

A guide to off-payroll working for limited company contractors



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Recent changes to the off-payroll rules mean that all contractors working through a limited company must keep themselves informed about proposed off-payroll rules. This guide aims to give contractors a concise overview of the changes in the private and public sectors to date.



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An overview of the off-payroll rules

In April 2017, the government announced that non-compliance with the off-payroll rules was costing the exchequer billions in lost tax revenue. In order to prevent this loss, tighter rules were introduced to the public sector. In the 2018 Autumn Budget, the Chancellor announced that these new off-payroll rules would be rolled out to the private sector in 2020.

Who do the off-payroll rules apply to?

You'll need to consider the off-payroll working rules if you provide your services to a medium or large sized client company through your own limited company.

Who is responsible for applying the off-payroll rules?

At the present time, there are different roles and responsibilities for applying off-payroll working rules depending on which sector the contractor is working in.

In the public sector, public authorities are responsible for deciding if off-payroll working rules apply. The contractor will need to provide information to the public authority to help them make their decision.

If the rules apply, the public authority, agency or other third party who is responsible for paying the worker must deduct tax and Class 1 NICs, before paying and completing the necessary reporting to HM Revenue and Customs (HMRC).

Currently, in the private sector, the contractor who is providing services through their own limited company, is responsible for deciding their employment status. If they deem that their contract falls inside IR35, then the appropriate taxes and NICs will need to be deducted at source. Presently they will be in a position to alter the way they work and discuss this with the client to ensure that their status is not compromised and that they can take full advantage of their limited company status. This right is effectively removed under the Off-Payroll Rules.



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How do the off-payroll working rules work?

The off-payroll working rules apply when the person providing their services would be deemed an employee if there was no limited company in place. For each individual engagement, the relationship between the client and the contractor must be considered according to the working practices for that engagement. These working practices relate to the key concepts of Control, Substitution and Mutuality of Obligation:

Supervision, Direction and Control (SDC): Does the contractor exercise control over when, where and how the work is carried out?

Personal Service and Substitution: Is the working arrangement a personal one, or does the contractor have the right to provide a substitution?

Mutuality of Obligation (MoO): Is there an obligation from the client to provide consistent and paid work, along with an obligation from the contractor to personally carry out this work?

The new rules that will be implemented in 2020 will take away the right of the contractor to determine if their assignments are inside or outside the rules. This right will transfer to the fee payer.

The off-payroll rules may also apply if:

- You work in the construction industry
- You, your limited company, or client are based outside the UK
- You work with your partner or spouse
- You are working through an intermediary for a charitable organisation

When the off-payroll working rules don't apply

The off-payroll working rules won't apply if the contractor works through their agency's PAYE, uses an umbrella company or a similar third party that directly employs the contractor and deducts Income Tax and NICs at source.

What happens when the off-payroll rules apply?

For tax and NICs purposes, the worker is treated as having an employment with the fee payer. Once the contract ends they will be given a P45. The relevant pay and tax details will then need to be entered on the contractor's employment supplementary pages of their self-assessment tax return.

If you are a recruiter in the public sector details on paying an intermediary, such as a limited company, can be found [here](#).



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How are pension contributions and expenses affected?

A limited company will still be able to make pension contributions on behalf of the contractor with relief being obtained through the company.

The 5% allowance to cover unspecified expenses has been removed if the off-payroll rules apply. However, the contractor can still claim tax-allowable business expenses that could be claimed by an employee working directly for a public sector organisation.

What are the penalties for not following off-payroll working rules?

Currently, in the private sector, contractors are liable for penalties if they have not correctly applied the off-payroll rules. Contractors will pay up to 25% more tax and NICs (equal to that of an employee) if the off-payroll rules apply.

If the contractor has worked on assignments where the rules should have been applied, but were not, the penalty will be up to 30% of unpaid tax where HMRC considers the contractor to have been careless. In cases where HMRC believes the underpayment to be deliberate, the penalties can be up to 100% of unpaid tax. HMRC can go back up to six years to assess liability. If the off-payroll rules are rolled out to the private sector in 2020, the liability will transfer to the private sector end client who is paying the contractor, however the government has indicated that the reforms will not be retrospective.

In the public sector the liability for these penalties rests with the public authority that is engaging the contractor. If the public authority deems the contractor to be outside IR35 when in fact they are inside rules, the public authority will be liable to pay any taxes and NICs to HMRC, plus any penalties. HMRC can go back up to 6th April 2017 to assess liability.

How can contractors safeguard themselves?

Crucial to HMRC's off-payroll regime is the concept of taking 'reasonable care' to apply the rules correctly. Contractors should adopt the following practices in order to demonstrate reasonable care and protect themselves against possible penalties:

- **Keep detailed and organised records relating to assignments**
- **Provide a complete and accurate tax return**
- **Consult professionals and undergo a contract review for each assignment**



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What has been the impact of the off-payroll rules?

The introduction of the new rules in the public sector has been problematic, not least because of the confusion surrounding the government's online self-assessment tool, CEST. Rather than giving contractors a clear and reliable indication of their employment status, the online tool is often confusing and contradictory on key classification issues relating to Substitution, Mutuality of Obligation and Control. This has led to an increased number of [IR35](#) employment tribunals.

In response to the new rules, many public sector authorities adopted a safety first policy that treated all contractors as inside IR35 and forced them to work through an umbrella company, rather than through their own limited company. Faced with the prospect of paying the same taxes as an employed person but with none of the associated benefits, many contractors turned their backs on the public sector, leaving organisations such as the NHS short of workers. Despite tax experts and industry commentators voicing their doubts over the implementation of the rules in the private sector, HMRC claim that the new rules have improved compliance. It is hoped that the two year delay on implementation will help to resolve the current problems, leading to a smooth implementation process in the private sector.

For further options and impartial guidance you can speak to a member of our team on 0203 6031878



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