



DAVID CHAPLIN

By email: request-544968-a68bde79@whatdotheyknow.com

FOI Reference:FOI327483

14/02/2019

Dear DAVID CHAPLIN

I refer to your request where you asked:

*'Off Payroll Reform in the Public Sector
Section 61M Chapter 10 ITEPA 22003 and Regulation 13 Social Security
(Miscellaneous Amendments No.) Regulations 2017*

Following the introduction of chapter 10 ITEPA 2003 and certain amendments to chapter 8 ITEPA 2003 ("IR35"), new rules apply in relation to off-payroll working in the public sector from 6 April 2017. Where individuals work and are paid through their own intermediary, public authorities as defined in the legislation) are now responsible for deciding whether the rules apply. Where a person is assessed as being with the new rules, the public authority agencies and third parties paying the fee for the services of the worker must operate tax, NICs and operate the Apprenticeship Levy.

I would like to check your compliance with the new legislation, including any systems you have introduced to help you decide whether the off payroll rules should apply when engaging workers via their own intermediary (either directly or via an agency or other labour provider). Such an intermediary will often be a 'personal service company', but as the legislation also applies where a worker is engaged via a partnership or another person, I will use the terms 'PSC or other intermediary' and 'PSC etc' in this letter.

I have listed the information we need below and would be grateful for your response by 31 August 2018. If the amount of information I have requested will make this difficult, please contact me to discuss how this can be managed.

Checking compliance with the rules from April 2017

1. Please describe the steps you took prior to April 2017:

- i. To review the off-payroll engagement of PSCs or other intermediaries, to decide whether the off-payroll rules would apply*
- ii. Please include an explanation of any different or additional steps taken in relation to PSCs etc that you engaged via an agency or other labour provider.*

2. If different from 1 above, please describe the systems / processes currently in place to decide whether the off-payroll rules apply to PSCs etc, whether you engage them directly or via an agency or other labour provider. Please provide a copy of any internal guidance / operating procedures for your staff, and comment on:

- i. who is responsible for carrying out the checks and approving decisions*
- ii. Whether the Check Employment Status for Tax tool (CEST) is used to inform decisions as to whether the rules apply, and*
- iii. How you ensure compliance where the PSC is engaged via an agency or other labour provider.*

3. For the tax year 2107/2018, if you directly engaged with and paid any worker's own PSC or other intermediary, please tell us:

- i. the total number of such PSCs etc. that you engaged directly*
- ii. the number of such PSCs etc that you decided were within the scope of the legislation*
- iii. if different from (ii), the number of such PSCs etc that have been subject to deduction of tax and NIC and included in an RTI submission*
- iv. the number of such PSCs etc that you decided were outside the scope of the legislation*
- v. the names, addresses and a brief description of the worker role / nature of services provided by the PSCs etc within (iv) above.*

4. For the tax year 2017/18, if you were invoiced by any agency or other labour provider for services via a worker's own PSC or other intermediary, please provide the name of each such agency or other labour provider and, or each of them, please tell us:

- i. the total number of such PSCs etc supplied by that agency / labour provider*
- ii. the number of such PSCs etc that you decided were within the scope of the legislation*
- iii. whether you told the agency / labour provider that the rules applied for every PSC etc within (ii) above and if not, please explain why not)*
- iv. the number of such PSCs etc, that you decided were outside the scope of the legislation*
- v. the name, addresses and a brief description of the worker role / nature of services provided by the PSCs etc within iv) above.*

5. Please identify any workers / PSCs etc that you decided were within the off-payroll rules, which have subsequently been engaged / paid via umbrella companies. Do you

have any policy in place that encourages the use of umbrella companies for those found to be within the rules?

6. For those not working through umbrella companies, have any workers that previously worked through their own PSC etc subsequently entered into employment contracts with your group?

7. The off payroll rules do not apply where a public authority has fully contracted out services to a third party e.g. an outsourcing company operating under a contract where the workers do not personally provide their services to the public authority. If you believe this applies to you, please provide an explanation for the affected contract(s).'

The use of Contingent Labour (CL) in the Cabinet Office is used to fill roles that require specialist knowledge and skills that aren't readily available. Line managers' are accountable for ensuring that further recruitment and capability plans are in place.

The HR Approvals Framework sets out the criteria of approval required depending on the daily billed rate. Anything more than £1000 per day has to be submitted to HR and Finance Directors and approved by the Chief Operating Officer and the Cabinet Office People Committee. Between £750 and £1000 requires a business case signed off by HR Business Partners (HRBPs) and approved by the HR and Finance Directors. Heads of Units can approve anything below £750 following a business case signed off from HRBP and Finance Business Partners.

IR35 compliance is part of the recruitment process, the hiring manager is responsible for making sure the HMRC tool is completed and the outcome captured on Fieldglass once completed (in or out of scope). The High Paid Off Payroll figures are published in the Annual Accounts for contractors that meet a certain criteria i.e. daily rate above £245 a day and been in post for at least 6 months from the date of reporting so will not include all contracted labour.

Alexander Mann Solutions (AMS) provide the ongoing management and supply of CL workers under the Public Sector Resourcing (PSR) Framework replacing the former CL1 Framework. SAP Fieldglass is used as the vendor management system.

With regard to your questions 3 to 6, I must inform you that the Cabinet Office is unable to comply with your request. Section 12 of the Freedom of Information Act relieves public authorities of the duty to comply with a request for information if the cost of dealing with it would exceed the appropriate limit. The appropriate limit has been specified in regulations and for central Government this is set at £600. This represents

the estimated cost of one person spending 3.5 working days in determining whether the Department holds the information, and locating, retrieving and extracting it.

Compiling the level of detail you have requested, which exceeds the currently available data provided by Cabinet Office in its routine transparency reporting, would require a significant amount of work that would exceed the appropriate cost limit. If you wish, you may refine your request in order to bring the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it, below the appropriate limit.

However, since January 2011, details of central government contracts above the value of £10,000 are published on Contracts Finder. Contracts published prior to 26 February 2015 can be viewed at: <https://data.gov.uk/data/contracts-finder-archive>

Those published after 26 February 2015 can be viewed at:
<https://www.contractsfinder.service.gov.uk/Search>

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to:

Eirian Walsh Atkins
Cabinet Office
70 Whitehall
London
SW1A 2AS

email: foi-team@cabinetoffice.gov.uk

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Cabinet Office. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. B. M.', written in a cursive style.

FOI Team
Cabinet Office