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<https://www.gov.uk/government/publications/hmrc-issue-briefing-reform-of-off-payroll-working-rules/hmrc-issue-briefing-reform-of-off-payroll-working-rules>



## 1. Off-payroll working rules

The off-payroll working rules can apply if a worker provides their services through an intermediary, which is usually the worker's own personal service company (PSC).

The rules make sure that individuals working like employees, but through their own limited company, pay broadly the same tax and National Insurance contributions (NICs) as individuals who are employed directly.

To work out whether the rules apply, a person or organisation will make a decision about whether the worker is employed or self-employed for tax purposes. This is known as an 'employment status determination'.

The proposed reforms to the rules mean that the person or organisation responsible for making this decision will change, where

**Comment [D1]:** Actually, 80% of the extra tax due is Employers NI, payable by the firm hiring the individual.

HMRC continually fail to mention this, and are responsible for not alerting businesses to this tax time bomb ticking away underneath them.

The only way to refuse this is to (a) terminate all the contractors, and (b) offer them a 25% pay cut, and expect them to accept it. Hardly realistic.

people are contracting their services to large or medium-sized organisations outside the public sector.

## 2. Reform to the rules

Before 2017, the responsibility for determining employment status for tax fell to the worker's PSC.

In 2017, the government changed the off-payroll working rules for those working in the public sector in order to improve compliance with the existing rules. The reform shifted responsibility for determining employment status from the worker's PSC to the organisation they work for. This is how employment status for tax is decided for the vast majority of people, who do not work through their own company.

Currently, an individual with an income of £50,000 who works through their own company, but doesn't follow the rules, will contribute around £6,000 less (through tax, National Insurance and employer's NICs) than somebody doing a very similar job as an employee. This includes employer NICs contributions of around £5,000.

At [Budget 2018](#), the government announced that this change will be introduced to all other sectors from 6 April 2020, to ensure consistency and compliance across the labour market.

From this date, large and medium-sized organisations will become responsible for assessing the correct employment status of the contractors they engage to work for them. If it is determined that the rules apply, the organisation that pays the individual's own limited company will be responsible for deducting and paying the associated employment taxes and NICs to HMRC.

HMRC estimates that, outside of the public sector, only one in 10 people who should be paying tax under the current off-payroll working rules are doing so correctly. These reforms will ensure the right amount of tax is collected. This will level the playing field between those who were applying the rules and those who were not.

This is not a new tax. These changes are intended to encourage compliance with the existing rules, and to make sure those affected pay the right tax from April 2020 onwards. This reform will provide £3

**Comment [D2]:** This is a half-truth. Because a firm that classes an existing contractor as inside IR35 will now need to pay (or the fee-payer will) all the new employment taxes on top of their existing rate. This is 13.8% employers NI and 0.5% App Levy. These taxes cannot, by law, be deducted from the contractors fees, because they are now being treated as employment income.

See SSCBA, Schedule 1, Part 3(2): <http://www.legislation.gov.uk/ukpga/1992/4/schedule/1/enacted>

**Comment [D3]:** But also collect more tax, since employment taxes are now paid ON TOP of contract rates, not taken out of them (which they used to be for the old Chapter 8 IR35 rules).

**Comment [D4]:** This refers to the old rules, chapter 8, and not the new rules – chapter 10. The individual does not have the income. The company does. And from that they need to pay their accountant, and other expenses. And, when you compare the tax paid by a salaried employee on £50K, they pay less than the tax someone who is inside IR35 is expected to pay – because the contractor is expected to pick up the “deemed employers” tax bill for them – namely the employers NI and App Levy. This cruel double-taxation anomaly has been corrected in the new rules – but the consequence is the ticking tax time bomb scenario.

**Comment [D5]:** The legal definition of “employment taxes” are Employers NI and App Levy. These cannot be deducted from employment income. The PAYE and employees NI is deducted from the contractors fees. The employers NI and App Levy must be paid ON TOP of the contractors agreed contract rate. Basically, treat the contractors fees the same as salary.

**Comment [D6]:** There is no empirical evidence ever published that underpins this claim.

**Comment [D7]:** HMRC have admitted blanket assessments are made, where the incorrect tax is collected, and they are not making any checks to stop wrongful inside IR35 determinations.

Neither is there any mechanism for the individual to seek natural justice before a court to rectify an incorrect assessment. So much for “fairness”.

**Comment [D8]:** This untrue. The whole new chapter (10), introduces a new tax, on top of the contractors fees. It would be true if they said it was not a new TYPE of tax. But it's certainly a new AMOUNT of tax. HMRC are playing with words to misled the reader.

billion for essential public services, including the NHS, over the next 4 years.

This reform does not prevent people from working through their own limited companies and does not affect the self-employed. Contractors who are following the existing rules correctly will feel little impact.

HMRC have taken the decision that they will only use information resulting from these changes to open a new enquiry into earlier years if there is reason to suspect fraud or criminal behaviour.

Contractors who work for small businesses will continue to make employment status decisions for their PSCs, and we're continuing to support them with guidance, a helpline and online tools.

### 3. Support from HMRC

HMRC has put various measures in place to help businesses and other organisations get the status of the contractors they engage right. We have dedicated teams providing education and support to all businesses, public bodies and charities affected.

This includes one-to-one support for 2,000 of the UK's biggest employers and direct communications to around 15,000 medium-sized businesses. This is supported by workshops, guidance, online learning, round tables and an enhanced online tool that will help them make the right decisions.

#### Guidance on GOV.UK

- [Understanding off-payroll working](#)
- [Prepare for changes to the off-payroll working rules](#)
- [April 2020 changes to off-payroll working for clients](#)
- [April 2020 changes to off-payroll working for intermediaries](#)
- [Fee-payer responsibilities under the off-payroll working rules](#)
- [Check employment status for tax tool](#)

Further guidance on the details of the reform will be published by the end of the year.

**Comment [D9]:** This is classic propaganda 101. Align one cause with another to gain support. They forgot to mention the extra teddy bears they also buy for orphaned children.

**Comment [D10]:** Really? Tell that to the thousands of contractors terminated by banks. Firms are stopping to hire contractors. Work will not get done, and will go abroad. People are losing their livelihoods.

**Comment [D11]:** This is untrue. A contractor paying IR35 taxes under Chapter 8, will actually pay less tax under Chapter 10, if their contract rate stays the same.

**Comment [D12]:** This cannot be relied upon in court, and there is still historic tax risk for contractors:  
<https://www.contractorcalculator.co.uk/tr easurys payroll assurances historical ir35 risk 549810 news.aspx>

They can still use "existing information" as opposed to "information resulting from these changes" to open enquiries.

They opened circa 600 at the BBC, 1500 at GSK, and existing tribunals are live.

They also put in the retrospective Loan Charge going back 20 years.

There's nothing to stop them accusing contractors of fraud, via nudge letters.

This claim by HMRC, unless put into statute, by way of amnesty, is as reliable as a chocolate fireguard.

**Comment [D13]:** They have previously published about 3,000 words. That's all.

Apparently, phone calls are being made to businesses. How they are going to call 60,000 of them and educate them on the nuances of case law, which takes their own inspectors 3 years to train for, is anyone's guess.

**Comment [D14]:** There are 60,000 businesses and 20,000 agencies affected. 80,000 minus 17,000 leaves 53,000 business with little to no advice by HMRC.

## 4. The check employment status for tax (CEST) tool

The CEST tool was first introduced in 2017 to help individuals and organisations decide if a worker should be treated as employed for tax purposes. It takes users through straightforward step-by-step questions.

The tool was rigorously tested against case law and settled cases by officials and external experts. It provides accurate results and HMRC will stand by the result produced by the tool provided the information input is accurate and the tool is used in accordance with our guidance.

To date, the tool has provided a determination in at least 85% of uses. As a minority of employment cases can be less straightforward, we're giving these customers detailed help and guidance, including one-to-one support from specialist advisers on our helpline.

HMRC will launch an enhanced version of the CEST tool before the end of the year. We worked with more than 300 stakeholders to make the tool clearer, reduce user error and consider more detailed information.

Customers don't need to wait for the enhancements to go live: HMRC stands by the results given by the tool now, provided the information entered is accurate and it is used in accordance with our guidance.

**Comment [D15]:** This has been completely debunked, HMRC being unable to provide any testing material from the sessions they used. They admitted they did not keep any of the results from the testing.

Independent testing by many has proved that it gives the wrong answers, and HMRC counsel attempted to get CEST assessments thrown out of court stating they were irrelevant.

**Comment [D16]:** There is evidence that they do not stand by the result, unless it says "inside IR35".

**Comment [D17]:** It doesn't matter if it gives an answer 100% of the time, if the answer does not align with the law.

**Comment [D18]:** The Lorraine Kelly case was taken to court by HMRC, and the judge said "it was not a borderline case". Lorraine Kelly won her appeal, and the CEST tool indicates she should have lost her court case. CEST is unfit for purpose.

**Comment [D19]:** They have added six questions, which are not overly relevant.

They have still omitted mutuality of obligation, a fundamental test for employment status. This means the tool does not cover the full factual matrix, and therefore does not constitute reasonable care.

**Comment [D20]:** They don't. And HMRC counsel attempt to get a CEST result thrown out of court, saying it was "irrelevant."

[https://www.contractorcalculator.co.uk/hmrc\\_refuses\\_stand\\_irrelevant\\_cest\\_ir35\\_51410\\_news.aspx](https://www.contractorcalculator.co.uk/hmrc_refuses_stand_irrelevant_cest_ir35_51410_news.aspx)