



Construction & Infrastructure

Recruitment Specialists

IR35 Reform >
in the Private Sector

Background Introduction

HMRC IR35 legislation has been in place since 2000, but non-compliance is widespread. HMRC estimate that only 10% of those who should be applying the rules do so, which will cost the Exchequer £1.3 billion in 2023/24. This deprives vital public services of important funds and is unfair to taxpayers who are complying with the rules.

TRi build are committed to providing the highest level of service and engagement throughout the recruitment process to ensure that workers and clients can deliver their services and their projects successfully in the knowledge that their status determination truly reflects their employment status.

Whilst the compliance of PSC workers has been a relatively mute subject for the last 20 years, HMRC have now realised there is a significant need for focus and attention on the management of this area of taxation, more specifically in relation to employers national insurance contributions.

It is essential that this workforce becomes more educated and compliant with the options that are available to them if they wish to remain off-payroll for the duration of their assignments.

With such a significant growth in the number of £multi-billion engineering projects across the UK, there will always be a requirement for the engagement of a highly skilled and flexible work force that is prepared and willing to move from project to project.

The TRiBuild Approach

Be prepared and pro-active

Due to the scale of the impact of this legislation, we are preparing now to ensure our compliance and working practices facilitate confident determinations

Listen and Learn

Our ability to gather intelligence from multiple sources allows us to learn at a faster pace and deliver the most informed approach to all parties

Openly Communicate

Face-to-face meetings and regular bulletins will provide clients and contractors with the most up to date information on how best to set out our working practices.

Basis of Determination

Why use a contractor?

How robust is your labour supply chain?

How does your supply chain support IR35 compliance?

Are you happy with your terms/contract of engagement?

Do you or the worker expect equal pay or employee benefits?

Should you need (the right of) supervision, direction and/or control?

Will you expect/assure ongoing engagement at the end of the assignment?

Does the worker require their own insurance?

What are the costs/benefits of employment vs. contractor?

Understanding IR35 Sheild



IR35 Sheild = Check Employment Status for Tax



The questions are not in place to trick anyone



Honest answers will still give the correct determination



TRIfuild will offer support with the test



TRIfuild supply chain also carry out employment status test



IR35 Shield Determination must become part of compliance on-boarding

Payment Methods

- Clearly defined contracts/assignment schedules to facilitate payment and associated required compliance checks:
 - Inside IR35 – Deemed employment (via APSCO accredited umbrella company)
 - Outside IR35 – Limited Company/PSC
 - Outside IR35 – CIS Limited Company/PSC
 - Umbrella – PAYE
 - Umbrella – CIS Self Employed

Inside IR35 – Deemed Employment Status

Highly complicated method of tax calculation

Tax/NI contributions are made on the total turnover/rate

Calculation managed by FCSA accredited umbrella companies

Embrace the change as a positive that will give definition and control to the engagement of contractors

Most public sector workers in this category have increased their rates by 10-15% to accommodate tax payments

Minor benefit over direct employment

Outside IR35 – Limited/PSC/CIS

- Defined assignment schedules detailing description of services
- Defined contracts of engagement for services
- Online IR35 Shield questions are addressed
- Insurances held to indemnify clients and protect them:
 - Public Liability - £1m
 - Professional Indemnity - £2m
 - Employer Liability - £5m

- No mutuality of obligation past the completion of a an assignment
- Client must agree that there is no need for Supervision, direction or control of the individual
- Worker must be afforded the right of substitution (with client agreement)
- Client has a right to 'set-off' payment should work delivered be unsatisfactory

Umbrella CIS – Self Employed

Becoming more popular amongst skilled labour (C&G, CSCS)

20% or 30% paid at source meaning HMRC are paid

Limited company or Umbrella option for engagement

Clearly defined tax status via (UTR) Unique Tax Reference number

TRi build Solutions take responsibility for determination in the eyes of HMRC

Self employment check carried out by umbrella company every six months to assist with audit process

Client must recognise the status and not require supervision, direction, or control

Umbrella - PAYE

Managed via an approved supply chain of three key suppliers

Professional engagement and supplier agreements

All suppliers are APSCO and FCSA accredited

All suppliers are regularly audited by HMRC

All HMRC payments are managed and audited

Umbrella companies have insurance to cover service provided

All workers paid weekly without fail

Contractor Insurance

Holding business insurance has always been a helpful indicator of being in business on your own account and therefore working outside of IR35. When HMRC carry out an IR35 status enquiry they will consider a number of factors.

Importantly, one of the ways that you can prove you are a legitimate business is through the assumption of contractual risks and liabilities and therefore the purchasing of relevant insurance cover.

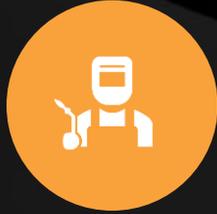
To work outside of IR35 the relationship between you and your client must not 'look and feel' like employment. If it does, it is likely IR35 will apply.

It is imperative to be able to demonstrate the differences between an independent contractor and employees of a business.

Having the correct insurance cover in place is one such demonstrable difference and serves as a helpful factor in favour of 'being in business on your own account' and therefore working outside of IR35.

Insurance is not a requirement for an employee as they would be covered by their employer's own provisions. Therefore, the holding of insurance demonstrates a clear distinction between contractor and employee.

Key Factors of Working Outside IR35



What is the reason/need for taking on a contractor?



Description of services and engagement



Mutuality of Obligation



Associated contractual and financial risk



Right of substitution



Payment of Employers NI/HMRC Taxation

Description of Services and Engagement

Engaging contractors cannot be seen as just providing and employees job description.

Contractors or temporary workers are engaged for a set period of time to accommodate projects, fluctuations or seasonal demands which do not require long term employee contracts.

A description of services must be described in such a manner as to detail what is expected of the individual.

The expectation should be that the service will then be delivered without the need for the individual to supervised, directed or controlled as they will come with the necessary skills to do so.

Mutuality of Obligation

Deemed employment status will be determined on a number of factors. One of these is a continuation of engagement/employment.

If a contractor is engaged to provide services for an agreed duration, there should be no responsibility from either party to offer or accept further works upon completion of the original engagement.

Both parties must agree a continuation of works if it is required and this must be for an agreed period.

Any agreements made surrounding a continuation of associated engagement or employment may attract employee status or 'deemed employment' which falls Inside IR35.

Associated Contractual and Financial Risk

The taking on or presence of discernible financial risk is also a key indicator of working outside IR35. The fact that you, as the PSC, have had to purchase insurance cover demonstrates a financial obligation and a responsibility to protect your interests.

It helps determine that you have acknowledged your financial risk exposure and taken the precaution to protect yourself against any claim that could lead to a financial loss against your company.

Professional Indemnity Insurance – a key piece of cover for any contractor - is designed to protect you against claims for negligence (such as providing a service, advice or designs that have caused a loss).

Clients will also expect the right to set-off monies against payments as a level of financial security associated with 'making-good' and errors or omissions that have arisen from the provision of the services.

Right of Substitution



PSC's must be afforded right of substitution if they are Outside IR35



Agreement must be made with the client prior to substitution



Substitute must be equally skilled and capable



Substitute must be engaged under the same contract and rates



PSC must engage the substitute and take responsibility for tax



PSC must hold employers liability insurance

Other Legislation and Acts

- All of the following are addressed in TRIbuilds contracts and terms of business:
 - MSC (Managed Service Company) legislation
 - The Criminal Finance Act 2017
 - AWR (Agency Worker Regulations)
 - Offshore fee-payers (umbrella)
 - Agency Worker Regulations 2010
 - Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 (SI 2019 No.725)

Contractor Audits

Running a contractor audit to better understand the detail of your contingent workforce is crucial, and not just for IR35 purposes.

End-users, you should begin with identifying the answers to four questions -- who your contractors are; where they are from; how they are contracted to your business, and what skills they bring to your business. These are all crucial 'need-to-knows' for engagers.

How the organisation engages external, off-payroll contractors and the consequences of this for the business, in terms of tax and logistics, is key too. To help you probe further, engagers, here's another fundamental four questions to pose about your contractors:

- Are they engaged via a limited or umbrella company?
- Is there an agency or consultancy involved in the arrangement?
- Are they based onshore?
- Are they VAT-registered?

Going through these checks (if you're company that uses contractors), and concluding what the answers are – or aren't, can help your operation prepare for IR35 compliance in just under eight months' time

Mindset

- While end-users who 'sit on the fence' won't achieve best practice for their business or their contingent workforce, leaping out of the blocks too early could result in a repeat of past mistakes. Rushing is not required here. Making sure that you, as an engager of off-payroll workers, make informed decisions for the changes to IR35 in the private sector, is.
- Clients, we recommend contractor IR35 status assessments are dealt with on a case-by-case basis, to ensure that such valuable workers are treated fairly, in line with the legislation and not at odds with your outfit needing to retain access to a talent pool.
- We believe engagers should not lose skills for their vital projects of the future simply because they neglected to extend fair treatment or 'reasonable care' to their contractors. By preparing diligently, meaning not leaving off-payroll working processes and systems to the 11th hour, your operation can adequately deal with the extra administrative burdens that will result from taking a case-by-case approach. It's a lengthy one, but it's also the right one