



National Audit Office



Investigation into the implementation of IR35 tax reforms

HM Revenue & Customs

REPORT

**by the Comptroller
and Auditor General**

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Report by the Comptroller and Auditor General

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Gareth Davies
Comptroller and Auditor General
National Audit Office

2 February 2022

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What this investigation is about

- 1** This investigation examines lessons from the implementation of 2017 reforms to tax rules for off-payroll working in the public sector. The government initially introduced these rules, commonly known as 'IR35', in the Finance Act 2000. Its objective was to prevent tax avoidance by 'disguised employees' – people who do the same job in the same manner as an employee but who avoid income tax and National Insurance contributions (NICs) by providing services through an intermediary such as a personal service company (PSC).
- 2** Central to the application of the IR35 rules is the assessment of an individual's employment status for tax purposes. Assessing employment status can be complicated. There is no single statutory definition of employment, and each role must be assessed on its own merits against several factors. Before April 2017, responsibility for assessing the employment status of individuals engaged via an intermediary and ensuring that the correct tax was paid rested with the intermediary.
- 3** In April 2017, the government introduced reforms that made public bodies responsible for determining the employment tax status of all those they hired through intermediaries. The government introduced this change to increase compliance with the IR35 rules after previous changes between 2007 and 2015 had not been successful in doing so. In May 2016, HM Revenue & Customs (HMRC) estimated that only 10% of PSCs were applying the IR35 rules correctly. We previously reported on the BBC's engagement with personal service companies both before and shortly after the 2017 reforms.¹
- 4** In April 2021, the government made further reforms and extended the requirements on determining tax status to medium and large organisations in the private and third sectors. This significantly increased the number of organisations in scope of the legislation.

¹ Comptroller and Auditor General, *Investigation into the BBC's engagement with personal service companies*, Session 2017-19, HC 1677, National Audit Office, November 2018.

5 In the course of our 2021 financial audit work, we noted that several government departments and arm's-length bodies had recognised losses or provisions in their financial statements for payments to HMRC relating to IR35. This was because HMRC had determined that they were not correctly determining the tax status of off-payroll workers. Research that HMRC commissioned suggested that many public bodies may have experienced challenges in implementing the requirements but did not indicate how widespread non-compliance might be.

6 This investigation sets out how HMRC introduced the 2017 reforms, the approach it has taken since, and what lessons it has learned and taken forward when extending the reforms to the private and third sectors in 2021. Our report is in five parts, covering:

- The new IR35 requirements on public bodies from 2017.
- What HMRC did to mitigate risks it identified to compliance, public bodies and workers, including guidance and support, monitoring and adaptation.
- What impact the roll-out has had on public bodies, workers and tax revenue.
- How HMRC assesses public bodies' compliance with the IR35 rules and what it has found to date.
- How HMRC has adapted its implementation of the next phase of the roll-out based on lessons from the public sector experience.

7 This report is an investigation into how the IR35 reforms have been implemented, and we did not seek to make an overall assessment of value for money. We have not sought to evaluate the design or policy intent of the regulations, nor have we examined the processes that individual public bodies use to make status determinations.

Summary

Key findings

Managing implementation and risks

8 The government reformed the administration of IR35 rules to address widespread and longstanding non-compliance. It first introduced the IR35 rules in 2000 to correct for incentives on workers to avoid tax by providing services through PSCs. Despite these rules and later attempts to prompt compliance, HMRC found that non-compliance remained widespread and estimated that this cost the Exchequer £440 million in 2016-17. HMRC identified that the need to examine each PSC for each engagement meant it could never successfully assure overall compliance, and that this could increase incentives for non-compliance. The government therefore reformed how the rules were administered in 2017 by transferring responsibility for determining employment status from the PSC to the end client (paragraphs 1.7, 1.10, 1.11, 1.13 and 1.15).

9 The government rolled out the reforms in phases, starting with the public sector in 2017. It initially limited the 2017 reforms to the public sector. This gave HMRC the opportunity to learn lessons if the government chose to extend the reforms to the private sector. In advance of the 2017 changes, HMRC consulted publicly and engaged with public bodies, including running a series of awareness-raising events to support them with determining the tax status of their off-payroll workers. It also provided guidance and a new online tool called 'Check Employment Status for Tax' (CEST) to help users assess employment status for tax purposes in all sectors of the economy (paragraphs 1.14, 2.2 and 2.4).

10 Public bodies had little time with the new guidance and tools before the rules came into effect. The government proposed reforms in the public sector in March 2016 and announced its decision to proceed in November 2016. HMRC published its guidance in February 2017, two months before the rules came into effect. Furthermore, it made available the full version of CEST – a key tool to help public bodies determine the tax status of off-payroll workers – in March 2017, with only one month to go. HMRC research in 2018 found that a little under half of surveyed public bodies thought they had enough time to prepare, but a similar proportion did not (paragraph 2.5).

11 While most public bodies found HMRC's guidance and online tool helpful, some experienced problems using them. HMRC's 2018 research found that 78% of surveyed bodies operating centralised payroll (those administering payroll for multiple organisations) and 91% of bodies operating their own payroll considered CEST helpful. However, around half of all respondents found the reforms difficult to comply with. The most common reason given by bodies operating centralised payroll (21% of those surveyed) was difficulties using CEST. Public bodies and other stakeholders we interviewed highlighted the following examples of challenges they faced (paragraphs 2.6 to 2.8 and 2.17):

- The original version of the guidance was general in scope, and the examples it included covered roles not relevant to most public bodies (such as pilots) rather than those widely used in the public sector (such as IT specialists).
- Users found some questions in CEST difficult to interpret correctly. For example, the tool asked whether the hiring manager would “ever reject” a substitute of equivalent skill and security clearance. If they answered that they would always accept such a substitute and also that the worker had to pay the substitute, CEST determined that the worker was self-employed. However, if the recruiting organisation always had a right to reject any substitute, they should not have answered that they would always accept one even if they would in practice.
- The technical guidance on employment status was long, detailed and not integrated into CEST. This made it difficult for hiring managers to identify the relevant guidance for the particular question they needed to answer.
- CEST is not designed to produce a clear outcome in all cases as some are too marginal for a tool to determine. HMRC estimates that, between March 2017 and October 2019, the tool delivered an ‘unable to determine’ outcome in 15% of cases. Since the tool was updated in 2019, this has risen to 20%.

12 HMRC made changes in 2019 to improve its tool and guidance and to work more collaboratively with public bodies and other stakeholders. Following feedback and the results of the research it had commissioned, HMRC made several changes to its approach. It launched an updated CEST tool in November 2019, which changed some of the questions and answers that users had identified as causing difficulty. HMRC also made several updates to its technical guidance, including new information on how to use and interpret CEST and on other matters such as HMRC's compliance approach. HMRC also began working more closely with stakeholders such as central government's Tax Centre of Excellence (a forum of tax experts involving several departments). Public bodies we interviewed reported that HMRC's approach has become more collaborative over time (paragraphs 2.15 to 2.18).

Impacts of implementing the reforms

13 Following the reforms, HMRC observed an increase in tax revenues and numbers of workers deemed to be employed for tax purposes. HMRC estimates that in the first two years, at least 50,000 additional individuals were on the payroll of public bodies having previously provided services through a PSC and paid less tax. HMRC initially assessed that an additional £550 million of income tax and NICs was collected in the first year. It later estimated that, offset against taxes that workers and their PSCs would have paid otherwise, the net increase in tax revenue was £250 million, more than HMRC had previously expected (£150 million). It is difficult to identify the exact extent to which this is due to the reform itself, as opposed to other factors. Some stakeholders have also expressed concern that some public bodies incorrectly assess people as being employed for tax purposes for fear of getting it wrong. However, there is not clear evidence to indicate how far this has occurred in practice (paragraphs 3.2 to 3.4 and 3.7).

14 Some workers disputed their tax status, but they did not have a clear legal route to appeal the determinations. HMRC's 2018 research indicated that, shortly after the reforms, 46% of surveyed bodies operating centralised payroll and 31% of bodies operating their own payroll had at least one dispute with contractors or agencies regarding status assessments. In our own 2021 survey, 26% of respondents from central government said that workers had frequently or occasionally challenged status determinations. Following the reforms, workers can raise a dispute with the organisation that made the determination, but there is not a clear legal route to appeal further. If workers believe they have been taxed incorrectly, their recourse is to use HMRC's self-assessment and NIC reclaim routes. This is the same as for any worker considered an employee, but differs from the previous system whereby the worker's PSC made the determination and so the worker would have no reason to dispute it (paragraphs 3.5 and 3.6).

15 Public bodies have reported incurring additional costs and challenges in recruiting or retaining contractors. Public bodies we interviewed explained that they had dedicated a lot of ongoing resource to employment status determinations, such as full-time staff, supporting teams and review panels. They also indicated that managing disputes with contractors, and more generally engaging with them to answer queries about the reforms and changes in employment status, has taken additional time and resource. Some public bodies have also reported difficulties in finding contractors, and that fee rates have risen. HMRC's 2018 research found that 32% of bodies operating centralised payroll and 22% of bodies operating their own payroll reported increased difficulty in filling contractor vacancies after the reform. Public bodies we interviewed and surveyed provided examples of difficulties finding contractors and rates increasing, particularly in sectors where specialist skills are in demand. However, those we interviewed noted that, while they consider this is at least partly due to the IR35 reforms, it is difficult to disentangle this effect from wider labour market trends affected by COVID-19 and EU Exit. Public bodies were also competing with the private sector where, until 2021, contractors could continue to work under the previous rules. Following the private sector roll-out of the reform this incentive is likely to have reduced (paragraphs 3.8 to 3.11).

Compliance by public bodies

16 The 2020-21 financial statements of government departments and agencies include a total of £263 million paid, owed or expected to be owed in additional tax for failing to administer the reforms correctly. This includes losses recognised in 2020-21 by the Department for Work & Pensions (£87.9 million), Ministry of Justice group (£72.0 million in total), Home Office (£29.5 million), Department of Environment, Food & Rural Affairs (£19.0 million) and NHS England (£4.2 million). Three central government bodies have also recognised provisions for potential liabilities not yet confirmed (totalling £50.0 million). These figures follow a loss previously recognised by NHS Digital (£4.3 million) for failings in implementing the reforms (paragraph 4.10).

17 The financial liabilities resulted from HMRC's assessment that those departments and agencies were getting status determinations wrong. In all cases of non-compliance, HMRC found that the public body had not taken reasonable care to prevent errors, including when answering questions in CEST. However, it had not set out how it would interpret reasonable care for the new requirements when they first took effect, and no public bodies have challenged the decisions in court so there is no case law to guide the definition. HMRC has so far found that the most common errors public bodies made were wrongly considering that they would always accept a substitute when they had a right to reject one, and overestimating the extent of financial risk that contractors bore. On substitution, for example, HMRC found that departments had failed to ensure that hiring managers were aware that the contractual framework in place gave them a right to reject a substitute (paragraphs 4.6 to 4.8).

18 HMRC's compliance work has focused mainly on central government bodies. The reforms meant that HMRC's oversight role became focused on ensuring that public bodies determined tax status correctly, rather than pursuing individual contractors and their PSCs on a case-by-case basis. HMRC has therefore taken a risk-based approach to identify potential non-compliance and uses this to prioritise investigations. Its early work examined 16 public authorities of different types, which found that central government bodies seemed to have more difficulty complying than other parts of the public sector. Compliance checks have focused mainly on central government up to 2021 and HMRC is now examining more local bodies (paragraphs 4.2 to 4.4).

19 HMRC's current approach to correcting cases of non-compliance results in it collecting more tax in total than is due, and it does not yet have a plan to address this. To calculate the historic taxes that departments owe, HMRC estimates the amount that should have been paid at the time based on workers' deemed wages. Its approach assumes that all workers will have fully used their tax-free personal allowance on income earned elsewhere. HMRC collects the amount due in accordance with the law at that time. It does not offset the total amount against any tax the worker or their PSC already paid and told us this was not allowed within the current legislation. This means that HMRC collects more tax in total than is due. Once the non-compliant client organisation accepts that its determinations were incorrect, the workers become entitled to claim back the tax that they and their PSCs have already paid. If they do, they in effect pay no taxes on that income because these are borne in full by the non-compliant public body. However, HMRC does not actively promote this and it is unclear how many workers reclaim their taxes in practice (paragraphs 4.12 to 4.14).

Learning lessons

20 When extending the reforms to the private sector, HMRC used a dedicated programme team, focused more on awareness-raising, and made further changes that apply to all sectors. It approached the 2021 extension of the reforms differently from the 2017 roll-out, based on the experience in the public sector (paragraphs 5.4 to 5.7):

- It set up a dedicated programme team to actively manage the changes, something it did not do in 2017.
- It continued seeking to improve its guidance and how it works with stakeholders, and it focused more on educational activities to help raise awareness and understanding of the reforms. It has also allowed the private sector a one-year grace period during which companies will not have to pay penalties for mistakes unless HMRC finds evidence of deliberate non-compliance.
- It introduced further changes to the rules for all sectors to address aspects of the 2017 reforms that were not working as intended. These included measures to mitigate alternative arrangements that might be used to circumvent the IR35 rules (such as multiple workers each having a small stake in a jointly owned company) and a more formal process by which recruiting organisations were required to communicate status determinations to workers and resolve disputes.

21 HMRC may have underestimated the cost to employers of implementing the reforms. When introducing the 2021 reforms, HMRC expected new administrative burdens for the private sector to be small. This was based on what HMRC considered to be the minimum effort required for compliance and it did not consider any need to use external consultants or assessment tools. Its final estimates in 2020 were that ongoing costs would be £8.4 million a year in total, smaller than the costs saved by PSCs no longer having to make determinations (£8.7 million). HMRC also assumed that resource requirements would diminish with time. However, emerging good practice in the public sector suggests that significant investment may be needed in contracting organisations to set up dedicated staff, independent review structures and formal approval at senior levels. Public bodies we interviewed explained that in some cases a lot of staff time had to be put into administration and ongoing compliance work (paragraphs 5.8 to 5.10).

22 Despite improvements HMRC has made to its guidance and tools, public bodies and other stakeholders told us it could go further to support implementation. Public bodies that answered our survey gave mixed views on the CEST tool and guidance. Most found it useful and some welcomed the improvements that have been made since it was first launched. HMRC's research also indicates that the proportion of organisations finding CEST helpful has increased since 2017. However, based on our survey and interviews with public bodies and other stakeholders, there are opportunities for HMRC to continue refining its guidance and CEST. This includes making the tool easier to use accurately (for example, by making relevant parts of the guidance more accessible within each question), ensuring the questions used in CEST's weightings genuinely relate to the role assessed, and providing more clarity on what good implementation looks like (paragraphs 2.16 and 5.11).

23 Inherent differences between the public and private sectors mean that HMRC faces new and challenging risks with the wider implementation of IR35 reforms. Stakeholders have identified several challenges for the private sector roll-out (paragraphs 5.12 to 5.14). For example:

- Labour markets in the private and third sectors are larger – HMRC estimates that the 2021 extension of the reforms will affect around 180,000 PSCs, almost four times the number affected by the 2017 reforms. This creates a bigger challenge for HMRC to identify and monitor risks of non-compliance.
- Complex supply chains are also more common, such as those that cross international borders or involve overseas workers. This may mean a greater risk of companies making errors when determining tax status, or of knock-on effects resulting in workers changing careers or business moving overseas.
- There is uncertainty over HMRC's approach to non-compliance in the private sector. HMRC has published its compliance approach for the 2021 reforms and established a framework for penalties. However, its assessments and penalties have not yet been tested because it has so far only found central government bodies to be non-compliant, none of which have challenged it in court.

Concluding remarks

24 Rolling out the IR35 reforms to the public sector first has meant an opportunity for HMRC to learn lessons and adapt its approach. The 2017 reforms have achieved their primary purpose of reducing non-compliance and therefore increasing tax revenue. However, the public sector faced challenges with the initial roll-out: public bodies had little time to prepare; some found it difficult to use the original guidance and tool that HMRC had provided; and there was a limited understanding on all sides of how much time and resource were needed to get it right. As a result, it was highly likely that some public bodies would make mistakes.

25 By changing its approach, both in the public sector and when extending the reforms to the private and third sectors, HMRC appears to have learned several key lessons and addressed some of the more significant difficulties, including enabling more support and time for the transition. Questions remain about the system for addressing incorrect determinations, with routes of appeal untested and tax burdens in cases of non-compliance likely to fall on employers. There are also differences between the public and private sectors that increase the inherent challenges. HMRC faces new risks that will make it harder to identify, monitor and address non-compliance, including larger and more complex labour markets in the private sector. HMRC will need to manage these risks if it is to ensure the reforms are successful.

Recommendations

26 There are opportunities for HMRC to continue to improve the customer experience and compliance. It should:

- a Further develop the CEST tool and accompanying guidance to make it as easy as possible to use accurately.** This includes:
 - taking a structured approach to analysing sources of mistakes and user feedback to improve the questions and limit the scope for misinterpretation;
 - embedding or linking to relevant parts of the detailed guidance within each question to make it easier for users to understand the questions and identify the relevant guidance; and
 - ensuring there is a clear and efficient process for users to follow when CEST cannot provide a determination, including from HMRC's own helpline.
- b Assess the usefulness of CEST to different sectors.** Stakeholders report that questions used in CEST's weightings are not equally relevant for all roles and sectors. HMRC should monitor and evaluate the accuracy and usability of CEST for engagements in different sectors. It should identify where there may be more risk of non-compliance, and whether more tailored guidance and support may be needed.

- c Identify and set out case examples of good implementation to promote compliance by helping organisations get determinations and tax deductions right first time.** To do this, HMRC should work with stakeholders such as the Tax Centre of Excellence, the Government Internal Audit Agency, and tax and payroll experts. For example, public bodies and other stakeholders told us they would welcome more clarity and case examples on:
- good practice in training staff to understand and administer the rules;
 - ways to link together different parts of the business to ensure the right information is used when determining employment status; and
 - ways to work with others in the supply chain to ensure tax deductions are calculated correctly when workers are deemed to be employed.
- d Update its estimate of compliance costs to hiring organisations based on actual experience, to help all parties understand the scale of activity needed and how HMRC can best support implementation.** Emerging good practice and HMRC's compliance work suggest that significant investment may be needed – for example, in dedicated staff and independent review structures. HMRC needs to send a clear signal to hiring organisations about the level of resources and administration needed to be compliant. It should reassess and communicate the resources and processes required in practice to reliably ensure compliance on an ongoing basis rather than minimum implementation costs.
- e Develop a more effective and efficient system to ensure HMRC accurately collects the total taxes due from workers and hiring organisations when errors have been made.** This covers situations both where HMRC has found an organisation to be non-compliant and where workers have appealed an incorrect determination. The current arrangements for cases of non-compliance involve HMRC collecting the estimated full amount owed from deemed employers and leaving it to workers to reclaim taxes already paid. HMRC should:
- consider how it can efficiently and effectively ensure that it collects the correct taxes due in total; and
 - explore how it can better estimate the amount due from client bodies for workers incorrectly assessed as self-employed. HMRC should test its assumption that all workers will have used their tax-free personal allowance on income earned elsewhere. It should consider how it can collect better data on the contractors affected and whether it would be appropriate to use whole population data to make estimates where there is a large number of workers.

f Build on its improved collaboration with stakeholders to enable constructive discussions and pre-empt challenges in the public and private sectors.

This could involve further working with:

- representatives of specific sectors to develop sector- or role-specific guidance and examples based on an analysis of where this would be most helpful; and
- private sector stakeholders on the risks and challenges they face to understand what impacts the reforms may have on complex supply chains, particularly in essential or high-risk areas.

Part One

IR35 and the 2017 reforms

1.1 This part of the report explains the tax rules governing off-payroll working, and the 2017 reforms in the public sector and why they were introduced. It sets out:

- the nature of off-payroll working and intermediaries;
- the tax rules governing off-payroll working since 2000 (known as 'IR35'); and
- the reforms to IR35 introduced in 2017.

Off-payroll working arrangements

Off-payroll working and employment status

1.2 The taxes and National Insurance contributions (NICs) an individual pays on earnings depend on whether they are employed or self-employed for tax purposes and whether they earn money from shares in a company (**Figure 1**). For example, self-employed contractors pay lower NICs than employees, and the organisations they work for pay none at all. Dividends are also taxed at a lower rate than employment or trading income.

1.3 Employment status for tax purposes is different from status for employment rights, and the policies for each are owned by different government departments:

- In UK employment law, people can be employees, casual workers, wholly self-employed, or a combination of these. This status determines what employment rights, such as sick pay, they are entitled to. The Department for Business, Energy & Industrial Strategy is responsible for employment law and policy.
- For tax purposes, there are only two employment statuses – employed or self-employed – and the rules governing a worker's status are different from legal employment. Someone who is not legally an employee, and therefore does not benefit from employment rights, can be deemed employed for tax purposes and required to pay employment taxes.² The overall distinction is whether in effect the working arrangements resemble an employment contract. HM Revenue & Customs (HMRC) and HM Treasury (HMT) are responsible for employment tax policy.

² Unless stated otherwise, references in this report to employed or self-employed workers refer to their tax status.

Figure 1UK tax rates for income tax and National Insurance contributions (NICs), 2021-22¹**Tax rules vary between employees, self-employed workers and corporations**

	Individual taxes		Corporate taxes
	Employed	Self-employed	
Tax on employment/trading income	Income tax: 20%/40%/45%	Income tax: 20%/40%/45%	Corporation tax on profits: 19%
Tax on capital (paid by individuals)	-	-	Dividend tax on dividends: 7.5%/32.5%/38.1% Capital gains tax on sale or disposal of business assets: 20%/10%
Employee NICs	Class 1: 12%/2%	Class 2: £3.05 a week Class 4: 9%/2%	-
Employer NICs	Class 1: 13.8%	-	-

Notes

- 1 The devolved administrations have freedom to deviate from UK income tax rates. The rates and thresholds in Scotland differ slightly from the rest of the UK.
- 2 The percentages applicable depend on the value of the income, dividend or capital gain. See GOV.UK for current monetary thresholds, including the tax-free personal allowance for individuals.
- 3 In addition, a new social care levy was announced by the government in September 2021. This will initially be introduced as a temporary 1.25% increase in the rate of Class 1 and 4 NICs and dividend taxes until the new levy takes effect in 2023-24.

Source: National Audit Office review of HM Revenue & Customs documentation

Working through intermediaries such as personal service companies

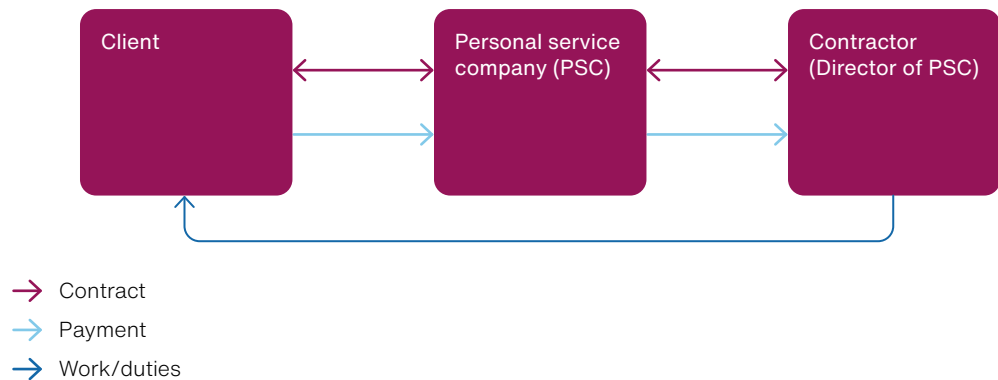
1.4 Contractors can provide services either directly or through an intermediary such as a personal service company (PSC). There is no statutory definition of a PSC, but they are typically small, limited companies owned or managed by the worker and set up to act as an intermediary for their client. In a simple arrangement, the worker provides services to the client through a contract between the client and the PSC (**Figure 2** overleaf). In practice, arrangements can be more complex and involve one or more recruitment agencies.

1.5 Workers, often encouraged by their clients, have used a variety of company structures to reduce their tax liabilities. Using PSCs can mean lower tax bills for both parties (**Figure 3** on page 19). For example, the client pays the PSC rather than the worker and therefore does not deduct income tax or pay NICs. Contractors providing services through a PSC can pay themselves a low salary that utilises the tax-free personal allowance and then pay the rest in dividends, which are taxed at a lower rate. Working through PSCs can also bring other benefits to both the worker and their client, such as greater flexibility in working arrangements.

Figure 2

Working through a personal service company

Off-payroll workers can provide services via their own limited company



Source: National Audit Office review of HM Revenue & Customs documentation

1.6 PSCs have been common in a number of sectors, including oil and gas, engineering, construction, entertainment and media, and road haulage. They have also been common practice for contractors in IT and digital services, including those working on government contracts.

Tax rules for off-payroll working through intermediaries (IR35)

1.7 In the 1990s, the government became concerned that many people were using PSCs for no other purpose than to avoid tax. It therefore introduced legislation in 2000 to ensure that individuals working in similar ways are treated fairly for tax purposes. It intended that the rules – commonly known as ‘IR35’ – should ensure that off-payroll workers who in practice work as though they were employees pay roughly the same taxes as employees, regardless of the structure they work through.

1.8 From April 2000, the IR35 rules required individuals working through a PSC to assess whether they would be employed for tax purposes if they were working directly for their end client. If so, the PSC must treat the income as employment income and deduct income tax and NICs accordingly. Individuals working through a PSC can therefore be employed or self-employed for tax purposes, depending on the nature of their work, and pay different amounts of tax.

1.9 However, determining whether an employee relationship exists can be complex. There is no single statutory definition of employment and each role must be assessed on its own merits, considering a series of tests and applications of case law. **Figure 4** on page 20 sets out the main criteria affecting employment status for tax purposes. All criteria need to be individually considered when determining employment status, as well as a rounded overall assessment based on the nature of the work. For example, this rounded assessment should consider whether the worker is in business in their own right, or as part and parcel of the client’s organisation.

Figure 3

UK tax implications of different contractual arrangements (illustrative examples)

For a fixed cost to the client, a worker's net pay can differ significantly depending on their working arrangements

	Employed	Self-employed (directly engaged)	Self-employed (through a personal service company)
	(£)	(£)	(£)
Fixed cost of engagement to hiring body	50,000	50,000	50,000
Deductions:			
Income tax	(6,500)	(7,500)	(0)
Dividend tax	(0)	(0)	(2,079)
Corporation tax	(0)	(0)	(7,676)
Employee National Insurance contributions (NICs)	(4,260)	(3,804)	(0)
Employer NICs	(4,998)	(0)	(98)
Total tax and NICs paid	(15,758)	(11,304)	(9,853)
Net amount worker receives	34,242	38,696	40,147

Notes

- 1 These calculations assume the personal service company (PSC) pays the worker in such a way as to minimise tax and NICs.
- 2 For workers engaged through PSCs, employer NICs are paid by the PSC on any salary the worker receives.
- 3 The devolved administrations have freedom to deviate from UK tax rates. These calculations will be slightly different in Scotland where the rates and thresholds differ from the rest of the UK.
- 4 These calculations use tax and NIC rates for the 2020/21 tax year.

Source: National Audit Office analysis of HM Treasury publications

Non-compliance before 2017

1.10 Between 2007 and 2015, HMRC and HMT made several further changes to try and prompt compliance with the rules. For example, in 2012, HMT announced a review to understand how many public sector appointees used off-payroll arrangements. Following this review, HMT introduced new rules that required the most senior staff in public bodies to be on payroll except for “exceptional circumstances”. The changes also required employers to include contractual provisions to ensure income tax and NIC obligations were met when they employed contractors on a long-term basis. We previously reported on the BBC’s engagement with personal service companies both before and shortly after the 2017 reforms.³

3 Comptroller and Auditor General, *Investigation into the BBC’s engagement with personal service companies*, Session 2017-19, HC 1677, National Audit Office, November 2018.

Figure 4

Factors to determine employment status for UK tax purposes

There are several criteria to consider when determining whether a worker is employed or self-employed for tax purposes

Factor	Description
Personal service or right of substitution	Employees provide a personal service. If a worker can send and pay a substitute to perform the work, this may indicate that they are a self-employed contractor.
Mutuality of obligation	This is the basic minimum requirement that needs to be established for an employment status. It tests whether the engager (hiring organisation) is obliged to pay the engaged party (worker), and whether the engaged person is obliged to provide services in return.
Control	The more control the engager can exert over what work the contractor undertakes and when, where and how it is done, the more likely the worker is to be deemed an employee.
Financial risk and provision of equipment	The greater the financial risk for the worker depending on how they discharge the contract – for example, an ability to make a profit or loss – the less likely they are to be deemed employed. However, the scale of risk is a matter of interpretation as there are no set limits or statutory tests.
Length of the engagement	Longer engagements can indicate an ongoing relationship, which may make the worker more likely to be employed for tax purposes.
Multiplicity of engagements and financial dependence	Being engaged by a number of organisations to provide the same or comparable services may indicate self-employment, because the engaged party is less financially dependent on any one engager.
Intention of the parties	The intention of the parties, written or otherwise, when they set up the contract or while carrying it out should be considered. For example, this includes whether both parties believed and understood the role to be self-employed.

Notes

- 1 This is not an exhaustive list.
- 2 Employment status has to be determined on a case-by-case basis, looking at the contract and the reality of the engagement as a whole. These factors help paint an overall picture on which a determination of employment status can be based.

Source: National Audit Office review of HM Revenue & Customs documentation

1.11 However, HMRC found that non-compliance continued to be widespread. In May 2016, it estimated that only 10% of the PSCs required to operate the IR35 rules on at least part of their income were doing so. It also estimated that non-compliance cost the Exchequer £440 million in 2016-17. It identified that the need to examine each PSC for each engagement meant it could never successfully assure overall compliance with the rules, and that this could increase the incentives for non-compliance.

1.12 In the same period, HMRC also identified that use of PSCs was continuing to increase. Research published in 2016 estimated that, in 2015, around 307,000 PSCs operated across the UK. This constituted a growth of over 5% a year since 2012-13, indicating that the sector was growing faster than both the overall business population and the self-employed.⁴

Reforms to off-payroll working in 2017

1.13 To address concerns over increasing use of PSCs and high levels of non-compliance, the government introduced reforms in 2017 to the way that the IR35 rules were implemented. The objectives of the reforms were to:

- **improve fairness in the tax system:** by ensuring individuals paid the correct taxes and NICs regardless of whether they chose to work through a PSC; and
- **protect the Exchequer:** by ensuring that the correct revenue was collected.

1.14 The government initially limited the 2017 reforms to public authorities.⁵ HMRC estimated that this covered approximately 30,000 PSCs. This gave HMRC the opportunity to learn lessons if the government chose to extend the reforms to the private sector.

1.15 The reform did not change the rules determining employment status but adjusted how they are administered. It transferred responsibility for determining employment status, and for ensuring the correct taxes are paid, from the PSC to the end client. From April 2017, public bodies therefore became responsible for determining the tax status of all off-payroll workers engaged through PSCs. To do this correctly, they needed to ensure that, for all their contractors, they understood the full details of the contracts and the working arrangements in practice. Because the end clients were now responsible for making determinations, the government removed the 5% allowance that PSCs could deduct from their taxable revenue to cover their administration of tax status.

1.16 HMRC considered that the 2017 changes would make it more likely that the rules would be applied correctly. When the reforms took effect, it estimated that they would have an £890 million positive impact on the Exchequer during the first five years of implementation.

4 Association of Independent Professionals and the Self-Employed, *The Economic Impact of Personal Service Companies*, August 2016.

5 Public authorities were defined as those with responsibilities in the Freedom of Information Act.

Part Two

Managing implementation and risks

2.1 This part of the report explains the approach HM Revenue & Customs (HMRC) took to implementing the 2017 IR35 reforms and managing associated risks. It sets out:

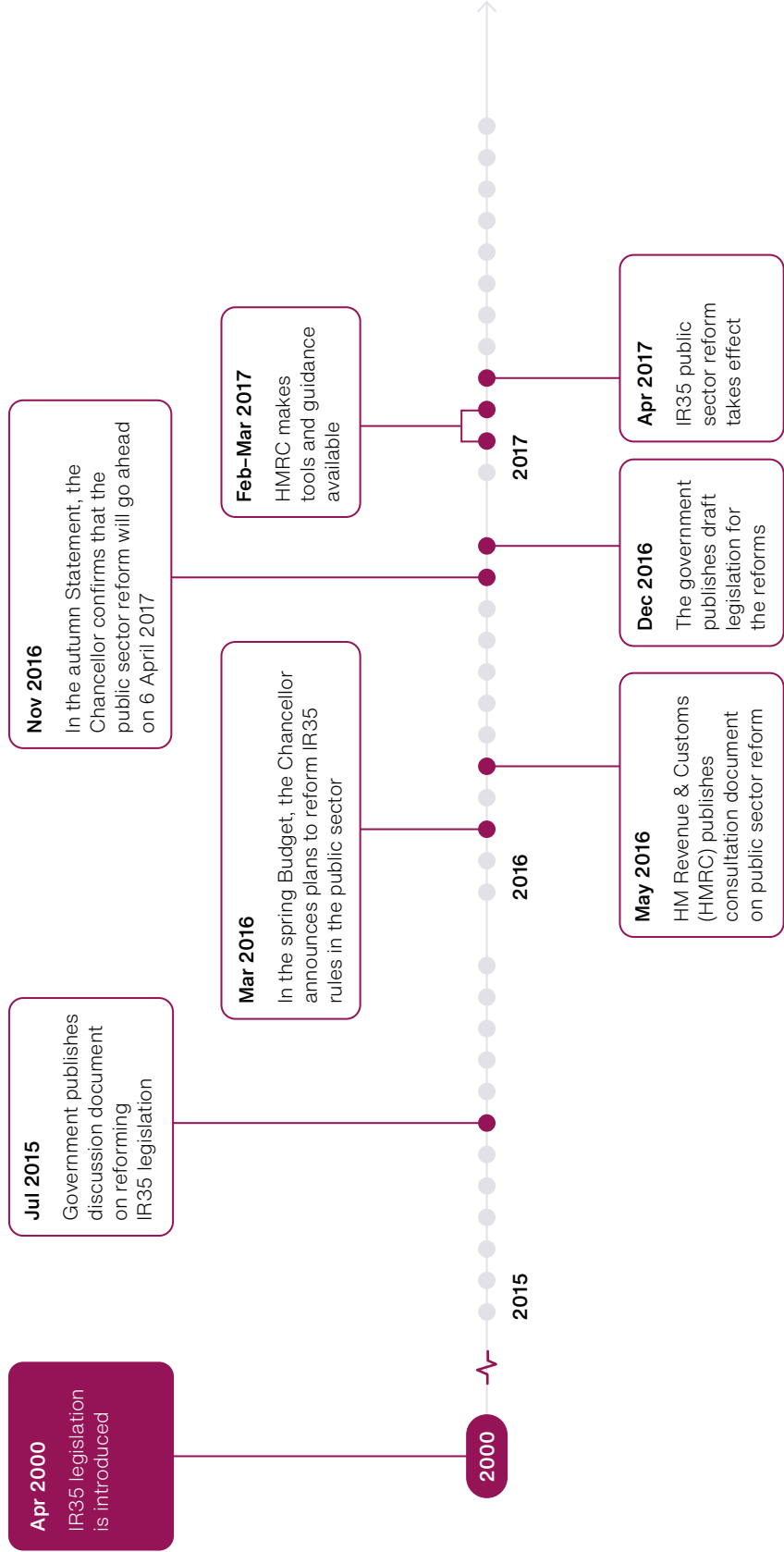
- how HMRC introduced the reforms in 2017;
- the risks that HMRC identified to compliance, public bodies and workers;
- the guidance and support HMRC made available for public authorities to support implementation; and
- HMRC's approach to monitoring and adapting the implementation of the reforms since 2017.

Introducing the 2017 reforms

2.2 The design and implementation of the 2017 IR35 reforms broadly followed normal legislative processes (**Figure 5**). This initially involved various stages of public consultation, inviting views on how the IR35 rules should be updated. The government proposed to introduce changes in the public sector in March 2016 and announced its decision to proceed in November 2016, shortly after which HMRC published draft legislation and further technical consultation.

Figure 5
Timeline of the 2017 reforms to IR35

The 2017 reforms broadly followed normal legislative processes, including consultation and draft legislation



Source: National Audit Office analysis of HM Revenue & Customs documents

Risks identified by HMRC

2.3 Through its research and consultations, HMRC identified a range of risks that might arise from implementing the reforms. This included:

- **Engaging organisations being unlikely to implement the changes confidently and accurately.** Stakeholders responding to the consultations raised early concerns that determining employment status would be complex. While employment status was an existing concept and guidance was available, HMRC nonetheless considered that there was a risk of error and non-compliance. HMRC also recognised that the reforms required public bodies to hold the right information to make determinations and deduct taxes and National Insurance contributions (NICs) correctly. In some organisations this would mean joining up separate systems, such as payroll and invoicing.
- **Engaging organisations becoming overly cautious in their contracting practices.** Stakeholders raised concerns that these organisations may take an overly cautious approach to minimise the risk of non-compliance, which could mean genuinely self-employed workers having to pay employment taxes.
- **Public bodies finding it more difficult and costly to secure the right contractors.** For example, workers might pass the cost of higher taxes to their clients through higher fees or simply refuse to work in the public sector.
- **Long supply chains making it more difficult to be compliant.** In longer supply chains, the end client might not have the detailed information needed to determine a worker's tax status.

Guidance and support

2.4 To support public bodies to implement the changes and mitigate many of the risks it had identified, HMRC committed to making it easier for customers to make employment status decisions. It aimed to do this in several ways:

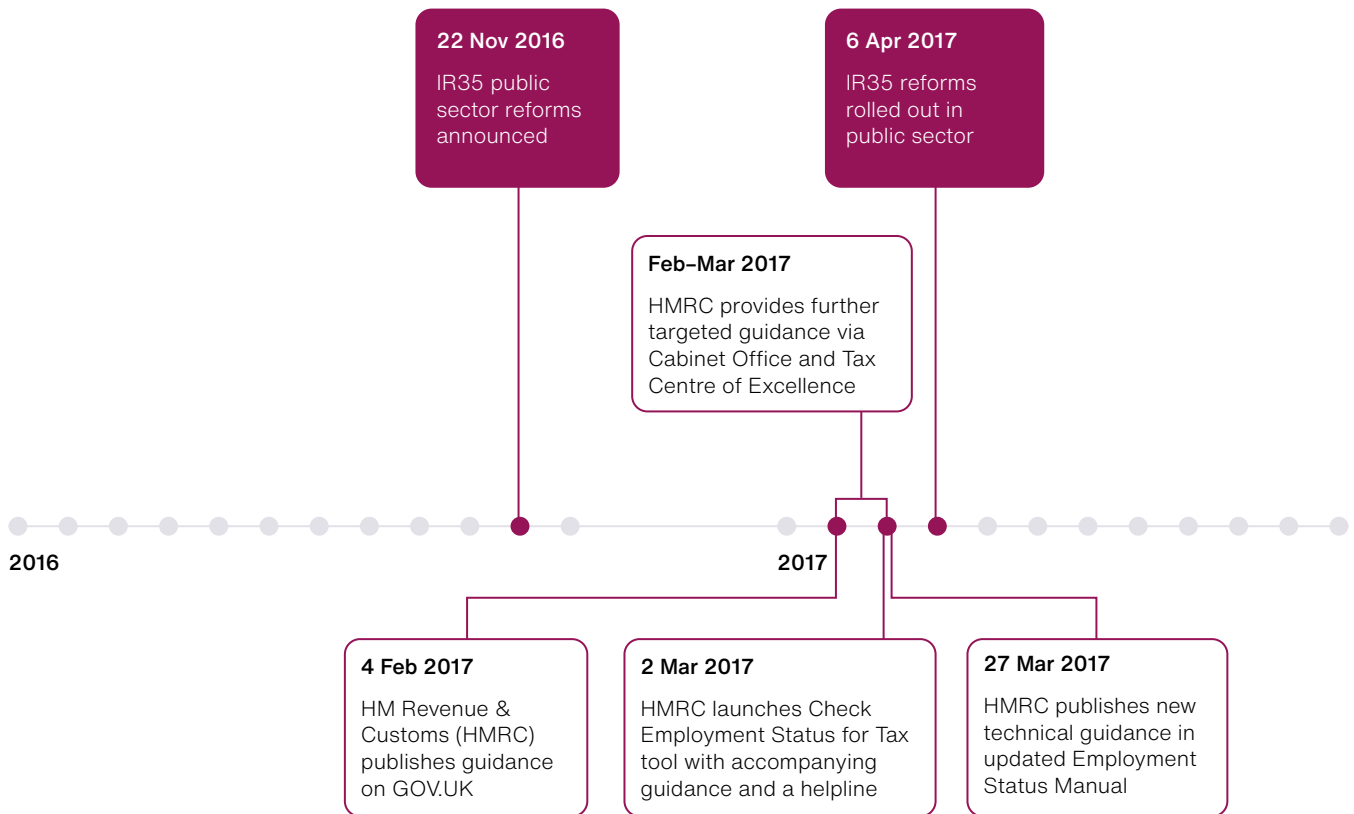
- New online guidance, including general guidance on GOV.UK and detailed technical guidance in an updated Employment Status Manual.
- A new online tool called 'Check Employment Status for Tax' (CEST), designed to help users determine tax status if they accurately answer a series of questions about an off-payroll worker.
- A series of awareness-raising events with public bodies, including a workshop to support government departments with the interpretation of specific questions within CEST.

2.5 Public bodies had little time – around two months or less – with the new guidance and tools before the rules came into effect (**Figure 6**). HMRC research in 2018 surveyed bodies operating centralised payroll (those administering payroll for multiple organisations or locations, called ‘central bodies’ in HMRC’s research) and bodies operating their own payroll (called ‘sites’ in HMRC’s research).⁶ This found that 39% of bodies operating centralised payroll and 48% of bodies operating their own payroll thought they had enough time to prepare, but 47% and 42% respectively did not.

Figure 6

New IR35 tools and guidance in 2017

Public bodies had around two months or less with new tools and guidance before the changes took effect



Source: National Audit Office analysis of HM Revenue & Customs documents

⁶ For example, a government department administering payroll for itself and some of its arm’s-length bodies, or for multiple offices in different locations, would be operating centralised payroll.

CEST tool

2.6 HMRC created CEST to help users determine employment status for tax purposes, including whether the IR35 legislation applies to an off-payroll engagement. Its use is not mandatory, but HMRC provided it as a free-to-use tool to help users determine employment status for tax purposes. The tool asks a series of questions about the worker’s contract and working arrangements and uses the answers to provide a determination based on employment status legislation and case law. Since CEST’s launch in March 2017, HMRC has committed to standing by its results so long as it is used according to the guidance and the answers are accurate.

2.7 While most public bodies found CEST helpful, some experienced problems using it. HMRC’s 2018 research found that 78% of surveyed bodies operating centralised payroll and 91% of bodies operating their own payroll found the tool helpful. However, around half of respondents found the reforms difficult to comply with. The most common reason given by centralised-payroll bodies (21% of those surveyed) was difficulties using CEST (the equivalent figure being 10% for bodies operating their own payroll). Public bodies and other stakeholders we interviewed highlighted examples of challenges they faced using the tool:

- Users found some of the questions and terminology within the tool’s first iteration difficult to interpret correctly. In some cases, this was particularly problematic due to the way the questions were worded. For example, CEST asked whether the hiring manager would “ever reject” a substitute of equivalent skill and security clearance. If they answered “*No – the end client would always accept a substitute who met these criteria*” and also that the worker had to pay the substitute, the tool determined that the worker was self-employed. However, even if this was what they would always do in practice, if the recruiting organisation had a right to reject any substitute they should have answered “*Yes – the end client has the right to reject a substitute for any reason, including if it would negatively impact the work*”.
- The technical guidance on employment status was long, detailed and not integrated into CEST. This made it difficult for hiring managers, particularly those without the right expertise or training, to identify and understand the relevant guidance for the specific question they needed to answer.
- CEST is not designed to produce a clear outcome in all cases as some are too marginal for a tool to determine. HMRC estimates that in 15% of cases between March 2017 and October 2019, the tool could not tell the user if the worker should be treated as self-employed or a deemed employee for tax purposes. Users who receive this outcome are encouraged to consult HMRC’s helpline for any queries relating to off-payroll working. In total, around 40,000 calls were answered by HMRC’s telephone helpline from April 2017 to October 2019.

2.8 Public bodies and other stakeholders also highlighted challenges with the wider guidance that HMRC had provided. In particular, the original version of the guidance was general in scope, and the examples it included covered roles not relevant to most public bodies (such as pilots) rather than those widely used in the public sector (such as IT specialists).

Other forms of support

2.9 In late 2016 and early 2017, HMRC held awareness-raising events with a range of public bodies and other stakeholders to help prepare them for the reforms and to seek feedback on the legislative design and on CEST. This included central government departments, local government, healthcare, education, payroll professionals and tax advisers.

2.10 Having consulted stakeholders while developing the legislation, HMRC continued to engage with them to develop further guidance and support after the reforms took effect. HMRC worked with the Cabinet Office and Crown Commercial Services to raise awareness among public bodies. It also worked with stakeholders across government to disseminate guidance. For example, in March 2017, it provided further guidance to central government's Tax Centre of Excellence (a forum of tax experts involving several departments) covering several areas where stakeholders had raised questions. These included the status of substitutes and paid helpers, and the financial risk to a worker from providing their own equipment.

Monitoring and adapting the roll-out

Monitoring compliance

2.11 To identify and address non-compliance, HMRC undertakes investigations into whether IR35 has been applied correctly. If it determines that the legislation has been applied incorrectly, it can demand past underpaid tax and NICs, and charge interest and penalties.

2.12 The reforms mean that HMRC's oversight role has become focused on the hiring organisations engaging the worker as end client, rather than examining individual contractors and their personal service companies (PSCs) on a case-by-case basis. This has enabled HMRC to take a more active risk-based approach to monitoring compliance and to have greater reach across more off-payroll engagements. It uses this to try and identify public bodies more likely to have weak controls or evidence of poor practice. Part Four explains how HMRC has approached its compliance work with public bodies and what it has found.

Monitoring other factors

2.13 HMRC uses its own data on tax returns and revenues to estimate the effects of the reforms on status determinations and tax revenues across the public sector. The impacts it has observed so far are set out in Part Three.

2.14 HMRC has also used consultations and commissioned external research to monitor wider implications for public bodies and workers. For example, from May 2018, it ran a 12-week consultation to evaluate the public sector rules and options for the private sector. It has also commissioned external research to understand the perspectives and experiences of public bodies and employment agencies. One such report on the longer-term impacts and experiences of public bodies was planned for 2020 but had to be delayed to February 2022 due to the COVID-19 pandemic.

Adapting to feedback

2.15 Based on its research and feedback from public authorities and other stakeholders, HMRC has made changes aimed at making it easier to understand and implement the rules.

2.16 In particular, HMRC launched an updated CEST tool in November 2019. This included changes to some of the questions that users had identified as causing difficulty, including the questions on substitution (paragraph 2.7), and some new questions that were not in the previous version. We surveyed public bodies in 2021, two years after HMRC had launched the enhanced CEST. Most respondents, including 82% from central government, found it at least somewhat useful (**Figure 7**), and some welcomed HMRC's improvements. HMRC's research also indicates that the proportion of organisations finding CEST helpful has increased since 2017. However, in the responses to our survey, government departments or organisations that had not found the reforms easy to implement were less likely to find CEST useful.

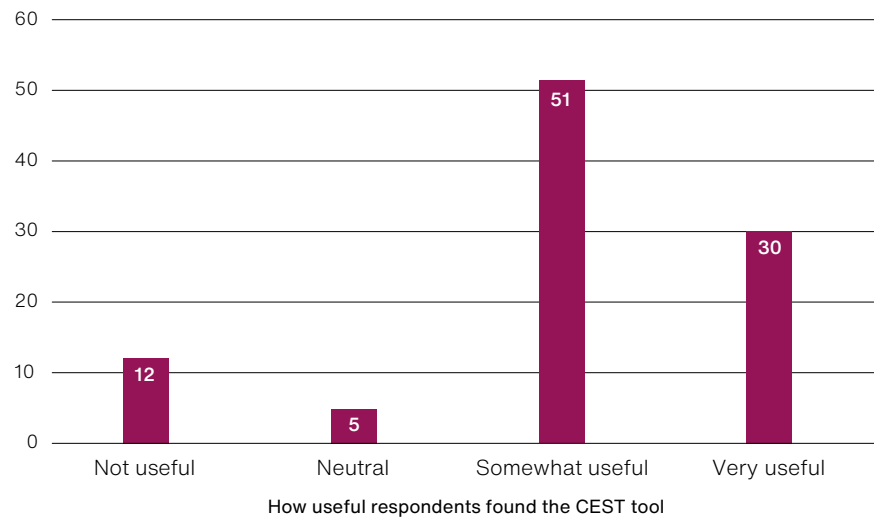
2.17 After the November 2019 update, CEST assessed fewer cases as employed and more cases as "unable to determine" (**Figure 8** on page 30). HMRC estimates that CEST has not provided an answer in 20% of cases since the update, compared with 15% before. When testing a sample of cases in the updated tool in 2019 for consistency with the previous version of CEST (as well as with case law), HMRC found none that had switched between employed and self-employed. There are no data on whether this has happened for users in practice, or the extent to which CEST now gives an outcome for cases it was previously unable to determine.

Figure 7

Central government views on the usefulness of the Check Employment Status for Tax (CEST) tool, 2021

82% of survey respondents from central government who have used CEST found it useful

Proportion of respondents from central government (%)

**Notes**

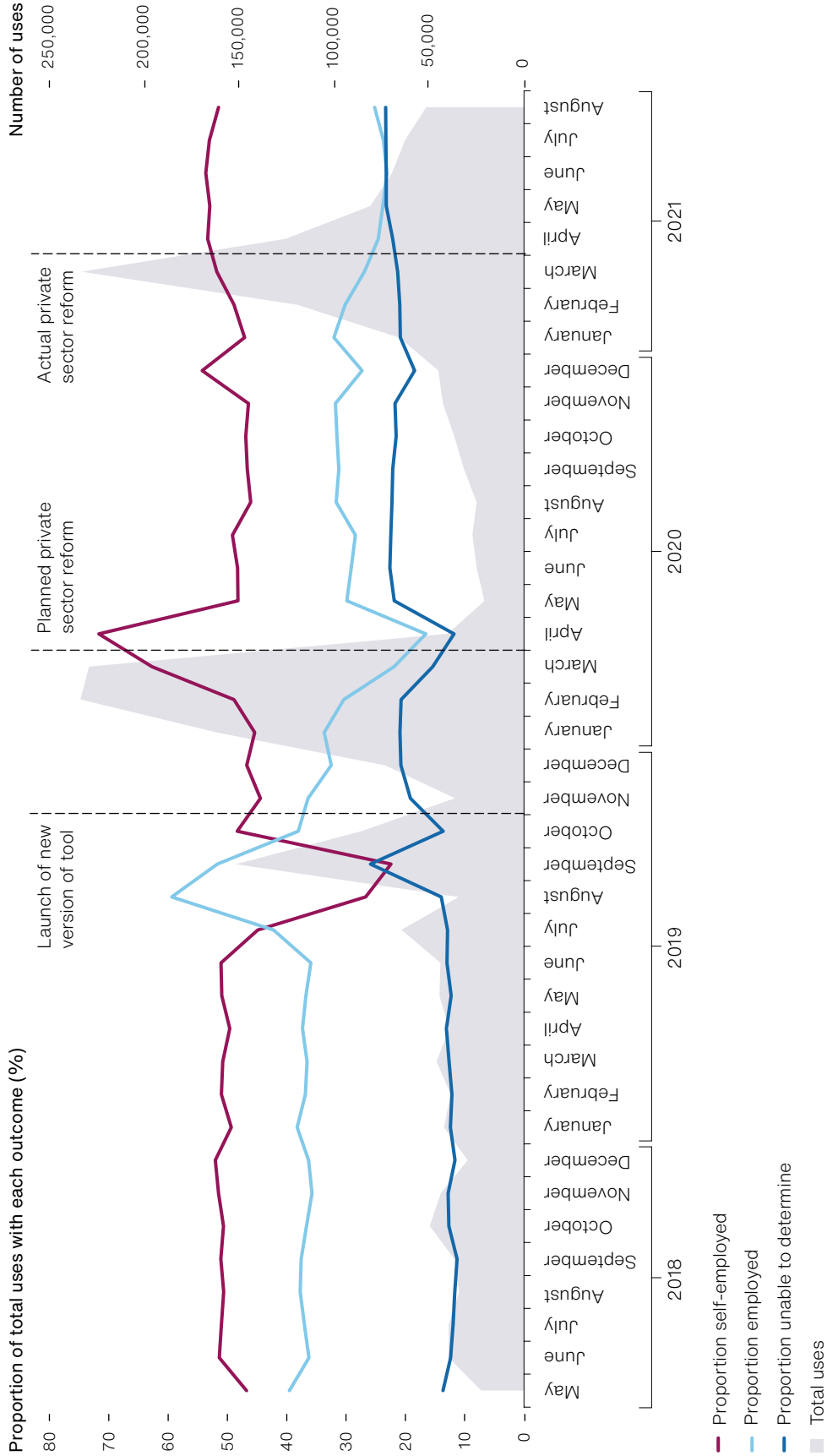
- 1 Out of 95 respondents to our survey from central government (including some government-affiliated but independent national bodies), these data relate to the 82 who had used CEST.
- 2 The 'somewhat useful' and 'very useful' responses do not sum to 82% due to rounding. Figures also do not sum to 100% since one of the 82 respondents who had used CEST did not answer the follow-up question on ease of use. This has been excluded from the chart.

Source: National Audit Office survey of public bodies, undertaken in 2021

Figure 8

Check Employment Status for Tax (CEST) tool user data, May 2018 to August 2021

Since the new version of CEST was launched in November 2019, the proportion of cases it is unable to determine has increased overall



Notes

- 1 Because of the way the data were collected before November 2019, HM Revenue & Customs estimates that around 60% of actual usage data was gathered for that period. It therefore may not be directly comparable with the data after November 2019 which cover all usage.
- 2 There may also have been a change over time in who uses CEST due to the government extending the reforms to the private sector (planned for April 2020 but delayed to April 2021 because of COVID-19).

2.18 HMRC also made several other substantive changes including:

- **Updating and developing new guidance:** HMRC updated its guidance to ensure it was accurate based on feedback and its own periodic reviews. The relaunched CEST tool in November 2019 was accompanied by updates to the Employment Status Manual – this included new information on how to use and interpret CEST, and on other matters such as HMRC’s compliance approach.
- **A greater focus on collaboration:** Public bodies and other stakeholders we interviewed reported that HMRC was not initially open to feedback, but that its approach has become more collaborative over time. For example, it began working more closely with the cross-government Tax Centre of Excellence to provide further guidance and support, and to receive feedback, including in preparation for changes to the rules in 2021.
- **A clearer definition of reasonable care:** To comply with the 2017 IR35 reforms, public bodies needed to demonstrate reasonable care in making status determinations. In response to feedback that this was not clearly defined, HMRC updated the Employment Status Manual in February 2020 to explain in detail how it considers whether reasonable care has been taken. For example, it includes “accurately completing and applying the result” of CEST as indicating reasonable care, while putting inaccurate information into the tool indicates behaviour that would not constitute reasonable care.

Part Three

Impacts of implementing the 2017 reforms

3.1 This part of the report explains the known impacts of implementing the reforms in three broad areas:

- the impacts of the reforms on tax revenues and working arrangements;
- the impacts on workers, including their ability to appeal decisions; and
- the impacts on public bodies of implementing the reforms.

Impacts on tax revenue and workforce arrangements

3.2 Data held by HM Revenue & Customs (HMRC) indicate that the reforms have broadly had the intended effect of increasing both tax revenues and the proportion of the workforce classified as deemed employees:

- HMRC estimates that, in the first two years of the reforms, at least 50,000 additional individuals were on the payroll of public bodies having previously provided services through a personal service company (PSC) and paid less tax.
- Overall, HMRC initially assessed that an additional £550 million of income tax and National insurance Contributions (NICs) was collected in the first year. Offset against taxes that would otherwise have been paid by workers and their PSCs, this meant a net increase in tax revenue of £250 million, more than the £150 million that HMRC had expected. HMRC's latest estimate of the net increase in revenue was £275 million in 2018-19.

3.3 It is difficult to identify precisely how far the increase in workers assessed as employed is due to the IR35 reforms as opposed to other factors. For example, stakeholders in the health sector explained to us that, in the NHS, there has been a drive in recent years to reduce reliance on agency staff for reasons of affordability. It is also difficult to disentangle these effects from wider labour market trends and the effects of EU Exit or other major projects in government. Our analysis of IR35 disclosures by government departments showed fluctuations from year to year in the numbers of disclosed IR35 contractors since 2017.

3.4 HMRC, public bodies and tax experts we interviewed also indicated that there has been a shift in how hiring organisations approach contracting and procurement of services following the IR35 reforms. This includes the following:

- Some public bodies avoiding hiring contractors unless they are on payroll somewhere in the supply chain, to avoid the financial risk of non-compliance.
- Increased use of the Public Service Resourcing framework contract to access contractors and contingent labour, rather than finding workers through other routes.
- Increased use of umbrella companies, which are organisations that act as intermediaries for multiple contractors. HMRC has observed an increase in the number of people employed by umbrella companies. The government's 2021 call for evidence into the umbrella companies market (which covers concerns that there may be high levels of tax non-compliance) cited estimates that the number of such workers had increased from under 400,000 in 2015 to over 600,000 by 2021.⁷

Impacts on workers

3.5 Some workers disputed their tax status following the 2017 reforms. HMRC's research published in 2018 found that, shortly after the reforms, 46% of surveyed bodies operating centralised payroll and 31% of bodies operating their own payroll had had at least one dispute with contractors or agencies regarding their status assessments. Our own 2021 survey of public bodies found that 26% of respondents from central government said that workers had frequently (10%) or occasionally (15%) challenged their status determinations.⁸ HMRC's research on longer-term impacts also indicates that the level of disputes has fallen over time.

3.6 In cases where workers disagree with their status assessment, they have not had a clear legal route to appeal the determinations. Following the reforms, workers can dispute their tax status with the organisation that makes the determination. However, if a worker still does not agree, there is not a clear legal route to appeal further. If workers believe they have been taxed incorrectly, their recourse is to use HMRC's self-assessment and NIC reclaim routes. This is the same as for any worker considered an employee, but differs from the previous system, whereby the worker's own PSC made the determination and so they would have no reason to dispute it.

⁷ HM Treasury, HM Revenue & Customs and Department for Business, Energy & Industrial Strategy, *Call for evidence: Umbrella company market*, November 2021.

⁸ These do not sum to 26% due to rounding.

3.7 Stakeholders we interviewed in health and tax advice also expressed concern over the knock-on consequences for workers of public bodies changing their hiring practices. For example, this included concerns that workers could lose business from bans on off-payroll contractors or end up paying too much tax if they are wrongly assessed as employed for tax purposes. There is not clear evidence to indicate the extent to which these issues occurred in practice in the public sector. HMRC's research suggests that very few public bodies report making blanket determinations and that most have not decreased their use of PSCs. However, recent surveys on the impact of the 2021 private sector reforms indicate that:

- nearly half of contractors who responded to one survey said that the last firm they worked for initially reacted to the reforms by implementing a ban on using PSCs;⁹ and
- 21% of contractors who responded to another survey said their current firm made a blanket assessment that all engagements were employed for tax purposes.¹⁰

Impacts on public bodies

3.8 Public bodies we interviewed told us they have faced challenges implementing the 2017 reforms. In particular, gaining assurance that the right assessments have been made has, in some cases, proven difficult due to the complex nature of employment status. Even before the reform, HMRC and the courts did not always reach the same conclusion on how workers should be classified. Public bodies have also pointed to issues they experienced with HMRC's guidance and tools (as set out in Part Two) and the level of expertise available to them. In our 2021 survey, 39% of respondents from central government organisations said they have found the reforms at least somewhat difficult to implement (**Figure 9**), and 28% had initially lacked confidence in doing so.

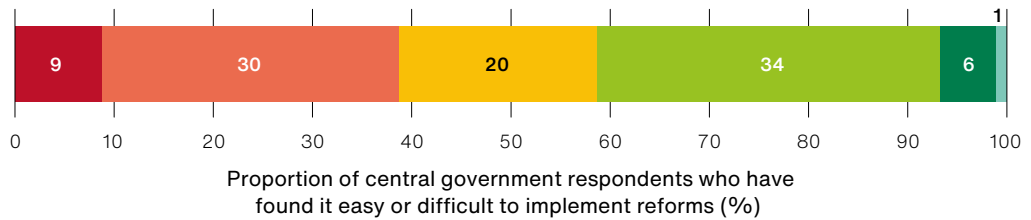
3.9 Some public bodies have also reported difficulties in finding contractors and that fee rates have risen. HMRC's 2018 research found that, while most public bodies did not experience any problems, 32% of surveyed bodies operating centralised payroll and 22% of bodies operating their own payroll reported increased difficulty in filling contractor vacancies after the reforms. Similarly, 28% and 20% respectively reported paying higher rates for contractors. Public bodies we interviewed and surveyed ourselves also provided examples of difficulties finding contractors and rates increasing. This was particularly the case in sectors where specialist skills are in demand, such as healthcare. However, those we interviewed noted that, while they considered this is at least partly due to the IR35 reforms, it was difficult to disentangle this effect from the wider labour market trends affected by COVID-19 and EU Exit. Public bodies were also competing with the private sector where, until 2021, contractors could continue to work under the previous rules. Following the private sector roll-out of the reform, this incentive is likely to have reduced.

⁹ IR35 Shield, *IR35 Impact Survey*, January 2022.

¹⁰ Association of Independent Professionals and the Self-Employed, *Taking stock: Assessing the impact of IR35 reforms in the private sector*, October 2021 (accessed January 2022 at www.ipse.co.uk).

Figure 9

Response to implementation of IR35 reforms in central government, 2021

39% of central government bodies that responded to our survey have found implementation difficult

- Very difficult
- Somewhat difficult
- Neither easy nor difficult
- Somewhat easy
- Very easy
- Don't know

Note

1 Out of 95 respondents to our survey from central government (including some government-affiliated but independent national bodies), these data relate to the 90 who answered our question on how easy the reforms had been to implement.

Source: National Audit Office survey of public bodies, undertaken in 2021

Costs of implementing the reforms

3.10 Public bodies have reported incurring additional costs from implementing the reforms. HMRC did not estimate costs for public bodies when introducing the 2017 reforms. By convention, it excludes administrative burdens on the public sector when estimating the cost of tax changes. Its 2018 research indicated that average set-up costs in the first six months were low, but that 44% of surveyed bodies operating centralised payroll and 41% of bodies operating their own payroll reported an increase in ongoing administration costs between 2016-17 and 2017-18. HMRC did estimate the burden on private sector businesses (such as employment agencies) and assumed they would incur negligible one-off costs for familiarisation with the rules and putting in place new processes, but that ongoing costs would be small.

3.11 Public bodies we interviewed explained that they had dedicated a lot of ongoing resource to employment status determinations for a range of reasons, including the need to:

- create dedicated roles and review structures for assessing both existing and incoming contractors. This required up-front cost to set up the necessary processes and continued resources to manage them on an ongoing basis.
- access suitable tax expertise to be confident that they could establish the employment status of contractors correctly. This was done by training or recruiting specialist staff, or by paying external experts such as tax advisers.
- manage disputes with contractors who appealed their status determinations, and more generally engage with workers to answer queries about the reforms, particularly those whose employment status had changed. These processes have taken additional time and resources.
- change or otherwise deal with existing systems that were not adequately set up for the new requirements. For example, some stakeholders told us that proper status assessments require cross-disciplinary skills and information exchange between different parts of the organisation that had incompatible systems and different management, such as tax experts, payroll, HR and accounts payable.

Part Four

Compliance by public bodies

4.1 This part of the report explains how HM Revenue & Customs (HMRC) assesses public bodies' compliance with off-payroll working rules and what it has found to date. It sets out:

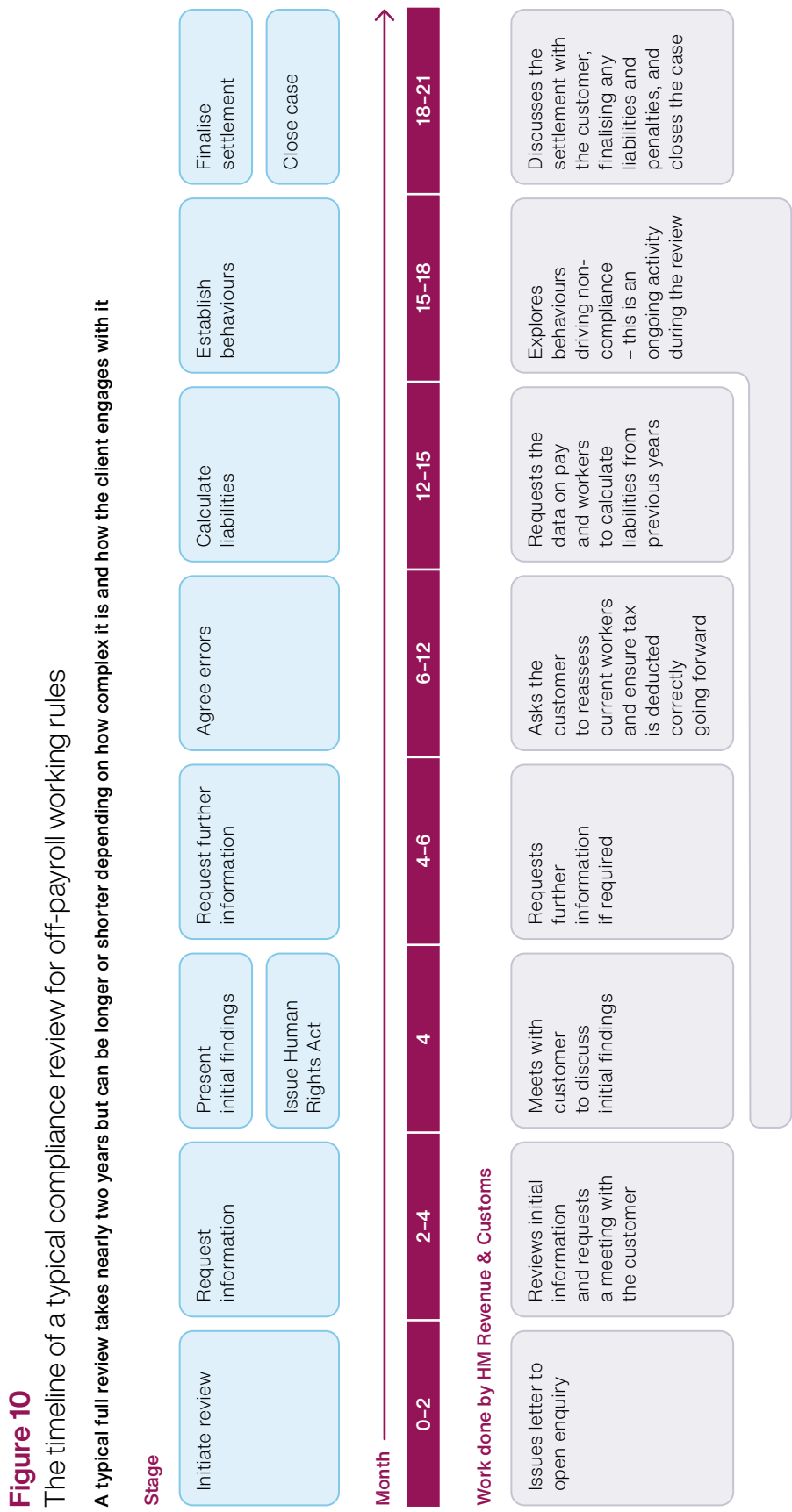
- how HMRC assesses compliance by public bodies;
- what HMRC has found in its reviews; and
- the consequences of non-compliance, including financial liabilities and potential impacts on workers.

How HMRC assesses compliance

4.2 The 2017 reforms meant that HMRC's oversight role became focused on ensuring that public bodies determined tax status correctly, rather than pursuing individual contractors and their personal service companies (PSCs) on a case-by-case basis. HMRC has therefore taken a risk-based approach to identify areas where it considers non-compliance to be more likely, and it uses data and intelligence from a range of sources to prioritise its investigations.

4.3 When HMRC chooses to conduct a full compliance review, this process can take from a few months to over two years depending on how complex the case is and how the client engages with it. **Figure 10** overleaf sets out an illustrative timeline and process for a typical review. At any point in this process, HMRC can conclude that the risk of non-compliance is low and choose not to pursue the review.

4.4 HMRC's compliance work has so far focused mainly on central government bodies. In the first few months of the reforms, HMRC initially examined 16 public authorities of different types to assess the risk of non-compliance, including assessing samples of status determinations. This work found that central government bodies seemed to have more difficulties with compliance than other parts of the public sector. Compliance checks have focused mainly on central government up to 2021 and HMRC is now examining more local bodies.



Source: National Audit Office review of HM Revenue & Customs analysis of substantially completed compliance cases

What HMRC has found

4.5 Figure 11 sets out the status so far of the 59 compliance reviews that HMRC had initiated up to September 2021. More than half remain ongoing and there were 24 that HMRC chose not to pursue because it judged the risk of non-compliance to be low. Of those subject to a full compliance review, as at September 2021, HMRC had fully settled two with a liability because it had found the public body to be at fault.

4.6 In all cases so far where HMRC has judged there to be non-compliance, it has found that the public body had not taken reasonable care to prevent errors, including when answering questions in the Check Employment Status for Tax (CEST) tool. However, it had not set out how it would interpret reasonable care for the new requirements when they first took effect. Public bodies and other stakeholders we interviewed told us that they had asked HMRC for clearer guidance as early as 2017. In response to feedback, HMRC published a more comprehensive explanation of the factors that it considers demonstrate reasonable care when updating its technical guidance in 2020.

Figure 11

Status of HM Revenue & Customs (HMRC) IR35 compliance assessments of public bodies since April 2017, as of September 2021

HMRC has so far initiated 59 compliance reviews, two of which have been fully settled

Sector	Status:			Total cases opened
	Ongoing	Not pursued due to low risk of non-compliance	Closed and historic taxes settled	
Government departments	11	2	2	15
Local authorities	5	10	0	15
Police and fire authorities	1	3	0	4
National Health Service	4	2	0	6
Further and higher education	2	3	0	5
Large businesses	10	4	0	14
Total	33	24	2	59

Note

1 Large businesses are corporations considered to be public bodies, such as the BBC.

Source: National Audit Office analysis of HM Revenue & Customs documentation

4.7 Of the cases that had at least reached completion of advanced fieldwork by September 2021, HMRC found that the most common problems had been hiring managers wrongly considering that they would always accept a substitute when they had a right to reject one (all cases) and overestimating the extent of financial risk the contractors bore (a third of cases). On substitution, for example, HMRC found that departments had failed to ensure that hiring managers making status decisions were aware that the contractual framework in place gave them a right to reject a substitute. In some cases, this had caused most off-payroll workers to have been classified as self-employed when they should have been employed for tax purposes.

4.8 No public sector bodies have challenged the decisions in court. HMRC told us that, while it is possible for government departments to take each other to court, it is very unlikely that one would choose to do so. As a result, while reasonable care is an established concept in tax law more generally, there is no case law to guide either what it means for organisations making employment status determinations or how any resulting liability should be calculated in cases of non-compliance.

Consequences of non-compliance

Financial liabilities and penalties

4.9 When HMRC determines that the end client (in this case, the public body for whom the worker is providing services) has issued incorrect status determinations and not taken reasonable care in doing so, that organisation becomes liable for the taxes and National Insurance contributions (NICs) that it should originally have deducted and paid. HMRC also issues penalties for non-compliance, the size of which depend on the historic taxes owed and whether the errors were deliberate or careless. However, HMRC can suspend penalties for careless behaviour and not charge them, subject to the reviewed organisation agreeing to HMRC's conditions and putting processes in place to ensure that the error does not happen again.

4.10 The 2020-21 financial statements of government departments and agencies include a total of £263 million paid, owed, or expected to be owed to HMRC for failing to administer the reforms correctly (**Figure 12**). This follows a loss previously recognised by NHS Digital (£4 million) for failings in implementing the reforms, bringing the total to £267 million. The Cabinet Office and Department for Environment, Food & Rural Affairs have also disclosed contingent liabilities for possible future payments to cover errors that may emerge as part of ongoing reviews.

Figure 12

Central government bodies with IR35 losses and provisions in their 2020-21 financial statements

The 2020-21 financial statements include a total of £263 million paid, owed or expected to be owed to HM Revenue & Customs (HMRC)

Department	Recognised loss (£m)	Provision (£m)	Total (£m)
Department of Environment, Food & Rural Affairs	19.0	35.3	54.3
Department of Health & Social Care:			
Core department		4.5	4.5
NHS England	4.2	10.2	14.4
NHS Digital	0.2		0.2
Department for Work & Pensions	87.9		87.9
Home Office	29.5		29.5
Ministry of Justice:			
Core department	52.3		52.3
HM Courts & Tribunal Service	12.8		12.8
Other partner organisations	6.9		6.9
Total	212.8	50.0	262.8

Notes

- 1 The losses reflect the value recognised by departments as payable to HMRC in respect of misapplication of IR35 from 2017-18 to 2020-21. Recognised losses do not include penalties. Any penalties charged may have been suspended and, provided the department abides by the suspension conditions, will not need to be paid.
- 2 These figures follow a loss of £4.3 million previously recognised by NHS Digital.

Source: National Audit Office analysis of certified financial statements

4.11 Where compliance checks have concluded, HMRC has also issued non-compliant public bodies with penalties in line with legislation. These have mostly not been recognised in the financial statements and are therefore not included in the figures above. This is because HMRC suspended the penalties subject to the public bodies meeting certain conditions, which means they may not need to be paid.

Collecting the right tax due in cases of non-compliance

4.12 It is not clear how HMRC can ensure that it accurately collects the total taxes due in cases of non-compliance. HMRC is required to ensure that everyone pays the right amount of tax and to determine amounts underpaid to the best of its judgment. In some cases, it has been difficult to estimate the total tax owed because of gaps in the data available. Departments have not always collected or retained the data needed to identify exactly how much each worker was paid (for example, after deducting agency fees) or what income they earned from other work in each tax year. When HMRC does not have the full data, it estimates the tax liability based on factors that it can measure, such as any past workers for whom there is full information or from data on that department's current off-payroll workforce.

4.13 When HMRC calculates the historic taxes that departments owe, its approach involves the following:

- HMRC assumes that all workers have already used their tax-free personal allowance on income earned elsewhere. It told us that it would ideally use National Insurance numbers for every worker to identify their exact tax position. Because departments have not had this information, HMRC has applied the OT tax code (which does not allow a personal allowance) to all workers because it considers this to be the most likely tax code.¹¹
- HMRC collects the amount due in accordance with the law at that time. It does not offset the estimated tax that should have been paid at the time against any tax that may already have been paid by the worker or their PSC. It told us that the current legislation does not allow this, and that it is not possible to reliably estimate the taxes and NICs already paid by an individual worker and their PSC because their tax returns would often include income from other sources as well as deductible expenses.

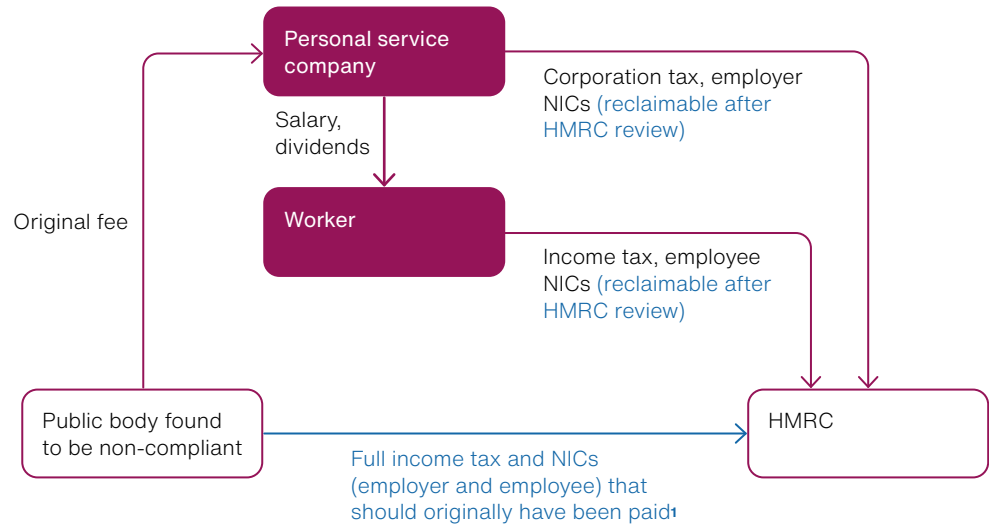
4.14 Workers and PSCs are in principle entitled to claim back the tax that they paid when a public body is subsequently found to have been non-compliant. Because HMRC cannot currently offset the historic taxes against any taxes already paid by the worker or PSC, the worker and PSC are automatically entitled to reclaim the tax (**Figure 13**). If they do, in effect, they will not have paid taxes on the income they received from that public body because these will be borne entirely by the public body that made the incorrect status decision. However, HMRC does not actively promote this and it is unclear how many workers reclaim their taxes in practice.

¹¹ HMRC told us it could alternatively apply basic rate or higher rate tax codes, but that these would underestimate and overestimate respectively the taxes due if applied to all workers. Without National Insurance numbers, its only other option is the emergency tax code (which allows the personal allowance) but it does not consider this appropriate as its use is for new employees who have completed a new starter checklist, which would not be the case for a contractor wrongly assessed as self-employed.

Figure 13

Tax reclaims in cases of IR35 non-compliance

When a public body settles historic taxes with HM Revenue & Customs (HMRC), workers become entitled to reclaim the tax and National Insurance contributions (NICs) they paid



- Contracted organisation
- Public body
- Initial payments
- Payments after review

Note

1 Income tax and employee NICs should have been deducted from the fee before paying the personal service company.

Source: National Audit Office analysis of information from HM Revenue & Customs and other stakeholders

Part Five

Learning lessons

5.1 In the 2018 Budget, the government formally announced plans to extend the reform of off-payroll working rules (IR35) to the private and third sectors. This change took effect from April 2021, alongside other updates to the legislation. This part of the report sets out:

- the scope and delivery approach of the 2021 reforms;
- the lessons HM Revenue & Customs (HMRC) has learned from implementation in the public sector and how it has reflected these in its approach to the 2021 reforms; and
- the risks and opportunities that stakeholders have indicated that HMRC will need to manage going forward.

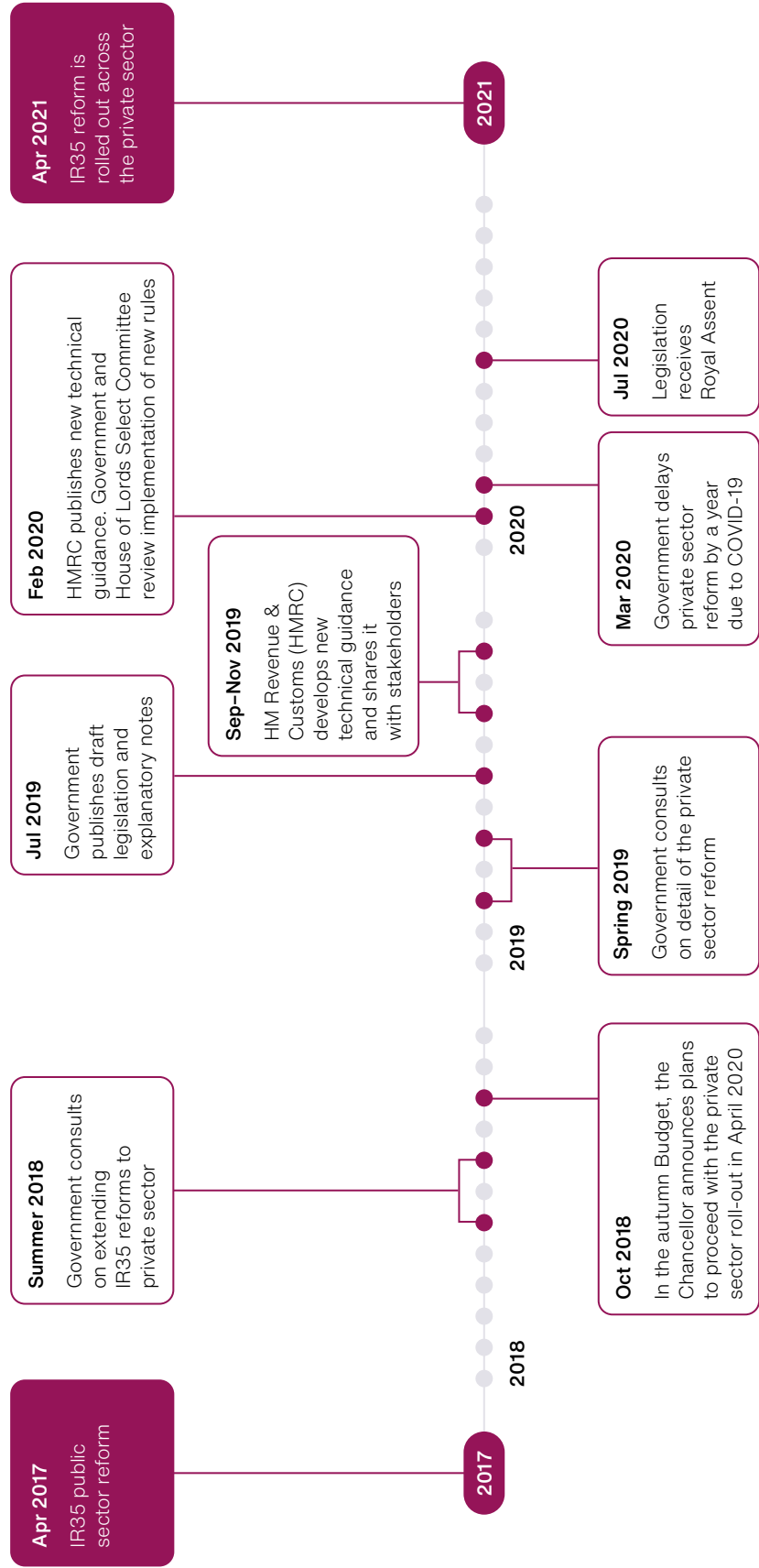
Scope and delivery of the private sector reform

5.2 The 2021 changes make medium and large organisations in the private and third sectors responsible for determining the employment status of workers providing services through intermediaries. For small organisations, the responsibility remains with the worker's intermediary, as it did under the 2000 legislation.

5.3 The government followed a similar legislative process as in 2017, except that it delayed the changes by a year from April 2020 to April 2021 because of the COVID-19 pandemic (**Figure 14**). Stakeholders we interviewed told us that this allowed more time for organisations to prepare and understand what changes they needed to make. The benefit of more time is consistent with our survey of public bodies – among respondents from central government, 28% said they were not confident implementing the reforms in 2017 but only 4% still felt that way now.

Figure 14
Timeline of the 2021 private sector roll-out of the IR35 reforms

The government followed a similar legislative process as in 2017, but delayed the changes by a year due to the COVID-19 pandemic



Source: National Audit Office analysis of HM Revenue & Customs documents

Lessons learned from the public sector roll-out

Lessons learned by HMRC

5.4 As set out in Part Two, HMRC adapted its approach to implementation in the public sector following feedback and the findings of its own research. This included various changes to its Check Employment Status for Tax (CEST) tool as well as guidance and increased collaborative working with stakeholders. This section sets out how HMRC also applied lessons from the 2017 reforms to deliver the 2021 changes.

5.5 First, HMRC put in place a dedicated programme team to support the private sector reform. The programme management approach included a clear business case, a more structured overview of risks to delivery, and a strategy for ongoing communication and customer education. HMRC does not typically use this approach for most legislative changes but did so based on its experience with the public sector reforms in 2017, for which it did not use a programme team.

5.6 As part of the 2021 changes, the government made further changes to the rules for all sectors to address aspects of the 2017 reforms that were not working as intended. For example, this included:

- **Status determination statements:** The end client making the status determination must now issue a statement explaining whether the worker is an employee for tax purposes. This must be provided to both the worker and the party the body contracts with.
- **Dispute resolution mechanisms:** End clients must have a centralised disagreement process to respond to any disputes about status determinations from contractors or other actors in the supply chain. When a dispute is raised, the client must now provide a formal response within 45 days.

5.7 HMRC also put greater focus on supporting the sector to be ready. It continued work to improve its guidance and how it works with stakeholders, and it focused more on educational activities to help raise awareness and understanding of the reforms. In response to the feedback obtained, it adapted its approach to address some of the concerns raised:

- Unlike in 2017, HMRC has published its compliance approach, setting out how it will support organisations to comply with the rules. To reassure individual contractors affected by the reforms, HMRC committed not to use information received as a result of the new rules to open compliance checks into workers or their personal service companies (PSCs) for earlier tax years unless there is a reason to suspect fraud.
- HMRC has introduced a one-year grace period for the private sector roll-out. Organisations will not have to pay penalties for mistakes during the first year unless HMRC finds evidence of deliberate non-compliance. This has also been applied retrospectively for the 2017 public sector reform.

- HMRC was made aware of a risk that the draft legislation published in February 2019 could allow workers to circumvent the rules by working in a company in which they had less than a material interest (for example, multiple workers each having a small stake in a jointly owned company). The final legislation introduced in the Finance Act 2020 included measures to mitigate this risk. However, stakeholders brought it to HMRC's attention that this provision had a broader impact than intended and could potentially include workers who would already have been taxed like employees. HMRC therefore amended the provisions to make the rule more targeted and ensure the rules operated as intended.

Lessons learned across government

5.8 There is evidence of lessons and good practice being put in place by government departments. The Government Internal Audit Agency (GIAA) identified ways that government bodies had adapted procedures to support compliance, including:

- **Senior approval:** For example, requiring director-level approval for all contingent labour requests assessed as self-employed for tax purposes.
- **Clear policies:** Several, but not all, organisations had clearly documented policies and procedures for IR35 determinations.
- **Sharing knowledge:** For example, departments and arm's-length bodies setting up centres of excellence to support implementation.
- **Documentation:** There are examples of good practice where organisations had documented clear audit trails and approval processes. However, there are still organisations in central government that have either inadequate or no supporting documentation to support their assessments.

Risks and opportunities

5.9 Despite these improvements, there remain implementation challenges around capability and data that could be exacerbated when applied to the private sector. Employment status can be complex and often determined by hiring managers with little experience or training in employment taxes. Furthermore, internal audit findings and our interviews with stakeholders have highlighted the importance of good, linkable data for this to work in practice but they suggest that there is still some way to go. It is possible that these issues again become prevalent while the private and third sectors are inexperienced with the new requirements. Stakeholders have also raised concerns that, while there is now a more formal process for workers to dispute their tax status with the hiring organisation, there is no further route of appeal if they still disagree. If a contractor still believes they have been wrongly determined as employed, they must use HMRC's self-assessment and National Insurance contributions (NICs) reclaim routes as described in paragraph 3.6.

5.10 The emerging good practice and remaining implementation challenges indicate that HMRC may have underestimated the costs of implementing the reforms in 2021.

- While HMRC does not estimate the impact of tax changes on public bodies, its estimates for the private sector in 2021 assumed that new administrative burdens would be small. This was based on what it considered the minimum effort required for compliance. It did not initially consider any need to change systems, use external consultants or put in place additional assurance processes. Stakeholders told us they did not have confidence in HMRC's estimates and expressed concern over the cost implications for the private sector. HMRC reviewed its assessment in response to challenge from the House of Lords Economic Affairs Finance Bill Sub-Committee in 2020 and shared it with its Administrative Burdens Advisory Board, which considered the overall approach sound and reasonable. Following this review, it still estimated that ongoing costs would be low (£8.4 million a year in total) and smaller than the costs saved by PSCs no longer having to make determinations (£8.7 million). HMRC's final estimates assumed that:
 - it would take organisations 30 minutes to complete CEST, and 30 minutes more to resolve any 'unable to determine' outcomes using HMRC's helpline;
 - organisations would not use third-party status tools and assessments; and
 - organisations would not use external advisory services.
- HMRC also assumed that resource requirements would diminish with time. However, it is uncertain to what extent this will materialise and when. Good practice in the public sector, including that identified by the GIAA, still suggests significant running costs. Public bodies we interviewed explained that, in some cases, dedicated teams and a lot of staff time had to be put into administration and ongoing compliance work (paragraph 3.11). For example, one told us that independent checks and multiple levels of review helped improve compliance. HMRC has not revisited its estimates to ensure they reflect these learnings.

5.11 Public bodies and other stakeholders also told us HMRC could go further to support implementation. Beyond the lessons HMRC has learned to date, there are opportunities to continue to improve customer experience and compliance in the public sector. For example, they suggested it could:

- **Continue to refine CEST.** While most public bodies that answered our survey found CEST at least somewhat useful, some did not, despite improvements HMRC has made (paragraph 2.16). Stakeholders we interviewed and surveyed suggested ways in which HMRC could improve CEST further, including:
 - making it easier to use by making relevant parts of the guidance more accessible within each question and resolving ambiguities that make some questions easy to misinterpret. For example, CEST asks whether the worker pays vehicle costs up-front, but the separate technical guidance explains that the answer should be no if they are later reimbursed.
 - ensuring the questions used in CEST’s weightings genuinely relate to the specific role being assessed. For example, a worker not having to buy their own equipment or materials is an equally important indicator of employment regardless of how relevant this is to their role. In the media industry, for instance, the questions would not distinguish between roles where equipment is essential (such as camera operators) and roles that may not need equipment at all (such as presenters).
- **Provide more clarity on what good implementation looks like.** Stakeholders stressed to us the importance of good data and joint working between different functions across an organisation, including payroll, HR, procurement and hiring managers. Public bodies we interviewed told us they would welcome more input on what HMRC considers to be good practice in processes and staff training.
- **Continue to improve collaboration with public bodies and external experts to enable constructive discussions and pre-empt challenges.** For example, stakeholders told us there is an opportunity to work further with different sectors to help develop more specific guidance and examples for typical roles and sectors where there are particular complexities. Doing so could help hiring managers interpret the guidance and make status determinations more quickly and accurately.
- **Be more transparent in how HMRC, and CEST, reflect case law.** Stakeholders we interviewed expressed concern that HMRC is not sufficiently transparent about how the outcome of IR35 court cases inform CEST’s questions and algorithms, or HMRC’s views and approach more generally.

Risks in the private sector roll-out

5.12 Inherent differences between the public and private sectors mean HMRC faces new and challenging risks with the wider implementation of IR35 reforms. It needs to engage with a larger and more diverse customer group, which is likely to be harder to reach. It estimates that the 2021 extension of the reforms will affect around 180,000 PSCs, compared with at least 50,000 it estimates were affected by the 2017 reforms. This creates a bigger challenge for HMRC to identify and monitor risks of non-compliance. HMRC's outreach and customer education in preparation for the 2021 reform included: 61 webinars between November 2020 and December 2021 with over 27,000 attendees; 30 workshops; and 47 stakeholder events. However, HMRC has acknowledged particular challenges in reaching medium-sized businesses.

5.13 Complex supply chains are more common in the private sector. This creates risks that may be difficult for companies to manage and HMRC to monitor:

- Complex supply chains may mean a greater risk of errors if companies find it more challenging to obtain the correct information to determine employment status. This issue is exacerbated where supply chains cross international borders or involve overseas workers.
- There are potential impacts on labour market flexibility and knock-on effects if workers change careers or businesses move overseas. Based on its own research, HMRC considers that the public sector reform was effective in increasing compliance without affecting labour market flexibility, and that it should not affect the ability of organisations to take on temporary workers through a PSC, or of contractors to work flexibly. However, a 2021 survey of contractors indicated that a significant minority of respondents experienced bans on the use of PSCs (paragraph 3.7).

5.14 There is also uncertainty over HMRC's approach to non-compliance in the private sector. HMRC has published its approach to supporting compliance in the private sector. This focuses on supporting customers to comply and seeking to work with them to self-correct errors. However, HMRC has so far only found central government bodies to be non-compliant, none of which have challenged it in court. Its post-reform assessments and penalties are therefore not yet tested in the courts. A recent survey of contractors indicated that only a small proportion of respondents trusted HMRC to stand by determinations made using CEST.¹² If HMRC pursues private sector bodies, they may challenge its conclusions in court, which could lead to new case law with clarifications or binding judgments on how the rules should be applied.

¹² IR35 Shield, *IR35 Impact Survey*, January 2022.

Appendix One

Our investigative approach

Scope

1 This investigation examined lessons from the implementation of 2017 reforms to tax rules for off-payroll working in the public sector. It covered the following:

- The new IR35 requirements on public bodies from 2017.
- What HM Revenue & Customs (HMRC) did to mitigate risks it identified to compliance, public bodies and workers, including guidance and support, monitoring and adaptation.
- What impact the roll-out has had on public bodies, workers and tax revenue.
- How HMRC assesses public bodies' compliance with the IR35 rules and what it has found to date.
- How HMRC has adapted its implementation of the next phase of the roll-out based on lessons from the public sector experience.

Methods

2 In examining these areas, we drew on a variety of evidence sources outlined below. This included: interviewing HMRC, other public bodies and a range of other stakeholders; reviewing documentation and data held by HMRC; reviewing publicly available information; and conducting a survey of public bodies.

Interviews

3 **We interviewed officials from HMRC** to understand the nature of the 2017 reform, how it was legislated, how HMRC supported customers to implement the new rules and how it monitored compliance.

4 We interviewed officials from central government departments and arms-length bodies. These included some that had been found not to be compliant with the IR35 requirements by HMRC, as well as some that had been reviewed without issue where we considered there may be good practice. We conducted these interviews to understand what the experience of these organisations was in implementing the reform, how they approached it and, where relevant, what their experience was of being reviewed by HMRC. We met with the following central government bodies:

- Home Office;
- Department for Work & Pensions;
- Department for Environment, Food & Rural Affairs;
- Department for Transport;
- Ministry of Justice; and
- NHS England and NHS Improvement.

5 We interviewed representatives of other parts of the public sector, including those that cover local authorities, healthcare providers and education providers, to understand the experience of the reforms in the wider public sector. We met with the following:

- BBC;
- British Universities Finance Directors Group;
- Chartered Institute of Public Finance and Accountancy;
- Healthcare Financial Management Association;
- Confederation of School Trusts;
- Local Government Association; and
- NHS Employers.

6 We met with other stakeholders, including experts in taxation, payroll administration and freelance working, to understand the implications of the reform. We spoke to representatives from the following organisations: Chartered Institute of Payroll Professionals; Chartered Institute of Taxation; Contractor Calculator; Deloitte; Institute of Chartered Accountants in England and Wales; and Low Incomes Tax Reform Group.

7 We consolidated our notes from interviews and meetings into an overall analytical framework. We coded the data against key themes identified, and the framework was refined as the understanding of themes and important issues grew. The overall findings were synthesised by theme and fed into the report.

Review of publicly available information

8 We reviewed publicly available documents and information to identify risks and key challenges identified by HMRC and stakeholders. This included:

- evidence published as part of the public consultations for the reforms in 2017 and 2021;
- relevant HMRC guidance on employment status and IR35;
- HMRC's Check Employment Status for Tax (CEST) tool;
- the House of Lords Finance Bill Sub-Committee review and associated evidence;
- research commissioned by HMRC; and
- published surveys of contractors asking for their perspectives and experiences of the reforms.

Review of HMRC documents and data

9 We reviewed unpublished HMRC documentation and data, to understand how the reform had been planned, implemented and monitored. This included programme documentation, HMRC's analysis of impacts and costs, and internal board papers. We also reviewed HMRC's data and analysis of usage of CEST and the related helpline.

Review of financial statements

10 We reviewed recent financial statements of central government bodies that we audit to identify losses recognised and provisions made relating to IR35.

11 We also reviewed IR35 disclosures in the major government departments to understand the volume of assessments made, re-assessments made, and disclosed changes in status.

Survey of public bodies

12 We conducted an online survey of public bodies to gather views on their experiences implementing the IR35 requirements, the use of CEST and other guidance, and impacts on hiring practices.¹³ The survey was designed to be short and simple, and to take around 10 minutes to complete. Most questions were multiple choice and, of these, the key questions that we have set out in this report were:

- How easy or difficult have you found it to comply with the new rules introduced in 2017?
- How confident were you, and are you now, in implementing the reforms?
 - In 2017?
 - Now?
- How useful have you found the resources you used to be?¹⁴
- How frequently have workers challenged the status determinations you've made with regards to their tax status?

13 In addition to these questions, we also asked respondents about any engagement they have had with HMRC, including as part of compliance reviews, and possible impacts on workforce composition. Our survey included some open text questions, inviting respondents to expand on their answers and to provide other information such as aspects that had gone well when implementing the reforms or their overall experience of implementing them.

14 Respondents were not required to respond to all the questions. Only those questions needed for processing and quality assurance (type of public body, organisation name and characteristics, and respondent role) were mandatory. Partial responses were therefore included, and each question was evaluated based on the responses received and non-responses were not analysed. When numbers are cited in the report, the number of responses is indicated.

15 We sent the survey link directly to public bodies that we audit, which covers central government and some other government-affiliated but statutorily independent national organisations such as parliamentary bodies and independent regulators. On our behalf, organisations representing or supporting local public sector bodies (such as local authorities, academy trusts and healthcare providers) also circulated the survey to their members.

¹³ We circulated the survey among our audit clients. This covered ministerial and non-ministerial government departments, arm's-length bodies, executive agencies and wholly owned subsidiaries.

¹⁴ Respondents were routed for this question based on which guidance they reported they had used when implementing the IR35 requirements, the options being: HMRC's online published materials; HMRC's CEST tool; HMRC's webinars and events; Tax Centre of Excellence guidance; and private sector advice from tax advisory services or similar.

16 We did not specify who in each public body should answer our survey other than asking for it to be someone of suitable seniority. This was to recognise the fact that the IR35 requirements are relevant to various parts of a business including finance, payroll, HR and procurement, and that different organisations will have taken different approaches to which functions will have taken a lead role. Most respondents (55%) represented their organisation's finance function. The most common other roles were in commercial and business support functions (28%) and HR (11%).

17 In response to stakeholders' suggestions while we designed our survey, we also allowed more than one respondent from the same organisation as long as the organisation and role were clearly stated. This was to allow a wider range of perspectives, recognising that individuals in different functions may have different views on, and experience of, how off-payroll working rules apply. Responses without a verifiable organisation name or a valid role description were not included in our analysis. We cleaned the data to exclude unusable responses and identify organisations with more than one response. In total, 144 respondents completed the survey in part or in full. This included three organisations where two representatives had responded from the same organisation. The analysis covered usable complete or partial responses and excluded organisations that were disqualified on the basis of not having engaged off-payroll staff at any point (16 responses).

18 The number of responses from different parts of the public sector is illustrated in **Figure 15** overleaf. Most responses – 95 representatives from 92 organisations – came from our audit clients in central government. These represented 39% of the organisations we contacted, and 42% of those where the request was successfully delivered.¹⁵ We considered this response rate to be statistically meaningful and have reported the results throughout our report. However, because we cannot guarantee that our sample is representative of the population overall, we have not attempted to test for statistical significance.

19 Because the survey was shared in the wider public sector using a variety of channels with the help of intermediaries, we cannot reliably estimate how many organisations received the survey link. However, only 49 usable responses were received. Compared with the size of those sectors, this response rate was too low to present meaningful statistics. We have therefore not included these responses in any numbers cited in the report. However, we have supplemented our qualitative evidence base from interviews with the free-text answers given in our survey from all respondents.

¹⁵ In 16 cases, we received an automated reply to our email indicating delivery fail or other error.

Figure 15
Survey response profile

Type of organisation	Number of responses ⁴	Number contacted
Central government¹	95	236
Of which:		
Departments	18 (12 ministerial departments/ six non-ministerial departments)	34 (15 ministerial departments/ 19 non-ministerial departments)
Other public bodies ²	77	202
Wider public sector³	49	N/A
Of which:		
Education	14	
Health	6	
Local authorities	13	
Police and fire	9	
Higher education	7	

Notes

- 1 In total, we directly contacted 236 of our audit clients from central government.
- 2 In addition to ministerial and non-ministerial departments, we also sent our survey to 202 other public bodies that we audit. This included executive agencies, non-departmental public bodies, other arm's-length bodies, and other government-affiliated but statutorily independent national organisations such as parliamentary bodies and independent regulators.
- 3 We cannot reliably estimate how many organisations in the wider public sector received the survey link because we did not send it to them directly. Comparing the number of responses to the assumed population sizes, however, indicates that the numbers are too small to be statistically meaningful. The response profile is included for transparency.
- 4 The table shows the count of individual responses that were not disqualified. The survey allowed different representatives to respond within organisations to reflect views of different functions. Only three of our clients who qualified for the survey did this. This means there were 92 unique organisations responding.

Source: National Audit Office analysis of survey responses from public bodies

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