

Technical consultation on draft secondary legislation for off-payroll working from April 2020

Introduction

1. The off-payroll working rules make sure that individuals working like employees, but through their own limited company, pay broadly the same Income Tax and National Insurance contributions (NICs) as individuals who are employed directly.
2. The government announced at Budget 2018 that it would reform the off-payroll working rules (also known as the intermediaries legislation, or IR35) for all medium and large organisations.
3. To work out whether the rules apply, the person or organisation receiving an individual's services ("the client") will be responsible for making a decision about whether the worker is employed or self-employed for tax purposes. This is known as an 'employment status determination'.
4. The reform to the rules mean that the person or organisation responsible for making this decision will change from the worker's intermediary to the client, where people are contracting their services to medium or large-sized organisations outside the public sector. This approach aligns with the rules that apply in the public sector and this shift will help address widespread non-compliance with the rules.
5. Small organisations will be exempt from considering whether the rules apply, minimising administrative burdens for the vast majority of engagers, and HMRC will provide support and guidance to medium and large organisations ahead of implementation.
6. On 7 July 2019, the government published draft legislation for Finance Bill 2019-20 to reform the off-payroll working rules for engagements in the public sector and in medium or large-sized organisations outside the public sector. The draft legislation included a power to make secondary legislation to allow HMRC to recover unpaid PAYE liabilities from other relevant parties in the labour supply chain, namely the first UK-based agency in the chain, or alternatively from the client receiving the individual's services.
7. The two draft statutory instruments published for consultation alongside this technical note accompany primary legislation due to be contained in Finance Bill 2020 in similar terms to that published in July 2019. The draft Income Tax (Pay As You Earn) (Amendment) Regulations 2020 contain detailed provisions allowing for the recovery of PAYE Income Tax liabilities from a third party where a deemed employer (the party treated as making a payment of earnings to the worker's intermediary) has failed to make PAYE tax deductions from payments made in relation to an off-payroll worker and there is no realistic prospect of

recovering the outstanding Income Tax from the deemed employer within a reasonable period. These draft regulations also amend the PAYE regulations to provide for the reporting of an off-payroll worker indicator on PAYE Real Time Information (RTI) returns.

8. The draft Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020, make similar provisions to those provided for in the draft primary legislation and in the draft PAYE regulations for NICs purposes.

Who should read this?

9. The operation of the power to recover from other relevant persons and the operation of NICs for off-payroll working, will be of interest to:
 - a. 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.
 - b. Public authorities receiving worker's services provided through an intermediary.
 - c. Accountants and other agents representing people who work through intermediaries or representing engagers who pay workers engaged through intermediaries.
 - d. HR and procurement managers and those who deal with recruitment processes and payroll.

The Income Tax (Pay As You Earn) (Amendment) Regulations 2020 – Draft

10. These draft regulations make amendments to the Income (Pay As You Earn) Regulations 2003 (PAYE Regulations), introducing the amendments to the PAYE regulations and inserting new Chapter 4A into Part 4 of the PAYE regulations. The regulations allow for the recovery of unpaid PAYE debts from other relevant persons within the labour supply chain where Chapter 10, Part 2 ITEPA 2003 applies to an engagement and there is no realistic prospect of recovering the outstanding Income Tax from the deemed employer within a reasonable period. In line with HMRC's response to the consultation on the April 2020 reform, HMRC will not exercise this power in the case of genuine business failure of the party ordinarily liable for the Income Tax and NICs.
11. The changes proposed mean that HMRC will first seek to recover any unpaid tax liabilities from the agency the client contracts with, where this agency is UK-based (agency one in the labour supply chain). Where HMRC are of the view that there is no realistic prospect of recovering the outstanding Income Tax from agency one, HMRC will then seek to recover unpaid liabilities from the client. The regulations also include provisions setting out the requirements for the contents of the recovery notice to be used in these circumstances and appropriate appeal rights in relation to the provisions.

12. The draft regulations also insert new paragraph 14AA into Schedule A1 to the PAYE Regulations which deal with information to be included in real time information returns requiring employers to identify payments which relate to an off-payroll worker subject to Chapter 10, Part 2 ITEPA 2003.

13. The draft Income Tax (Pay As You Earn) (Amendment) Regulations 2020 have been published on [GOV.UK](https://www.gov.uk).

The Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020 – Draft

14. These draft regulations make a number of consequential amendments and insert new regulations into the Social Security (Intermediaries) Regulations 2000, and also make consequential amendments to the Social Security (Contributions) Regulations 2001. These regulations make similar provisions to those provided for in draft primary legislation and in the draft PAYE regulations for NICs purposes.

15. The draft Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020 have been published on [GOV.UK](https://www.gov.uk).

16. The consequential amendments and both sets of new draft regulations reflect draft provisions to be inserted into the Income Tax (Earnings and Pensions) Act 2003 by virtue of Finance Bill 2020. The explanatory note provided alongside each of the draft regulations provide further detail about the regulations.

17. The consultation invites interested parties to comment on the technical detail of both draft statutory instruments. Any comments on the draft regulations should be sent to: offpayrollworking.inthepriatesectorconsultation@hmrc.gsi.gov.uk

18. The consultation will run for 4 weeks commencing on 22 January 2020 and ending on 19 February 2020.

Next steps

19. Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate before they are laid before Parliament.

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