



Changes to IR35

March 2017

What will we cover?

IR35 - Who's affected and how?

IR35 - Process and reporting



Background

Press Attention

Daily Telegraph

8 March 2015

Senior NHS officials sacked following investigation into off-payroll earnings

The Times

14 November 2015

Universities accused of reducing tax bills

Mail Online

20 May 2014

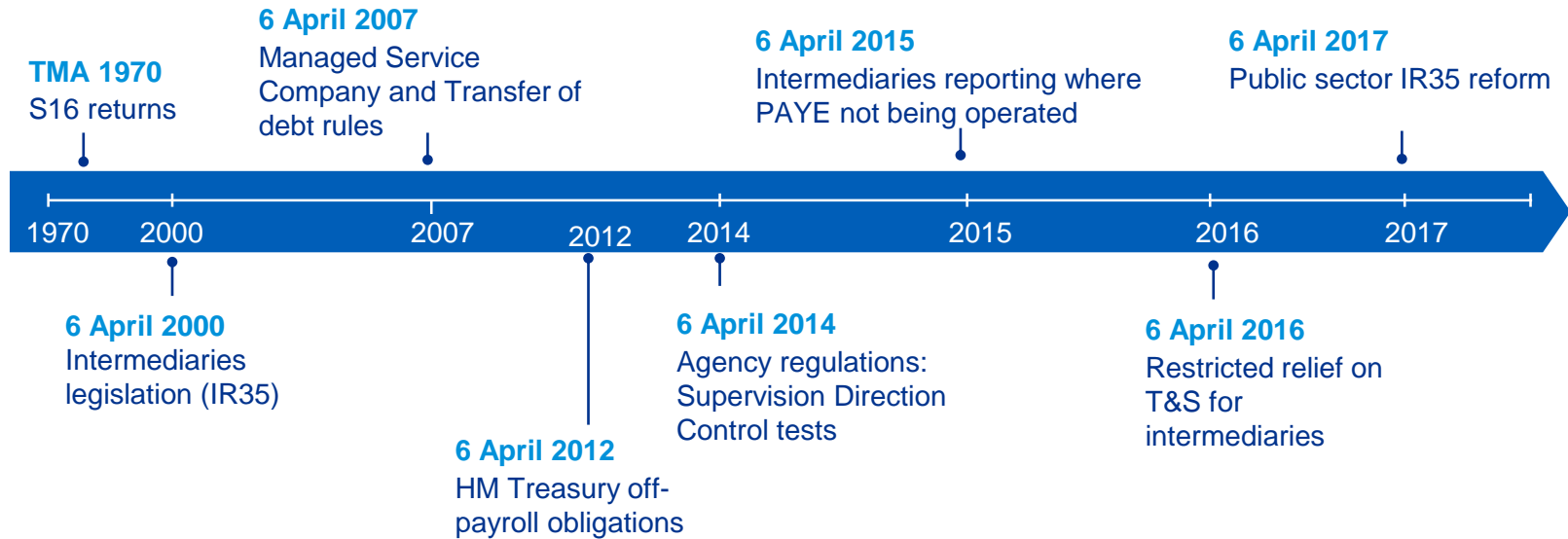
NHS 'pay dodge' lets thousands of staff slash their tax bills: More than 2,400 workers receive pay as contractors ...

The Guardian

6 November 2015

Crackdown on personal service companies could raise £400m in tax

HMRC Response



Estimated annual cost to the exchequer £440m (2016/17)



IR35 – Who's affected and how?

Public sector bodies

Freedom of Information Act 2000

Freedom of Information (Scotland) Act 2002

Included:

- Government departments, executive agencies and non-departmental public bodies
- NHS
- Police and fire authorities
- Devolved administrations
- Educational establishments including universities
- BBC, Channel 4
- Bank of England
- Homes and Communities Association

Excluded:

- Private companies carrying out public functions e.g. Private urgent care centres

Agency or third party

A business that supplies workers

- Includes consultancy or outsourcing specialists
- Supply of services or supply of labour?

Exclude

- Employees of the agency
- Compliant Managed Service Companies
- Workers employed by an Umbrella Company

Offshore agency

- PAYE and NIC to be operated by the last party in the chain that is UK resident (this may be the public sector body)

Personal service intermediaries

Personal service company

Individual, associate or family member (can include an unmarried partner):

- Control, or have the ability to control, more than 5% of the ordinary share capital of the company directly or indirectly; or
- Have, or are entitled to acquire, rights to receive more than 5% of any dividends from the company; or
- Possess, or are entitled to acquire, rights over more than 5% of the assets that would be available for distribution if the company is wound up (close companies only); or
- Receive, or could receive, payments or benefits directly or indirectly from the intermediary that could reasonably be taken to represent payment for the services the individual provides to clients

Personal service intermediaries

Partnership

- Individual or family member (can include an unmarried partner) are entitled to 60% or more of the profits of the partnership; or
- All or most of the partnership's income comes from providing services to a single client, or to a single client and its associates; or
- The profit sharing arrangements in the partnership are designed to ensure that the partner receives an amount based on the payments received for services to clients for engagements within IR35 legislation

Individual

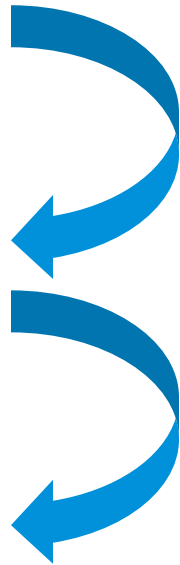
- Individual receives, or could receive, payments or benefits that could reasonably be taken to represent payment for the services the individual provides to clients

Old IR35

Joe Bloggs (worker)

Joe Bloggs Limited
(PSC)

Public Sector Body
(engager)



Personal services of Joe Bloggs required by
Public Sector body

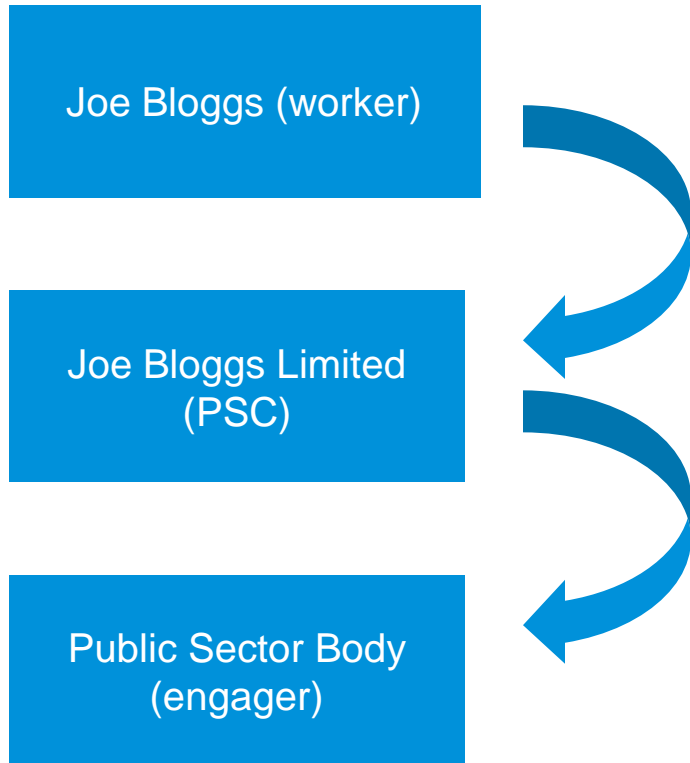


Joe Bloggs Limited to determine whether
there is a deemed employment relationship



Joe Bloggs Limited accounts for tax,
employee NIC and employer NIC on
payments received from Public Sector Body
(5% deduction allowed)

New IR35 - 6 April 2017



Personal services of Joe Bloggs required by
Public Sector Body

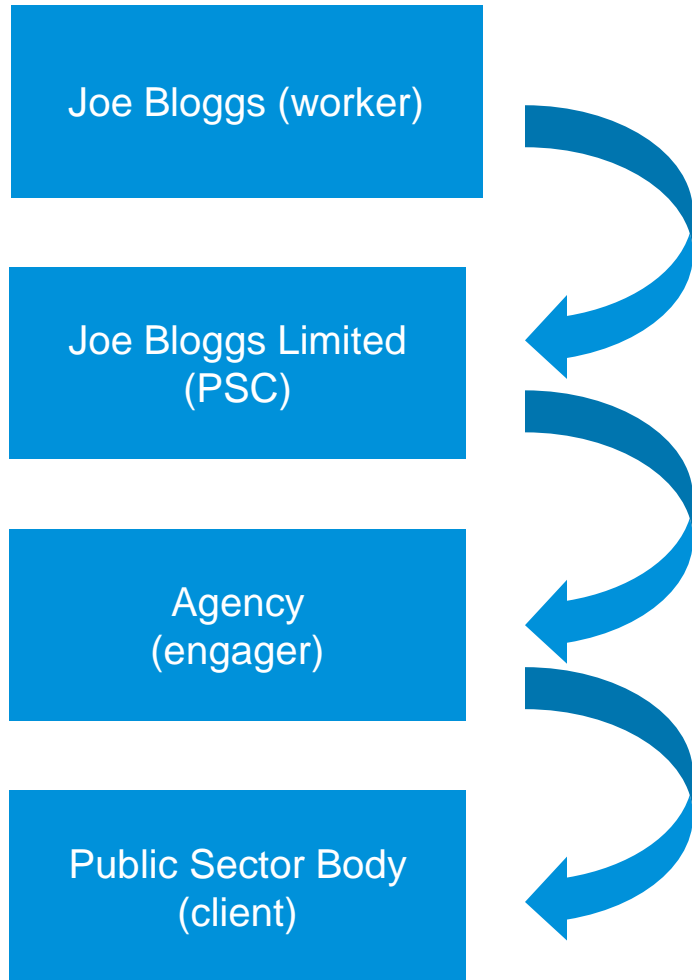


Public Sector Body to determine whether
there is a deemed employment relationship



Public Sector Body accounts for tax,
employee NIC and employer NIC on
payments paid to Joe Bloggs Limited

New IR35 - 6 April 2017



Personal services of Joe Bloggs provided to a Public Sector Body via an Agency



Public Sector Body to determine whether there is a deemed employment relationship



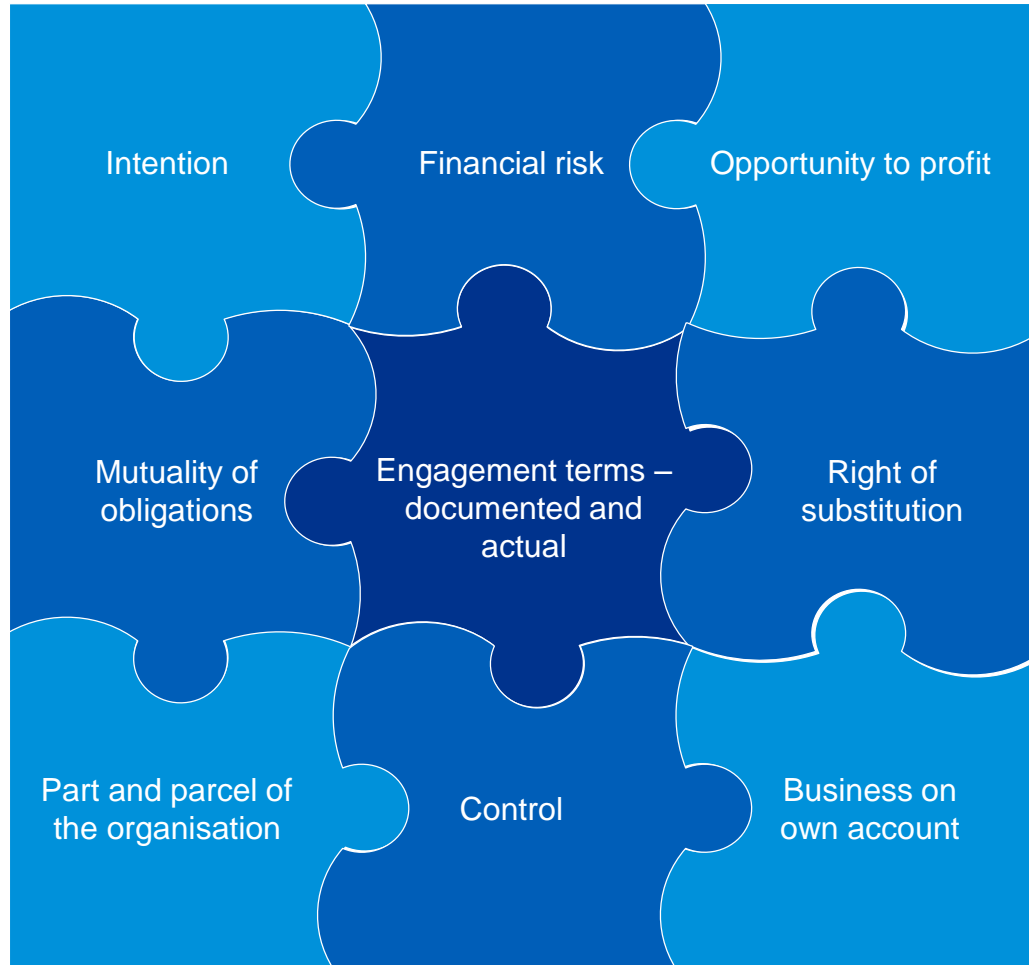
The Agency accounts for tax, employee NIC and employer NIC on payments paid to Joe Bloggs Limited



IR35 - Process and reporting

Establishing employment status

- Personal service
- Control
- Financial risk
- Defective work
- Opportunity to profit
- Part and parcel of the organisation
- Business structure
- Intention of the parties



Establishing employment status (cont.)

- **Right of substitution and engagement of helpers**
 - Who engages the substitute
 - Who controls the substitute
 - Who pays the substitute
 - Ability to hire helpers, paid by worker
- **Control**
 - What work is done
 - When is it done
 - Where is it done
 - How it is done
- **Financial risk** – payment basis, provision of equipment, penalties, making good defective work
- Opportunity to make a **profit/loss**
- HMRC employment status indicator tool (**ESI**)

HMRC's employment status service

- New HMRC digital tool
- Includes approximately 50 questions based on personal service, control, financial risk, part and parcel of the organisation, business structure etc.
- Detailed guidance and relevant examples will be provided to walk users through the decision making process
- Status tool makes a decision as it is being completed i.e. first question “Is the worker an office holder” – Yes – IR35 applies
- The output is an on-screen decision with a reference number which can be saved as a pdf if information in relation to the worker is recorded
- HMRC will abide by the decision if the correct information is provided
- Information gathering exercise will be important

Payroll Reporting Obligations

Worker to provide:

- National Insurance number
- Date of birth and personal address
- Bank account details
- Payroll systems need to be updated to enable PAYE and NIC to be deducted from payments made to the PSC
- Statement C of new starter form to be completed and code BR
- Interaction between RTI and accounts payable systems
- The Payer should provide a P45 to the worker
- Pay and Tax/NIC deductions will be included within the workers self-assessment tax return
- No double taxation
- Further guidance expected from HMRC

Summary Payroll Obligations (cont.)

Points to note:

- The Payer must apply normal rules in relation to the Apprenticeship Levy on payments made under IR35
- IR35 over-rides any obligations arising under the Construction Industry Scheme
- No obligations for the Payer:
 - Statutory Sick Pay
 - Statutory Maternity/Paternity/Adoption pay
 - Statutory redundancy pay
 - NMW/NLW
 - Pension auto-enrolment
 - Pension contributions
 - Annual leave
 - Protection from unlawful deductions from wages

Payroll obligations

Public sector body engagement

- Determine whether engagement falls within the new rules
 - Identify intermediary
 - Determine employment status
- Calculate the deemed payment
- NB – Deemed payment exclusive of VAT
- Process deemed payment through payroll (RTI)
- Pay secondary class 1 NIC
- Operate the tax code BR
- P45 issued at the end of the contract



Agency engagement

- Agency submits a request to the Public Sector Body who advises whether engagement falls within the new rules

Agency required to:

- Calculate the deemed payment
- NB – Deemed payment exc VAT
- Process deemed payment through payroll (RTI)
- Pay secondary class 1 NIC
- Operate the tax code BR
- P45 issued at the end of the contract

Penalties

Current position

- Obligation to account for PAYE and NIC rests with the PSC/partnership/individual
- Any underpaid PAYE and NIC together with interest and penalties is recovered from the PSC/partnership/individual

New position

- Obligation to account for PAYE and NIC rests with the End User or Agency
- Any underpaid PAYE and NIC together with interest and penalties is recovered from the Trust or Agency
- BUT...If fraudulent information is provided that has the effect that the new rules are not applied, the person providing this information will be responsible for the PAYE and NIC

Fraudulent information

- Public sector body will need to determine employment status for workers engaged directly and those supplied by agencies or other 3rd parties
- Request submitted to Public sector body by 3rd party or agency
- Public sector body has 31 days to respond
- Failure to respond in the timeframe – Public sector body deemed to be the payer and therefore needs to operate PAYE and NIC on payments to the worker if the engagement is deemed to fall under the new rules.
- Any underpaid PAYE and NIC together with interest and penalties is recovered from the Public sector body

Further guidance

- 31 day period may change
- Fraudulent vs reasonable care
- Anti-avoidance provisions for complex labour supply chains

Next steps

Impact assessment

- Risk
- Cost
- Resource
- Processes and systems

Gap analysis

- Walk through a sample of engagements
- Agency process
- Payroll process
- Interface between Accounts Payable and Payroll
- Policy documents
- Process maps

Action plan

- Working group
- Document ideal process and set milestones to deliver



Thank you



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