

1. What is IR35?

IR35 legislation was originally introduced in April 2000 to ensure that workers who provide their services through an intermediary – such as a limited company, personal service company, agency or partnership – but who would be an employee if they were contracted directly, pay the same amount of tax and National Insurance as employees.

IR35 is also known as the ‘off-payroll’ legislation.

2. What is changing in April 2021?

The change being introduced to IR35 is related to who is responsible for determining a worker's status when they are employed through an intermediary and, if relevant, who has responsibility for operating payroll to account for any tax and National Insurance contributions (NICs) to HMRC.

Changes were first introduced in April 2017 for any public sector organisation that employed a worker through an intermediary, which meant that public sector clients became responsible for determining a worker's status, rather than the intermediary.

From 6 April 2021, the responsibility for determining a worker's status will be extended to all medium and large organisations in the private sector that meet **at least two** of the following conditions:

- Annual turnover of more than £10.2 million
- Balance sheet total of more than £5.1 million
- More than 50 employees

If the parent of a group meets these conditions, any subsidiaries will also have to apply the off-payroll working rules.

Smaller organisations in the private sector that do **not** meet these conditions will not have to determine the employment status of any workers employed through an intermediary. This will remain the responsibility of the worker's intermediary, together with any associated payroll obligations.

The new rules will only apply to services carried out from 6 April 2021 onwards. Businesses should take reasonable care to ensure that they have appropriate processes in place to deal with determining employment status, responding to changes in employment status for tax purposes, and handling appeals.

HMRC has confirmed that businesses will not have to pay penalties for errors in the first year, except in cases of deliberate non-compliance.

3. Determining employment status

Using the IR35 rules for employment status, construction companies who use off-payroll workers, and meet the conditions above, will now have to determine the employment status of workers provided by an intermediary.

HMRC provides a free online tool to [Check Employment Status for Tax \(CEST\)](#) and has confirmed that, as long as the correct information is provided, it will accept the results provided by CEST.

The determined employment status must be passed on to whoever provided the worker and continue to be passed on until it reaches the worker and the party immediately above the worker's intermediary. This party is known as the **fee-payer** or **deemed employer**. In some cases the intermediary and the fee-payer may be the same entity

4. Who is responsible for tax and NIC payments?

If a worker is determined to be employed for tax purposes, it is the fee-payer or deemed employer that is responsible for:

- Calculating the deemed direct payment to account for employment taxes and National Insurance contributions (NICs) associated with the contract
- Deducting those taxes and employee NICs from the payment to a worker's intermediary
- Paying employer NICs
- Reporting to HMRC through Real Time Information the taxes and NICs deducted
- Applying the apprenticeship levy and making any payments necessary

The fee-payer is not responsible for deducting student loan repayments from workers engaged through their own intermediaries. The worker should account for student loan obligations in their own tax return.

As the worker is not an employee for employment law purposes, under IR35 legislation they are not entitled to:

- Statutory payments
- Automatic enrolment into a pension scheme
- Employment rights such as holiday pay

If a party in the labour supply chain receives the employment status determination, but does not pass it on, they will become the fee-payer and have responsibility for any payments due.

5. What to do if a worker or fee-payer disagrees with a determination

If the worker or the deemed employer disagrees with an employment status determination reached, they have the right to appeal and the following steps should be taken:

- Consider the reasons for the disagreement
- Decide whether to maintain the determination and give reasons why
- Provide a new determination if the original determination is subsequently felt to be wrong
- Keep a record of determinations and the reasons for them, as well as copies of all representations received

A response must be provided within 45 days of receiving notification of a disagreement with an employment status determination.

During this 45-day period, the rules should continue to be applied in line with the original determination.

Failure to respond within 45 days will result in the worker's tax and National Insurance contributions (NICs) becoming the responsibility of the company that made the determination.

Once a decision has been reached, the company should:

- Confirm to the worker if the determination has not changed
- Confirm to the fee-payer **and** the worker if the determination has changed

6. Checklist

- ✓ **Confirm whether IR35 or 'off-payroll working' rules apply to your business**
- ✓ **Identify off-payroll workers that need an employment status determination**
- ✓ **Use HMRC's [Check Employment Status for Tax \(CEST\)](#) to determine the employment status of each worker**
- ✓ **Pass the employment status determination onto whoever provided the worker**
- ✓ **If your business is the fee-payer or deemed employer, account for tax and National Insurance Contributions (NICs):**
 - Calculate and deduct tax and NICs from the payment made to the worker's intermediary
 - Report and pay any tax and NICs due to HMRC
 - Apply and pay the Apprenticeship Levy