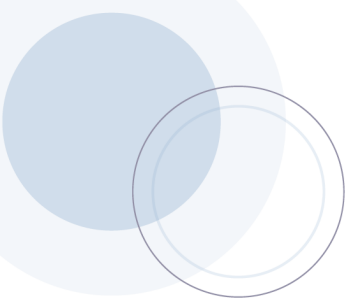


# Legal and Policy Webinar

5 March 2019



# Extension of the off-payroll rules to the private sector

Lewina Farrell  
Head of Legal Services



# Extension of the off-payroll rules to the private sector

- In October 2019 Government confirmed that they would extend the off payroll rules into the private sector from 06.04.20.
- [Consultation](#) published 05.03.19 – closes 28.05.19. Draft legislation summer 2019.
- Some amendments to existing off payroll rules which will apply to all organisations affected.
- Statutory payments and employment rights will not be affected by these changes.



# Extension of the off-payroll rules to the private sector



- What clients do/ will the rules apply to?
  - Public sector – as defined in the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 (since April 2017).
  - Private sector – medium and large organisations (due to proposed small company exemption).
    - But not small companies \*, as defined in the Companies Act 2006 – i.e. a company which in a particular financial year meets two or more of the following conditions: (1) has a turnover of not more than £10.2 million, (2) a balance sheet total of not more than £5.1 million, or (3) not more than 50 employees (current figures). Companies in small groups also captured (with anti-avoidance rules). Two options propose to simplify this further - see [consultation](#) pages 7 to 9.
    - Where a small company is exempt, the existing IR35 rules apply i.e. responsibility for status decision and relevant deductions stays with the intermediary (e.g. PSC).
  - Off payroll rules do/ will not apply to contracted out services.

\* NB – the proposed exemption applies to end users only, not employment businesses supplying temps/ contractors.

# Extension of the off-payroll rules to the private sector



Where the off payroll rules apply:

- End user client will be responsible for making the IR35 status decision, not the intermediary (e.g. personal services company).
- Client passes the status decision to the fee-payer (the party closest to the intermediary through which the individual provides their services). New provisions to ensure that the status decision and the reasons for it move through the supply chain including from the client directly to the off-payroll worker. Consultation pages 10 to 16.

If it is an 'inside IR35' engagement the fee-payer will be required to make appropriate tax and NICs deductions. Employers' NICs will also be due. Report on deductions via Real Time Information.

If it is an 'outside IR35' engagement the intermediary remains responsible for any deductions. Employment business reports payment via quarterly ITEPA reports.

# Extension of the off-payroll rules to the private sector



HMRC's [Check your employment status for tax tool](#) (CEST) questions include:

- who is completing the tool – any of the public authority, the employment business or the temporary worker can use the tool. However, the decision on status rests with the public authority;
- what type of intermediary the temporary worker works through (personal services company, partnership or as a sole trader);
- whether the temporary worker can send a substitute and if they have ever exercised that right;
- if the temporary worker is required to pay the substitute or if the employment business or public authority would pay them;
- how much supervision, direction or control the public authority will exert on the temporary worker;
- whether the temporary worker has to pay for any materials in order to provide their services;
- whether the temporary worker is integrated into the client's workforce.

The list above is not exhaustive but gives an idea of the question themes.

HMRC will review CEST in preparation for the extension of the off-payroll rules.

# Extension of the off-payroll rules to the private sector



CEST will give one of the following answers:

the temporary worker is an employee for tax purposes, which means that PAYE tax and NICs are due – i.e. **INSIDE IR35** (therefore fee-payer must make deductions). Also pay employer NICs.

the temporary worker is self-employed for tax purposes, which means that the intermediary remains responsible for its own tax affairs – i.e. **OUTSIDE IR35** (therefore fee-payer does not make deductions).

an indeterminate answer – **DON'T KNOW.**



# Extension of the off-payroll rules to the private sector



## **Liability provisions** (pages 14 – 16):

- Liability will rest with the party that has failed to fulfil its obligations until it meets those obligations. Then liability will move down the supply chain as each party fulfils its obligations.
- If HMRC unable to collect e.g. because the liable party ceases to exist, then liability moves back to agency 1 in the chain, and ultimately the client becomes liable.
- NB – no personal liability or directors, office-holders or associates of fee-payers.

## **Disagreements over status decisions** (pages 17 to 19):

- Client to pass status decision to off payroll worker.
- Clients to develop processes to resolve disagreements based on a set of requirements set out in the legislation.

## **Accounting processes:**

- See pages 20 and 21 of the consultation.





# Extension of the off-payroll rules to the private sector



Steps to take:

Clients need to assess:

1. whether they could be exempt from the changes or not
2. contractor work-force. How many, how are they engaged?
3. looking at CEST, or another tool, would those contractors' engagements be 'inside' or 'outside IR35'?

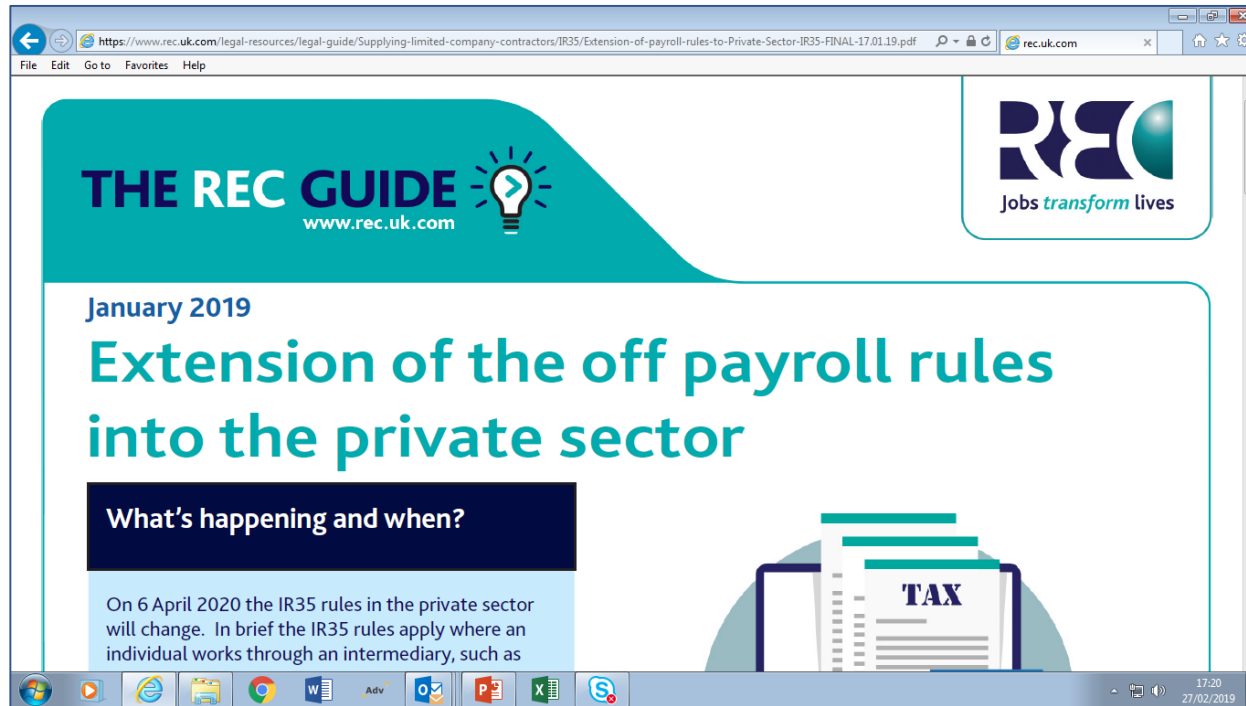
Agencies:

1. speak to clients - are they aware of the proposed changes?
2. have clients assessed their workforce?
3. for 'inside IR35' engagements, how will clients manage the associated costs?  
Accept increased costs, increase rates to maintain contractors, keep rates same, reduce number of contractors?
4. assess payroll – what process and software changes are required?
5. impact on other processes and costs – apprenticeship levy?

# Extension of the off-payroll rules to the private sector



See [IR35 Hub](#) and [“Extension of the off payroll rules into the private sector” factsheet](#).



# Extension of the off-payroll rules to the private sector – seminar dates



Exact timings and venues still tbc. Please see <https://www.rec.uk.com/training-and-events/events> for more details.

<b>Date</b>	<b>Location</b>	<b>Date</b>	<b>Location</b>
16.05.19	Southampton	23.05.19	London (am and pm)
18.06.19	Leeds	25.06.19	Reading
02.07.19	Birmingham	10.07.19	Manchester
16.07.19	London (am and pm)	10.09.19	Glasgow
11.09.19	Edinburgh	02.10.19	Newcastle
03.10.19	Aberdeen	24.09.19	Bristol
25.10.19	Cardiff	08.10.19	London (am and pm)
13.11.19	Belfast	20.11.19	Lowestoft

## Government's Good Work plan

Bunmi Adefuye

Senior Solicitor



Clare Flower

Head of Compliance Policy



# Government's Good work plan



- In 2016 the government commenced an independent review of employment practices in the modern UK economy which was led by Matthew Taylor.
- A consultation took place last year where government considered measures to increase transparency in the labour market, employment status, agency worker regulations and the enforcement of employment rights.



# Government's Good work plan



- The government's response to the consultation is set out in the Good Work Plan and four draft Statutory Instruments have been published:
- The Agency Workers (Amendment) Regulations 2019
- The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018
- The Employment Rights (Miscellaneous Amendments) Regulations 2019
- The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019



# The Agency Workers (Amendment) Regulations 2018



- The Regulations will come into force on 6 April 2020.
- Currently, under Regulation 10, agency workers forgo their right to equal pay even if they meet the 12 week qualifying period but in return will receive a payment in between assignments for at least 4 weeks before the contract is terminated.
- The amendment repeals Regulations 10 and 11 of the Agency Workers Regulations 2010 known as the “Swedish Derogation” model.
- Agency workers can no longer waive their right to equal pay.
- Agency workers on a Swedish Derogation contract must receive a written statement from the temporary work agency confirming that the agency worker is entitled to the rights relating to equal pay.
- If the temporary work agency does not comply with the above requirement, the agency worker can bring a claim to an employment tribunal and claim compensation.
- There are additional protections for agency workers where they should not be unfairly dismissed and they must not be subjected to a detriment.

# The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018



## Written statements

The Regulations will come into force on 6 April 2020. At present a written statement of particulars is required to be given by the employer to an employee no later than two months after the beginning of the employment. The Employment Rights Act 1996 is amended to provide the right to a written statement from day one for all employees.



# The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018

## Written statement continued.....

Additional information must be provided which includes:

- Days and times they are required to work
- Duration of the contract
- Notice periods
- All remuneration, not just pay
- Entitlement to sick leave and pay
- Other entitlements such as maternity/paternity leave
- Training entitlements
- Duration and conditions of any probationary period



Employers can provide the information in instalments within 2 months, but the majority must be provided when the employee begins employment.

# The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018



## Holiday pay reference period

- Regulation 16 of the Working Time Regulations 1998, is amended to change the reference period for calculating annual leave pay from 12 to 52 weeks.
- The reference period is applicable to workers whose pay varies because they do not have normal working hours, or they have normal working hours but the amount of work or days or times they work typically changes every week.
- If a worker has not worked for 52 weeks, the reference period is the number of weeks for which the worker has worked.



# The Employment Rights (Miscellaneous Amendments) Regulations 2019



The Regulations are expected to come into force in part on 6 April 2019 and in part on 6 April 2020.

The Regulations amend existing legislation as follows:

- the Employment Tribunals Act 1996 is amended and increases the maximum financial penalty available for aggravated breach of a worker's employment rights **from £5,000 to £20,000**. Government's intention is that increased penalty will deter employers from breaching employment law.
- The Employment Rights Act 1996 extends the entitlement to the **written statement of employment particulars to all workers** and not just employees.

# The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019



- There will now be a requirement under a new Regulation 13A for the employment businesses to give work seekers and candidates a '**key information document**' before there is an agreement in place.
- The Regulations will come into force on 6<sup>th</sup> April 2020.
- The purpose of the key information document is to address the lack of transparency in who is responsible for paying candidates and the actual amount they receive particularly now that supply chains are more complex.
- The content of the 'key information document' differs depending on who the employment business's work seeker is and must be a separate document.

# The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019



If the work seeker is the person engaged by the employment business to work for the hirer, the following information must be supplied:

- *The Title of the document at the top of the first page*
- *The purpose of the document in relation to relationship between the employment business and the work seeker*
- *If relevant , where other related information can be found*
- *The contact details of the Employment Agencies Standards Inspectorate(EASI)*
- *The type of contract the work seeker will be engaged on*
- *The identity of the employment business or who is responsible for paying the work seeker*
- *The rate of pay or the minimum rate of pay that they can expect, to achieve for the work seeker*

# The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019



Continued.....

- *intervals at which they will be paid*
- *the amount and nature of costs and deductions from their pay*
- *the amount and nature of fees for goods and services for which the work seeker must pay a fee*
- *non-monetary benefits the work seeker is entitled to receive*
- *annual leave entitlements and holiday pay*
- *a representative statement that illustrates the remuneration the agency worker can expect to receive*

# The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019



If the work seeker that will be engaged by the employment business is a company or another entity, under paragraph 6 of Regulation 13A, the information below together with the information on the previous slide must be provided to both the individual and the company.

- *identity of the work seeker*
- *identity of the employer*
- *if not the employer, the identity of the person who will pay the worker*
- *if the employment business, the work seeker, the employer and person responsible for paying the worker are connected, the nature of the connection between the parties*
- *explanation of the difference in remuneration or minimum rate of remuneration between the work seeker who is the company and the individual carrying out the work including deductions*

# Government's Good work plan



Regulation 13A goes further by stating that:

- *Even when the work seeker and the limited company opts out of the Conduct Regulations which is permitted under Regulation 32(9), it is not possible to opt out of the requirements in Regulation 13A and they are therefore applicable across the board*
- *The information must be provided in a clear and succinct manner*
- *The document may contain details set out in Regulations 14 & 15 but no other additional information*
- *The information must be presented on 2 sides of A4 paper with 210 by 297 millimetres dimensions*
- *The employment business must keep records of the information.*



# Government's Good work plan



There are other proposals to amend employment law in the Good Work Plan, some of which include:

- **Employment status** - Government has confirmed that they will “bring forward legislation” that will clarify employment status together with proposals that will align tax and employment rights.
- **Continuous service** – the relevant break in service for the calculation of the continuous service will be extended from one to four weeks.
- **Holiday pay** – as well as increasing the pay reference period to 52 weeks as stated in the previous slide, government will also launch a holiday pay awareness campaign. See the [government's guidance on calculating holiday pay for workers without fixed hours or pay](#).

# Government's Good work plan



- The right to request a more predictable and stable contract from the hirer- this is applicable to agency workers who have worked with a hirer for 26 weeks. In addition, workers on zero hours contract who have also worked for 26 weeks can request a contract that guarantees their hours.
- Extending the remit of the Employment Agencies Standards Inspectorate (EASI) – Government has agreed to extend EASI’s remit to cover to regulating umbrella companies in the supply chain.
- “Name and shame scheme”- the scheme will be for employers who fail to pay Employment Tribunal awards.



# Itemised pay slips



- All workers not just employees will be entitled to receive a payslip from April 6th April 2019
- This will help workers identify whether they have been paid the correct amount.
- A worker's payslip must contain information about the hours worked where the pay the worker receives varies according to the time worked.
- The changes to the information which must be included on the payslip means that employers (including recruiters with temporary workers) must include the hours worked where the pay the worker receives varies according to the time worked.
- For more information please see the [government's guidance on additional information on payslips](#) and the [REC's Legal bitesize \(Feb 2019\)](#).



# NHSI Consultation



- *Reducing reliance on agency staff: proposals on admin and estates and off-framework agency staff*
- *Proposal 1: Restrict the use of off-framework agency workers for non-clinical and unregistered clinical shifts.*
- *Proposal 2: Restrict the use of admin & estates agency workers, except for special projects and shortage specialties.*
- The changes being proposed would restrict the ability of trusts to use agency workers to fill admin & estates shifts, and to use off framework agency workers to fill non-clinical and clinical unregistered shifts
- Closing date 22 March 2019 - the REC will be responding .



# Gender Pay Gap reporting



Businesses with over 250 employees will have until 4 April 2019 to publish their gender pay gap data. There are seven calculations which employers must produce including:

- average gender pay gap as a mean average
- average gender pay gap as a median average
- average bonus gender pay gap as a mean average
- average bonus gender pay gap as a median average
- proportion of males receiving a bonus payment and proportion of females receiving a bonus payment
- proportion of males and females when divided into four groups ordered from lowest to highest pay.

# Gender Pay Gap reporting



Last year's figures revealed that women in the UK earn on average 18% less than men, and this year's figures are expected to be around the same.

Although it is not compulsory for employers to produce a narrative to go along with their calculation, such a report is useful for explaining the reasons for the results and giving details about actions that are being taken to reduce or eliminate the gender pay gap.

Last year over 75% of reporting companies chose to include a narrative report.

For detail on reporting requirements see [Gender pay reporting](#) on the REC Legal Guide.

# REC's Professional standards committee



- The REC is looking for a new **Professional Standards Committee** member. If you are passionate about raising standards in the recruitment industry, this could be a great opportunity for you. We are welcoming applications from members. To find out more:



# REC's Professional standards committee



Congratulations if you have taken and passed your compliance test for this compliance cycle. If you haven't yet passed the compliance test you must do so by **15 March 2019** to avoid access to your membership benefits, including the legal helpline, being restricted. If you have any questions about the test please contact [compliance@rec.uk.com](mailto:compliance@rec.uk.com). See also <https://www.rec.uk.com/membership/compliance>





## Upcoming events



8th March - Inclusive Recruitment Forum

12th March – Health and Social Care Sector meeting

26th March – Education Sector meeting

29th March – Countdown to Brexit Webinar

4th April – National Forum: Navigating Brexit – Cardiff, Wales

9th April - Technology Sector meeting

24th April – Childcare Sector meeting

30th April – National Forum: Navigating Brexit – Belfast, Northern Ireland

Thank you