

UK Government to Reverse Recent IR35 Reforms by Spring 2023

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Chancellor Kwasi Kwarteng announced in his Autumn Statement last week that the recent changes to the “off-payroll” working rules (otherwise known as “IR35”) are going to be repealed.

Although the new Prime Minister, Liz Truss, made tax-cutting and a “smaller state” a pillar of her leadership campaign, this announcement has caught many by surprise given there has been no prior consultation and the most recent reforms applicable to the private sector were brought in only last year.

What is the current law?

The off-payroll working/IR35 rules were meant to address tax avoidance in the public and private sectors. The law:

- applies when an individual provides services personally to a client/end user via a qualifying intermediary (personal service company, partnership or individual); and
- makes the client/end user responsible for determining employment status and deducting payroll taxes.

This has created a significant compliance and cost burden for employers, and emerging case law has made IR35 status assessments complex.

What is changing?

By repealing the recent changes, the current position will be reversed. Contractors who provide their services through an intermediary, such as a personal service company, will again be solely responsible for assessing their own employment status and paying the appropriate amount of income tax and National Insurance contributions if required under the off-payroll working rules, rather than the end users of their services.

The government’s [Growth Plan 2022](#) document says the change will free up time and money that could be put towards other priorities for those businesses that engage contractors. It also will purportedly minimise the risk that genuinely self-employed workers are negatively impacted by off-payroll rules.

When will the changes take place?

The Chancellor has said that the repeal will take place on 6 April 2023, and primary legislation will need to be introduced to do so via a new Finance Bill.

What is the impact on organisations?

Until the existing law is repealed, the current off-payroll rules remain in place and end users must continue to determine employment status and deduct any necessary payroll taxes.

A repeal is likely to be welcomed by organisations and contractors who will appreciate the reduction in “red tape” to conduct their business, although some end users may feel frustration after having gone to significant lengths to adapt their policies and procedures to comply with the new reforms, only to now have to go back and review them again in light of the government’s change in strategy.

Is this the end of the IR35 story?

No, not quite. Whilst organisations will no longer be responsible for determining the tax status and deducting payroll taxes, risks remain.

Organisations considering engaging a contractor should still be alert to employment status for two reasons:

1. HMRC can still take potential tax or enforcement action (including for corporate criminal tax offences) against an organisation and its directors personally if an arrangement is artificial and the end user is paying contractors off-payroll when they know that the contractors should be taxed as employees; and
2. the general law on employment status will remain very much a live issue, and individuals may also try avail themselves of employment rights such as the protection from unfair dismissal and the right to a redundancy payment and holiday or sick pay if they believe they were in fact employees.

Against this background, it will still be important for organisations considering engaging an individual through an intermediary to take specialist advice on a case-by-case basis to ensure that the right vehicle is being used to structure these relationships and appropriate checks and balances are in place.

If you would like to discuss any of the points raised above in further detail, please contact the London Employment Law team, Jonathan Maude at +44 (0)20 3667 2860, Daniel Stander at +44 (0)20 3667 2861 or Rachel Easton at +44 (0)20 3667 2923.

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