

Your guide to Onshore Intermediary Legislation



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INTRODUCTION

On 6th April 2014 the government introduced the Onshore Intermediaries Legislation (in conjunction with the Offshore Intermediaries Legislation) which affected employment intermediaries, recruitment agencies and contractors who had previously operated as self employed individuals.

The legislation was introduced quickly for the government to help to prevent other methods of avoiding paying these taxes being implemented. This document is intended for ICS' agency partners in order to clarify the terms within the legislation and what it ultimately means for them and their contractors.



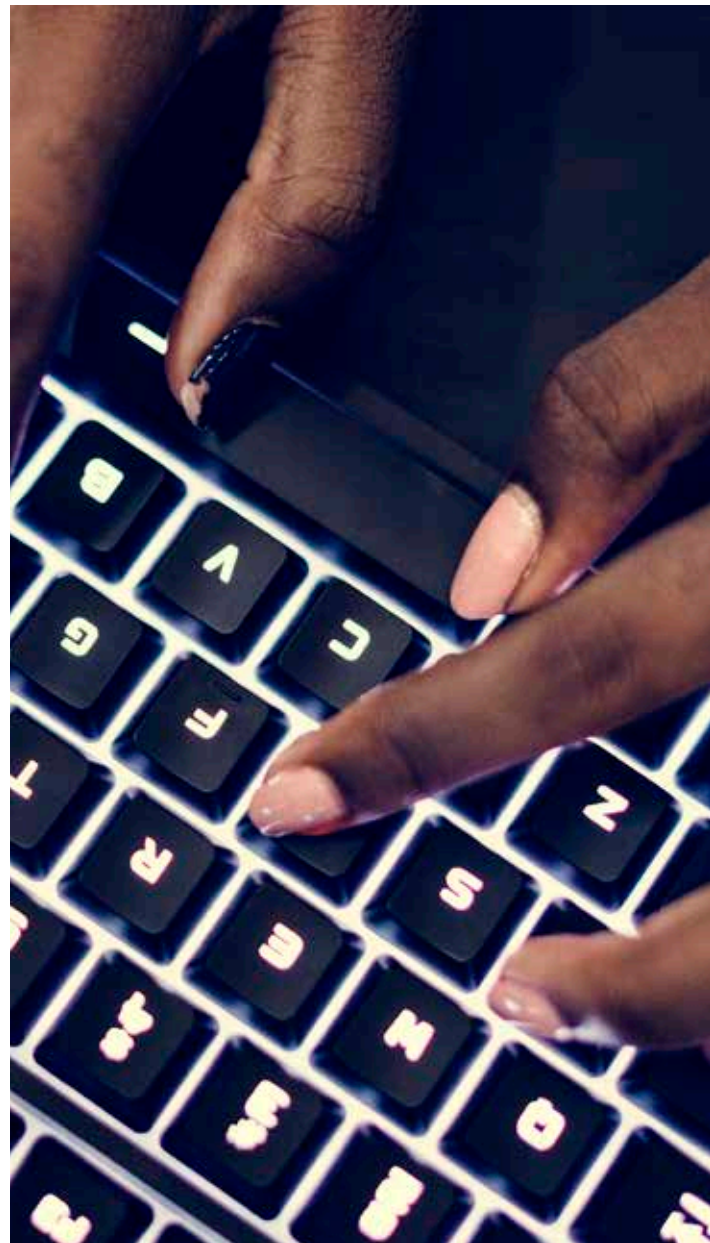
WHAT WAS THE PROBLEM?

The government stated that a significant and growing amount of revenue was lost as a result of the facilitation of false self-employment arrangements via employment intermediaries.

It was deemed to be particularly relevant within the construction industry, where intermediaries were used in order for the hiring entity to remove the risks to them resulting from incorrectly classifying workers as being self-employed. The intermediaries would then often rely on the lack of a requirement for personal service (right of substitution) to argue that the self employment was genuine.

Some of the other advantages to the hirer observed were that they would neither be obliged to pay any costs relating to employment (eg Employer's NICs, employer's pension contributions, holiday pay, sick pay etc) nor could they be the subject of any employment related disputes.

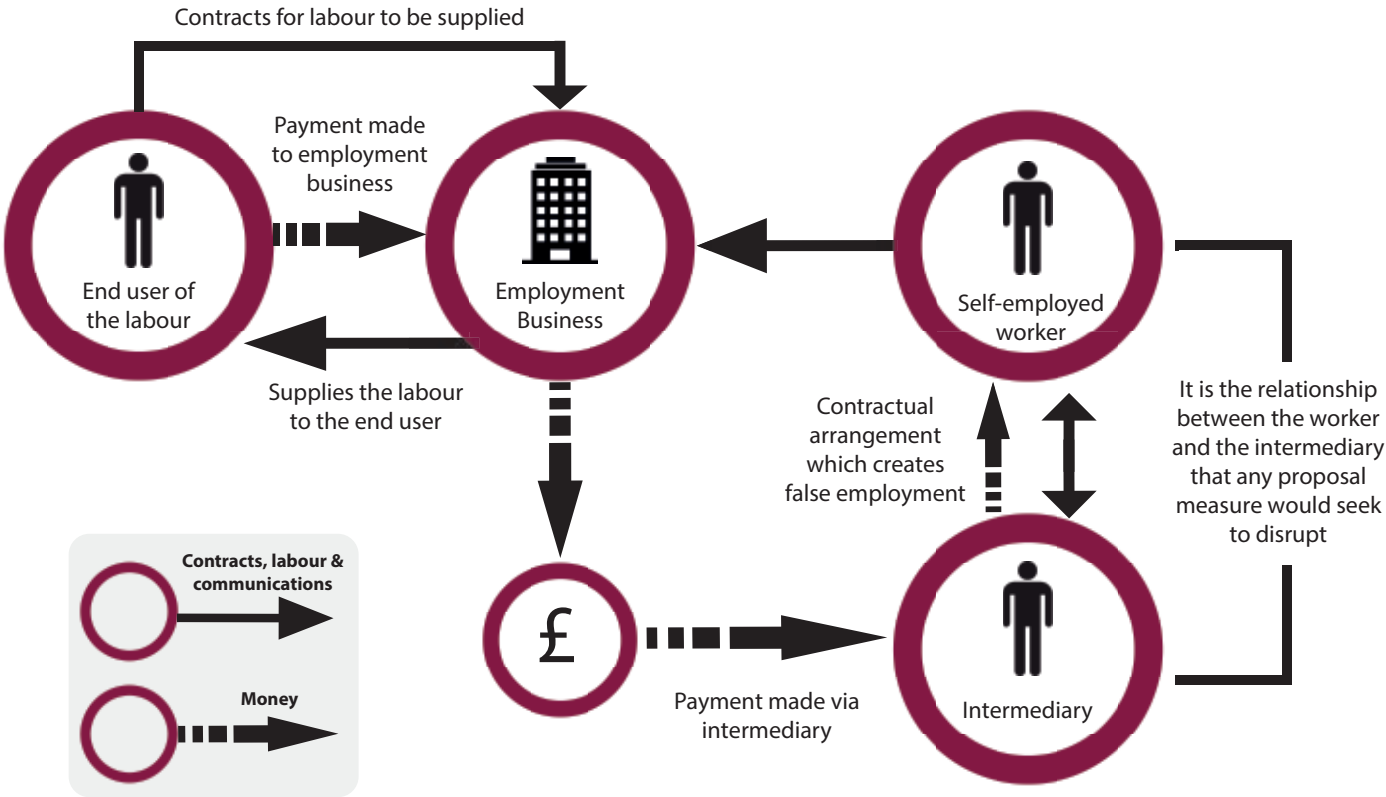
For the workers themselves, they would see a short term increase in their take-home pay due to increased rates and decreased NICs, along with the deferral of the payment of income tax and (Class 4) NICs until much later. However they would ultimately be disadvantaged through the loss of their employment rights. Opinion is that a significant number of individual workers who



WHAT WAS THE PROBLEM? (CONTINUED)

were the subject of these arrangements may have either been unaware that they were operating as self-employed individuals (until such time as they required to exercise their rights as employees) or they had no option but to accept the arrangement in order to work on that assignment.

FALSE SELF-EMPLOYMENT INFOGRAPHIC



WHAT WAS THE SOLUTION?

There is legislation which already exists which places the onus on the agency which has the contractual relationship with the worker to properly account for PAYE tax and NICs on behalf of the worker if certain criteria are met. One criterion is that the worker is obliged to provide his services personally. In order for that legislation to yield the results which were intended, the requirement for personal service has been removed. The new criteria for the legislation to apply are as below.

- an individual ('the worker') personally provides, or is personally involved in the provision of, services to another person ('the client'),
- there is a contract between the client and a third person ('the agency') under or in consequence of which:
 - the services are provided, or
 - the client pays, or otherwise provides consideration, for the services, and
 - remuneration receivable by the worker in consequence of providing, or being involved in the provision of, the services does not constitute employment income of the worker.

But the legislation does not apply if it is shown that the manner in which the worker provides the services, or the manner of the worker's involvement in the provision of the services, is not subject to (or to the right of) supervision, direction or control by any person.

That being said, it is automatically assumed that the worker is under control for these purposes. Control in this context concerns 'how' the services are delivered and can come from any individual who purports to be a leader.



HOW DOES IT AFFECT RECRUITMENT AGENCIES?

If the criteria detailed above are met for an individual worker then the recruitment agency ('the agency') is liable for the deduction of income tax and class 1 primary NICs from that worker's pay and also for the payment of this to HMRC via RTI. There is also the necessity to pay the class 1 secondary NICs.

Indeed, if the criteria are met, the recruitment agency will also become liable to pay statutory payments such as sick pay and maternity pay to those workers. There are also a lot of cases whereby the worker would become an employee of the recruitment agency for all intents and purposes and, as such, are entitled to full employment rights.

As stated in the previous section, there is a requirement for control over the worker to exist whilst he is involved in the delivery of services to the hirer and that control is assumed to exist under each engagement. If it is believed that the worker is not under the control of any individual in that context then the burden of proof lies on the recruitment agency. It is required to keep hold of the evidence which determines that the worker is, in fact, not being controlled when it comes to his involvement in the delivery of the services. If HMRC later contests that and the evidence proves that control exists then the recruitment agency will be liable to pay the retrospective taxes and NICs to HMRC that relate to that engagement. If the agency relies on evidence provided by another party to determine that there is no control and that evidence later proves to be fraudulent then the other party would be liable for those payments.

Reporting

Under the quarterly reporting procedure the employment intermediary (recruitment agency) will be required to provide specific personal details about themselves and those workers who have been paid outside of the operation of PAYE.

The reporting requirement commenced on 6th April 2015 with the first return becoming due in August 2015. Recruitment agencies will be required to submit an electronic return quarterly.

Return	Is this a NIL return (yes or no)? Have you ceased operating (yes or no)?
Worker Details	Name National Insurance Number, OR Date of Birth and Gender Address and Postcode (if the National Insurance number is not known) Engagement details where PAYE was not operated¹
Assignment Details	UTR² Start date and end date of en- gagement Amount paid for the workers³ Currency of the payment³ Inclusive or exclusive of VAT?³
Third Party Details	Name and address of party paid by intermediary for worker's services⁴ Companies House registration number⁵

Notes:

1. A letter is chosen here to indicate which of different types of engagement is applicable:

A Self employed

B Partnership

C Limited liability partnership

D Limited company including personal service companies

E Non-UK engagement

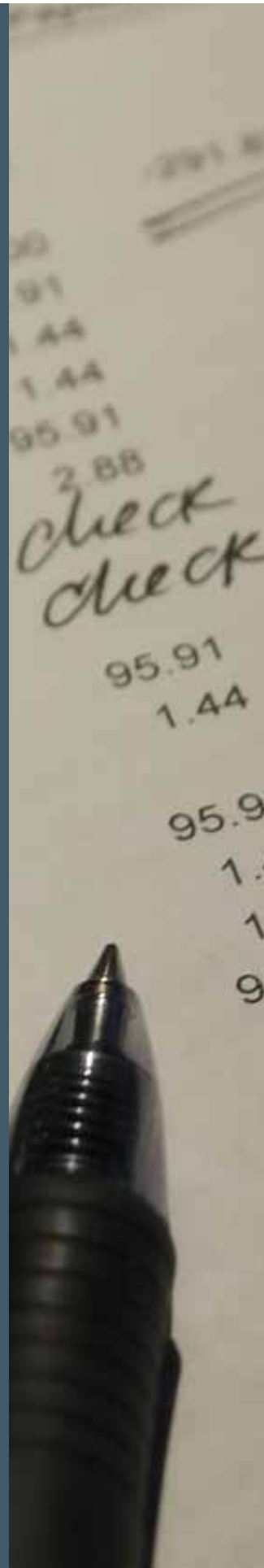
F Another party operated PAYE on the worker's payments

2. The UTR is only required where options A, B or C have been chosen for 'engagement details where PAYE was not operated'.

3. Details of the payment which was made for the worker are only required where options A, B, C, D or E have been selected for 'engagement details where PAYE was not operated'.

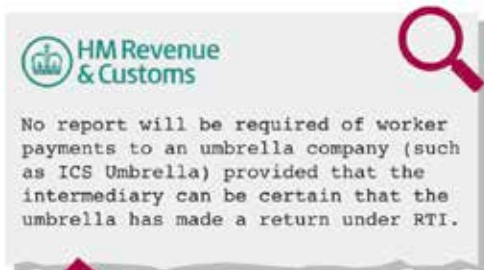
4. The name of the party which the intermediary paid for the worker's services is only required where options A, B, C, D or E have been selected for 'engagement details where PAYE was not operated'.

5. The Companies House registration number is only required where option D has been selected for 'engagement details where PAYE was not operated'.

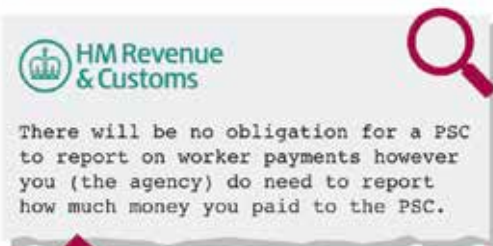


HOW DOES IT AFFECT RECRUITMENT AGENCIES?

The employment intermediary must continue to make returns until either it has not placed any workers whom for it was not required to operate PAYE for a full tax year, or it notifies HMRC that it is no longer an employment intermediary.



Simply select 'F' for Engagement details where PAYE was not operated and provide personal details of the worker.
See page 8 'How can ICS help?' for details.



Simply select 'D' for Engagement details where PAYE was not operated, provide details of the worker and provide the PSC company name, registration number and the amount paid to the PSC.

If a PSC supplies more than one worker, including any subcontracted workers, they will be acting as an intermediary and will have to send reports for each reporting period and we will personally advise those contractors. This should not impact the agency.

Timings

Period	Reporting Deadline
6th April to 5th May	4th August
6th July to 5th October	4th November
6th October to 5th January	4th February
6th January to 5th April	5th May

Penalties

If a report is late, incomplete or incorrect a penalty can be charged. New automatic penalties will be introduced for failure to send a report or for sending a report late. Penalties are given based on the number of offences in a twelve month period.

They are:

- First offence £250
- Second offence £500
- Third and later offences £1,000

If there's twelve months or more between offences then the charge will be £250 for the first offence in the new twelve month period. Where there is continued failure to send reports or persistent lateness of reports, daily penalties may apply.

HOW DOES IT AFFECT CONTRACTORS?

A contractor who works under a PAYE scheme via an intermediary will not be affected by the legislation by virtue of the fact that the income does constitute employment income. The same applies for a contractor working under an umbrella solution.

For a contractor who works via a PSC, there will be no financial or employment rights implications which result from the legislation. If a PSC supplies more than one worker, including any subcontracted workers, they will be acting as an intermediary and will have to send reports for each reporting period and we will personally advise those contractors.




Any contractor who is engaged as a self employed individual via an intermediary may be required to change their status. The government remains keen to point out that it aims to reward innovation. It also recognises the increased risk which self employed individuals take on and has the view that this should be rewarded. Self employed contractors with a specific skill-set which lies beyond the scope of the hirer's employed workforce who, therefore, deliver their services without any control from a third party will be able to continue as a self employed individual if they work via an intermediary, provided that the absence of the right to control is provable.

Those self employed contractors working via intermediaries who are amongst other individuals at the same hirer who have the same skills, and some whom may already be employees of the hirer, will be far more likely to be affected by the legislation since a lack of control would be much more difficult to prove. In that case it is likely that either the contractor will be paid as an employee by the intermediary that has the contract with hirer or the intermediary will choose to employ the contractor in order to remove the necessity for reporting etc. In either case, the result for the contractor is likely to be a short term decrease in take home pay, but a long term benefit from the acquisition of the right to receive statutory payments and often employment rights.

To discuss this further, contact our team on 0800 195 3750 or email info@icsuk.com

HOW CAN ICS HELP?

Established in 2002, we work in partnership with recruitment agencies providing an umbrella solution and accountancy services to contractors, freelancers and temporary workers throughout the UK. It is our job to take compliance seriously and we have tailored our services over the past twelve years to ensure that we remain compliant. We retain one of the big four accountancy firms to advise us, ensuring that we are always on top of any legislative changes.

-  For our recruitment partners, we are the first point of contact for advice on legislation that may impact on them and we have been preparing for these amendments since they were announced in the Autumn Statement. We are currently working with a number of our agency partners with an information share agreement.
-  **ICS Umbrella** operates entirely within HMRC's expectations regarding compliance, reporting and adhering to their processes in general. The details of all payments made to employees are captured under RTI however under the Onshore Intermediaries Legislation, this leaves our agency partners to report on the workers' details but we can help.
-  **Limited Company Contractors** – there may be cases whereby contractors engaged via a Personal Service Company (PSC) might fall into the reporting requirement. As contractor accountants, we will work with our PSC clients in order to advise on this where appropriate. If you have clients who may be in this situation then please contact the team on 0800 195 3750 for free advice.

Get in touch!

Our team are always on hand to answer queries which you may have regarding any aspect of the legislation and the reporting requirement.

For more details of how we can assist with an information share arrangement, please contact our team on 0800 195 3750 or email newbusiness@icsuk.com



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