

Locum Workers

New IR35 Rules for Public Sector Contractors



The Government has reformed the IR35 rules for those working off-payroll, via a limited company, partnership or LLP in the public sector.

The rules are set to shift the responsibility of deciding IR35 status from the Personal Service Company (PSC) contractor to the public sector authority, i.e. any of those bodies listed under the Freedom of Information act 2000 and the Freedom of Information Act (Scotland) 2002. This includes local authorities and locum care & social workers providing their services through a limited company. HMRC has released [guidance](#) to support the new rules.

Those found to be inside of IR35 will have PAYE and NIC deducted from their fees and paid over to HMRC. Additionally, even though their income is now treated as employment income, they will not be entitled to any employment benefits. Only statutory entitlements will be available to them through their own limited company. Furthermore, it has been confirmed that where IR35 is deemed to apply, the 5% tax free allowance for the costs of running a limited company will be removed.

The new rules will apply to payments made on or after 6 April 2017 and therefore apply to the contracts entered into before that date if it overlaps 5 April 2017. This also means that if the contract ends before 6 April 2017 and payment is made on or after 6 April 2017, then it will fall within the new legislation. It is worth pointing out that if a PSC has been operating outside of IR35 and is subsequently determined inside of IR35 after the 6th April, this might ring alarm bells to HMRC and they could consider the whole contract as being caught by IR35 and investigate retrospectively.

In the past, end clients did not have to consider whether their workers were IR35 compliant or not, but since 2012 public sector bodies have had to take a proactive stance. Under the new rules this goes even further and public sector bodies are now responsible for determining the status of their workers operating through a limited company.

According to the legislation it is the responsibility of the public sector body to inform the fee payer (agency paying the limited company if applicable) whether or not the new rules apply to the social worker, for example. All the

agency has to do then is deduct the PAYE and NIC (If IR35 applies) from the fees paid to the social workers limited company. Guidance on how to make payments and deductions can be found [here](#).

So, how are public sector bodies going to decide whether the IR35 legislation applies to each off-payroll contractor? HMRC have been working with stakeholders and the government to create an online digital tool called the [Employment Status Service](#).

It is important to note that the service is optional to end clients and is only intended to help the client make a decision. The locum still has a lot of say about how their status is considered and the tool is only HMRC's view of someone's IR35 status.

IR35 itself has not changed, those working in the private sector are still operating in the same way, but the administration and responsibility for IR35 will change in the public sector from April 6th 2017. So those workers who are genuinely self-employed and outside of IR35 should still be treated as such. If the locum has either, a right to send someone else to do the work, or they have absolute control over how the work is performed, or there is a lack of obligation for each party to offer and accept work and they take a financial risk and genuinely operate their business on own account they should be treated as being outside of IR35.

Locums's should get their contract and working practices reviewed and seek professional advice from an IR35 specialist in order to give their end client the correct information or a chance to renegotiate contract terms if necessary before April 6th.

HCPA member may call for further advice. Just quote HCPA when asked for your membership account number. Alternatively call your local Peninsula Business Manager, Peter Sheridan on **07971 146678** or email Peter.Sheridan@peninsula-uk.com.

Please listen to our new podcast covering the new rules, available [here](#).