



Unlocking IR35

Helping you navigate off-payroll legislation
in the private sector

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Sam Thorne, Practice Manager, London

Are you IR35 ready?

From 6 April 2021, the IR35 rules that apply to limited company contractors are changing.

IR35 was introduced in 2000 to ensure all limited company contractors who were working in the same way as employees were paying the correct amount of PAYE income tax and National Insurance Contributions (NIC).

Under the 2000 IR35 rules, the limited company contractor was responsible for determining their own IR35 status. They were also responsible for determining whether their income was employment or self-employment income. However, from April 2021, this responsibility will shift to the end user/client hirer using the services of the limited company contractor. This means the end user will have to assess their contingent workforce to determine whether those roles filled by limited company contractors are inside or outside IR35 legislation. If a contractor is deemed to be inside IR35, their income will be treated as deemed employment income and the fee payer (usually the employment business supplying their services) will be responsible for paying their invoices, subject to tax and NIC deductions. This will inevitably reduce their take home pay.

As the end user, you'll be obliged to share the IR35 status determination with Rullion or whichever employment business is the first agency in the supply chain. You will need to demonstrate you've taken "reasonable care" when carrying out the IR35 assessment.

With over 40 years' experience in the recruitment sector, we've guided businesses both large and small through various legislative changes. Our expert team provides a complete solution that protects your organisation and ensures that you have a compliant workforce.

How to gather data on your contractor population



John Shepherd,
Client Solutions Manager,
Altrincham

Before you undertake any IR35 assessments, you should begin by mapping out your contingent landscape, gathering insight on your current contingent workforce and identifying any hidden contractors.

You'll need to complete an audit, capturing data and gathering insights into your current contingent workers, identifying:

1. Who exactly are your current contingent workers?
2. What is their pay rate?
3. How long have they been on assignment for?
4. What is the end date of their assignment?
5. What is their current status – i.e. are they PAYE agency workers or limited company contractors
6. Are there other intermediaries aside from Rullion in the supply chain?

We've created a template which will help you quickly and easily enter your contingent workforce data, which includes sections on:

- Requirement title
- Agency name
- Start and end date
- Department and location
- Contractual status
- Pay rate and unit
- Agency mark-up and charge rate

[Download template](#) >

How To Determine An Individual's Employment Status?

Once you have a complete overview of your contingent workforce, you'll need to identify the limited company contractors in that workforce. You'll then need to start assessing whether the assignments the contractors are engaged in are inside or outside IR35.

As the end user, you'll be responsible for providing a Status Determination Statement for each contractor assignment. You must be able to demonstrate you've taken "reasonable care" i.e. that you have carried out a proper status determination using the Government CEST tool, an independent assessment tool, or your own in-house expertise. HMRC use various factors to establish the employment status of a contingent worker, including control, substitution and mutuality of obligation.

Control

One of the most important factors when determining a contingent worker's status is around the level of control they have over the manner in which they undertake their work. Do you or the contractor control where, when and how a contractor undertakes tasks on their assignment?

It's important that a worker can demonstrate a level of autonomy when undertaking an assignment, as opposed to being under direct supervision by the end client. A self-employed worker should have more influence over how they complete tasks, being provided with milestones to hit, rather than a list of directions.

Mutuality of obligation

A mutuality of obligation exists when the end user is obliged to provide paid work and the contingent worker is obliged to accept and complete the work.

This situation is typical of an employer-employee relationship. However, if a contractor is in business on their own account, they'd expect the end user to hire them to undertake a specific task, with no expectation of further work.

Key signs to watch out for:

- Line managers supervision
- Defining when a contractor works
- Provisions for holidays and sick pay

Substitution

One of the biggest factors when determining whether a contingent worker is inside or outside of IR35 is the right to provide a substitute. If a contractor is unable to attend an assignment for whatever reason, do they have an unfettered right to provide a substitute?

An employee provides a personal service to their employer – if they can't attend for whatever reason, they have no obligation or right to provide a substitute. However, a business provides a service to the end user, and therefore are able to provide a substitute.

Whilst other factors will come into play, if a worker doesn't have the right to provide a substitute, they are more likely to be inside IR35.

Other factors include:



Financial risk

Is there a high level of risk involved in the individual's work? If most of the risk lies with the end user, this indicates employment. To be deemed self-employed, any errors made during the contract must be rectified in the contractor's own time and at their own expense.



Provision of equipment

Unless there is a sound reason, the contractor should supply their own equipment.



Intention of parties

HMRC wants to determine the true relationship between contractor and end user. Therefore, the contract must clearly state the intentions to be supplier and customer, not employee and employer.



Part and parcel

It's important that a contractor isn't seen as part of the organisation. For example, if they have staff (employed by the end user) reporting into them or attend staff social events then they're behaving like an employee.



Employee benefits

A true self-employed worker doesn't receive employee benefits. This includes holiday, sick pay and pensions.



Exclusivity

A self-employed worker should be able to work in more than one organisation at a time. If a worker is obliged to work exclusively with one client at a time, they're probably an employee for tax, not a self-employed worker.

HMRC has introduced the CEST tool to help businesses and individuals undertake IR35 assessments. We've partnered with a specialist provider to deliver market leading assessment services, underpinned by professional indemnity.

Daniel Peach, Senior on-site Account Manager, Barnwood



FAQs

What is IR35?

IR35 is a legislative instrument used by HMRC to identify disguised employment status and counter tax avoidance by identifying and targeting contingent workers who operate like an employee.

What is going to change?

From April 2021, when working arrangements relating to a limited company contractor's assignment are considered to be inside IR35:

- The 'fee payer' (agency) must pay employer's National Insurance on top of the agreed rate
- The fee payer must treat the contractor's income as deemed employment income and deduct income tax and National Insurance from the contractor's invoice before paying it
- The end user is now responsible for assessing the IR35 status of their limited company contractor workforce and providing a status determination to the agency (employment business) they are contracting with.

Who's responsible for determining IR35 status? The end client, the agency or the limited company contractor?

Prior to the legislation coming into effect, the limited company contractor is responsible for determining their own IR35 status. However, from 6 April 2021, this responsibility will shift to the end user. If you engage a limited company contractor through a fee payer (agency) on a contingent basis, you, the end user will be responsible for carrying out the status determination. The agency, as the fee payer, will be responsible for ensuring the correct deductions are made from the contractor's invoice before payment is made.

Is there a tool to help determine IR35 status?

HMRC has developed a basic online tool, CEST, to help the end user assess whether a contractor's working practices fall inside or outside IR35. While it can deliver a result within minutes, some of its determinations are not clear cut.

Some independent assessment tools go into more depth and tend to arrive at determinations with greater clarity. Not only do these tend to provide assessments with greater clarity, but they also provide insurance alongside the outcome.

What happens if the end client gets the assessment wrong?

If the end client determines a limited company contractor's IR35 status incorrectly, it may be costly.

If a contractor's assignment is wrongly deemed as outside IR35, HMRC may launch an investigation. This could lead to back taxes, penalties and interest. Where a contractor's working practices have been wrongly assessed as falling outside IR35, and the fee payer has consequently not made the necessary deemed employment deductions before paying the contractor's invoices, the end user will be liable if they have not carried out the IR35 status determination with "reasonable care". If, on the other hand, reasonable care has been taken by the end user i.e. the status determination has been carried out with proper regard to the actual working practices, and a suitable assessment mechanism has been used but has nevertheless arrived at the wrong determination, it will be the fee payer who remains liable for the deemed employment deductions.

What is a blanket assessment?

A blanket assessment is where the end user predetermines an IR35 status decision without conducting an individual assessment, instead basing the decision solely on job description or role. This approach was commonly taken when the Off-Payroll rules were rolled out in the public sector but was challenged and discredited to a large degree.

What is a blanket ban?

In order to avoid having to carry out individual IR35 status determinations on individual contractors' working practices, some organisations have decided only to engage workers on a PAYE basis. This may result in contractors who believe their working practices fall outside IR35 either seeking to increase their rates to offset the rise in tax, or gravitating towards organisations that are prepared to carry out IR35 status determinations.

How should a contingent worker be treated in comparison to employees?

Every worker must be treated with respect regardless of whether they are a contractor, a PAYE contingent worker or permanent employee. However, it's important to remember that contractors and PAYE contingent workers aren't employees, and therefore shouldn't be seen to be or treated as 'part and parcel' of the organisation. For example, it's important that they don't have staff reporting into them, attend any social events or receive any employee perks.

Where do I start?

Get in touch! With over 40 years' experience in the recruitment industry, we've guided businesses both large and small through various legislative change. Our expert team at Rullion provides a complete solution that protects your organisation and ensures you have a compliant workforce.



We remove the hassle of recruitment, priding ourselves on helping our clients, candidates and employees succeed and grow.

We offer flexible, tailored solutions to meet individual needs through our Managed Solutions, Staffing Solutions and Talent Consultancy.

To speak with us about IR35, please get in touch using the following email address:

ir35@rullion.co.uk

Ellen Chan, Recruitment Consultant, London



Rullion

Mansion House
3 Bridgewater Embankment
Altrincham
Cheshire
WA14 1RW

rullion.co.uk

