



HM Revenue
& Customs

Off-payroll working rules from April 2020

Policy paper and consultation document

Publication date: 05 March 2019

Closing date for comments: 28 May 2019

Subject of this consultation:	A consultation on the implementation of the reform of the off-payroll working rules from April 2020.
Scope of this consultation:	The government has announced that the reform to the off-payroll working rules introduced for engagements in the public sector in April 2017 will be extended to the private sector from 6 April 2020. This consultation seeks to understand how best to implement the reform in the larger and more diverse private sector.
Who should read this:	People who work through an intermediary (for example their own personal service company (PSC)), agencies, companies, partnerships and individuals who are engagers of people who work through their own intermediary. Public authorities receiving worker's services provided through an intermediary. Accountants and other agents representing people who work through intermediaries or representing engagers who pay workers engaged through intermediaries. HR managers and those who deal with recruitment processes and payroll.
Duration:	From 05 March 2019 to 28 May 2019.
How to respond or enquire about this consultation:	By email: offpayrollworking.intheprivatesectorconsultation@hmrc.gsi.gov.uk By post: Employment Status and Intermediaries Policy, 3C/15, 100 Parliament Street, Westminster, SW1A 2BQ
Additional ways to be involved:	In order to engage as wide an audience as possible, the government will hold workshops with invited stakeholders during the consultation period.
After the consultation:	A summary of responses will be published later this year. The consultation will inform the draft Finance Bill legislation, which is expected to be published in Summer 2019. The reform will come into force from 6 April 2020.
Getting to this stage:	A discussion document was published at Summer Budget 2015 to consider reforming the off-payroll working rules in response to widespread non-compliance. Following consultation, the off-payroll working rules for engagements in the public sector were introduced from 6 April 2017. At Budget 2018, following consultation the government announced that the reform to the off-payroll working rules would be extended to engagements in the private sector from 6 April 2020.
Previous engagement:	HMRC published a consultation document on 18 May 2018 seeking views on how best to address non-compliance with the off-payroll working rules in the private sector. This consultation ran until 10 August 2018. A summary of responses and fact sheet were published on 29 October 2018.

Contents

1	Introduction	4
2	Defining the scope of the reform	7
3	Information requirements	10
4	Helping organisations to make the correct status determination and ensuring reasonable care	17
5	Other matters	20
6	Education and support for organisations and individuals	24
7	Summary of Consultation Questions	26
8	The Consultation Process: How to Respond	28

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction

The government announced at Budget 2018 that to increase compliance with the existing off-payroll working rules in the private sector, businesses will become responsible for assessing the employment status of the off-payroll workers they engage. This will bring the private sector in line with the public sector.

As with the reform in the public sector, these changes seek to increase compliance in the private sector with rules that have been in place since 2000, to make sure that they operate as intended. The reform does not introduce a new tax.

The government has listened to the views put forward by stakeholders during the previous consultation. As a result, the smallest organisations will not have to determine the employment status of the off-payroll workers they engage.

The government recognises the importance of providing organisations with sufficient time to prepare for and implement the reform. That is why, having listened to respondents to the previous consultation, the government has decided that the reform will not come into effect until 6 April 2020, giving medium and large-sized businesses longer to prepare.

In addition, HMRC will continue to work with stakeholders, including tax experts and businesses to explore enhancements to the Check Employment Status for Tax (CEST) tool and associated guidance. Any enhancements to CEST and associated guidance will be available for customers to use before the reform comes into effect.

Background

The off-payroll working rules – commonly known as IR35 – are intended to ensure that individuals who work like employees pay broadly the same employment taxes as employees, regardless of the structure they work through. The off-payroll working rules apply where an individual (the worker) provides their services through an intermediary to another person or entity (the client). The intermediary in this case is another individual, a partnership, an unincorporated association or a company. The most common structure seen is a PSC, which is the term we have used throughout this document. The term “client” is used throughout this document to identify the organisation or entity receiving the off-payroll worker’s services. The term “worker” is used to refer to the individual providing the services to the client, however, this does not mean that have the statutory “worker” employment status for employment rights purposes.

In April 2017, the government addressed non-compliance in the public sector by reforming the legislation for off-payroll workers in that sector. The public sector reform makes public authorities responsible for deciding whether the worker would have been regarded for income tax and National Insurance contributions (NICs) purposes as an employee if they were engaged directly. The public sector reform also makes the public authority or agency (the “fee-payer”) that pays the worker’s PSC, responsible for accounting for and paying income tax and NICs under PAYE to HMRC, on behalf of the worker.

PAYE receipts and independent research on off-payroll working in the public sector suggest that this reform has been effective in increasing compliance in the public sector without impacting labour market flexibility. At Autumn Budget 2017 the government therefore announced that it would consult on options for addressing non-compliance in the private sector. This consultation was published on 18 May 2018 and closed on 10 August 2018. A copy of the consultation document, and the subsequent summary of responses can be found at <https://www.gov.uk/government/consultations/off-payroll-working-in-the-private-sector>

The consultation received 275 responses from a range of stakeholders, including individuals working through PSCs, businesses and agencies engaging off-payroll workers in this way and representative bodies. After considering the responses, the government announced at Budget 2018 that it would extend the reform to the off-payroll working rules already in operation in the public sector to engagements in the private sector from April 2020.

The consultation

As part of its response to the last consultation, the government committed to carrying out a further, detailed consultation on the proposed operation of the rules.

The April 2020 reform will use the off-payroll working rules in the public sector as a starting point. This means that clients will be required to make a determination of a worker's employment status and communicate that determination. In addition, the fee-payer (usually the organisation paying the worker's PSC) will need to make deductions for income tax and NICs and pay any employer NICs. Affected organisations should therefore familiarise themselves with the existing legislation at Chapter 10, Part 2 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

The government is committed to learning from the public sector reform. It recognises that the needs of private sector organisations differ to those in the public sector and that the range of activities undertaken are substantially more wide-ranging, and therefore some changes are required. Other than the changes proposed to define small businesses in the private sector, the other changes the government is proposing in this consultation would equally apply to engagements in the public sector from April 2020.

This consultation is not intended to consider alternative approaches to tackling non-compliance with the off-payroll working rules. The government set out its position in respect of alternative proposals in the previous consultation document and the subsequent government response. This consultation is also not intended to consider the interaction between employment rights and being taxed like an employee. There is currently no link between tax and employment rights. However, last year the Government issued a consultation on employment status that explored the case for aligning the employment status definitions across tax and rights, including whether those deemed to be employees for tax purposes, such as those within the off-payroll working rules, should receive employment rights. This can be found at: www.gov.uk/government/consultations/employment-status.

On 17 December 2018 the Government issued its Good Work Plan, setting out its vision for the future of the UK labour market. The Government has recognised that

having a separate framework for determining employment status for employment rights and tax can create confusion for individuals and employers. The Government agrees that reducing the differences between the tax and rights frameworks for employment status to an absolute minimum is the right ambition, and will bring forward detailed proposals on how the frameworks could be aligned in due course. The Good Work Plan can be found at: www.gov.uk/government/publications/good-work-plan. Employment rights issues are therefore outside of the scope of this consultation but we will work with stakeholders to ensure that any potential changes and interaction between employment status for employment rights and tax are considered carefully.

In the meantime the cost of non-compliance with the off-payroll working rules in the private sector is growing and will reach £1.3 billion a year by 2023/24. It is therefore right for the government to take action to address this in order to secure funds that could otherwise be spent on vital public services.

The government is also alive to concerns expressed by a number of off-payroll workers, including: the lack of a legislative requirement to pass the determination (and reasons for the determination on request) down the labour supply chain; the absence of a statutory process to deal with status disagreements between the client and the off-payroll worker and/or fee-payer; and that businesses may use blanket decisions for the employment status of off-payroll workers in similar roles. The government intends to address these concerns as part of this consultation by refining the design of the reform to help and encourage organisations to make the correct determination. The government also intends to introduce a framework for resolving disagreements over employment status decisions for off-payroll workers.

This consultation is intended to provide organisations and off-payroll workers with greater certainty around how the off-payroll working rules will operate from 6 April 2020 and the obligations and responsibilities of the various parties involved in the labour supply chain. The government understands that many organisations will be keen to begin preparations and has therefore included in the education and support section of this document actions that affected organisations can take now to prepare for the reform.

Following this consultation

This consultation will inform the draft Finance Bill legislation intended to be published this summer. It will also provide public authorities with clarity on changes to the off-payroll working rules from April 2020 which they will also need to implement. HMRC will publish a full summary of responses as soon as possible following the conclusion of the consultation.

2. Defining the scope of the reform

This chapter and the following chapters set out the government’s proposals for how the rules should be refined to address concerns about how the reform is operating in the public sector, as well as meeting the needs of private sector organisations. It seeks the views of the organisations and individuals who will be operating the rules as to whether the proposals are likely to be effective. The changes proposed will apply to all public sector and medium and large-sized private sector clients.

Defining the scope

Having listened to concerns expressed by stakeholders about the capacity of clients to implement the changes, the government has decided that the smallest organisations will not be affected by the reform and will not need to determine the status of the off-payroll workers they engage.

The government intends to use the existing statutory definition within the Companies Act to determine whether or not a corporate client is small. This definition can be found at section 382 of the Companies Act 2006. An extract of the relevant provisions is set out below:

Companies Act definition of “qualifying as small”

The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

<i>1 Annual Turnover</i>	<i>Not more than £10.2 million</i>
<i>2 Balance sheet total</i>	<i>Not more than £5.1 million</i>
<i>3 Number of employees</i>	<i>Not more than 50</i>

The advantage of this approach is that the majority of companies, as well as tax and accountancy professionals, are likely to already be familiar with this definition and to what extent it applies to their operations. The reform will apply to all corporates who do not qualify as small under the test set out in section 382 (including those small companies which are excluded from qualifying as small despite meeting the requirements).

Companies in small groups as defined by section 383 of the Companies Act will also qualify as small for the purposes of the April 2020 reform. In addition, anti-avoidance provisions will be considered as part of the design to ensure that parties connected to, associated with, or controlled by the client cannot take advantage of the provisions to exclude small private sector clients from having to consider the status of their off-payroll workers.

However, the government recognises that the Companies Act definition does not apply to non-corporate entities and that the balance sheet test in particular may not be suitable for all non-corporate clients. The government therefore proposes two options

for non-corporate entities which look only at the turnover and the number of employees of the organisation.

The first option will be to apply the reform to unincorporated entities with 50 or more employees and to entities with turnover exceeding £10.2 million.

The second, is to apply the reform only to unincorporated entities that have both more than 50 or more employees and turnover in excess of £10.2 million.

The employee test will apply in the same way as the Companies Act test and will be met if the average number of employees employed over a year is 50 or more. The turnover test will also apply in the same way and will be met if the organisation's annual turnover exceeds £10.2 million. If either of these thresholds are exceeded the entity will be within the scope of the reform.

When an organisation becomes, or ceases to be small in an accounting period, for the purposes of the off-payroll working rules that change will apply from start of the tax year following the end of that accounting period. This is the case regardless of whether the organisation is incorporated or unincorporated.

Example 1

ABC Cash and Carry is a partnership specialising in the wholesale of goods to local businesses. The partnership employs 40 employees in various roles and in its accounting period ending 31 December 2019 it has a turnover of £8.7 million. ABC Cash and Carry has recently launched a website which allows their customers to place orders online. They engage an off-payroll worker through Agency Ltd to manage their website on their behalf.

It is now 6 April 2020 and the partnership must now decide whether or not the reform applies to them.

ABC Cash and Carry has fewer than 50 employees and less than £10.2 million in turnover. The partnership is considered small for the purposes of the reform under both options and does not have to apply the rules.

Under option 1, if ABC Cash and Carry had employed 50 or more employees or had turnover of more than £10.2 million it would have been responsible for determining the status of the contractor and passing it on to Agency Ltd.

Under option 2, ABC Cash and Carry would need to have 50 or more employees and turn over in excess of £10.2 million in order to be within scope of the reform.

Example 2

It is now 30 November 2020 and ABC Cash and Carry has now filed its accounts for the accounting period 30 November 2019 to 30 November 2020.

ABC Cash and Carry has increased its customers since the start of the tax year. As a result, ABC Cash and Carry now has a turnover of £10.5 million and is now employing 52 employees. ABC Cash and Carry continues to engage an off-payroll worker through Agency Ltd to manage their website.

ABC Cash and Carry knows that it qualified as small for the full tax year from 6 April 2020 because its small entity status was assessed on the basis of its accounting period ending immediately before 6 April 2020.

ABC Cash and Carry is positive about its future growth and expects to maintain and build on its customer base over the next 6 months into the following tax year. If its expectations are realised and it continues to engage an off-payroll worker to manage its website, ABC Cash and Carry is aware that from the 6 April 2021, it will need to consider whether the off-payroll working rules should be applied to its off-payroll contractor.

The reform and all associated responsibilities will apply in full to public authorities and any private sector organisations that do not qualify as small. This means that an organisation is liable for any income tax and Class 1 employee NICs due on deemed payments of employment income until it has fulfilled its obligations. These organisations will also be liable for employer NICs due on those same payments. This is consistent with the liability faced by public sector clients who fail to operate the current rules in Chapter 10, Part 2 ITEPA 2003.

Question 1 – Do you agree with taking a simplified approach for bringing non-corporate entities in to scope of the reform? If so which of the two simplified options would be preferable? If not, are there alternatives tests for non-corporates that the Government should consider? Could either of the two simplified approaches bring in to scope entities which should otherwise be excluded from the reform? Is it likely to apply consistently to the full range of entities and structures operating in the private sector? Please explain your answer.

3. Information requirements

Responsibilities of each party in the labour supply chain

In extending the reform to the private sector, it is necessary to consider the obligations and responsibilities of each party in the labour supply chain. It is important that each individual or entity involved is able to consider and apply the rules effectively. However, the government recognises the necessity to balance providing certainty with the need to minimise unnecessary administrative burdens for those implementing the reform.

Current position

Under the reformed rules in the public sector, clients have to provide a status determination to the party they contract with at the start of the contract. This has to be provided by the time the contract starts or before the off-payroll worker starts to provide their services.

Once a determination has been provided, the party the client contracts with has a legal right to ask for the reasons for that determination and in response, the client must provide those reasons in writing within 31 days of receiving the request. This right is intended to allow the party that the client contracts with to check the decision and to understand how the determination was reached.

Where the client either does not provide the determination, or the reasons for it within these timescales, the liability for any income tax and NICs due transfers to the client until they do so. The client has an opportunity to correct this position and provide a determination and/or the reasons for the determination each time a new payment is made.

In practice the party that the client contracts with, passes the client's determination down the supply chain until it reaches the fee-payer. If the off-payroll working rules apply, the fee-payer is required to deduct income tax and NICs from any invoice amounts and to pay it to HMRC.

To enable the fee-payer to fulfil its responsibilities the off-payroll worker is required to inform a fee-payer of the nature of the structure they are working through. The off-payroll worker must also provide the potential fee-payer with information to allow it to correctly account for Pay As You Earn (PAYE).

Proposed changes

While the government believes that the existing rules have worked adequately in the public sector, responses to the previous consultation identified a small number of points that would benefit from further consideration as the reform is rolled out more widely. For example, there is currently no requirement for the off-payroll worker to be given a determination by a client directly, nor is there any legislative right for the off-payroll worker, or fee-payer to seek the reasons for the determination.

Ensuring information is shared appropriately

The government wants to ensure that the parties in the labour supply chain have sufficient information to allow them to comply with their obligations under the off-payroll working rules. However, the government is also keen to ensure that any new requirements do not impose a disproportionate administrative burden on organisations. This consultation is therefore intended to provide the government with sufficient information to allow it to strike the appropriate balance between these two principles.

The government considers it necessary to legislate to ensure that the determination – and the reasons for that determination – are cascaded to all parties within the labour supply chain, to ensure they comply with their obligations.

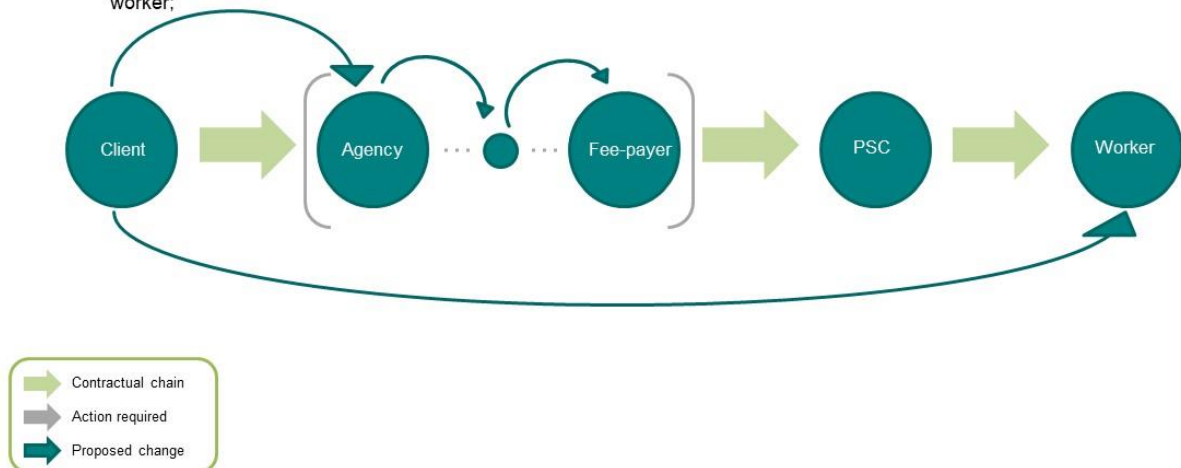
For off-payroll workers, the government considers that this could be achieved by requiring clients to provide the determination – and on request, the reasons for the determination – to the off-payroll worker directly. Changes would be made to legislation and guidance to be clear that the client must provide the off-payroll worker as well as the party they contract with (for example, an agency) the status determination for each engagement.

Illustration A: Determination and reasons for determination cascaded down the labour supply chain

1. Client required to provide status determination and reasons for determination to person they contract with and off-payroll worker;

2. Status determination and reasons for determination are required to be passed down the contractual chain

3. Off-payroll worker and fee-payer (if not person client contracts with) have right to ask for reasons for determination directly from the client



Question 2 – Would a requirement for clients to provide a status determination directly to workers they engage, as well as the party they contract with, give off-payroll workers sufficient certainty over their tax position and their obligations under the off-payroll reform? Please explain your answer.

For fee-payers, although the current legislation does not explicitly require that the fee-payer be provided with the client's determination, the government understands that in the public sector this exchange of information takes place anyway. Nevertheless, the

government intends to legislate to formalise the position, making clear to all parties the obligations on them as a result of the reform. This will require all recipients of a determination and the reasons for a determination to pass them on to the next person in the contractual chain at, or before, the time they make the first corresponding payment.

This proposal will ensure fee-payers who are further down the labour supply chain have the information they need to comply with the rules. It is the government's view that including a legislative requirement for the information flow to parties in the labour supply chain would address concerns raised by stakeholders about this issue.

Question 3 – Would a requirement on parties in the labour supply chain to pass on the client's determination (and reasons where provided) until it reaches the fee-payer give the fee-payer sufficient certainty over its tax position and its obligations under the off-payroll reform? Please explain your answer.

Question 4 - What circumstances may result in a breakdown in the information being cascaded to the fee-payer? What circumstances might result in a party in the contractual chain making a payment for the off-payroll worker's services but prevent them from passing on a status determination?

Simplified Information flow

The government is aware that the solution above could be cumbersome if labour supply chains are long and complex. Where there are more parties in the labour supply chain, each party in the chain is a potential point of failure, which may result in the status determination not reaching the fee-payer. These cases may benefit from an alternative approach to "short-circuit" a lengthy supply chain and simplify information flow, with the fee-payer receiving the determination directly from the client. However, this would require the client to know the identity of the fee-payer.

In most cases the organisation paying the worker's PSC will be the fee-payer. However, where the organisation paying the worker's PSC is off-shore, the fee-payer responsibilities move up the labour supply chain to the next UK-based entity. The government is keen to seek views on how the client may be in a position to identify the fee-payer in order to provide the determination (and the reasons for the determination on request) to the party they contract with, the off-payroll worker and the fee-payer directly.

Question 5 – What circumstances would benefit from a simplified information flow? Are there commercial reasons why a labour supply chain would have more than two entities between the worker's PSC and the client? Does the contact between the fee-payer and the client present any issues for those or other parties in the labour supply chain? Please explain your answer.

Question 6 – How might the client be able to easily identify the fee-payer? Would that approach impose a significant burden on the client? If so, how might this burden be mitigated? Please explain your answer.

Working for a small organisation

Small organisations in the private sector will not be responsible for determining whether the engagement is within scope of the off-payroll working rules. Currently where an off-payroll worker provides their services to a private sector organisation, that off-payroll worker is required to consider whether Chapter 8, Part 2 ITEPA 2003 applies to that engagement. This will continue to be the case for off-payroll workers providing their services to small private sector clients after 6 April 2020.

Where a potential fee-payer has not received a determination it would not be required to make any deductions for income tax and NICs or pay employer NICs until such a time as they have received a determination.

Example 3

ABC Cash and Carry is a partnership specialising in the wholesale of goods to local businesses. The partnership employs 40 employees in various roles and it has a turnover of £8.7 million. ABC Cash and Carry has recently launched a website which allows their customers to place orders online. They engage an off-payroll worker: Philip Johnson, of PJ Web Services Ltd through Agency Ltd to manage their website on their behalf.

It is now 6 April 2020, the partnership must now decide whether or not the reform applies to them. ABC Cash and Carry has fewer than 50 employees and less than £10.2 million in turnover. The partnership is considered small for the purposes of the reform and does not have to apply the rules.

As the reform does not apply to ABC Cash and Carry, it has not provided a determination to Agency Ltd or to the off-payroll worker Philip Johnson. All payments made by ABC Cash and Carry to Agency Ltd for Philip Johnson's services are for the full invoice amount and are not accompanied by a client status determination.

Agency Ltd are therefore not required to make any deductions for income tax and employee NICs, or pay employer NICs on any payments made to PJ Web Services Ltd for Philip Johnson's services.

When PJ Web Services Ltd is calculating its tax liabilities it will need to consider whether the engagement held by Philip Johnson with ABC Cash and Carry would have been one of employment were it not for the existence of Philip Johnson's company PJ Web Services Ltd. If this is the case, then PJ Web Services Ltd would need to apply the reformed off-payroll working rules for engagements with small entities in the private sector, to be set out in Chapter 8, Part 2, ITEPA 2003.

As the worker's PSC is currently required to consider whether Chapter 8 applies to any private sector engagements, the government does not believe this requirement would result in an additional burden for the worker's PSC. Compliant PSCs should be doing this already in relation to private sector engagements.

Question 7 – Are there any potential unintended consequences or impacts of placing a requirement for the worker’s PSC to consider whether Chapter 8, Part 2 ITEPA 2003 should be applied to an engagement where they have not received a determination from a public sector or medium/large-sized client organisation taking such an approach? Please explain your answer.

Addressing non-compliance

The government believes that the vast majority of organisations will comply with their obligations under the reformed off-payroll working rules. However, it will be necessary to have in place effective deterrents to ensure that there is no advantage for the small minority who may seek not to comply, or to enter into artificial or contrived arrangements with a view to circumventing the rules.

The existing rules in Chapter 10, Part 2 ITEPA 2003 provide for the liability for income tax and NICs to be transferred from one party to another in certain circumstances, for example where a client fails to provide a determination. The government believes that extending these existing provisions would provide an effective mechanism for preventing and addressing non-compliance with the rules following the April 2020 reform.

To ensure that any reform of the information sharing rules is effective and avoids imposing unnecessary administrative burdens, it would be helpful to understand in more detail how labour supply chains in the private sector are typically structured. For example, the government is keen to understand more about the length of a typical labour supply chain and the role of any intermediary parties in the chain, in particular where more than one agency or party exists between the client and the worker’s PSC. The government is also interested in any differences between labour supply chains in different sectors and the reasons for these differences.

Question 8 – On average, how many parties are in a typical labour supply chain that you use or are a part of? What role do each of the parties in the chain fulfil? In which sectors do you typically operate? Are there specific types of roles or industries that you would typically require off-payroll workers for? If so, what are they?

In order to ensure that the extended information requirements are effective the government also proposes to modify the rules that determine when the liability for income tax and NICs should be transferred.

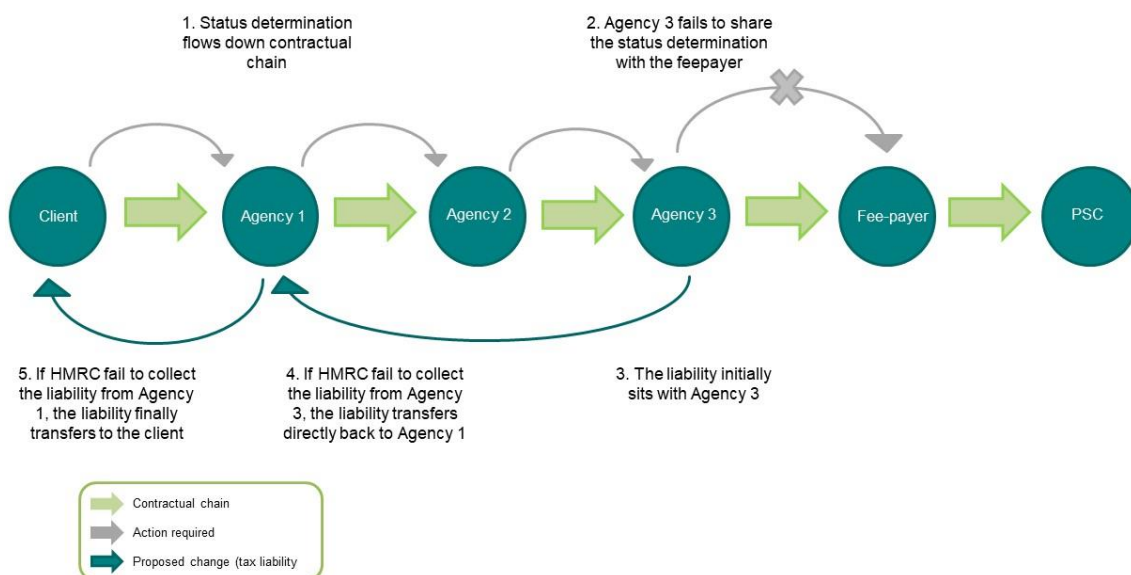
Where HMRC does not receive the tax due, the government proposes that the liability should initially rest with the party that has failed to fulfil its obligations, until such a time that it did meet those obligations. This means that liability would move down the labour supply chain as each party fulfils its obligations. For example, if an agency in the chain failed to send on the determination that agency would be liable for any income tax and NICs due. Similarly, if a fee-payer, having received the determination failed to make deductions from any payments made to the worker’s PSC then it would become liable.

If HMRC were unable to collect the outstanding liability from that party, for example, because it ceased to exist, the government proposes that the liability should transfer back to the first party or agency in the chain. Where HMRC could not collect from the first party or agency it would ultimately seek payment from the client. This approach mirrors the approach taken in the agencies legislation and the legislation which applies to labour supply chains which feature non-UK employers.

It is the government's view that this approach is proportionate, as it is the business of the first agency in any chain to secure and provide its clients with labour, and so it is therefore best placed to ensure compliant behaviour from the parties in the chain below. The first agency is able to consider their contractual arrangements and who they wish to contract with to provide the labour they have been contracted to supply. This means it has a number of options open to them, such as indemnifying themselves against non-compliant fee-payers, taking on fee-payer responsibilities themselves, or choosing to only work with reputable and compliant firms.

The advantages of this approach are that it would provide a clear incentive for all parties to comply with their obligations and to ensure a determination is passed fully down the chain. This approach would also encourage all parties to contract with reputable and compliant firms.

Illustration B: Liability flows down the labour supply chain as each party fulfils its obligations. Liability initially rests with party that has failed to fulfil its obligations, then transfers to Agency 1 and ultimately transfers to the client where HMRC cannot collect from Agency 1.



Question 9 – We expect that agencies at the top of the supply chain will assure the compliance of other parties, further down the labour supply chain, if they are ultimately liable for the tax loss to HMRC that arises as a result of non-compliance. Does this approach achieve that result?

Question 10 – Are there any unintended consequences or impacts of collecting the tax and NICs liability from the first agency in the chain in this way? Please explain your answer.

Question 11 - Would liability for any unpaid income tax and NICs due falling to the engager (if it could not be recovered from the first agency in the chain), encourage clients to take steps to assure the compliance of other parties in the labour supply chain?

Question 12 – Are there any potential unintended consequences or impacts of taking such an approach? Please explain your answer.

The government has also considered the alternative approach of including additional provisions in legislation that would seek to transfer the liability to the directors, office holders or associates of the fee-payer where HMRC is unable to collect the liability from the fee-payer.

Having considered this alternative approach, on balance the government thinks the approach set out above:

- is better able to drive behavioural change from those in the labour supply chain who have the most control;
- is simpler in terms of liability only ever resting with one party in the labour supply chain at any one time; and
- is an approach where liability follows obligations, providing opportunities to correct behaviour and failures every time a payment is issued.

4. Helping organisations to make the correct status determination and ensuring reasonable care

Addressing status determination disagreements between the client and the off-payroll worker and/or fee-payer

The Government recognises concerns raised during the summer consultation about the absence of a process to challenge status determinations. A number of respondents to that consultation also expressed concern that organisations may make blanket determinations of the employment status of off-payroll workers working in similar roles.

The government is clear that the off-payroll working rules should be applied properly and consistently with due consideration given to the facts of a particular engagement. Employment status for tax is determined by the contractual terms and conditions, and the actual working practices of an engagement. Where a role and contract have been previously assessed as inside the off-payroll working rules, an organisation can be in a position to determine the status of the role at the time of advertising. Whether the assessment is made before the role is advertised or later, organisations will be required to take reasonable care in making decisions.

Applying a decision to a group of off-payroll workers with the same role, terms and contractual conditions can be appropriate in some circumstances. However, HMRC is clear that it is not right to rule all engagements to be within or outside of the rules irrespective of the contractual terms and actual working arrangements. HMRC has not seen evidence to suggest widespread blanket decisions are being made in the public sector but where reasonable care has not been taken to reach these decisions, the liability for paying the income tax and NICs can transfer to the public authority.

The government understands that in some circumstances an off-payroll worker or fee-payer may disagree with a client's status determination. This could include believing that the full circumstances of the engagement have not been considered, or because they think the client has not taken reasonable care in reaching that determination.

The government thinks strengthening the existing rules by requiring the client to directly provide the off-payroll worker and the fee-payer with the reasons for the status determination on request will go some way to address this concern.

It may be that the client has provided the reasons for their determination together with their status determination to the party they contract with. In this circumstance under the proposals set out above, those in the labour supply chain will be obligated to pass both down the labour supply chain until it reaches the fee-payer and the off-payroll worker should have received both items from the client directly.

Where, for whatever reason, the fee-payer or off-payroll worker have not received the reasons for the status determination together with the status determination, the

government thinks it is appropriate to provide the off-payroll worker and the fee-payer with the right to seek the reasons for the status determination directly from the client. This would be the first step in seeking to resolve status disagreements.

In addition to this right to receive a determination and the reasons for the determination, it may be necessary for a process to be put in place to allow for determinations to be challenged. The government believes that the most effective approach would be for clients to develop and implement a process to resolve disagreements based on a set of requirements set out in legislation.

The introduction of a client-led status disagreement process would allow organisations to tailor the process to fit in with their wider business processes, while maintaining a level of consistency across all organisations. As a minimum the government would expect any process to include the consideration of evidence put forward by the off-payroll worker and/or fee-payer, advising the party of the outcome of that consideration and the reasons for that outcome. The introduction of this stage would be the second step in seeking to resolve status disagreements, providing additional assurance to off-payroll workers and fee-payers that the client has not taken an arbitrary approach to determining status and has considered any evidence they may have to the contrary.

This consultation introduces a variety of ways in which individuals can raise their concerns about their status determination directly with the client that issued it. It is the government's view that this dialogue will inevitably result in the client taking reasonable care when reaching its final view on the status determination of the engagement. The government believes that the introduction of a client-led status disagreement process will mean that fewer off-payroll workers will need to use end of year processes to challenge the status determination. Instead, more workers and clients will reach the correct position in real time.

Question 13 – Would a requirement for clients to provide the reasons for their status determination directly to the off-payroll worker and/or the fee-payer on request where those reasons do not form part of their determination impose a significant burden on the client? If so, how might this burden be mitigated? Please explain your answer.

Question 14 – Is it desirable for a client-led process for resolving status disagreements to be put in place to allow off-payroll workers and fee-payers to challenge status determinations? Please explain your answer.

Question 15 – Would setting up and administering such a process impose significant burdens on clients? Please explain your answer.

The government considers requiring clients to set up such a process would not place a disproportionate administrative burdens on these organisations. Public sector and medium/large-sized private sector organisations are likely to already have relatively sophisticated HR processes in place either in-house or sub-contracted to relevant service providers for managing workplace disputes.

Question 16 – Does the requirement on the client to provide the off-payroll worker with the determination, giving the off-payroll worker and fee-payer the

right to request the reasons for that determination and to review that determination in light of any representations made by the off-payroll worker or the fee-payer, go far enough to incentivise clients to take reasonable care when making a status determination?

5. Other matters

Accounting for tax, NICs and the Apprenticeship Levy when payments are made to the worker's PSC

As is currently the case for engagements in the public sector, where the rules apply, the fee-payer will be treated as an employer for income tax, NICs and apprenticeship levy purposes. The fee paid to the PSC is to be treated as a payment of the off-payroll worker's employment income when it is paid. The amount treated as the off-payroll worker's employment income will be the VAT exclusive amount paid to the worker's PSC. For income tax, NICs and Apprenticeship Levy purposes, the worker will be treated as having an employment with the fee-payer.

The reform requires the fee-payer to operate the rules for tax, NICs, and the Apprenticeship Levy in the same way as for a normal employee. The off-payroll worker is legally required to furnish National Insurance Number, tax code and identity details to enable the right tax to be deducted.

On or before the fee-payer makes payment to the worker's PSC, the fee-payer has to complete the normal Real Time Information (RTI) process and notify HMRC of the amount of the taxable earnings and the tax and NICs deducted.

As in the public sector reform, statutory payments and other employment rights will not be affected by the proposed reform to the off-payroll working rules from April 2020. This means that the deemed employment relationship does not result in employment rights or statutory payments obligations for the deemed employer or fee-payer.

Treatment of employer NICs for Employment Allowance purposes

As is the case for the public sector reform, all employer NICs paid as a result of deemed employment income are excluded liabilities for the purposes of the Employment Allowance. If an organisation only has secondary Class 1 NICs liabilities arising from the payment of deemed employment income they would not be able to claim the Employment Allowance against these liabilities. If an organisation has a mix of employees and off-payroll workers, only the secondary Class 1 NICs liabilities arising from payments of earnings made to the employer's direct employees would be qualifying liabilities for Employment Allowance purposes.

Dealing with student loans

Although the fee-payer is treated as the employer for the purposes of income tax, NICs, and the Apprenticeship Levy, as per the public sector reform, the fee-payer will not be required to make deductions for student loans purposes.

Provisions to address double taxation

Existing provisions dealing with double taxation will continue to apply following the April 2020 reform. This means that broadly speaking the worker's PSC is able to set the amount of the deemed payment against the amount of remuneration from the worker's PSC on which tax liabilities arise. The corporation tax computation should be

adjusted so that the worker's PSC cannot claim a double deduction for the costs associated with the engagement.

5% allowance

As with public sector engagements the worker's PSC will no longer be permitted to deduct a 5% allowance in relation to engagements with medium and large-sized clients.

Provisions to address special situations and avoidance behaviour

Existing provisions to address anti-avoidance will also continue to apply. Where the agency or third party that would be the fee-payer is offshore, the liability moves to the next person above them in the contractual chain which is in the UK. If only the client is in the UK then they will be the liable party. Where a party in the contractual chain, including the client is outside the UK but the off-payroll worker performs services in the UK, fee-payers must still deduct tax and NICs.

Provisions dealing with circumstances where the off-payroll worker, or parties, or companies connected to, associated with or controlled by the off-payroll worker are inserted into the labour supply chain will also continue to apply. These provisions prevent the worker's PSC from manipulating the labour supply chain in order to circumvent the legislation.

Other anti-avoidance provisions will also be considered as part of the design to ensure that clients cannot abuse the provisions to exclude small private sector clients from the reform.

How the off-payroll working rules should be applied in relation to "contracted out" services

The off-payroll working rules require a worker to personally perform, or be under an obligation to personally to perform, services for another person ("the client"). This condition will not be met where the client has contracted-out the services to a third party, e.g. an outsourcing company, in such a way that the third party does not as part of that service provide their client with the labour of the workers.

For engagements in the public sector, if a public authority has contracted-out the services to a third party in the private sector, the public authority is not required to consider whether the off-payroll working rules apply. Conversely, had the public authority entered in to a contract for labour supply it would be required to consider whether the off-payroll working rules applied.

In these circumstances, under the current rules, even the third party who engages a worker's PSC to perform the services for the public authority, is not required to consider whether the off-payroll working rules apply.

From April 2020, the position for the public authority will not change. The public authority will still not be required to consider whether the off-payroll working rules apply because it has not entered into a contract for labour supply. A private sector organisation that has contracted-out services in this way will also not be required to

consider the legislation. In the circumstances described above, the third party is the client that has engaged the worker's PSC. The third party will be required to consider whether the off-payroll working rules apply, and if they do, it will be responsible for deducting and paying the appropriate tax and NICs.

How the off-payroll working rules should be applied in relation to other tax legislation

Agency legislation: where an agency contracts directly with the worker as an employee and operates tax and NICs, or engages them on a self-employed basis but operates tax and NICs under agency rules, then the off-payroll working rules do not apply. (See Chapter 7, Part 2 ITEPA 2003).

Umbrella companies: where an umbrella company employs the worker directly as an employee and does not contract with the worker's PSC, the off-payroll working rules do not apply. Some umbrella companies do not employ the worker directly and continue to contract with the worker's PSC - so these arrangements should be checked. If the worker's PSC continues to receive payments for the off-payroll worker's service through their PSC then the off-payroll working rules continue to apply.

Managed Service Company legislation: where the conditions in the off-payroll working rules apply, these rules will take precedent over the managed service company rules in Chapter 9, Part 2 ITEPA 2003.

Construction Industry Scheme: where the conditions in the off-payroll working rules apply, these rules will take precedent over the rules in the construction industry scheme.

Pensions

The rules within Chapter 8 allow the PSC to make contributions to the worker's pension as an employer would, tax and NICs free. This facility was removed when Chapter 10 was introduced in order to simplify the calculation fee-payers would need to administer.

Under the new rules workers are able to claim all the income tax relief due on pension contributions. However, these contributions will no longer qualify for NICs relief, as tax and employee NICs will have been deducted from their contract fee by the fee-payer. We are considering legislative options that allow fee-payers to make contributions free of tax and NICs to the workers personal pension.

Making pension contributions would effectively give fee-payers a deduction on the amount on which they will be required to pay employers NICs. This is because the pension contribution reduces the gross pay before tax and employers NICs are calculated.

Question 17 – How likely is an off-payroll worker to make pension contributions through their fee-payer in this way? How likely is a fee-payer to offer an option to make pension contributions in this way? What administrative burdens might

fee-payers face which would reduce the likelihood of them making contributions to the off-payroll worker's pension?

Other issues

Question 18 – Are there any other issues that you believe the government needs to consider when implementing the reform? Please provide details.

6. Education and support for organisations and individuals

Check Employment Status for Tax (CEST) Service

The CEST service was launched in 2017. HMRC developed the CEST service to help clients decide:

- the status of their off-payroll workers; and
- whether the off-payroll working rules apply.

CEST was rigorously tested and is able to determine employment status in 85% of cases. HMRC continues to work with stakeholders to identify improvements to CEST and wider guidance to ensure it meets the needs of the private sector.

Enhancements will be tested with stakeholders before the reform is implemented.

Stakeholder concerns

There are currently concerns about CEST's ability to:

- take account of existing employment status for tax case law and as a result may not give an accurate employment status determination in some cases
- reflect the complex nature of the private sector.

HMRC response

HMRC is currently working with stakeholders to deal with these concerns. HMRC is looking to:

- enhance the service to help customers make employment status decisions;
- improve CEST guidance so organisations can confidently make employment status determinations that people working through intermediaries will be able to see and understand
- develop an education and support package for those affected to help them prepare for, and implement changes to the off-payroll working rules.

Education and Support Package

HMRC will tailor this package to:

- give relevant information to those who will need to apply the off-payroll working rules, such as: HR directors, hiring managers, and off-payroll workers so they can act on the changes in time for April 2020
- meet the needs of different users. For example clients will be pointed towards specific guidance on making the status decision, fee-payers to guidance on operating payroll, and off-payroll workers will have easy access to guidance

specific to them, such as how to apply the existing rules when providing their services to small clients.

Actions for businesses to take now to prepare for the reform

However, the government understands that many organisations will be keen to begin preparations.

Organisations affected by the reform should take the following actions now to prepare for the reform:

1. Identify and review their current engagements with intermediaries, including PSCs and agencies that supply labour to them
2. Review current arrangements for the use of contingent labour, particularly within the organisation functions that are more likely to engage off-payroll workers
3. Put in place comprehensive, joined-up processes (assess roles from a procurement, HR, tax and line management perspective) to get consistent decisions about the employment status of the people they engage
4. Review internal systems, such as payroll software, process maps, HR and on-boarding policies to see if they need to make any changes

This consultation document should give organisations and individuals with certainty around:

- how the off-payroll working rules will work from 6 April 2020 and
- the obligations and responsibilities of all parties involved in the labour supply chain.

7. Summary of Consultation Questions

Question 1 – Do you agree with taking a simplified approach for bringing non-corporate entities in to scope of the reform? If so which of the two simplified options would be preferable? If not, are there alternatives tests for non-corporates that the Government should consider? Could either of the two simplified approaches bring in to scope entities which should otherwise be excluded from the reform? Is it likely to apply consistently to the full range of entities and structures operating in the private sector? Please explain your answer.

Question 2 – Would a requirement for clients to provide a status determination directly to off-payroll workers they engage, as well as the party they contract with, give off-payroll workers sufficient certainty over their tax position and their obligations under the off-payroll reform? Please explain your answer.

Question 3 – Would a requirement on parties in the labour supply chain to pass on the client's determination (and reasons where provided) until it reaches the fee-payer give the fee-payer sufficient certainty over its tax position and its obligations under the off-payroll reform? Please explain your answer.

Question 4 - What circumstances may result in a breakdown in the information being cascaded to the fee-payer? What circumstances might result in a party in the contractual chain making a payment for the off-payroll worker's services but prevent them from passing on a status determination?

Question 5 – What circumstances would benefit from a simplified information flow? Are there commercial reasons why a labour supply chain would have more than two entities between the worker's PSC and the client? Does the contact between the fee-payer and the client present any issues for those or other parties in the labour supply chain? Please explain your answer.

Question 6 – How might the client be able to easily identify the fee-payer? Would that approach impose a significant burden on the client? If so, how might this burden be mitigated? Please explain your answer.

Question 7 - Are there any potential unintended consequences or impacts of placing a requirement for the worker's PSC to consider whether Chapter 8, Part 2 ITEPA 2003 should be applied to an engagement where they have not received a determination from a public sector or medium/large-sized client organisation taking such an approach? Please explain your answer.

Question 8 – On average, how many parties are in a typical labour supply chain that you use or are a part of? What role do each of the parties in the chain fulfil? In which sectors do you typically operate? Are there specific types of roles or industries that you would typically require off-payroll workers for? If so, what are they?

Question 9 – The intention of this approach is to encourage agencies at the top of the supply chain to assure the compliance of other parties, further down the chain, through which they provide labour to clients. Does this approach achieve that result?

Question 10 – Are there any potential unintended consequences or impacts of collecting the tax and NICs liability from the first agency in the chain in this way taking such an approach? Please explain your answer.

Question 11 - Would liability for any unpaid income tax and NICs due falling to the client (if it could not be recovered from the first agency in the chain), encourage clients to take steps to assure the compliance of other parties in the labour supply chain?

Question 12 – Are there any potential unintended consequences or impacts of taking such an approach? Please explain your answer.

Question 13 – Would a requirement for clients to provide the reasons for their status determination directly to the off-payroll worker and/or the fee-payer on request where those reasons do not form part of their determination impose a significant burden on the client? If so, how might this burden be mitigated? Please explain your answer.

Question 14 – Is it desirable for a client-led process for resolving status disagreements to be put in place to allow off-payroll workers and fee-payers to challenge status determinations? Please explain your answer.

Question 15 – Would setting up and administering such a process impose significant burdens on clients? Please explain and evidence your answer.

Question 16 – Does the requirement on the client to provide the off-payroll worker with the determination, giving the off-payroll worker and fee-payer the right to request the reasons for that determination and to review that determination in light of any representations made by the off-payroll worker or the fee-payer, go far enough to incentivise clients to take reasonable care when making a status determination?

Question 17 – How likely is an off-payroll worker to make pension contributions through their fee-payer in this way? How likely is a fee-payer to offer an option to make pension contributions in this way? What administrative burdens might fee-payers face which would reduce the likelihood of them making contributions to the off-payroll worker's pension?

Question 18 - Are there any other issues that you believe the government needs to consider when implementing the reform? Please provide details.

8. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 3.

Responses should be sent by 28 May 2019, by e-mail to offpayrollworking.intheprivatesectorconsultation@hmrc.gsi.gov.uk or by post to: Employment Status and Intermediaries Policy, 3C/15, 100 Parliament Street, Westminster, SW1A 2BQ

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue & Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation

Your Data

The data

We will process the following personal data:

Name

Email address

Postal address

Phone number

Job title

Purpose

The purpose(s) for which we are processing your personal data is: *Off-Payroll Working in the Private Sector*

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue & Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue & Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: <mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk>

Please do not send responses to the consultation to this address.