

How and when to use the new REC template contracts

October 2020

Why we have created new contracts

REC template contracts are available to REC members as part of their membership and therefore at no extra cost. Over the years, the number of contracts has grown due to changes in the law. We've recently conducted a full review of our existing contracts for two reasons:

- to reflect the changes to the off-payroll (IR35) rules which will take effect on 6 April 2021, and
- to try to reduce the number of contracts members have to manage.

We are pleased to make these new contracts available to members some months ahead of the off-payroll changes. This document explains how and when to use the new contracts.

How have we changed our contracts?

In this review, we've:

- replaced 16 client and limited company contracts with just six contracts that cover everything you need when supplying contractors or those working through umbrella companies
- created two brand new combined terms to use when supplying PAYE workers, workers working through umbrella companies and personal service companies (PSCs).
- merged the "opted out" of the Conduct Regulations contracts with the "non-opted out" contracts (limited company contractors can opt out of the Conduct Regulations provided they do not work with vulnerable people)
- simplified the language where possible
- renamed contracts to make them easier to identify
- updated or created the following supporting documents:
 - new assignment details forms A2 (PSCs) and A3 (umbrella company)
 - new Conduct Regulations opt out forms CR1 (PSCs) and CR2 (umbrella company)
 - updated due diligence checklists 7A (umbrella company) and 7B (PSC)
 - updated the off-payroll exempt client declaration form
 - updated the off-payroll client status determination statement

The guidance notes on all the documents show you which documents to use together but we also have a table on page 3.

We welcome any feedback that you have on the new contracts - you can send this to legaldocumentreview@rec.uk.com.

The off-payroll rules - exempt and non-exempt clients

Throughout this document we use the terms "exempt" and "non-exempt" client so in this section we explain what we mean by those terms.

The off-payroll rules currently apply in the public sector. You probably already use client contracts 5A, 7A, 9A and 11A when supplying limited company contractors to public sector clients. You can now use new contract 3A (combined client terms for the supply of PAYE workers, umbrella companies and PSCs) and new contract 3C (client terms for the supply of PSCs only) instead. There are also new umbrella and PSC contracts to replace existing limited company contacts.

The off-payroll rules will be extended to the private sector from 6 April 2021 and will apply to payments made for work done on or after that date unless the private sector client is exempt. From 6 April 2021 only the following organisations will be exempt from the off-payroll rules:

1. Small organisations
2. Wholly overseas companies.

Exempt small organisations:

A private sector client will be exempt from the off-payroll rules if it meets the definition of small company set out in the [Companies Act 2006](#), i.e. it meets two of the following three criteria:

- it has a turnover of not more than £10.2 million per financial year
- it has a balance sheet of not more than £5.1 million per financial year
- it has no more than 50 employees.

Unincorporated organisations will also be exempt if they have a turnover of not more than £10.2 million per year. There are also rules about groups of companies and joint ventures.

These are very simplified explanations of small companies. Do not try to guess whether your client is small or not - we have created an [exempt company declaration form](#) which you can use to ask the client about their status.

Please note that the small companies exemption only applies to clients - even if your agency is a small company, you must still comply with the off-payroll rules.

Companies with no UK connection:

A company will also be exempt if it is based wholly overseas, i.e. there is no UK connection immediately before the beginning of the relevant tax year, either in the form of being UK resident or having a permanent establishment in the UK. This means having a fixed place of business which includes a branch, an office or a factory. It also includes having an agent that ordinarily operates on behalf of the client or an oil or gas platform within UK waters.

Again, do not try to guess whether your client is wholly overseas or not. You can use the [exempt company declaration form](#) to ask the client about their status.

For up to date information on the off-payroll changes see our [IR35 hub](#). See also our [infographics](#) which you can use with your clients and contractors. To help you get ready, attend one of our [virtual IR35 seminars](#).

When to use the new contracts?

You can use the new contracts straight away or you can change over at a time that best suits your business (but no later than 5 April 2021). We will continue to advise on our existing contracts for some time.

When you move to the new contracts will depend on:

- the types of temporary workers you supply
- the clients that you have, and
- the tax status decisions they make (and when they have to make those decisions).

Clients who must comply with the off-payroll rules:

- **Public sector clients:** you can use the following contracts whenever you are ready:
 - Client contracts 3 (PAYE), 3A (combined) and 3C (PSC only)
 - Temp contracts: 4 (PAYE), 4A (umbrella), 4B (PSC inside IR35) and 4C (PSC outside IR35)
- **Private sector clients:** you can move to the contracts listed above when you know that your private sector client will have to comply with the off-payroll rules. The various obligations in the off-payroll rules will not apply until 6 April 2021 for those clients but the client may want to issue its status determination statement (SDS) early. HMRC have said that they will accept SDSs made before 6 April 2021, provided they meet all the requirements to be valid.
 - If the client decides that an engagement is **outside IR35** you can engage the PSC on contract 4C (PSC outside IR35) any time before 6 April 2021. You won't have to make any tax or NICs deductions. The PSC will manage IR35 itself and the contractor will be pleased to know their position.
 - If the client decides that the engagement is **inside IR35**, you will need to manage this more carefully because though you need to get the right contracts in place, **you should not deduct tax and NICs from PSCs before 6 April 2021**. You can use contract 4B (PSC inside IR35) if you and the contractor agree that they can continue to work through their PSC. Or, use the umbrella company contract (4A) if the contractor moves onto an umbrella company, or use the PAYE contract (4) if they move onto your payroll.
 - Some clients may simply decide to ban contractors from working through PSCs anymore. If so, the off-payroll rules won't apply - so you won't need to worry about getting the client's SDS and using PSC contracts. Instead just use the PAYE contract (4) or umbrella contract (4A).

Clients who exempt from the off-payroll rules:

- **Private sector clients:** you can move to contracts 3B, 3D and 4D when you know that your private sector client will be exempt from the off-payroll rules as of 6 April 2021 (use the [exempt company declaration form](#) to ask the client about its status). When the client is exempt, it will not have to make a SDS and you will not have any fee-payer obligations. So to manage things from a practical sense you could move to these contracts any time before 6 April 2021. Again, contractors will appreciate knowing their position, as they will continue to manage the IR35 rules.

We have assumed that contractors whose engagements are outside IR35 will opt out of the Conduct Regulations and so we have only produced opted out contracts for outside IR35 engagements. Please contact us if you need a non-opted out contract for outside IR35 engagements.

Which contracts to use?

You can continue to use our existing contracts and move to the new contracts when you are ready. In the table below we show you which new contracts work with each other. On page 2 we explain "exempt" and "non-exempt clients".

Existing contracts	New contracts					
	Client contracts	Temporary worker contracts				
		PAYE workers	Umbrella workers	PSC inside IR35	PSC outside IR35	
Contracts 3 and 4 (PAYE only) (Not amended as part of this review, included here for completeness)	Contract 3 - PAYE terms (client)	Contract 4 - PAYE only				
Client must comply with the off-payroll rules (i.e. public authorities only until 5 April 2021 and from 6 April 2021, public authorities and medium and large organisations with a UK connection)						
Contracts 5A and 6A (inside IR35, opted out) Contracts 7A and 8A (inside IR35, not opted out) Contracts 9A and 10A (outside IR35, opted out) Contracts 11A and 12A (outside IR35, not opted out)	you can now use	NEW Contract 3A (combined terms for the supply of PAYE workers, umbrella company workers and PSCs)	✓ Contract 4	✓ Contract 4A (non-opted out and opted out combined)	✓ Contract 4B (non-opted out and opted out combined)	✓ Contract 4C (opted out only)
		NEW Contract 3C (for the supply of PSCs only)			✓ Contract 4B (non-opted out and opted out combined)	✓ Contract 4C (opted out only)
Client is exempt from the off-payroll rules (i.e. private sector clients to 5 April 2021 and from 6 April 2021, private sector clients which are small or wholly overseas)						
Contracts 5 and 6 (inside IR35, opted out) Contracts 7 and 8 (inside IR35, not opted out) Contracts 9 and 10 (outside IR35, opted out) Contracts 11 and 12 (outside IR35, not opted out)	you can now use	NEW Contract 3B (combined terms for the supply of PAYE workers, umbrella company workers and PSCs)	✓	✓ Contract 4A (non-opted out and opted out combined)		✓ Contract 4D (opted out only)
		NEW Contract 3D (for the supply of PSCs only)				✓ Contract 4D (opted out only)

In the table above, "opted out" and "non-opted out" refer to the Conduct of Employment Agencies and Employment Businesses Regulations 2003. Limited company contractors can opt out of the Conduct Regulations, provided they do not work with under 18s or vulnerable people.

Statement of work contracts

We haven't produced a statement of work contract as part of this review. Statement of work contracts are bespoke to each and every project and or business model. It would not be possible for us to produce a quality document that covers all scenarios and meet HMRC compliance standards. HMRC are, at present, assuming where an agency is delivering a project under a statement of work contract, that it is labour supply and the agency will have to demonstrate otherwise.

If you do want to prepare a statement of work contract, our [legal business partners](#) can help you at discounted rates.