



ENSURING IR35 COMPLIANCE FOR YOUR BUSINESS





INTRODUCTION

IR35 has been in effect across the private sector since 2021 and HM Revenue & Customs (HMRC) has moved into actively reviewing and assessing whether businesses are conforming with the off-payroll working regulations.

For some businesses, IR35 has become a business-as-usual task – one that might not necessarily be at the top of the list when it comes to checking compliance. However, it's crucial the IR35 status of every contract assignment is still effectively reviewed, that hiring managers continue to understand the assessment measures for in scope and out of scope assignments, that

any recruitment suppliers you engage are following IR35 best practice, and that as a business you can evidence effective training and procedures.

To help with this, towards the end of 2023, HMRC shared extensive documentation to support businesses and their supply chains, ensuring they are complying with the off-payroll rules. We've thoroughly reviewed this documentation and are keen to share an overview of some of the areas of focus that organisations should be prioritising when it comes to preparing for potential scrutiny from HMRC for IR35 compliance.

READ THE GUIDANCE IN FULL

HELP TO COMPLY WITH THE REFORMED OFF-PAYROLL WORKING RULES (IR35)

For the purpose of the off-payroll working rules, and in this document, 'client' refers to the organisation which the worker supplies their services to. Some organisations may refer to this as the 'end client'. Various sections of this document refer directly to information provided by HMRC in their guidance documents.





TRAINING YOUR STAFF

The following information is provided to support part 2 of the HMRC guidance:

TRAINING YOUR STAFF

When providing training to staff around IR35, it's important to cover: the off-payroll working rules; what is required of different parties in the contractual chain; and how to understand employment status principles in order to make accurate determinations.

UNDERSTAND YOUR CURRENT WORKFORCE MIX

For clients hiring workers, HMRC provide an extensive list of what should be covered in the staff training, including:

- **Pre-engagement** – terms and conditions, advert scope and where discussions with fee payers are required.
- **Onboarding** – considering the interaction needed with other parties that may be involved in the supply chain, and ensuring all in scope engagements are considered.
- **Contracted out services** – identifying whether managed services are classed as contracted out for the purpose of off-payroll working rules.
- **Employment status principles** – how to understand indicators to make informed IR35 decisions
- **Status determination systems** – what tools, such as CEST (Check Employment Status for Tax), are used by your organisation to make accurate determinations.
- **Status determination sign off** – understanding who is allowed to sign off status determinations and who has responsibility for approving statements.
- **Blanket determinations** – why HMRC do not accept blanket decisions for a group of workers without reviewing individual terms and working arrangements.
- **Role-based determinations** – how these can be used and how to differentiate between role-based and blanket determinations.
- **Status determination statements (SDS)** – how to provide an accurate and valid SDS.
- **Supply chain liaison** – passing the determination and SDS down the labour supply chain and how deemed payments should be calculated.
- **Outsourcing to third parties** – key considerations when utilising additional stakeholders.

- **Disagreement process** – how to manage disputes from the worker or deemed employer in line with the organisation's disagreement process.
- **Auditing** – understanding internal auditing processes and what needs to be documented to support this.

Keep training methods varied to keep the attention of those completing it and include measures to check they understand and have taken in the information being shared with them. Support this with easy access to the relevant documentation and processes that support key steps such as status determinations and disputes and ensure any changes to these are well communicated – with additional training implemented where needed.

THOUGHTS FROM LINX



“Of all the guidance shared by HMRC, how businesses approach training we believe is the most crucial. It’s an area that should be given a great deal of focus, as it can be easily overlooked.

We’ve worked with clients to develop comprehensive training programmes that not only give their staff the knowledge and expertise to confidently manage IR35 compliance, but a transparent and well documented training strategy developed with the support of an external consultancy that demonstrates to HMRC that businesses are taking their IR35 commitments seriously.”



Richard Hanson, Client Services Director, **Linx** 



KEY TAKEAWAYS

- **Include short tests to check the participant's understanding, including multiple choice answers throughout the training.**
- **Avoid giving high level details, and instead make it in-depth so staff undertaking the training are given extensive detail to help them fully understand IR35.**
- **Include the various terms you engage workers through, such as contracting, the nature of these roles and any specific contracts used.**
- **Provide detailed information on all processes and systems your organisation uses when making status determination statements.**
- **Ask for feedback after the training is complete to gauge their understanding.**
- **Plan regular refresher training and share timescales for this in advance, recording all training taken on personnel records.**

RECORD KEEPING

The following information is provided to support part 3 of the HMRC guidance:



RECORD KEEPING

When it comes to ensuring you have comprehensive paperwork documenting your implementation of IR35, HMRC will be looking for detailed information should they open a case to investigate your IR35 practices.

This record keeping needs to be in place for all engagements where off-payroll working rules need to be considered – whether the outcome was in or out of scope of IR35. Records should also be up-to-date, and include any reassessments where assignments are long-term and need to be periodically reviewed to ensure the worker is still operating inside or outside IR35.

Paperwork must show how you have both reviewed off-payroll working rules and operated IR35 processes for each assignment, where relevant.

If you are fully contracting out services, you'll also need to record these decisions and evidence of the client/supplier arrangement in relation to off-payroll working.

The need for transparent record keeping is not just required of the client, the deemed employer (where it is different), any agencies in the supply chain and any worker intermediaries also need to maintain detailed paperwork.



CLIENT RECORD KEEPING

For clients, HMRC suggest the below information should be captured:

- Third party communications when considering off-payroll working rules, such as agreement as to whether the contractor will operate through an intermediary, and checks undertaken to ensure that payments have been taken where IR35 applied.
- Any gross fees paid to the party you contract with.
- Status determinations, including your reasons for the determination; outputs from any tools you have used to make the determination; evidence you have passed on the determination to the worker and anyone else in the supply chain that needs to be notified.

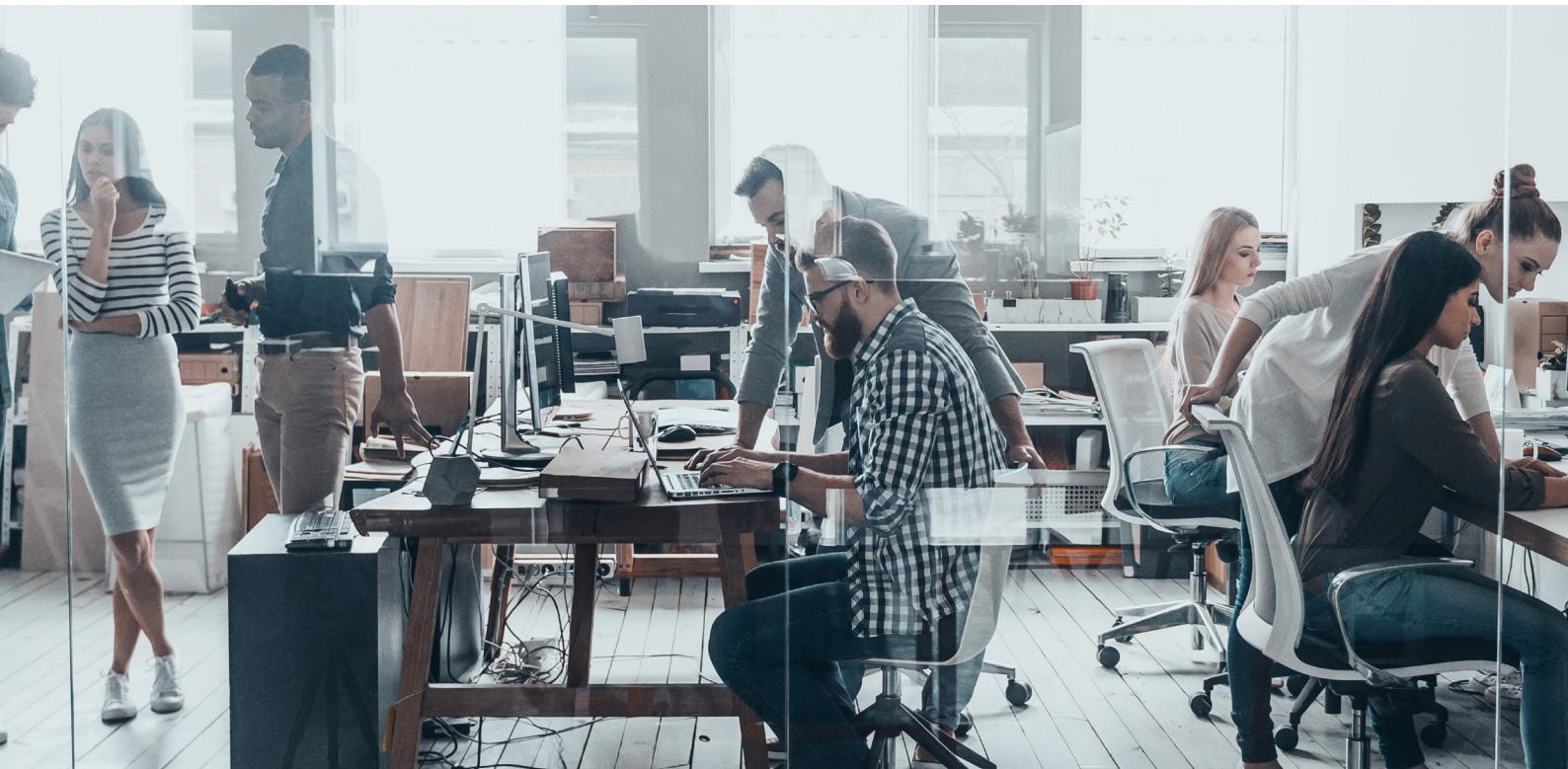
Keeping comprehensive records that cover the above areas will help to demonstrate to HMRC that you have consistently applied the off-payroll working rules and have robust processes in place.

It can also support any disagreements raised, helping to provide clarification on how the determination was made. Changes from 6th April 2024 to how tax will be repaid where HMRC identify incorrect status determinations, will mean that tax already paid during the assignment can be offset against the outstanding tax bill. So, it's important to have a record of when tax was paid during the assignment, should the determination be queried at a later date by HMRC. Most crucially though, comprehensive record keeping demonstrates how you have met your regulatory obligation to effectively implement IR35.

KEY TAKEAWAYS

- **The detail is important. If queried, it will demonstrate your understanding of IR35 and robust processes.**
- **Record communications with all parties in the supply of contract workers.**
- **An out of scope determination is just as important to record in detail as an in scope one.**

- **Remember that one of the reasons you are record keeping is for potential scrutiny from HMRC in the future, so ensure paperwork is easy to understand and straight forward to find if needed.**





CONSIDERING THE REQUIREMENTS OF A NEW ROLE

The following information is provided to support part 4 of the HMRC guidance:

CONSIDERING THE REQUIREMENTS OF A NEW ROLE



When it comes to hiring off-payroll workers, there are a number of areas and stakeholders you need to consider before engaging any new workers.

DETERMINING THE HIRE ARRANGEMENT

If you opt to use a recruitment agency to source and engage the worker, then you'll need to communicate the outcome of your initial IR35 status determination. This should include your understanding of how the worker will operate, and whether their role would class as in or out of scope when you consider the guiding principles of IR35 – such as their right to substitution and their supervision, direction and control.

If you do not wish for workers to be engaged through their own intermediaries, then you'll need to ensure this is communicated

to the agency. Where you are happy to accept workers who want to be engaged through their intermediaries, you should also record whether or not they chose to do so.

If you have an alternative hiring process in place which means that you are not the deemed employer, you should have clear processes in place with the party who will be the deemed employer to ensure that PAYE is in operation for any in scope deductions and status determinations are being accurately implemented.

MANAGING THE HIRING PROCESS

Where the role is a standardised one, you can consider whether an existing role-based determination may fit the requirements of this new role. This is an arrangement where workers operate through the same working practices, contractual agreements and off-payroll working practices. If you are unsure whether a role-based determination applies, it is best practice to initiate an individual IR35 assessment on the role to ensure you adhere to off-payroll working regulatory requirements.

When interviewing for a role, it's important to record information shared and captured during the meeting that will help to determine IR35 status, including working practices, individual arrangements agreed, and the terms and conditions of the assignment.

KEY TAKEAWAYS

- **Fully understand the nature of the worker's engagement – including any agencies and intermediaries.**
- **Keep records of job interviews particularly where information has been shared that will be used for status determinations.**





CONSIDERING YOUR OFF-PAYROLL WORKING POPULATION

The following information is provided to support part 5 of the HMRC guidance:

CONSIDERING YOUR OFF-PAYROLL WORKING POPULATION

IR35 applies regardless of whether the workers are directly or indirectly engaged by you, but who is ultimately responsible as the end client and fee payer may differ. So, it's important to consider all your working population when looking at the off-payroll working rules.

MANAGING INDIRECT WORKERS

For indirect workers, you will need to have robust processes in place to ensure you can capture all the information needed for the worker and their assignment. If you are the client but not the deemed employer, you may not directly have some of this information, so will need to interact with any agencies and intermediaries.

It is your responsibility to:

- Determine indirect worker status determinations for off-payroll working and tax purposes.
- Identify all off-payroll workers in your supply chain.



Directly engaged workers are those who are contracted to deliver their services and paid by you, including those operating through personal service companies (also referred to as limited companies) and any other intermediaries.

Indirectly engaged workers however are contractors who deliver service to you as the end client but are engaged and paid through a third party – such as an intermediary, managed service provider, consultancy or recruitment agency. While you are not directly engaging the worker or paying them, you should still know how they are being engaged and their status determination.



KEY TAKEAWAYS

- **Understand who is responsible in each engagement scenario and the role you play as the client, together with the potential financial liabilities.**
- **It is your responsibility to ensure you have sufficient due diligence and compliance checks on your supply chain, including detailed information on all off-payroll workers you both directly and indirectly engage.**

Include all stakeholders involved in the supply of indirect workers to your organisation, especially complex supply chain arrangements, and ask them to provide worker details for everyone who delivers services to your organisation through an intermediary. Where there are no workers engaged through intermediaries, they should declare this.

Where workers are engaged through an intermediary you will need to confirm whether they are operating as a sole trader or will be employed through a third party such as an umbrella company, and that PAYE will be in operation.

- **Where HMRC cannot recover PAYE liabilities from other parties, they may look to your organisation to recoup costs, so robust processes to fully understand your indirectly engaged workers and their supply chain arrangements can prevent this.**



WHAT TO DO IF OFF-PAYROLL WORKERS ARE MISSED

The following information is provided to support part 6 of the HMRC guidance:

WHAT TO DO IF OFF-PAYROLL WORKERS ARE MISSED

During regular reviews of your directly and indirectly engaged off-payroll workers, you may come across a contractor who has been missed off your workforce records. Upon discovering any workers you were not previously aware of, you should promptly consider the worker's status to determine if IR35 applies. If you believe this is the case, and subsequently not enough tax has been processed for the worker's assignment, then this should be immediately raised with HMRC so they can help rectify it.

You can make a voluntary disclosure to HMRC where you believe there are unpaid PAYE tax liabilities using their [online service](#). To do this you will need your Government Gateway account details and the individual's National Insurance and tax information.

CONTRACTED OUT SERVICES



The following information is provided to support part 7 of the HMRC guidance:

CONTRACTED OUT SERVICES

Where organisations engage suppliers through [contracted out services](#), sometimes referred to as a managed service, it is important to fully understand these arrangements and know who the client is in the eyes of HMRC for off-payroll working compliance.

DETERMINING WHO IS THE CLIENT

Whilst contracts may clearly document in detail how contractors engaged via the contracted out service will operate and how services will be delivered, a crucial measure for HMRC will be the reality of how these services are operated when compared to the contractual arrangements. Where contracted out services are used, the organisation issuing the contract to the service provider should not have any interest or expectation to have a say in who is engaged to deliver the service or how the individuals are contracted.



Where organisations expect to maintain control of who is hired, how they deliver their services and want to put in place specific arrangements such as what time they work and who manages them, then the reality of their commercial relationship is not a contracted out service. In this example it would demonstrate to HMRC that whilst the contract has been badged as a contracted out service, the nature of how it is being operated is very different – making the organisation the client for the purposes of the off-payroll working rules.

It's important for organisations to scrutinise all contracted out services, to determine who the client is. Where the contracted out service includes the use of labour, the ultimate recipient of the services must decide who is the client – themselves or the service provider- as well as each party's obligations regarding off-payroll working.

- Where operational processes demonstrate it is not a fully contracted out service and workers are engaged through their own intermediaries, your organisation will be the client in HMRC's eyes.
- Where medium/large/public sector organisations deliver the fully contracted out services, the service provider is the client.
- Where a fully contracted out service is provided by a small non-public sector organisation, neither party hold client responsibilities. However, where the worker provides their services to the small business through an intermediary, their intermediary is responsible for determining their employment status for tax deductions.

STATEMENT OF WORKS

It's not uncommon for external supplier arrangements to be managed through a **statement of work** – a document that details how the work will be carried out and the agreed milestones and deliverables. Statement of works however do not constitute a contract, and where used these need to be reviewed alongside the main managed service contract. The details of the statement of work however and the operational arrangement for how workers will deliver their services and the pay structure and personal risk they will incur, i.e. liability for missed milestone or rectification of mistakes made, will help to

determine whether the services are being delivered through a legitimate contracted out service.

HMRC have noticed a number of companies who promote solutions that work around IR35, claiming that they can present contracts for statement of works or managed services to negate the off-payroll working rules. As mentioned previously though, a contractual agreement is not automatic evidence to HMRC that the services being delivered are fully contracted out.

KEY TAKEAWAYS

- **Where a fully contracted out service is provided, the organisation paying the service provider should have no say on how the service is delivered or which individuals are contracted to deliver it.**
- **Businesses need to ensure they have undertaken their own due diligence before undertaking contracted out and statement of work services.**
- **A clear and documented understanding of who is the client, regarding off-payroll working rules, should be in place for every contracted out service.**

- **Regular reviews should be undertaken to ensure any fully contracted out services continue to be delivered in line with the contractual terms and any statement of works in operation. Where material changes have occurred, such as the organisation beginning to have control over who is engaged and how they deliver their services, then a reassessment will be needed to determine who the client is now, from HMRC's off-payroll working perspective.**





MAKING STATUS DETERMINATIONS



The following information is provided to support part 8 of the HMRC guidance:

MAKING STATUS DETERMINATIONS

For organisations to ensure they are operating compliantly regarding IR35, the arrangements for how status determinations are made need to be robust.

DECIDING WHO WILL MAKE DETERMINATIONS

The person making the ultimate decision on each worker's IR35 status determination needs to have a thorough understanding of the individual arrangements. This may mean appointing one individual within the business to make the final decision, working with the hiring manager to understand the individual's engagement. Or there may be an appointed person who is responsible for checking provisional determinations made by



the hiring managers, to ensure the off-payroll working rules and internal processes are being applied consistently.

For larger organisations, a team of people may be involved in signing off the status determination, comprising of hiring managers, legal, procurement and HR representatives.

CONSIDERATIONS FOR DETERMINATIONS

A range of information will need to be considered in order to make a status determination, and the crucial thing HMRC will be looking for, if they chose to review a business' IR35 practices, is consistency. Being able to demonstrate a clear process for making determinations, and evidence that structured guidance is being used for each assignment being reviewed.

The particular arrangements for each assignment need to be considered, and no pressure should be applied where organisations want to appease a specific worker or widen the pool of available talent. The written terms of engagement also need to be thoroughly reviewed to ensure they do not differ from verbal agreements made with the worker, are consistent

with working practices, contain adequate detail around how the worker will be engaged, do not contradict any other written terms and have not changed over time.

Organisations may opt to use decision making tools to support with making status determinations. These can help to provide clear evidence of a determination decision, but they are only as accurate as the information entered into them. Whilst it is not a mandatory requirement to use HMRC's own decision tool CEST, [Check Employment Status for Tax](#), it is the only tool they will stand behind provided the information used was correct.



REVISITING IR35 DETERMINATIONS

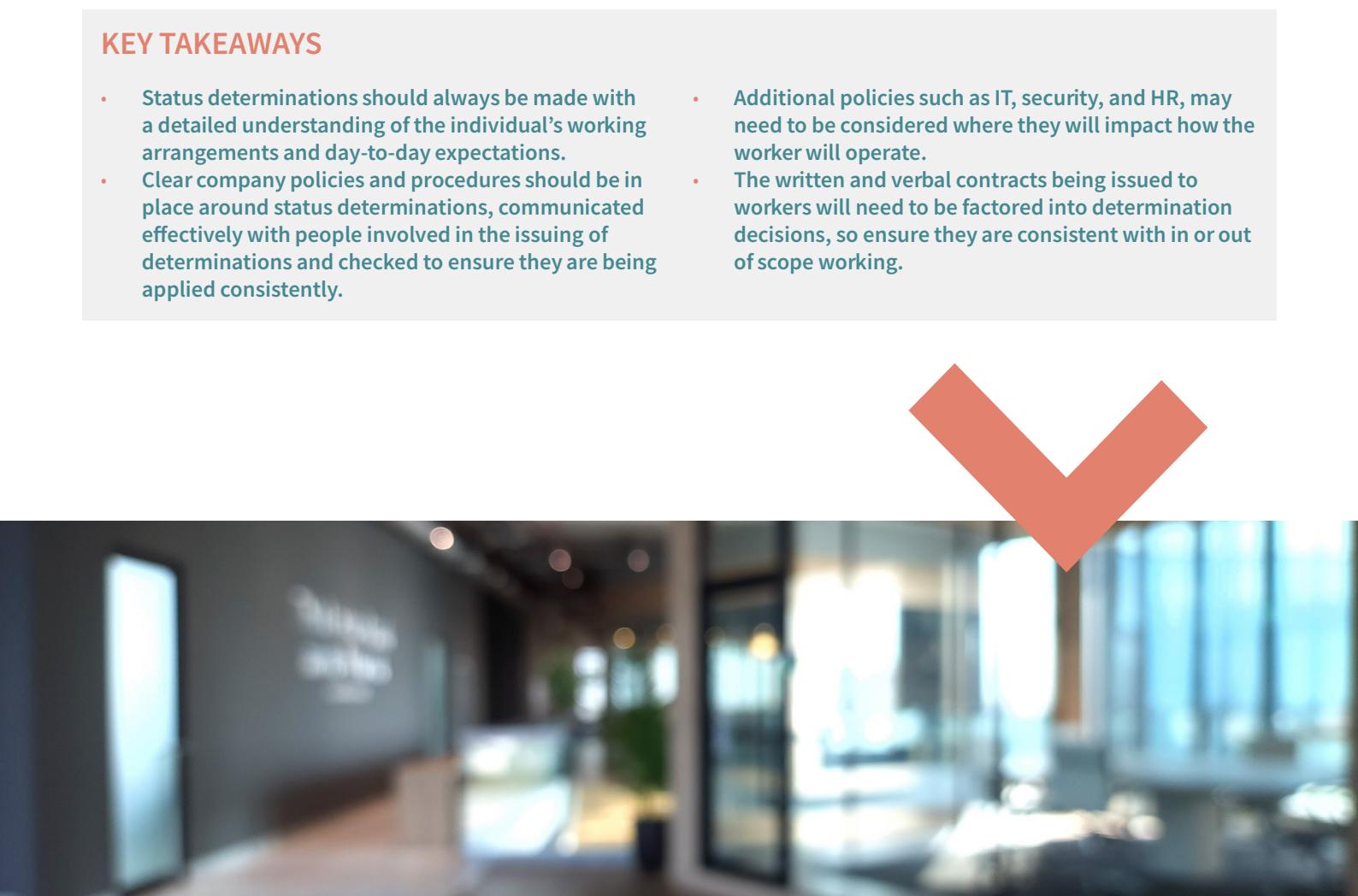
Organisations have an obligation to ensure status determinations remain accurate and undertake reassessments where they believe material changes have occurred that mean the original determination may no longer be a correct reflection of how the worker operates.

For this reason, it's best practice to plan regular reviews, issuing new status determination statements where individual assignments have changed, and ensuring any workers engaged under role-based determinations still fall in line with grouped working practices. Any new determinations should be clearly communicated to the worker and relevant parties in the supply chain and include a date that the revised decision will come into effect.

KEY TAKEAWAYS

- Status determinations should always be made with a detailed understanding of the individual's working arrangements and day-to-day expectations.
- Clear company policies and procedures should be in place around status determinations, communicated effectively with people involved in the issuing of determinations and checked to ensure they are being applied consistently.

- Additional policies such as IT, security, and HR, may need to be considered where they will impact how the worker will operate.
- The written and verbal contracts being issued to workers will need to be factored into determination decisions, so ensure they are consistent with in or out of scope working.





STATUS DETERMINATION STATEMENTS



The following information is provided to support part 9 of the HMRC guidance

STATUS DETERMINATION STATEMENTS



The status determination statement is the formal document that is issued to the worker and any parties in the labour supply chain, to share the outcome of an organisation's determination.

For the statement to be valid, it must include the decision on their off-payroll working status – either employed, where IR35 applies, or self-employed for tax purposes. Details on the reason for the decision should be included, in relation to the guiding principles of IR35, such as mutuality of obligation and right to substitution. The determination must also have been made taking reasonable care to ensure it is accurate and reflects how the worker will undertake their assignment.

Where statements are deemed by HMRC to be invalid, the client organisation will be responsible for any subsequent tax, National Insurance contributions and Apprentice Levy, where applicable.

CLIENT-LED DISAGREEMENT PROCESS

The following information is provided to support part 10 of the HMRC guidance:

CLIENT-LED DISAGREEMENT PROCESS

When clients issue status determination statements, they need to have a clear process in place for managing disagreements, which may be made by workers or their deemed employers. Any other parties in the labour supply chain do not have the right to dispute determinations.

Disputes can be shared in writing and verbally, so it's important to remind hiring managers that conversations with workers where disagreement is raised about their employment status could constitute a dispute, so everyone should be aware of the company's disagreement process.



Valid disagreements need to include the grounds for which the determination is being disputed, in relation to the employment status indicators. Where disagreements are made without providing a reason, these can be rejected. You cannot however reject a disagreement where reasons have been provided, without first investigating the dispute.

HANDLING DISAGREEMENTS

When managing disagreements ensure that you always consider the representations made by the person, respond within 45 calendar days of receiving the dispute, and continue to apply the tax arrangements for the existing determination. Where assignments have been determined in scope, this means that tax deductions should still be taken whilst the disagreement is reviewed.

In your response back you should inform them of your finding – providing information as to why you disagree with the dispute or any changes where the outcome alters the employment status for tax. If your dispute review process determines that the employment status of a worker does in fact need to change, then you should express in writing that the previous statement has been withdrawn and issue a new statement.

Where changes are made to whom you are not the deemed employer, you are responsible for ensuring PAYE operations are in place with the deemed employer and sharing any information you have which will help the deemed employer in the chain calculate the deemed direct payment. You must also ensure that you share a copy of the new status determination statement with the deemed employer.

KEY TAKEAWAYS

- **Ensure hiring managers understand your company's disagreement process and who in the labour supply chain has the right to make disputes.**
- **Take reasonable care when reviewing disputes to ensure you have comprehensively reviewed the worker's existing determination and the grounds of their dispute, and clearly document your findings.**
- **Ensure you follow up with deemed employers where disagreements result in the issuing of a new status determination statement, and record confirmation that they are applying the new employment status and any subsequent tax deduction.**





OUTSOURCING OFF-PAYROLL WORKING RESPONSIBILITIES

The following information is provided to support part 12 of the HMRC guidance:

OUTSOURCING OFF-PAYROLL WORKING RESPONSIBILITIES

Organisations can choose to outsource some, or all, of their off-payroll working obligations to a third party, and this can help to ensure implementation is delivered impartially and transparently. This can also be a good option where an organisation does not have the skills and expertise internally to be able to navigate the off-payroll working rules.

It's crucial to remember though, that the company remains accountable for ensuring the rules are being executed

compliantly, so must have overview and a robust understanding of how the third party is operating.

Even where organisations use a third party to outsource IR35, they are still accountable for:

- Accurately identifying all in scope off-payroll workers.
- Making well informed status determination statements for in scope contractors.
- Ensuring all parties in the labour supply chain are issued the statement determination statement.
- Operating a compliant PAYE operation where they are the deemed employer.

Any liabilities that may arise from errors made by third parties remain the responsibility of the company.

INTERNAL AUDIT PROCESS – PERIODIC REVIEWS

The following information is provided to support part 13 of the HMRC guidance:

INTERNAL AUDIT PROCESS – PERIODIC REVIEWS

Periodic reviews of your organisation's off-payroll working activity and application of IR35 rules should be undertaken. By planning regular internal audits, this can ensure processes are being followed consistently, and that status determination statements are still accurate, before making any necessary changes and communicating them to your business.

When planning the requirements for internal audits, the

size and complexity of the organisation, the number of off-payroll working assignments and where the organisation sits in the contractual chain need to be considered. This will help to determine the scope of the internal audit, such as the percentage of work assignments that will be reviewed and the frequency of the exercise. The more business divisions within your organisations and off-payroll workers under various supply chain arrangements, the higher the risk for errors – making it advisable to run internal audits more frequently.

Many organisations who need to manage off-payroll working rules will fall into HMRC's Senior Accounting Officer (SAO) provisions. Where this applies, organisations will also need to consider their SAO reporting requirements and the processes and systems used to comply with SAO rules.



SETTING UP INTERNAL AUDITING

To ensure an independent and comprehensive review is undertaken, organisations may choose to engage a specialist consultancy partner to set up the process for these internal reviews and gather all the necessary information needed to perform the audits.

Whether you are undertaking internal audits yourself or with the help of an external consultancy, HMRC recommend your process includes:

- Identification of workers who are engaged through their own intermediaries, where you need to determine their employment status.

- The information flow passed through your organisation, identifying any gaps in processes.
- The accuracy of status determinations and statements produced, and their consistency.
- Your disagreement process and checks to ensure they meets HMRC's requirements.
- The procedures for passing status determination statements to the worker and next qualifying person in the labour supply chain.
- Decisions about managed service contracts and how they are deemed fully contracted out services.

KEY TAKEAWAYS

- **There are no strict guidelines from HMRC on how and when you need to undertake internal audits, but they will be looking to check that the frequency and process for your audits meets the size and scale of your business.**
- **It may be beneficial to partner with an external consultancy to set-up and undertake your audits.**

They can provide fresh eyes for your internal processes and procedures and be able to share industry best practice.

- **Always detail the outcome of your internal audits and periodically reassess whether the scope and frequency are still adequate.**

REFRESH YOUR IR35 KNOWLEDGE

If you want to find more specific information about IR35 or check your understanding of the off-payroll working rules, then you can visit our blog archive on our website.

[VISIT BLOG ARCHIVE](#)





SUPPORTING ORGANISATIONS WITH IR35 COMPLIANCE

At Linx, our team of experts work with businesses to help them become and remain IR35 compliant. From taking a deep dive into their organisational processes to ensure they meet best practice guidance shared by HMRC, to designing and delivering tailored IR35 training programmes for consistent implementation of processes. Ensuring staff knowledge is adequate and every measure is being taken to meet the off-payroll working regulations.

To help maintain compliance across their operations, we also offer supply chain auditing services – working with their recruitment agencies to assess their understanding and compliance with IR35 and a wide range of employment and HR legislation before reporting back effective measures and changes that should be implemented.



NEED ADDITIONAL SUPPORT?

If you're interested in finding out more about our Compliance as a Service, then get in touch with us.



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