

A woman with blonde hair, wearing a white hard hat and an orange safety vest over a white button-down shirt, is looking upwards and to the left. She is holding a rolled-up white blueprint in her left hand. The background shows a construction site with wooden scaffolding and beams under a clear sky.

# IR35 Contractor 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 working practices.

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



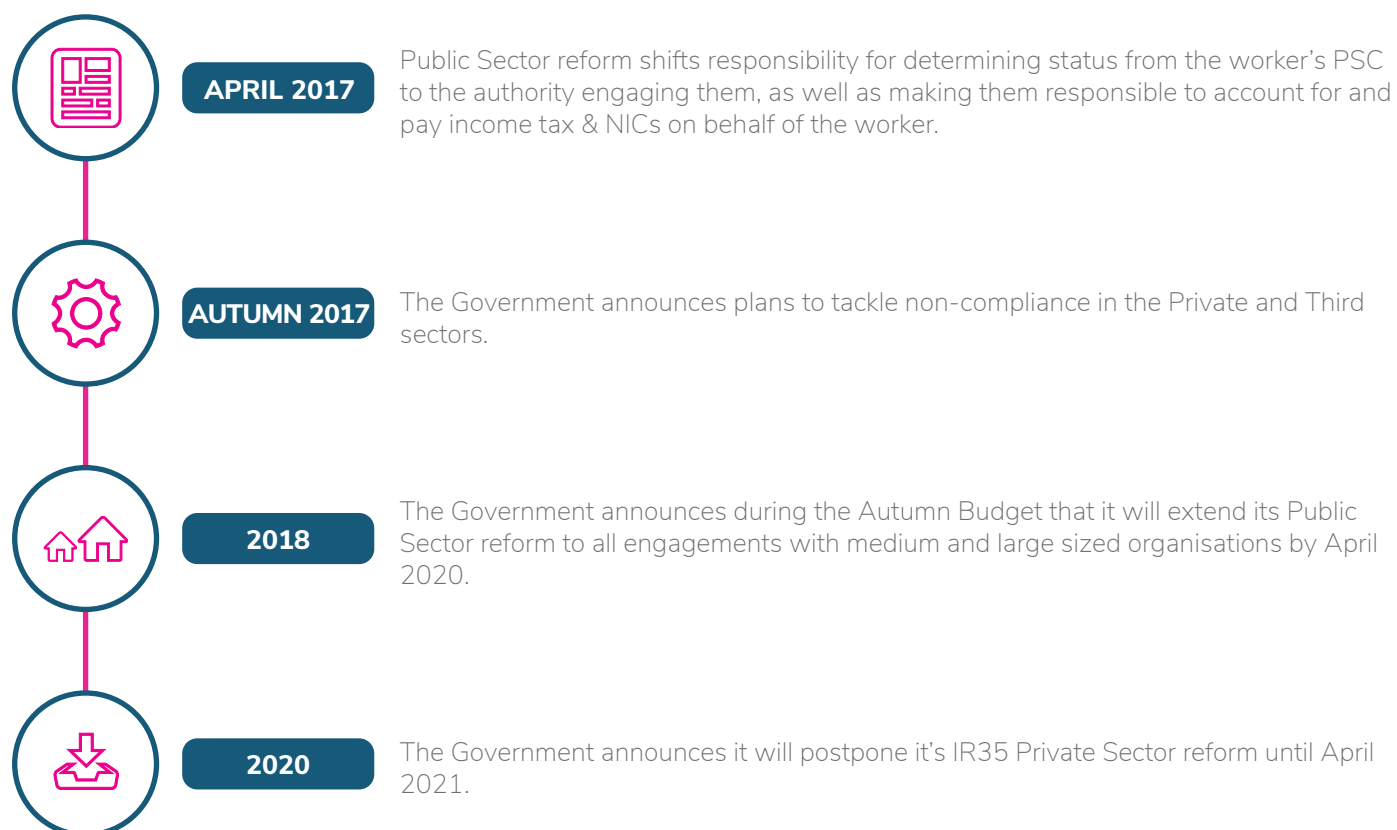
## Understanding your rights

What control will you have with IR35?



# IR35 Background

Whilst it may seem a new topic, IR35 has actually been active in the Public Sector for some time.



## 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](https://nrl.co.uk/ir35) for a full IR35 glossary.



### 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**



**THE BUSINESS YOU ARE DELIVERING THE WORK TO, KNOWN AS THE END CLIENT, WILL BE RESPONSIBLE FOR DETERMINING YOUR IR35 STATUS FOR EACH ASSIGNMENT YOU WORK ON. THEY MUST:**

- Use reasonable care when making each determination
- Pass the Status Determination Statement to you and the party you have a contract with, for example the recruitment agency – known as the Fee Payer
- Include their reasons for the determination



**IR35 WILL NOT APPLY TO END CLIENTS IF THEY MEET TWO OR MORE OF THE FOLLOWING CRITERIA:**

- 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 YOUR RECRUITMENT AGENCY, WILL BE RESPONSIBLE FOR DEDUCTING YOUR TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

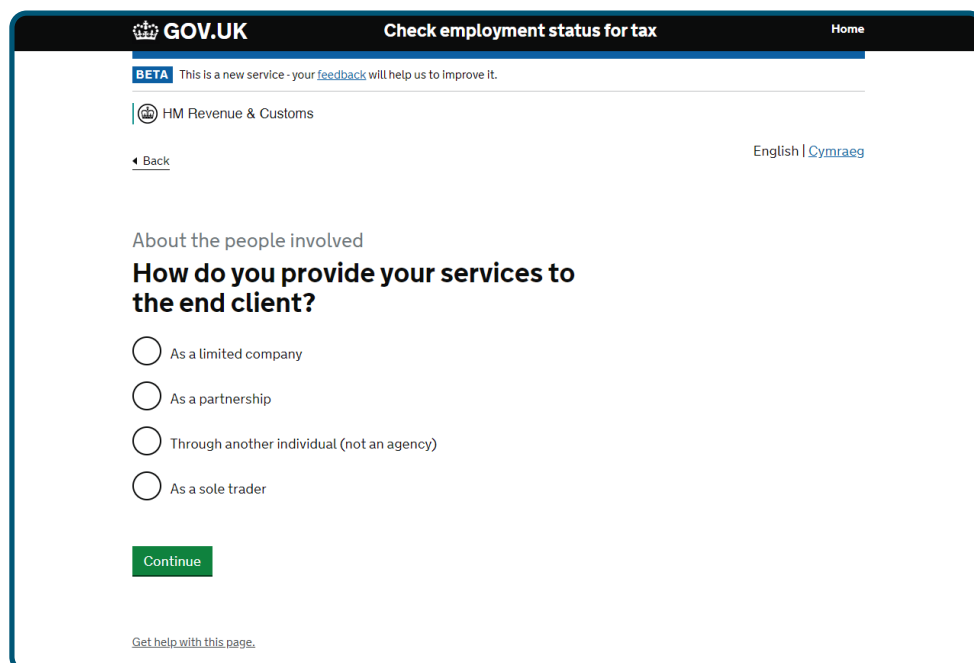


## Assessing IR35 status

For the End Client, HMRC provides an evaluation tool, CEST - Check Employment Status for Tax. This asks a series of questions to understand your working practices and determine whether they believe this constitutes Disguised Employment. Where it determines your assignment is too similar to a directly employed permanent member of staff, you will be In Scope of IR35 - meaning tax and National Insurance Contributions will need to be deducted throughout that 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 are urging our clients and their contractors to work with us to determine IR35 status, demonstrating that they have utilised external resources to fairly make their determinations.

You can also use the online CEST tool to make your own determination for IR35, but remember it will be the responsibility of your End Client to make the final determination.



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](#) English | [Cymraeg](#)

About the people involved

**How do you provide your services to the end client?**

☐ As a limited company

☐ As a partnership

☐ Through another individual (not an agency)

☐ As a sole trader

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## Compliant working practices

To ensure you are compliant as an independent contractor, and not seen as a Disguised Employee, you'll need to ensure contract work is accepted on a project by project basis with set deliverables and deadlines. This ensures you're being commissioned by the client purely on a project basis, with no permanent or long-term role once the project is complete.

Changes to how you undertake project work (such as moving to a Statement of Work instead of being contracted for a specific job role), will help demonstrate that you are being employed to deliver a service to the End Client as a supplier and not an employee.

There are several factors that HMRC expects End Client's 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 assignment working practices may need reviewing.

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### Right of substitution

**Can you send another contractor to work in place of yourself to fulfil the contract?**

**Would your End Client accept a suitably qualified substitute?**

As a Limited Company contractor your company is providing the service, not you – the End Client is paying for a service to be delivered, this does not mean you need to necessarily complete this service personally.



### Supervision, Direction and Control

**Do you have complete control throughout your assignment, or will the End Client be giving you direction?**

As a Limited Company contractor your company should be engaged to deliver a service with little direction and control to stipulate how that work should be completed – you are being commissioned to undertake a scope of work, using your skills and experience to know how to complete the task.





## Financial Risk

**Do you carry any cost implications if a project overruns or remediation work is required at a later date?**

**Are you required to supply any technical equipment needed to complete the works (excluding everyday items such as laptops and mobile phones)?**

As a Limited Company contractor you are delivering services – the arrangement between you and your End Client should be based on a service being delivered to a set standard, at a set price and using the necessary technical equipment to execute those services.



## Mutuality of Obligation

**Is the arrangement with your End Client to complete only the assignment you have been commissioned for, with no expectation from either party that additional work will be available once complete?**

As a Limited Company contractor you have been engaged by the End Client solely to deliver a specific service - there should be no anticipation of further work, nor any obligation to accept future work.



## Part and Parcel

**Are you considered to be part of the business – i.e. you have a staff building pass, staff parking; you attend business social events; use subsidised restaurants, staff gyms or other employee benefits?**

As a Limited Company contractor you should operate independently from the End Client, and not benefit from perks their directly employed personnel receive.



## Your responsibility

By understanding more about the key areas HMRC will focus on when assessing IR35 status, such as Right of Substitution and Financial Risk, you can review how you currently undertake assignments with your clients – and identify any potential changes that you could make.

### New assignment, new contract

It's crucial to remember that if you start a new assignment with an End Client you must request a new contract or a review of the existing service agreement. Sometimes a change in your working arrangement may alter your IR35 determination, so it's important to review each time there is a change in client requirements.

### Understanding your rights

IR35 may seem daunting, after all it's the End Client who will determine if IR35 applies for your assignments, and your recruitment agency who will deduct any necessary tax and National Insurance Contributions as your Fee Payer.

If you feel your IR35 determination is inaccurate though, you do have the right to lodge a request to review this under an End Client led Status Disagreement Process. The End Client must then review the individual determination.

The End Client will have 45 days to respond to you with the results of their investigation, including the reason for their outcome and will you continue to be engaged under the initial determination during this time.



## What can you do now?

In preparation for the changes in off-payroll working expected in the Private Sector in April 2020, there are several things you can do to stay ahead.

### 1. Review your contract

Look at your contract and what restrictions may be written into it that may affect an IR35 determination.

### 2. Review your working practices

Research the key assessment areas for IR35 in more detail. Are there any working practices that you currently undertake they may reflect an In Scope assignment? Are there any practical changes you can make to how you operate that would support an Out of Scope decision?

You could review your current work practices using HMRC's CEST tool but remember that the End Client will be responsible for completing this with their interpretation of how you are engaged, so your results will not guarantee your IR35 status.

### 3. Speak to your recruitment agency

They will be able to provide valuable advice, suggestions for changing working practices and other payment options.

### 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 IR35 into the Private Sector.

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



**nrl.co.uk/ir35**