

FOI Release
Information released under the Freedom of Information Act

Title: Off-payroll legislation

Date of release: 15 January 2019

Information request:

The Off-payroll legislation was introduced in Chapter 10 of the Income Tax (Earnings and Pensions) Act 2003, with the new legislation going live from 6 April 2017. This new legislation overrode, in the public sector, the existing Intermediaries Legislation (Chapter 8, ITEPA).

The new legislation is here:

<https://www.legislation.gov.uk/ukpga/2017/10/schedule/1/part/2>

One of the key differences between the chapter 8 and chapter 10 is that the public authority is required to decide whether the off-payroll working rules (Chapter 10) apply based on whether the conditions have been met in section 61M(1)(d).

61M Engagements to which Chapter applies

(1) Sections 61N to 61R apply where—

(a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for another person (“the client”), (b) the client is a public authority, (c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and (d) the circumstances are such that— (i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or (ii) the worker is an office-holder who holds that office under the client and the services relate to the office.

This requires the public authority to test whether the worker would be considered an employee based on employment status case law.

These assessments would have been completed by you with each assessment receiving its own determination.

Please can you provide:

A monthly breakdown, from April 2017 onwards of the number of assessments conducted by you, together with the number of assessments that are considered to be “inside IR35” (i.e. 61M(1)(d) applies) and the number that are “outside IR35” (i.e. 61M(1)(d) does not apply)

Information released:

At the time the new legislation was introduced (6 April 2017) the IPO assessed all Contingent Labour workers affected and deemed that they would be “inside” of

IR35. As such we do not carry out assessments on an individual basis. Please see below a monthly breakdown of the number of Contingent Labour workers onboarded since April 2017. All of these were considered inside IR35.

Month/year	Number of staff
05/2017	2
06/2017	1
07/2017	3
08/2017	0
09/2017	3
10/2017	1
11/2017	0
12/2017	0
01/2018	1
02/2018	4
03/2018	0
04/2018	1
05/2018	2
06/2018	4
07/2018	2
08/2018	1
09/2018	4
10/2018	5
11/2018	2
12/2018	1