



HM Revenue
& Customs

Off-payroll working from 6 April 2021 – interpretation of section 61O and the conditions where the intermediary is a company

HMRC has been made aware of concerns regarding the wording of section 61O of Chapter 10 ITEPA that will apply from 6 April 2021.

As part of Finance Act 2020, the Government introduced an amendment to section 61O of ITEPA 2003, relating to the conditions where an intermediary is a company. This amendment was made as a result of feedback on the draft legislation to protect against arrangements put in place to side step the material interest condition.

In recent conversations with stakeholder groups, concerns have been raised that the new conditions for a company to qualify as an intermediary for the off-payroll working rules could capture a wider range of companies providing a worker's services to a third party, such as umbrella companies, employers seconding employees and agencies providing workers in circumstances where the other conditions of Chapter 10 are met. This interpretation would require a client to apply Chapter 10 to those engagements. This is not the intention of the legislation.

The off-payroll working rules are intended to apply to situations where there is no employment or agency worker relationship between the worker and the client or an agency or other third party in the labour supply chain, and the worker's services are provided through their own intermediary. Where a worker is already subject to PAYE on all of the income from an engagement as an employee, other than with their own intermediary, HMRC does not intend Chapter 10 to apply.

The Government's policy intent in relation to the off-payroll working legislation is clearly set out in its recently published technical guidance. This guidance sets out how HMRC will apply the legislation in practice, and customers should continue to reference it as they prepare for the off-payroll working reform.

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000>

HMRC is actively engaging with stakeholders on this issue and continues to work closely with them. HMRC is considering what action is required to ensure the off-payroll working rules apply as intended in order to provide certainty to those affected by the reform.

Off-Payroll Working Policy
HM Revenue and Customs