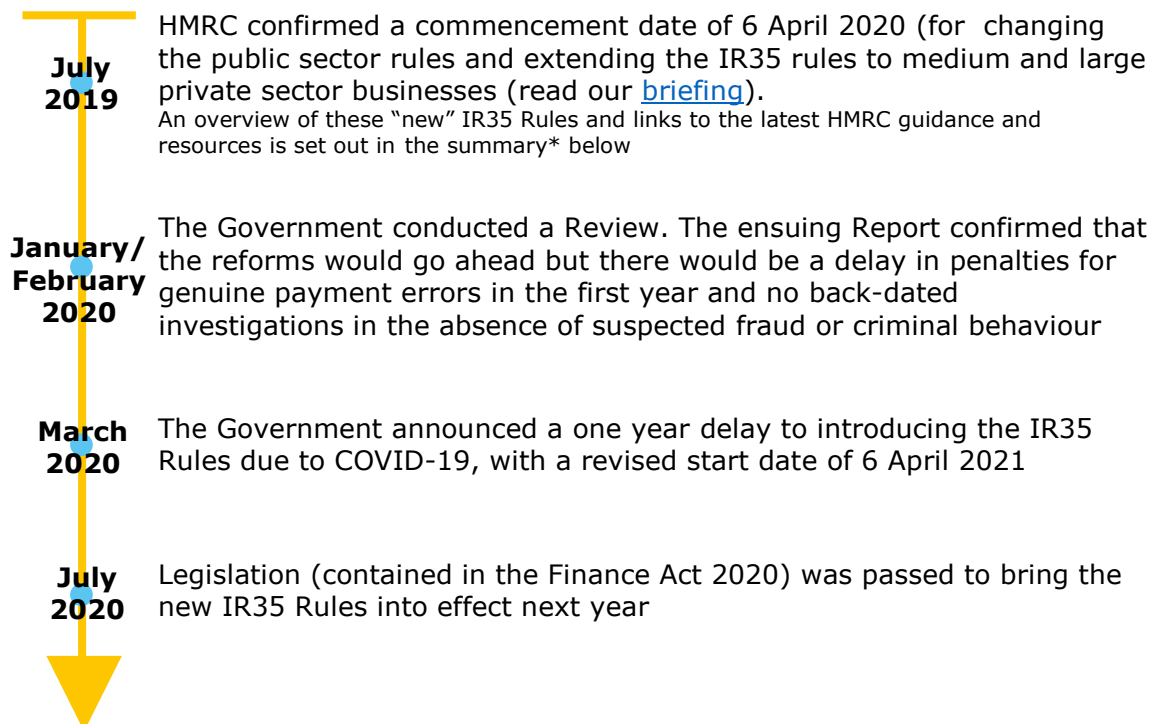
## Time to act

# Six month countdown to 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. Proposals to extend the rules to the private sector were then published and are now due to take effect from **6 April 2021**. Below, we provide a brief reminder of the journey so far and consider how private sector businesses should be planning for the April changes.

## The journey so far



## The latest position

The Finance Act 2020 has introduced some small but important changes to the new IR35 Rules from April, such as: excluding overseas clients with no UK connection; imposing a duty on 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.

Although calls for a further delay to implementation persist, current indications are that the Government will press ahead with a 6 April 2021 start date. 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. Before April 2021, we expect the HMRC [general guidance and communication support](#) to also be revised and secondary legislation to be finalised, providing powers to HMRC to recover the employment taxes from other members of the supply chain where the party responsible for such liabilities defaults.



## How businesses should be responding

In the run-up to 6 April next year, 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;

**establish** the integrity and credibility of those within the labour supply chain and whether they are compliant with the off-payroll changes; get ready to give reasons for status determinations including training those involved and ensuring that “reasonable care” is being taken in applying the new 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 has been speculation that extending the definition of intermediaries (where workers lack a material interest in an intermediary but are entitled to receive a chain payment from that company), could bring umbrella companies within the scope of the new Rules. However, that seems unlikely, in our view, provided that a worker contracts with the umbrella company directly as an individual and the umbrella company accounts for income tax and NICs under the PAYE regime.

## Comment

The recent amendments to the new IR35 Rules are unlikely to prove significant in practice. However, with only six months to go, there is little doubt that complying with the new Rules, and the preparatory steps that will be required between now and April, will prove 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 that pressed ‘pause’ on their preparations last Autumn, it is time to press ‘play’. For those late to preparing for the new 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 company from which the worker receives a chain payment)
- 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 will also not apply to small companies.

### The new 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 new 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.

## How we can help

Examples of the types of support that we can provide to clients 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:

- HMRC guidance on employment status for tax purposes
- HMRC technical guidance on CEST
- HMRC technical IR35 guidance

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