



HM Revenue
& Customs

Off-payroll working rules from April 2020

Summary of Responses
11 July 2019

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1. Executive Summary

- 1.1. The off-payroll working rules (commonly known as IR35) ensure that individuals who work like employees pay broadly the same income tax and national insurance contributions (NICs) as employees, regardless of the structure they work through. The rules do not affect the self-employed.
- 1.2. The rules have been in place since 2000, but non-compliance is widespread. HMRC estimate that only 10% of those who should be applying the rules do so, which will cost the Exchequer £1.3 billion in 2023/24. This deprives vital public services of important funds and is unfair to taxpayers who are complying with the rules.
- 1.3. In April 2017, the government reformed the rules in the public sector to address this issue. The public sector reform shifted the responsibility for determining status from the worker's personal service company (PSC) to the public authorities engaging them. The reform also made the public authority or agency that pays the worker's PSC (the "fee-payer") responsible for accounting for and paying income tax and NICs under PAYE to HMRC, on behalf of the worker.
- 1.4. Evidence suggests that public sector compliance is increasing as a result, with an estimated additional £550 million (based on 12 months' worth of receipts) of income tax and NICs being raised to support the UK's public services.
- 1.5. Currently, individuals outside of the public sector who work through their own company are responsible for determining whether the rules apply and paying any tax and NICs due. At Autumn Budget 2017, the government announced plans to carefully consult on how to tackle non-compliance in the private and third sectors. Following a twelve-week consultation published in May 2018, the government announced at Autumn Budget 2018 that it would extend the public sector reform to all engagements with medium and large-sized organisations. To give people and businesses time to prepare, this change would not be introduced until April 2020. This reform would ensure better compliance with rules that have been in place since 2000. It would not introduce a new tax.
- 1.6. The government consulted on the detailed design of the reform between 5 March 2019 and 28 May 2019. As with previous consultations, stakeholders proved keen to engage and provided invaluable insight into labour supply chains and off-payroll engagements.
- 1.7. The government received over 200 written responses. HMRC attended more than 10 external consultation events across the country and hosted over 100 organisations. The government received responses from a range of stakeholders including individuals, client organisations, accountants, lawyers, tax advisors and representative bodies.
- 1.8. A list of organisations who responded fully, or in part, to the consultation questions (excluding individuals) is included at Annex A.
- 1.9. The government consulted on proposals to address four main issues:
 - The scope of the reform and the definition of small business;
 - How to ensure parties in the labour supply chain have the information they need to comply with the reform;
 - How HMRC should address non-compliance in the labour supply chain; and

- How to address concerns about clients making blanket determinations and giving workers and fee-payers the power to challenge status determinations made by client organisations.

Scope of the reform

- 1.10. At Autumn Budget 2018, the government announced that engagements with small organisations outside the public sector would be exempt from the reform, minimising administrative burdens for the vast majority of businesses. The government used the small companies' definition in the Companies Act 2006 as the starting point for the carve-out for small businesses. The government also consulted on proposals to ensure small unincorporated client organisations were out of scope of the reform.
- 1.11. Respondents to the consultation supported using the Companies Act tests for companies.
- 1.12. Stakeholders also supported the government's aim to simplify these tests for unincorporated organisations. The government has listened to stakeholders' views, and will adopt a simpler test based only on the turnover of the client organisation.

Information requirements

- 1.13. The government consulted on two options intended to ensure all parties in the labour supply chain have the information they need to comply with the rules. The first would move information down the labour supply chain and the second would provide determinations directly to the fee-payer.
- 1.14. Respondents favoured legislating to move information down the labour supply chain in line with best practice in the public sector. This approach also protected confidential commercial relationships.
- 1.15. The government will therefore legislate to ensure information is passed down the supply chain where the off-payroll working rules apply, including in the public sector. This will align the rules in all sectors, but result in minimum change for those already operating the reformed off-payroll working rules.
- 1.16. While some respondents appreciated the intention of the second option, which aimed to simplify the flow of information, many cited the fact that most labour supply chains are short and the practical difficulties with identifying fee-payers as reasons to adopt the first option.
- 1.17. To further improve the information requirements, respondents suggested that clients should send the reasons for a determination alongside the determination itself. This would make the client's decision making process more visible to workers and fee-payers.
- 1.18. The government agrees this is a sensible recommendation from stakeholders. Draft legislation will include provisions to require the client to pass the reasons for the determination, as well as the determination itself, to both the party it contracts with and the worker.

Addressing non-compliance in the labour supply chain

- 1.19. The government also consulted on proposals to ensure compliance in labour supply chains. For information requirements to work as intended it is important that all parties in the labour supply chain act appropriately and that clients and first agencies carry out the due diligence to ensure labour supply chains remain compliant.
- 1.20. While respondents recognised the need for these organisations to carry out due diligence on labour supply chains, there were concerns that genuine business failures and administrative errors, resulting in an unpaid PAYE liability, could mean the client or agency at the top of the chain is left with unpaid PAYE liabilities despite having taken reasonable care.

1.21. The proposals are not intended to transfer liabilities in cases of genuine business failure, where deliberate tax avoidance has not occurred. Draft legislation will set out conditions under which the liability may be transferred to the top parties in the labour supply chain. Supporting guidance will clarify the steps HMRC expect clients and agencies at the top of the supply chain to demonstrate they have exercised reasonable care.

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

- 1.22. Responses to the earlier consultation in summer 2018 raised concerns that clients have an incentive to take a risk-averse approach when making status determinations by incorrectly deeming individuals to be employees. In response, the government consulted on a status disagreement process which would require clients to respond to representations made by workers and fee-payers.
- 1.23. Responses from stakeholders were mixed. Some raised concerns that the proposed process would not change what they felt were incentives for making risk-averse determinations. Many client organisations understood the need for the government to take action, but felt that a HMRC-led status disagreement process would more comprehensively address the issue.
- 1.24. The government does not agree that there are significant incentives for deeming individuals to be employees. It considers the client to be best able to understand the contractual terms and working practices of those it engages. Clients are also best placed to provide responses in real time. A HMRC-led status disagreement process would not be able to provide decisions in real time, with a consequential impact on the flexibility of the work force.
- 1.25. Guidance is already available for public sector organisations. HMRC will be working to revise this guidance in line with the extension of the off-payroll working reform. HMRC will provide extensive support to ensure all organisations are able to implement the off-payroll working rules and that they can apply them correctly.
- 1.26. HMRC has already issued guidance on what steps organisations can take now to prepare for the reform. Further guidance will be published over summer 2019 and targeted communications will be rolled out in the coming months.
- 1.27. In addition, HMRC developed the Check Employment Status for Tax (CEST) service, to help individuals and organisations decide employment status alongside more detailed guidance. It was developed in consultation with public authorities, employment agencies, central government procurement specialists, tax specialists and contractors themselves. HMRC is looking to enhance CEST to ensure it works effectively for organisations affected by the off-payroll working reform. Enhancements will be tested with stakeholders and users, and then rolled out before the reform of the off-payroll working rules are introduced.
- 1.28. HMRC has conducted over 25 CEST user research sessions and continues to work with a wide range of stakeholders on its enhancement of the service. HMRC expects to make the service available before the reform is implemented.
- 1.29. Compliance teams will continue to work directly with a range of organisations providing extensive support and guidance to help implement changes ahead of April 2020. This will include providing relevant information to those who will need to apply the off-payroll working rules, such as: HR directors, hiring managers.

2. Introduction

Background

- 2.1. Currently, outside of the public sector, an individual's PSC is responsible for determining their employment status and deciding whether the off-payroll working rules apply. However, the PSC may not have the right skills or systems in place to make this determination. There are also incentives for the individual to determine that the rules do not apply, as it reduces their tax liabilities.
- 2.2. This has helped lead to high levels of non-compliance with the rules, depriving vital public services of important funds and resulting in unfairness to taxpayers who are already complying with the rules.
- 2.3. Evidence from tax returns has shown that reform in the public sector, which shifted responsibility for operating the off-payroll working rules to the engager is increasing compliance, without reducing market flexibility. Extending the reform to all medium and large sized organisations from April 2020 will ensure fairness for all workers, regardless of the sector they are engaged in.
- 2.4. Under the reform, where an individual is engaged by a medium or large-sized organisation and works through their own company, the organisation will become responsible for assessing the individual's employment status and, where applicable, deducting and paying employment taxes. The existing rules will continue to apply for engagements with small organisations.
- 2.5. The government is committed to supporting business and ensuring the UK continues to be an attractive place to start and grow a business. A flexible labour market is a key part of that commitment. The off-payroll working rules do not affect the self-employed and do not stop anyone working through a company. However, it is right that individuals working like employees should be taxed in a similar way to employees, regardless of whether or not they work through their own company.
- 2.6. The government has listened to the concerns of individuals and businesses during the earlier consultation which closed on 10 August 2018. At Autumn Budget 2018 it announced that:
 - The reform will apply from April 2020, to ensure organisations have time to prepare;
 - The reform will apply only to medium and large-sized organisations to minimise administrative burdens for the vast majority of clients. Existing rules will continue to apply to the smallest 1.5m organisations;
 - HMRC will continue to improve the CEST digital service and associated guidance to ensure they work well for all sectors;
 - HMRC compliance teams will be providing support and guidance to organisations to help them implement the off-payroll working rules and it will not carry out targeted campaigns into previous years when individuals start paying employment taxes following the reform.
- 2.7. The government also announced it would consult on the detail of this reform. The consultation was published on 5 March 2019 and closed on 28 May 2019. The consultation is available online at:

<https://www.gov.uk/government/consultations/off-payroll-working-rules-from-april-20+ 20>

3. Defining the scope of the reform

- 3.1. This section considers how the smallest clients in the private and third sectors will be taken out of the scope of the rules.
- 3.2. Companies that engage off-payroll workers are in scope of the reform if they do not qualify as small under the Companies Act 2006. To qualify as small, a company must meet two of the following qualifying conditions:
 1. Annual Turnover not more than £10.2 million
 2. Balance sheet total not more than £5.1 million
 3. Number of employees not more than 50.
- 3.3. The government consulted on proposals, which would ensure that small unincorporated organisations, not in scope of the Companies Act, would also be outside the scope of the reforms.
- 3.4. For unincorporated organisations, the government suggested two possible tests to define small organisations for the purposes of the reform.
- 3.5. The first test would apply the reform to unincorporated organisations with 50 or more employees and to organisations with turnover exceeding £10.2 million.
- 3.6. The second option was to apply the reform to unincorporated organisations that satisfy both conditions, having both 50 or more employees and turnover in excess of £10.2 million.

Consultation questions

Question 1: Do you agree with taking a simplified approach for bringing non-corporate entities in scope of the reform?

- If so which of the two simplified options would be preferable?
- If not, are there alternative tests for non-corporates that the government should consider?
- Could either of the two simplified approaches bring entities into scope, 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?

Consultation responses

- 3.7. Stakeholders were broadly supportive of the government's decision to take small organisations out of scope of the reform and thought alignment with the tests in the Companies Act was sensible. However, a small number of respondents raised concerns that taking small companies out of the scope would add complexity to the tax system and should be reviewed when the reforms have bedded in.
- 3.8. Most respondents did not comment directly on the proposed options for unincorporated organisations, but of those that did, most preferred the second option.
- 3.9. While many felt that the second option worked well, a number of stakeholders pointed out that it required these organisations to consider two tests they would not ordinarily need to consider. They also felt administrative burdens on small organisations would be significant and therefore the threshold for coming within scope of the rules should be sufficiently high. However, respondents understood the need to align the test with the one used by incorporated organisations to reduce the risk of non-compliance.

- 3.10. Of those in favour of simplification, several respondents suggested the test for unincorporated organisations should be simplified further by being based on the organisation's turnover only. While all unincorporated organisations will know their turnover, the employee test in the Companies Act is a new test that unincorporated entities do not need to undertake.
- 3.11. Other stakeholders argued that the government should apply the rules to all organisations irrespective of the size. They said universal application of the rules would be more effective than having different rules dependent on the size of an organisation. Some of the comments went further and suggested that both tests were inefficient. These respondents felt two tests could lead to unintended non-compliance by fee-payers and/or PSCs due to the uncertainty of which test to apply based on the size of the client.
- 3.12. The consultation proposed that a previously small organisation would be brought within scope of the rules at the start of the tax year following the end of the company's accounting period during which it ceased to be small. Stakeholder responses highlighted that, where companies transition between being medium and small entities, it could be many months after this date that client organisations would only become aware of their position for the purposes of the Companies Act.
- 3.13. While all unincorporated organisations will know their turnover, the employee test in the Companies Act is a new test that unincorporated entities currently do not need to satisfy.

Government response

The government's position is that it remains appropriate for incorporated clients to apply the Companies Act 2006 definition to determine whether they are a small company.

However, after listening to stakeholders, the government will simplify the test for unincorporated client organisations further, to reduce complexity in applying the rules. This simplified test will consider turnover for a calendar year only, such that only unincorporated clients with turnover exceeding £10.2 million will be within the scope of the reform.

The government has also listened to concerns about what will happen when a client company ceases to be small, and so comes within the scope of the off-payroll working rules. In these circumstances, the client will be brought into the scope of the rules from the start of the tax year following the filing date at which it ceases to qualify as small under the Companies Act 2006 test. As set out in Companies Act 2006, small companies will become medium or large if they exceed the test for two consecutive years. The requirement to be small for two consecutive years also applies to companies transitioning from medium or large to small.

For unincorporated clients the rules will apply for the tax year following the calendar year in which turnover exceeds £10.2 million. The two year rule will not apply.

The existing rules will continue to apply to engagements with small organisations. Although this means there will be two separate frameworks for off-payroll engagements, the government believes that it is right that the smallest organisations should not be placed under a disproportionate administrative burden from operating the reform.

4. Information requirements

- 4.1. In this part of the consultation, the government set out the proposed requirements on each party in the labour supply chain when passing on information. The government's aim is to provide certainty about each party's obligations and to minimise unnecessary administrative burdens for those implementing the reform.
- 4.2. The government consulted on two different options, the first of which would cascade information down the labour supply chain. The second option looked to simplify information flows by providing the status determination directly to the fee-payer. Both options also required the client to provide the status determination directly to the worker.

Consultation questions

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?

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?

Question 4: What circumstances might result in a breakdown in the information being cascaded to the fee-payer? What circumstances may 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?

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?

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?

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?

Consultation responses

- 4.3. Most respondents agreed there should be a requirement for the worker's PSC to receive the employment status determination directly from the client and highlighted the importance of clear information throughout the labour supply chain. Sharing the status determination directly with the worker was seen as essential for longer labour supply chains.
- 4.4. Others criticised this approach, highlighting that for complex labour supply chains it may be difficult for the client to pass the determination directly to the worker.
- 4.5. Respondents broadly agreed that this direct communication would give workers a clearer understanding of their tax obligations. However, some respondents felt that workers would also need to be provided with the reasons for the determination to have the certainty over their tax obligations they required.

Cascade option

- 4.6. Respondents broadly agreed that passing the determination down the labour supply chain would ensure that fee-payers were made aware of their PAYE obligations. Respondents recognised possible limitations of cascading information down the labour supply chain, citing practical and administrative errors as well as opportunities for deliberate non-compliance.
- 4.7. Breakdowns in communication were a key concern for many respondents. Possible reasons included a lack of suitable internal procedures, a lack of internal IT infrastructure, and general administrative failures.
- 4.8. While respondents could foresee circumstances where status determinations might not reach the fee-payer, many respondents felt the fee-payer would receive the client's determination with little or no difficulty using the cascade option.
- 4.9. Some respondents felt cascading information down the labour supply chain was sensible especially as this is current practice in the public sector. Responses also made it clear that it is common practice for fee-payers with workers in the public sector to be supplied with determinations from the client.

Simplified Approach

- 4.10. Some respondents could see the benefit of taking a simplified approach in long and complex labour supply chains. However, most respondents disagreed and felt that there was little benefit to a simplified approach as clients may not be aware of the identity of the fee-payer. Some respondents proposed a requirement on workers to provide fee-payer details directly to the client. However, many highlighted that some labour supply chains are kept confidential for commercial reasons and that the simplified approach did not account for these circumstances.
- 4.11. Suggestions from stakeholders included technological solutions to enable information to be held centrally by HMRC and shared with appropriate parties.
- 4.12. Due to the transfer of liability provisions some stakeholders voiced concerns that the fee-payer may face liabilities despite doing their best to comply with the rules even if they follow the client's determination.

Information requirements and small clients

- 4.13. Existing rules within Chapter 8, Part 2 ITEPA 2003 already apply to non-public sector organisations. Stakeholders generally thought there would be no unintended consequences by continuing to apply the rules for small organisations alongside extension off-payroll working reform to medium and large-sized organisations. Nevertheless, it was argued by some respondents that small client organisations should be required to communicate their size in the same way that medium and large-sized organisations will be required to communicate determinations, and that the lack of such a requirement could lead to unintended non-compliance.

Labour supply chains

- 4.14. Respondents said that, in general, labour supply chains are short and consist of an average of four parties, including the client and the worker's PSC. Responses on the length of labour supply chains were provided by a wide range of industries, including accounting, banking, consulting, recruitment, and oil and gas.

Government response

The government agrees that requiring clients to pass the determination and the reasons for the determination down the labour supply chain and to the worker directly will improve the clarity that the fee-payer and the worker have over their tax position.

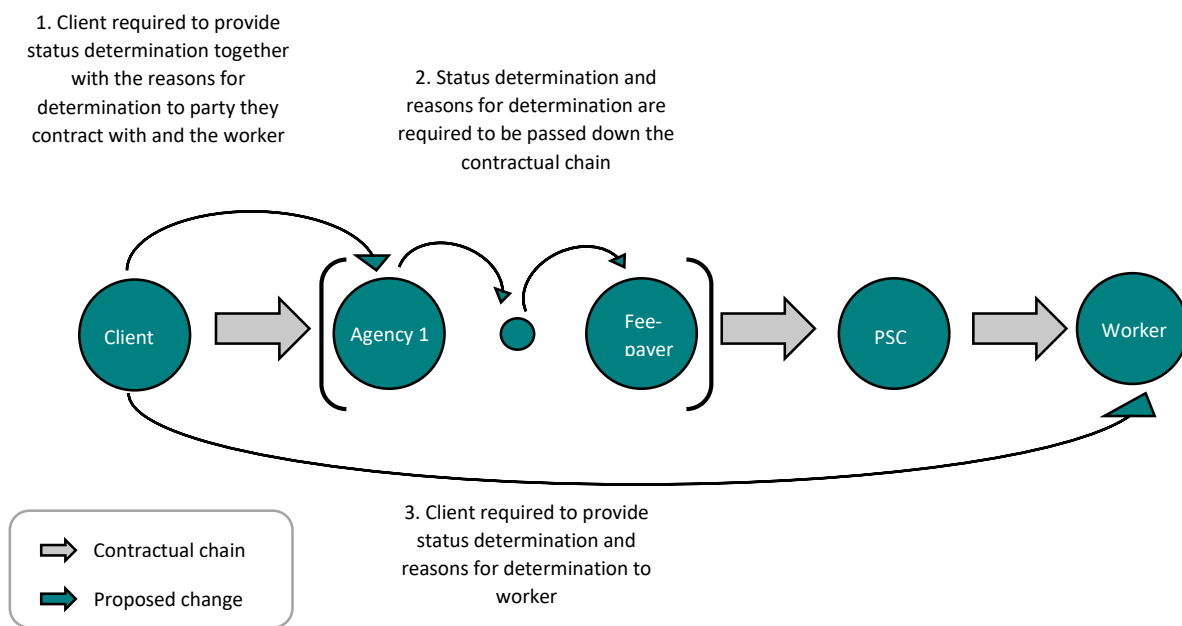
HMRC is grateful to respondents for detailed comments on the structure of, and commercial relationships within, labour supply chains.

Based on stakeholder responses, evidence suggests that labour supply chains are generally robust and information can be passed through effectively. The government will therefore legislate to require clients to pass the status determination and reasons for the determination down the contractual chain together, as well as passing them directly to the worker.

The government is not pursuing the simplified information flow due to practical difficulties associated with the client identifying the fee-payer which were raised by respondents.

HMRC will continue to work with stakeholders and develop its education and support package for clients contracting with atypical labour supply chains.

Diagram: Flow of information through the labour supply chain



Addressing non-compliance

- 4.15. This section of the consultation sought views on transfer of liability proposals which aim to reduce non-compliance in labour supply chains. The proposed approach would first place the PAYE and NICs liabilities with the party in the supply chain who has failed in their obligations, before moving the liabilities to the first agency in the supply chain if the initial party still does not comply. If the first agency in the supply chain also does not comply, then the liability would move to the client organisation.
- 4.16. Without transfer of liability provisions, there is a risk clients and first agencies may use agents who are not concerned with following the determination made. By allowing the liability to move to both the first agency and the client, this incentivises clients and the first agency to secure their labour supply chain.

- 4.17. This approach seeks to achieve its objective by incentivising clients and agencies to carry out due diligence on the other parties they contract with, in order to minimise the risk of the PAYE liabilities being transferred to them.
- 4.18. The government recognises that the vast majority of organisations comply with their obligations and do not actively encourage non-compliant organisations to enter labour supply chains. It therefore consulted on introducing deterrents that would encourage clients and agencies at the top of labour supply chains to actively shore up the labour supply chains they use.

Consultation questions

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 noncompliance. 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?

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?

Consultation responses

- 4.19. Respondents generally understood the need for the government to act to prevent non-compliance. Many respondents from the recruitment and employment agency sectors welcomed the transfer of liability proposals as they would address growing concerns over non-compliant competitors who are able to supply labour at rates that could not be matched by fully compliant agencies.
- 4.20. Respondents from the recruitment sector welcomed the ultimate liability resting with clients, as the proposal incentivised clients to conduct due diligence on the agencies with which they engage.
- 4.21. Despite understanding the need to secure the labour supply chain, some respondents raised concerns about liability moving directly to the first agency in the chain and then ultimately to the client. Many of these respondents felt it was unfair for these parties to potentially shoulder liabilities due to the actions of organisations out of their direct control.
- 4.22. Respondents felt the agency at the top of the chain would not be able to ensure the compliance of the entire labour supply chain. As a result, some respondents felt the first agency would construct contracts that would allow them to pursue other parties in the chain if they were required to account for and pay any liabilities resulting from non-compliance.
- 4.23. While some responses highlighted the first agency's inability to identify each party in the labour supply chain, others recognised that labour supply chains are generally short and that top agencies often engage directly with the fee-payer. This means the first agency in the chain will often be able to exercise a significant amount of control over the labour supply chain as a whole.
- 4.24. Most respondents said that the possibility of liability moving from the first agency to the client would encourage the client to take steps to secure the labour supply chain. Some respondents went further by recommending that the client should be made responsible for paying the tax and NICs to HMRC before payments pass down the labour supply chain. However, other stakeholders highlighted that taking this approach would likely have a detrimental impact on the recruitment sector and have consequential impacts on the flexibility of the contractor workforce.

4.25. Some respondents thought moving the liability to the client would encourage blanket determinations or contracts that would minimise risk. This was echoed by some respondents who suggested this would penalise compliant parties without accurately focusing on the non-compliance in the labour supply chain.

Government response

Consultation responses support the suggestion that the first agency has enough visibility of the labour supply chain to influence compliance.

It is appropriate for organisations that have most control over the labour supply chain to take steps to drive up compliance. In addition, unlike the client, a primary function of the first agency's role is to supply labour services, and the government therefore considers the first agency to be best placed to improve compliance further down the contractual chain. The client is similarly able to influence compliance in its choice of the first agency in the contractual chain.

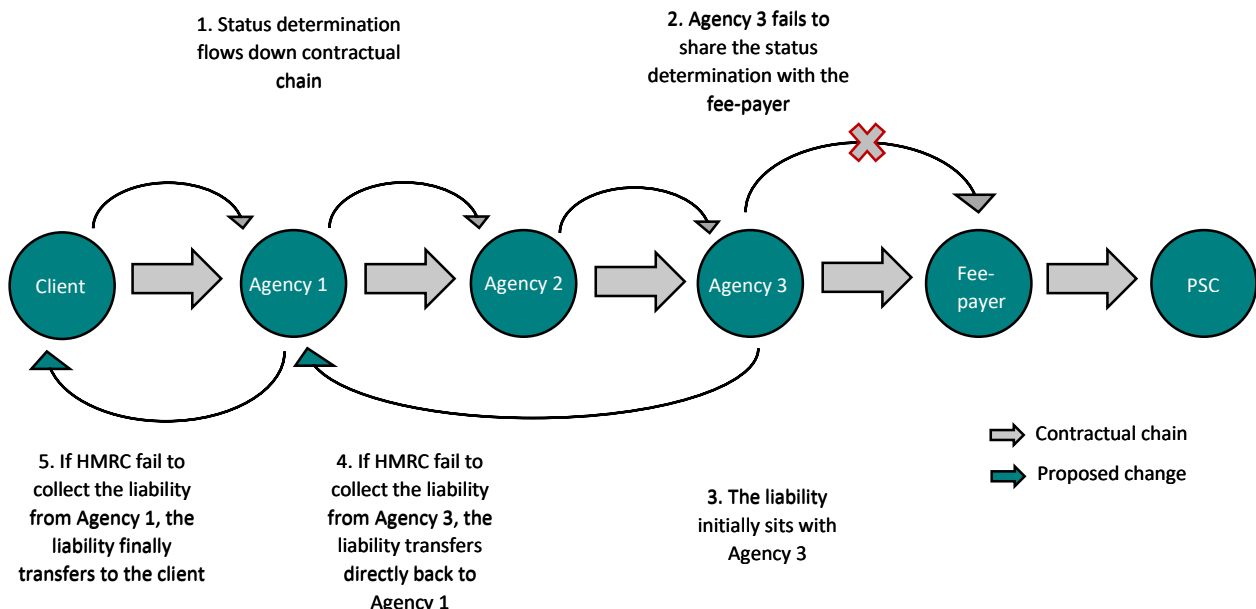
The government believes transferring tax and NICs liabilities where there has been non-compliance in the labour supply chain and where it is not possible to secure the tax liability from the non-compliant entity to the first agency and then to the client, will incentivise all parties in the labour supply chain to take steps to apply the rules as intended. The government hopes this will support the majority of organisations who comply with the rules.

The government understands there are commercial circumstances in which longer supply chains are common. HMRC is working with stakeholders to better understand these arrangements and to provide appropriate guidance and support to organisations implementing the reforms in these circumstances.

The government recognises there are circumstances in which an otherwise compliant labour supply chain could break down, resulting in an unpaid tax liability. The transfer of liability provisions are intended to be used in circumstances in which, for example, a promoter of tax avoidance has entered into the labour supply chain.

The government will legislate in line with the consultation proposals and HMRC will make clear in guidance the circumstances in which it will not seek unpaid liabilities from parties further up the labour supply chain. HMRC's guidance will also advise organisations on steps they can take to help ensure due diligence of their internal processes.

Diagram: Transfer of liability across the labour supply chain



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

- 5.1. The government consulted on the inclusion of a client-led status disagreement process where both the fee-payer and the worker would have the right to request the determination and the reason for the determination directly from the client.
- 5.2. This proposed status disagreement process would strengthen the existing rules which require clients to take reasonable care when making determinations. It would place a further requirement on the client to respond to representations made by the worker or the fee-payer. This requirement is anticipated to improve determinations and allow clients and workers to resolve disagreements in real time.

Consultation questions

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?

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?

Question 15: Would setting up and administering such a process impose significant burdens on clients?

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?

Consultation responses

- 5.3. Respondents had reservations about the additional work that a client-led status disagreement process would create. They particularly cited the need to create processes and train staff to deal with representations.
- 5.4. Alongside this, some respondents suggested that clients did not have enough knowledge of tax and employment law to manage a status disagreement process.
- 5.5. Some respondents suggested that a status disagreement process would not incentivise clients to take reasonable care and suggested that clients may still make blanket determinations.
- 5.6. However, some consultation responses reported that disagreement processes are already in place in many client organisations and most would expect a process, similar to the one suggested by HMRC, to take place even if this was an informal or ad hoc process.
- 5.7. Some respondents also felt that the status disagreement process should be led by HMRC or an independent third party. However, responses also highlighted the need for disagreements on status to be considered quickly, something a HMRC-led status disagreement process would not be able to achieve in real time.
- 5.8. Respondents supported the proposal for the fee-payer and worker to have a right to request the reasons for the determination, and reiterated their views that client organisations should provide the determination together with the reasons for that determination to workers and the party they contract with.

- 5.9. As liability for an incorrect determination could end up with the client in some circumstances, many respondents set out a belief that clients would take steps to reduce their risk by favouring in-scope determinations, rather than consider representations without prejudice.

Government response

Applying a decision to a group of off-payroll workers with the same role, working practices 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.

Evidence from the introduction of the reformed off-payroll working rules in the public sector shows that most public authorities are making assessments on a case-by-case basis and there is no evidence of blanket determinations.

No evidence was provided in this consultation to support the suggestion that blanket determinations will be a particular problem in the private and third sectors. All organisations are required to take reasonable care in making their decisions, and where they have difficulty in deciding if the rules apply, HMRC provides support and guidance to help. This support will be further developed and extended ahead of the implementation of the reform in April 2020 in line with what is already being done with organisations in the public sector.

The vast majority of medium and large-sized organisations will have HR or procurement functions that will be able to make employment status determinations for those engaged through PSCs. There are clear incentives for them to make accurate determinations where someone is likely to fall outside of the off-payroll working rules.

However, several respondents remained concerned about the possibility of blanket determinations. The government believes it is important to listen to these concerns and look to address them in a proportionate way. For this reason the government will legislate to set out the minimum requirements for the 'status disagreement process' in legislation to ensure workers can expect the same treatment regardless of which client they engage with. This will require clients to respond to representations made by off-payroll workers that disagree with their status determination.

Failure to respond to representations made by the fee-payer or worker will result in the client being liable for the tax and NICs liabilities. To support clients, HMRC will set out in guidance how a client can fulfil its obligation to take reasonable care and how it might implement the status disagreement process.

The government believes the client remains the party best able to understand the contractual terms and the expected working practices of those it chooses to engage, and to respond to any concerns or disagreements in real time.

6. Other matters

- 6.1. This part of the consultation sought to understand how the reforms to the off-payroll working rules would affect other areas such as student finance arrangements, pensions and any risks of double taxation.
- 6.2. This section also allowed respondents to voice further concerns or potential impacts that the government should consider as part of the reform.

Consultation questions

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?

Consultation responses

- 6.3. A large majority of respondents suggested that it was unlikely that either fee-payers or workers would make use of the proposed facility to make pension contributions. While some responses recognised the issue the proposal was aiming to address, respondents generally thought the pensions provision would be difficult to administer in practice for both workers and fee-payers.
- 6.4. For example, stakeholders highlighted that, if fee-payers agreed to provide this service and many workers then took it up, they could end up making payments to a number of different private pension providers which would be a considerable administrative burden.
- 6.5. Several respondents also commented on the wider work the government is conducting on employment status. Many said the government should consider the links between employment status for rights and employment status for tax, with some calling for a delay of the off-payroll working reform until this work has been concluded. Some respondents also said the government should consider giving employment rights to off-payroll workers.
- 6.6. Of the respondents that considered CEST, the majority recognised the importance of the service to the wider reform. However, many expressed the view that the current tool did not accurately reflect current case law, used language which was overly complex, and was ambiguous about how it reached its decisions. Many of these respondents suggested that CEST required an overhaul to meet the requirements of the varied set of working relationships that will be in-scope of the off-payroll working reform from April 2020.

Government response

Given the prevailing view of respondents that there would be little take-up of the option to make tax and NICs relief available where fee-payers to pay into private pensions, the government will not proceed with this proposal at this time. However, encouraging pensions saving remains a priority, and the government will monitor any further responses on this point during the consultation on the draft Finance Bill.

More widely, the government appreciates respondents taking time to consider further issues not raised directly by the consultation document.

On employment rights, at present there is no direct link between employment status for rights and employment status for tax. As set out in the Good Work Plan published in December 2018, the government agrees with Matthew Taylor's view in his review of modern working practices that aligning employment status for tax and rights is the right ambition. However, as Matthew Taylor recognised, this is not straightforward and any changes will need careful consideration to avoid unintended consequences.

In the meantime, it is right that the government takes action to improve compliance with existing rules. Those who wish to challenge their employment status for rights can take their case to an employment tribunal, regardless of their tax status.

On CEST, HMRC has been working to better understand the needs of organisations and to enhance the service. Enhancements will be tested with stakeholders and rolled out ahead of the reforms being introduced.

The government is aware that organisations are already preparing for April 2020 and will offer continued guidance and support. The government recently published four steps that organisations can take now in order to prepare for the reform and will offer more support through its education and support package, which will be published in summer 2019.

Annex

This list only includes organisations who provided written responses to the questions in the consultation document.

Although reviewed, responses from individuals, or on behalf of organisations for which no name was provided, are not listed.

361 Management Limited	IPSE
AAT	ITV
ACCA	J2 Tech
Account Art	JAG Procurement
Activon Projects Limited	Johnston Carmichael
Adecco Group	JSA Group
AK Employment Tax Services Limited	Kingston Smith LLP
AMS Accountancy	KMPG
APSCo	LA International Computer Consultants Ltd.
Aquipu Financial Consultants	LAN Consultants
ARC	Larsen Howie
Arras People	Lawspeed
Aspire Business Partnership	Legal and General
Astrop	Leggate Associates
Atkins Global	Lewis Silkin
ATT (Association of Taxation Technicians)	LITRIG
Auxilium Healthcare	Lloyds Banking Grp
Aviva	Lloyd's of London
BA&T Limited	London Society of Chartered Accountants
Baker Technology	M&G Prudential
Bauer Cottrell	Macfarlanes
BCECA	Manpower Group
BDO LLP	Markel Tax
BHP LLP	Mazers
Birmingham Law Society	MBO Partners
Biztek	MGR Weston Kay LLP
BNPM IT Consultancy	Morson International
Brookson Group	MPI Limited
BT	National Grid Plc
BUFDG (British Universities Finance Directors Group)	NRL
Burges Salmon	Odgers Berndtson
Caltha Limited	Oho Group Limited
Capita	Oil & Gas
CBI	Osborne Clark
Charity Tax Grp	Outsource
Chartered Accountants and Chartered Tax Advisers	Pact
Chartered accountants Ireland	Pari-Passu
CIOT	Passmore Consulting Limited
CIPD	Patricia J Arnold & Co Limited
CIPP	Pick Everard
Cleary Gottlieb Steen & Hamilton LLP	Pinset Masons

Climb Associates	PKF Littlejohn LLP
Coenseo	PRISM
Company Chemist Association	PRO UNLIMITED GLOBAL LTD
Contractor Calculator	PWC
Crunch Accounting	QDOS
Danbro	Recruitment & Employment Confederation (REC)
Dataception	Reed
Deloitte	Robert Walters
DLA Piper UK LLP	Rodhouse Compliance Service Limited
E - resourcing	Roebuck Consulting
Employment Lawyers Association	Royal Mail
Employment Taxes Industry Forum	RSM UK Tax and Accounting Limited
Equity	Saffery Champness LLP
Exxon Mobil	Sanctuary Group
EY	Screen Scotland
FCSA	Screen Skills
FSB	Shattered Silicon Ltd
Giant Group	Simmons and Simmons LLP
Grant Thornton	Singlelaw
Halsey & Co.	Sthree
Hays plc	Tax Assist
Huntswood	Tax Centre of Excellence
ICAEW	The Law Place Limited
ICAS	The Law Society
Imex Consultancy Ltd	The Law Society of Scotland
Impact Contracting	UK200Group
Impact Strategic Communications	Unite the Union
Impellam Group	Varga Limited
Institute of Consulting and Chartered Management Institute	Volt
Institute of Interim Management	Wiggin Media Group
Institute of Practitioners in Advertising (IPA)	World Class Project Management Limited
	WTT Consulting
	Yuno Juno