

The background of the entire page is a dark blue gradient. Overlaid on this is a network diagram consisting of several circular nodes connected by thin white lines. Each node contains a white icon: a person silhouette, a set of three interlocking gears, a clipboard with a checklist, a document with a signature, or a smartphone. A hand is shown in the foreground, with the index finger pointing directly at one of the gear icons. The text 'IR35 Client E-book' is positioned in the lower-left area, with 'IR35' underlined in pink and the rest in white.

IR35 Client E-book

WELCOME TO NRL'S UNDERSTANDING IR35 GUIDE.

This guide has been created to help you understand what IR35 is and how it could impact your current business and projects.

Topics covered will include:



IR35 Background

What is it and when did it come about?



Understanding the lingo

Key terms you should be familiar with



Talking tax

HMRC's IR35 agenda



Unravelling IR35

The basics you need to know



Compliant working practices

Understanding how IR35 will be determined



Your responsibility

What you should be doing



IR35 Background

Whilst it may seem a new topic, IR35 has actually been active in the Public and Private Sectors for some time. April 2021 introduces a change to the way it is administered.



Understanding the lingo

There are several key terms you need to know when IR35 is discussed, and you'll find the main terms below.



Disguised Employee

A Disguised Employee is a contracted worker who fills a position in a company and works under terms that would make them an employee but doesn't pay the corresponding income tax and National Insurance contributions (NIC) that an employee would.



Fee Payer

The Fee Payer is defined as the business, agency or third party that pays the Personal Services Company (PSC)/Limited Company.



Inside IR35

Inside IR35 means that HMRC deems a contractor as an employee and is therefore liable for income tax and National Insurance deductions at source. This is also referred to as In Scope.



Personal Services Company (PSC)

A Personal Services Company is defined as a Limited Company with one Director who is the contractor.

Head over to nrl.co.uk/ir35 for a full IR35 glossary.

* The client for whom the work is being completed.



End Client

The End Client is the party the contractor is engaged to deliver a service to. For the Public Sector HMRC gave a defined list for the End Client, for the Private Sector the definition of the End Client is the engaging business.*



Limited Company contractor

A contractor, who is usually the Director of the Limited Company, who operates on a contract basis through a private business.



Outside IR35

Outside IR35 means that a contractor is not classed as an employee and does not have the burden of income tax and National Insurance deductions. This is also referred to as Out of Scope.

Talking Tax

How does HMRC perceive contractors?

It's vital to understand that HMRC have strict regulations on how they perceive contractors with regards to their UK tax obligations.

In the past some workers have moved to a contractor role to benefit from the tax breaks of not working directly for an employer – whilst continuing to work for the company and receive similar benefits to the company's directly employed personnel. To combat this kind of behaviour (known as Disguised Employment) the IR35 legislation was launched, giving clear guidelines on how a contractor should operate to show they are not effectively working for a company.

IR35 looks at the way in which a contractor is engaged, fundamentally asking one simple question – “If the Personal Service Company did not exist, would the contractor be a company employee?” Where evidence indicates that there is no real difference to how they operate, IR35 would apply and the contractor will be subject to tax and National Insurance Contributions deducted at source.

Is it time to move to an umbrella company or permanent employment?

No, not necessarily. HMRC only expects one-third of contractors to be impacted by IR35. Don't forget that as a contractor you work on an assignment basis, so each individual assignment will need an IR35 determination – meaning you may undertake a mix of In and Out of Scope assignments over your career.



Unravelling IR35

Quick guide to IR35



IR35 WILL APPLY TO BUSINESSES ENGAGING LIMITED COMPANY CONTRACTORS, KNOWN AS OFF-PAYROLL WORKERS



YOUR BUSINESS, AS THE END CLIENT, WILL BE RESPONSIBLE FOR DETERMINING THE IR35 STATUS FOR EACH CONTRACTOR ASSIGNMENT. YOU MUST:

- Use reasonable care when making each determination
- Pass the Status Determination Statement to the contractor and any other parties involved in the engagement of the contractor, for example the recruitment agency - in their role as the fee payer



LEGISLATIVE CHANGES TO WHOM IS LIABLE FOR DETERMINATIONS UNDER IR35 WON'T APPLY TO END CLIENTS IF THEY MEET...

- Annual turnover not more than £10.2 million
- Balance sheet total not more than £5.1 million
- Not more than 50 employees



WHERE IR35 APPLIES THE FEE PAYER, OFTEN THE RECRUITMENT AGENCY, WILL BE RESPONSIBLE FOR DEDUCTING THE CONTRACTOR'S TAX AND NATIONAL INSURANCE CONTRIBUTIONS



AN END CLIENT LED STATUS DISAGREEMENT PROCESS WILL BE REQUIRED, SHOULD A CONTRACTOR WISH TO DISPUTE THEIR IR35 DETERMINATION. END CLIENTS WILL HAVE 45 DAYS TO DISCLOSE THEIR INVESTIGATION OUTCOME TO THE CONTRACTOR

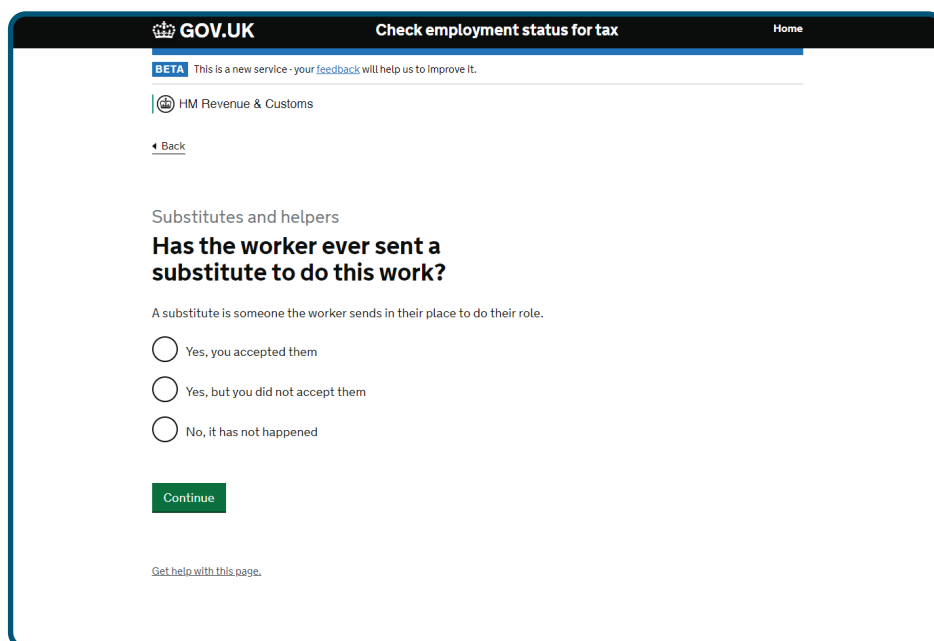


Assessing IR35 status

For the End Client, HMRC provides an online evaluation tool, CEST - Check Employment Status for Tax. This tool should be used to make each IR35 Status Determination Statement.

A series of questions are asked to understand the contractor's working practices and determine whether HMRC believe this constitutes Disguised Employment. Where it determines the assignment is too similar to a directly employed permanent member of staff, the contractor will be In Scope of IR35 - meaning tax and National Insurance Contributions will need to be deducted throughout the assignment.

If challenged however, End Clients must be able to demonstrate a fully auditable trail showing reasonable care has been taken to determine a contractor's IR35 status. It's for this reason that we urge our clients to work with us to determine IR35 status, demonstrating that they have utilised external resources to fairly make their determinations.



GOV.UK Check employment status for tax Home

BETA This is a new service - your [feedback](#) will help us to improve it.

HM Revenue & Customs

[Back](#)

Substitutes and helpers

Has the worker ever sent a substitute to do this work?

A substitute is someone the worker sends in their place to do their role.

☐ Yes, you accepted them

☐ Yes, but you did not accept them

☐ No, it has not happened

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Compliant working practices

IR35 means that it is more important than ever to ensure that businesses have clear operational and HR processes for how they engage contractors - ensuring that these are different to permanent employees of the business.

Contractors should be engaged strictly on a single assignment basis, with set deliverables and timescales. A new IR35 status determination is required if their assignment changes, or if they are engaged again on a different project. Opting to use Statement of Works instead of engaging contractors for a specific job role can also help provide clarity for all parties, and set the expectations for the assignment.

There are several factors that HMRC expects End Clients to assess when making Status Determination Statements, but it's important to remember that there are no right or wrong answers - instead each of the areas below are used to build a profile of how each contractor is engaged.

Take a look at the below and identify any areas where your current contractor assignments may need reviewing.



Right of substitution

Do you allow the contractor to send an alternative to fulfil the services?

The Limited Company is providing a service to you, but this should not necessarily mean they need to provide this service in person. HMRC's CEST tool will ask whether you would accept a substitute with the same skills and security clearance.



Supervision, Direction and Control

Does the contractor have complete control throughout their assignment, or will you be giving direction?

A Limited Company is often engaged to deliver a niche skill or expertise, not available within your permanent workforce. The contractor should therefore be able to deliver that service with little direction and control to stipulate how that work should have been completed.



Financial Risk

Does the contractor carry any cost implications if a project overruns or remedial work is required at a later date?

Do they supply any technical equipment needed to complete the works (excluding everyday items such as laptops and mobile phones)?

What sets contractors apart from employees, is the financial risk they carry - where terms of engagement stipulate that they will incur additional costs should work need to be rectified. Other factors, such as whether they incur the cost of specialist equipment hire provides a picture to HMRC on how that contractor operates.



Mutuality of Obligation

Is the arrangement with the Limited Company to complete only the assignment you have commissioned them for, with no expectation from either party that additional work will be available once complete?

You have engaged the contractor solely to deliver a specific service - there should be no anticipation that you will provide them with further work, nor any obligation for them to accept future work.



Part and Parcel

Do you consider the contractor to be part of the business - i.e. they have a staff building pass, staff parking, attend business social events, use subsidised restaurants, staff gyms or other employee benefits?

A Limited Company contractor should operate independently from your business, and not benefit from the same perks your directly employed personnel receive.



What can you do now?

1. Familiarise yourself with HMRC's CEST tool

You'll need to use this tool to make each IR35 status determination, so it's important to familiarise yourself with the questions that will be asked.

2. Review your current contracts and working practices

Look at the current contracts you have with off-payroll workers and what restrictions may be written into them that may affect an IR35 determination.

Review your working practices, to identify any changes you can make to how you operate that would provide more IR35 clarity to your contractors.

3. Speak to NRL

To help you navigate the process and understand industry best practice, make sure you speak to your recruitment consultant for support.

4. Keep on top of IR35 updates

We've launched an online resource centre on our website where we'll keep you up-to-date as the Government rolls out these changes to IR35 in the Private Sector.

Visit the resource centre and sign up to receive the latest updates:



nrl.co.uk/ir35