

The background of the entire page is a photograph of two construction workers in silhouette, wearing hard hats and working on a structure of vertical rebar. They are positioned in the middle ground. The sky is a mix of blue and orange, suggesting a sunset or sunrise. In the foreground, there is a dark, silhouetted structure that appears to be scaffolding or part of a building's framework.

A contractors guide to IR35 compliance





Welcome to NRL's contractor guide to IR35 compliance

This guide has been created to help you understand what IR35 is and how it may impact your contract assignments.

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 is determined



Your responsibility

Actions your business should be taking



Understanding your rights

What control do 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.



April 2017

Public Sector reform shifts responsibility for determining status from the worker's PSC to the authority engaging them, as well as making them responsible to account for and pay income tax and NICs on behalf of the worker.



Autumn 2017

The Government announces plans to tackle non-compliance in the Private and Third sectors.



2018

The Government announces during the Autumn Budget that it will extend its Public Sector reform to all engagements with medium and large-sized organisations by April 2020.



2020

The Government announces it will postpone its IR35 Private Sector reform until April 2021.



2021

In April 2021 IR35 comes to effect in the Private Sector.



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.



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.



Status Determination Statement

An assessment provided by the End Client which declares the employment status of an assignment with the justification for reaching the deemed status determination.



Talking tax

How does HMRC perceive contractors?



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

In the past some workers have moved to a contingent worker 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 contingent worker should operate to show they are not effectively working for a company.

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

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

Well, it depends on your individual circumstances. IR35 needs to be assessed through each individual assignment you'll undertake, so not all assignments may be In Scope.





Unravelling IR35

Quick guide to IR35:

IR35 APPLIES TO BUSINESSES ENGAGING LIMITED COMPANY CONTRACTORS, KNOWN AS OFF-PAYROLL WORKERS.

THE BUSINESS YOU ARE DELIVERING THE WORK TO, KNOWN AS THE END CLIENT, IS 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, in their role as the Fee Paye
- Include their reasons for the determination

A SMALL BUSINESS EXEMPTION MEANS ORGANISATIONS THAT MEET TWO OR MORE OF THE FOLLOWING CRITERIA FOR TWO CONSECUTIVE FINANCIAL YEARS WILL NOT BE SUBJECT TO IR35:

- Annual turnover not exceeding £15 million
- Balance sheet total not exceeding £7.5m
- Not more than 50 employees

WHERE IR35 APPLIES THE FEE PAYER, OFTEN YOUR RECRUITMENT AGENCY, IS 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 encourage 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

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

 HM Revenue & Customs

[Back](#)

About the people involved

How do you provide your services to the end client?

☐

As a limited company

☐

As a partnership☐☐**Continue**[Get help with this page.](#)

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 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 together 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.



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?

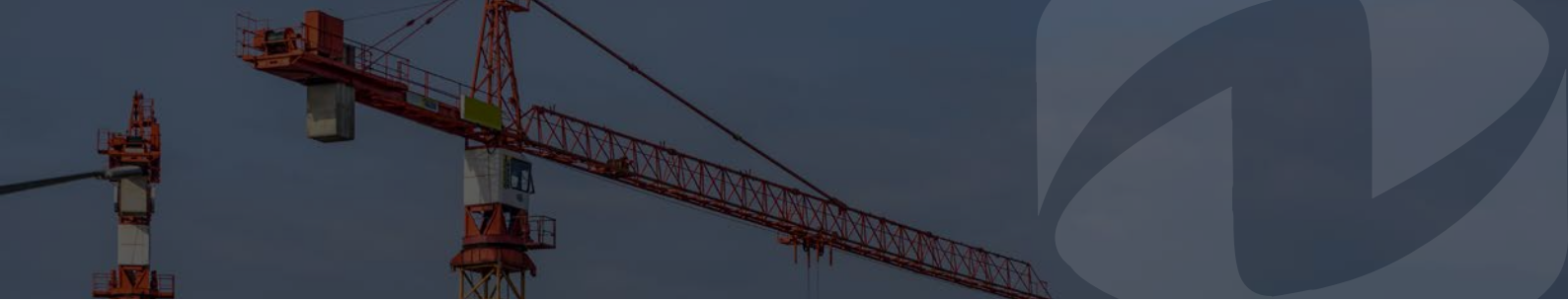
As a Limited Company contractor your company is providing the service, not you – the End Client is paying for a service to be delivered, this does not mean you need to necessarily complete this service personally.



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 potential changes that you may need to make.



New assignment, new contract

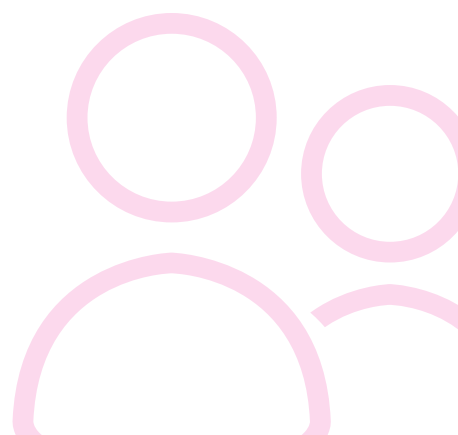
It's crucial to remember that if you start a new assignment with an End Client, you must request a new contract or a review of the existing service agreement. Sometimes a change in your working arrangement may alter your IR35 determination, so it's important to review each time there is a change in client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

When it comes to IR35, below are the key things you'll need to consider.

1 REVIEW YOUR CONTRACT

Look at your proposed 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 that 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.