

Off Payroll working (IR35) in the private sector with HMRC

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What you should get from today's webinar

- How the rules will affect workers
- Which rules will need to be considered from April
- How clients will look to consider a worker's status
- How workers can prepare for April

Off-Payroll Working Rules

The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees.

- The off-payroll working rules can apply if a worker provides their services through their own limited company or another type of intermediary to a client.
- An intermediary will usually be the worker's own personal service company, but could also be any of the following:
 - a partnership
 - a personal service company
 - an individual

Applying the rules from 6 April 2021

From 6 April 21 contractors will have to be aware of the two sets of rules depending on the type of business they engage with.

Current rules

(Chapter 8 ITEPA)

- These are existing rules (since 2000) that contractors in the private sector currently apply.
- These rules will continue to apply for engagements with small non-public sector organisations.

April 21 reform

(Chapter 10 ITEPA)

- Already in operation in the public sector.
- These rules will be implemented in the private sector from 6 April 2021.
- Clients will be responsible for determining employment status for their workers.

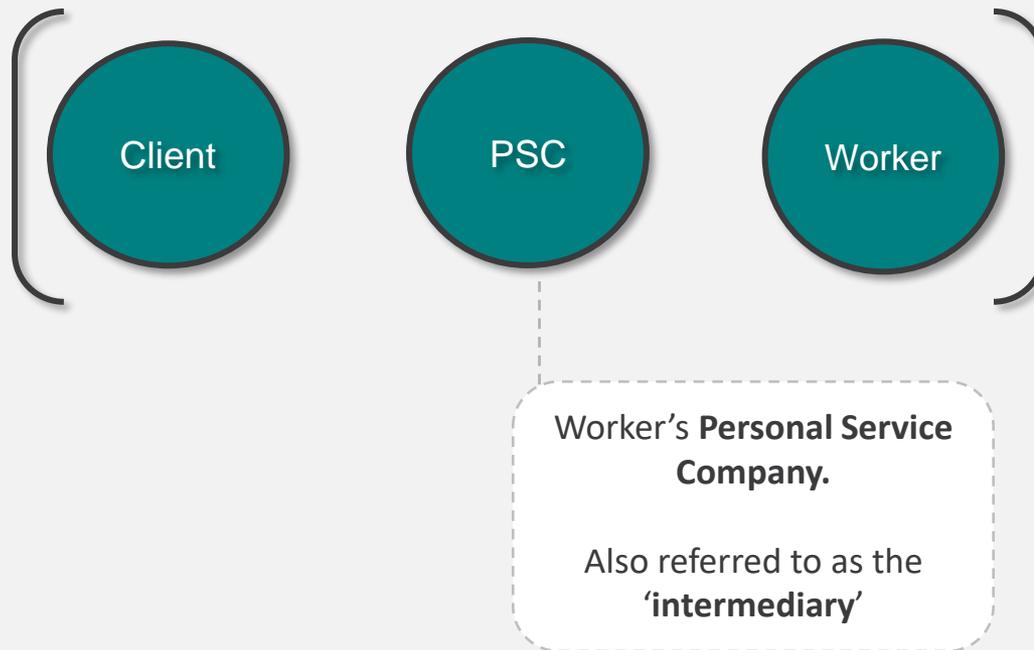
Engaging with a small (non-public sector) organisation

- When engaging with small clients, existing rules will continue to apply
- The intermediary will need to make an employment status determination for the worker to see if the off-payroll working rules will apply.
- If the rules apply you'll need to calculate a 'deemed employment payment'. This is the amount deemed to be the income of the worker, after some deductions and employer National Insurance contributions have been removed.

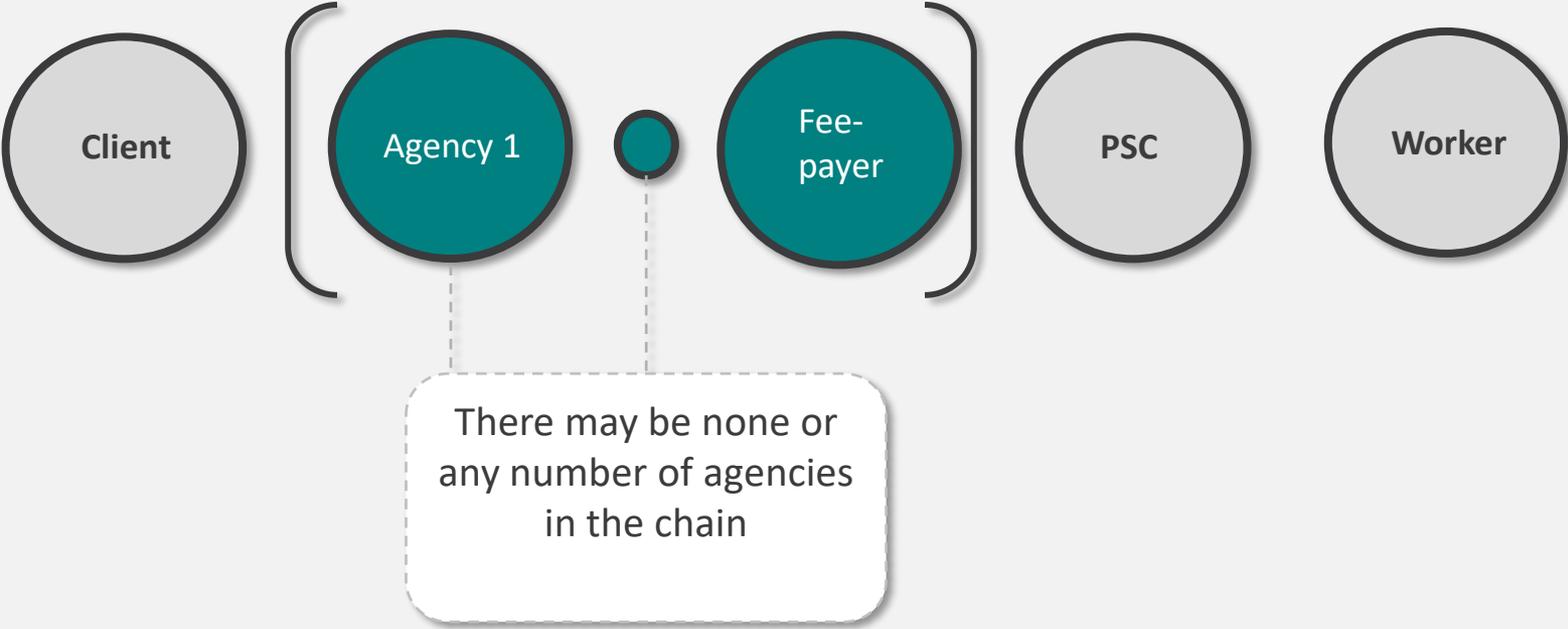
Changes from 6 April 2021

- All public authorities and medium and large-sized clients will be responsible for deciding the employment status of workers providing services through their own intermediary
- Small non-public sector clients do not have to consider the off-payroll rules from April 2021 – instead existing rules under Chapter 8 ITEPA will continue to apply

Main parties in a labour supply chain

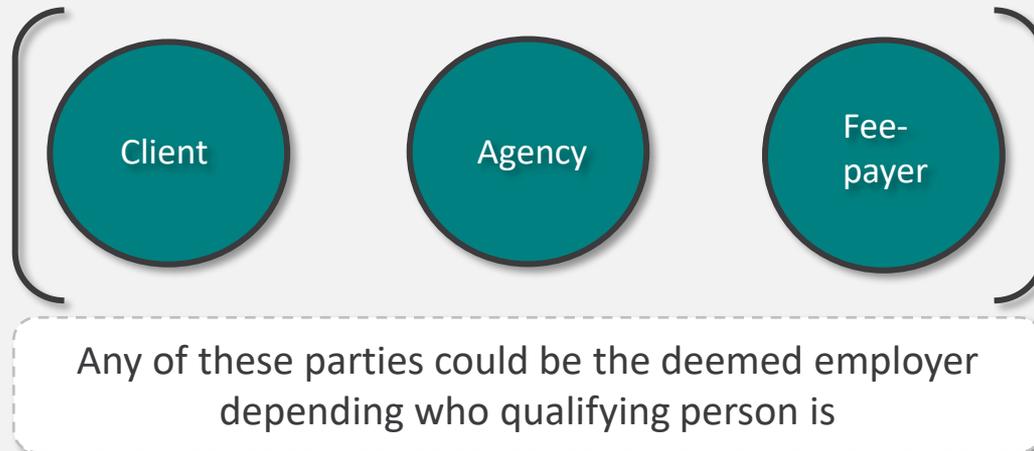


Parties in the off-payroll labour supply chain



Deemed employer

- The deemed employer is the party responsible for the deduction of tax and NICs (if the off-payroll working rules apply).
- The deemed employer is often (but not always) the fee-payer



Changes from 6 April 2021

Status Determination Statements (SDS)

- From 6 April 2021, the client will be responsible for determining whether the off-payroll working rules apply to an engagement.
- The client should then communicate that decision in the form of a Status Determination Statement (SDS).
- In the SDS the client should state their reasons for coming to their conclusion.

Communicating an SDS

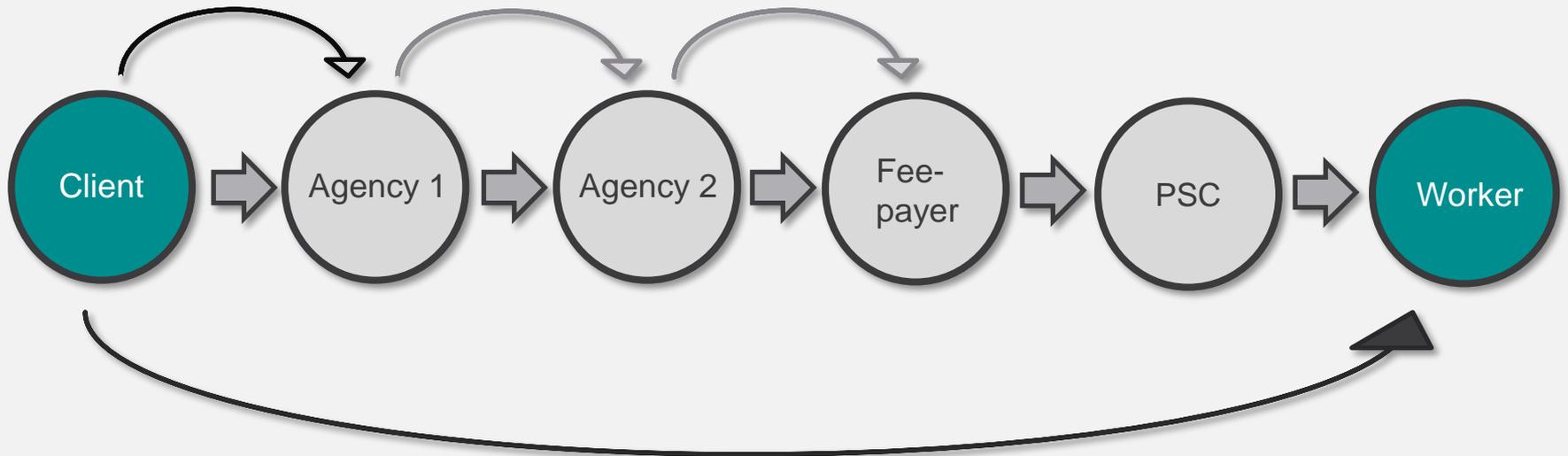
The client must communicate the SDS:

- directly to the worker
- to any third party the client contracts with (e.g. agency)

Once a client has issued an SDS to both the worker and the person they contract with (if there is a third party) and reasonable care has been taken when coming to its conclusion then the client has satisfied its duties under the rules.

Passing the SDS to relevant parties

- The client is required to pass on the SDS directly to the worker and the party they contract with
- The SDS should also be cascaded down the chain



What happens if a worker does not receive an SDS from the client?

- A worker may not receive an SDS from a client because the client is small.
- If a worker is uncertain about the size of its client for a particular engagement they can formally request confirmation from the client.
- Knowing the size of the client will provide the certainty workers need to understand whether the off-payroll working rules apply.

Failure to pass on an SDS

- Responsibility for tax and NICs will stay with the party that has received the SDS until they pass it to the next qualifying person in the chain.
- A worker is not required to pass the determination to any other party in the chain and will not be held liable by HMRC for unpaid taxes if the worker's PSC has received payment without an SDS having been issued by the client.

Outsourcing SDS responsibilities

If the client subcontracts:

- determining the worker's status,
- or the production of the SDS

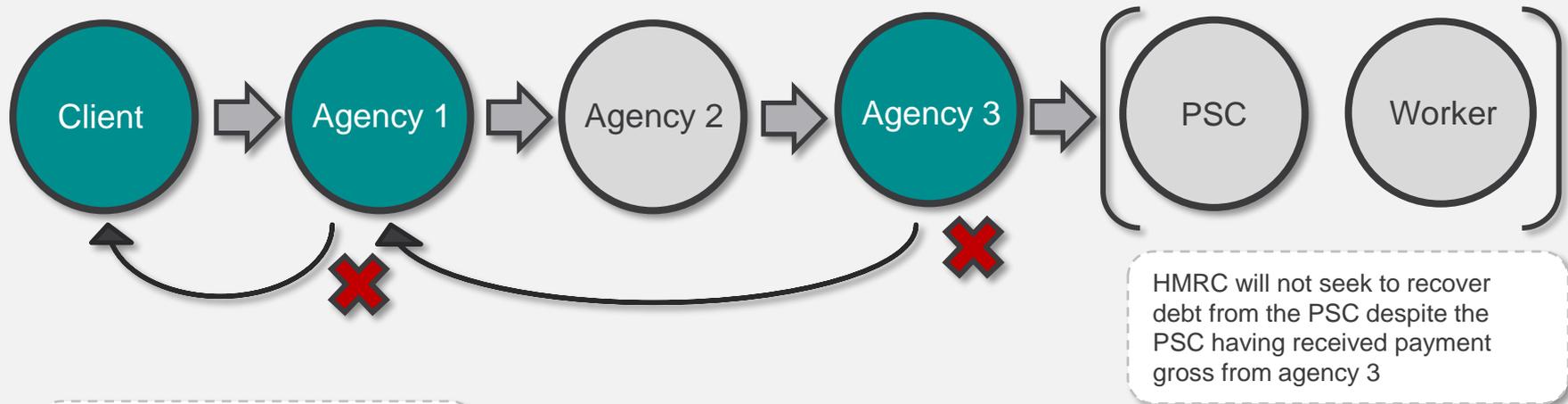
it will still remain responsible for ensuring the accuracy of the determination and ensuring that the SDS is passed to the relevant parties.

Recovery of debt provisions

HMRC will not and cannot recover outstanding debt from the worker or the worker's PSC.

Instead, HMRC will recover any outstanding debt from agency 1 or the client where the failure to account for tax and NICs by the person who should initially have paid.

Recovery of debt provisions



1. If HMRC is unable to collect tax and NICs due from the agency 1, HMRC will seek to recover the debt from the client

2. HMRC has been unable to collect tax and NICs due from agency 3.

HMRC will not seek to recover debt from the PSC despite the PSC having received payment gross from agency 3

 Movement of liability after failure

 Failure to collect debt

Taking reasonable care

- The client must take reasonable care 'in coming' to its status conclusion.
- Reasonable care is not statutorily defined but case law has described it as taking steps expected of a prudent and reasonable person.
- Reasonable care applies to the client – not just the individual person making the status decision.
- If the client can show reasonable care was taken when making the off-payroll determinations then responsibility for PAYE rests with the deemed employer – even if the determination is wrong.

Contracted-out services

- The off-payroll working rules place obligations on the worker's client. The client is the person in receipt of the worker's services and most akin to the worker's employer.
- Where there is uncertainty as to who the true client is, consideration should be given to the nature of the relevant contracts.
- Whether a contract is for a fully contracted out service is a question of fact, based upon the commercial reality of the arrangements.

Contracted-out services

- Labelling a contract as a contracted out service or a ‘statement of work’ will not prevent the off-payroll working rules from applying – the reality of the arrangements should be considered.

Relevant factors:

- The nature of the businesses.
- The nature of the service provider’s contract.
- The relationship between the worker, the service provider and their customer.

Determining status for groups of workers

- Clients can make a determination for a group of workers, providing those workers are engaged under the same contractual terms and conditions, and in practice work under the same terms and conditions.
- However, if determinations are made for groups of workers where the terms and conditions are not the same, this would not be taking reasonable care.
- If the client has not taken reasonable care, the responsibility for the deduction of tax and NICs and payment of apprenticeship levy and paying these to HMRC is the client's.

Disagreement process

Clients need to have process in place to deal with disputes of Status Determination Statements (SDS) by workers and deemed employers.

The client is required to:

- Consider the worker's or deemed employers representation
- Respond within 45 calendar days of representations
- Inform the worker and/or the deemed employer of the outcome
- Issue a new SDS if the original conclusion is found to be wrong

What can a worker expect from a client if the off-payroll rules apply to their engagement?

Operation of PAYE

Workers should:

- Be issued with a starter checklist which will determine their tax code

Workers may:

- Be provided with payslips, P45s and P60s by their deemed employer.

A worker's deemed employer will also:

- from 6 April 2021 set the RTI flag when running payroll to indicate an off-payroll engagement
- apply the apprenticeship levy to their payroll and make any payments necessary

CT accounting for intermediaries

- HMRC will accept accounts that have been prepared under either a gross or net receipt basis since the tax result is the same.
- Since the deemed payment amounts have already been subject to tax and NICs, no further tax is due on those amounts or this would be double taxation.
- This can be achieved in different ways depending on whether income from off-payroll working arrangements is recorded gross or net within the intermediary's accounts and whether the money is taken out of the intermediary as salary or dividends.

Entitlements to statutory payments

- A worker's entitlement for statutory payments does not arise with the deemed employer
- Any statutory entitlements arise through the worker's intermediary

Further things to consider

Check Employment Status for Tax (CEST) tool

- HMRC's Check Employment Status for Tax (CEST) tool can be used to check a client's conclusion.
- For parties responsible for making determinations, HMRC will stand by CEST's results provided accurate and correct information is used.
- For organisations responsible for determining status, CEST outputs do meet the conditions to be a valid SDS but reasonable care must be taken.
- Using CEST or other third party tools is not mandated.

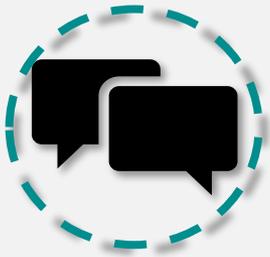
Overseas clients

- Wholly overseas clients are excluded from the off-payroll working rules.
- A client is based wholly outside the UK if it does not have a UK connection in the form of being UK resident or having a permanent establishment.
- If the client is wholly overseas, the worker's intermediary must consider whether Chapter 8, Part 2, ITEPA 2003 applies. (current non-public sector rules)

Residency

- If a worker is subject to UK tax and NICs (based on existing domicile and residency rules), then UK domestic legislation applies to the engagement.
- Residency is based on the worker and not based on where a worker's company is registered.
- A client does not need to consider whether Chapter 10 / Part 2 rules apply where there is no liability to tax and NICs in the UK.

Steps workers can take to prepare for 6 April



Talk to your client organisation.

Find out if your client organisation is a small non-public sector organisation – they are required to tell you if you ask.

You may also need to provide your client organisation with information to help them decide if the rules apply.



- **Know your rights** – your client has to provide you with a status determination and the reasons behind it if your engagement is ‘inside the rules’ (employed for tax purposes).
- You have the right to query a determination made by a client organisation.

Your income and your returns

Statutory payments

If you wish to qualify for statutory payments, you will still need to pay yourself a salary from your limited company, even if your contract is “inside IR35”.

RTI submissions

Submit RTI returns as normal for salary payments made by your limited company. For payments which have been subject to Income Tax and NICs by the client organisation or agency paying your fees, these should be reported on the FPS as non-taxable, non-NICable payments. This means you won't have to pay Income Tax and NICs again on the salary or dividends taken up to the amount which has already been subject to Income Tax and NICs through the off-payroll working rules.

Your income and your returns

SA returns

Submit SA returns for any other income which has not been subjected to the off-payroll working rules. The SA return will only need to include taxable pay.

Corporation Tax

Submit Corporation Tax returns and account for the treatment of VAT as normal.

Links to off-payroll guidance on GOV.UK

- [Guidance overview \(landing page\)](#)
- [April 2021 changes to off-payroll working for intermediaries](#)
- [CEST tool](#)
- [CEST tool guidance](#)
- [Detailed off-payroll guidance](#)

Thank you

- HM Revenue & Customs

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