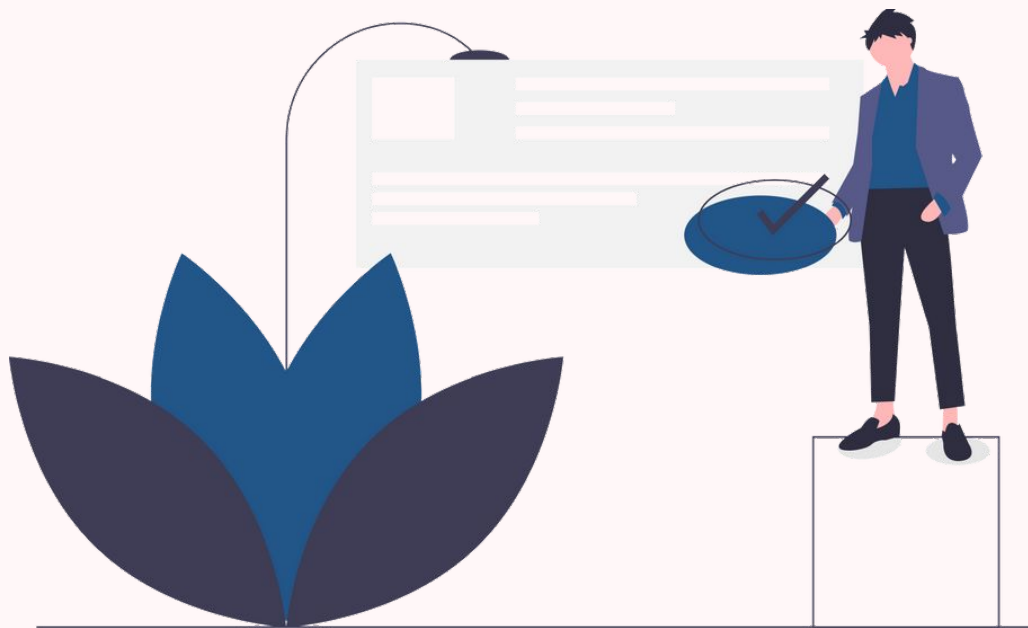




THE COMPLETE IR35 GUIDE.



Starting a business should be easy. Here is I35 explained!

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Introduction to IR35.

What is IR35?

IR35 is a piece of legislation which allows HMRC to treat private contractors as if they were employees.

It was introduced to combat the problem of "disguised employment", where employees offer their services via limited companies to pay less tax and National Insurance.

Will I be affected by IR35?

IR35 is usually a threat to your income only if you are self-employed, and provide your services via a limited company. HMRC may decide that you should be paying tax and NI contributions as if you were an employee.

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Introduction to IR35.

What would that mean?

If your contract is found to fall within IR35, then the difference in take-home pay usually amounts to around 20%.

Additionally, HMRC may choose to investigate previous contracts going back at least 6 years to see if they should also have come under IR35. So this could mean a higher tax bill and a bulk payment for previous unpaid tax, plus penalties and interest.

What should I do?

You need to **structure your contracts and working arrangements in such a way that they fall outside IR35.**

Your objective is to stop any enquiry by HMRC before it has a chance to get off the ground. This is usually not that difficult to do, but the process can be technical and complicated. In the next pages, we'll share a two-part action plan you can implement.

IR35 Action plan: Part I.

There are four action steps you can take right now. These are easy and impactful—and will set you on the right path.

1. Secure a clear right of substitution.

Substitution means you can send someone else in to do your work, at your own decision and expense.

Provided the right of substitution is clearly and tightly defined as laying in the contractor's hands, then the legal precedents make it a very effective defence. Your client cannot exercise any significant control (such as right of approval) over who you choose to replace you for this defence to work well.

Ensure that you have a right of substitution clause included in your contract. Even better, actually use this right during the duration of your contract.

2. Include a statement of intention in your contract.

HMRC may deem your contract or working practices to be ambiguous. You may appear to be a private company, yet you perform certain actions that makes it look like you're an employee. It's unclear whether you might fall within IR35 - or not.

But if you include a "statement of intention" in your contract, you will not be included within IR35 when there is ambiguity.

Without such a statement of intention in your contract, HMRC is required to interpret the ambiguity in your case as it deems most correct.

This is not an effective defence if your contract or working practices are unambiguous, and you clearly look like an employee.



3. Secure a "confirmation of arrangements" letter from your client.

In all IR35 cases, the courts have made it clear that they require evidence from the client.

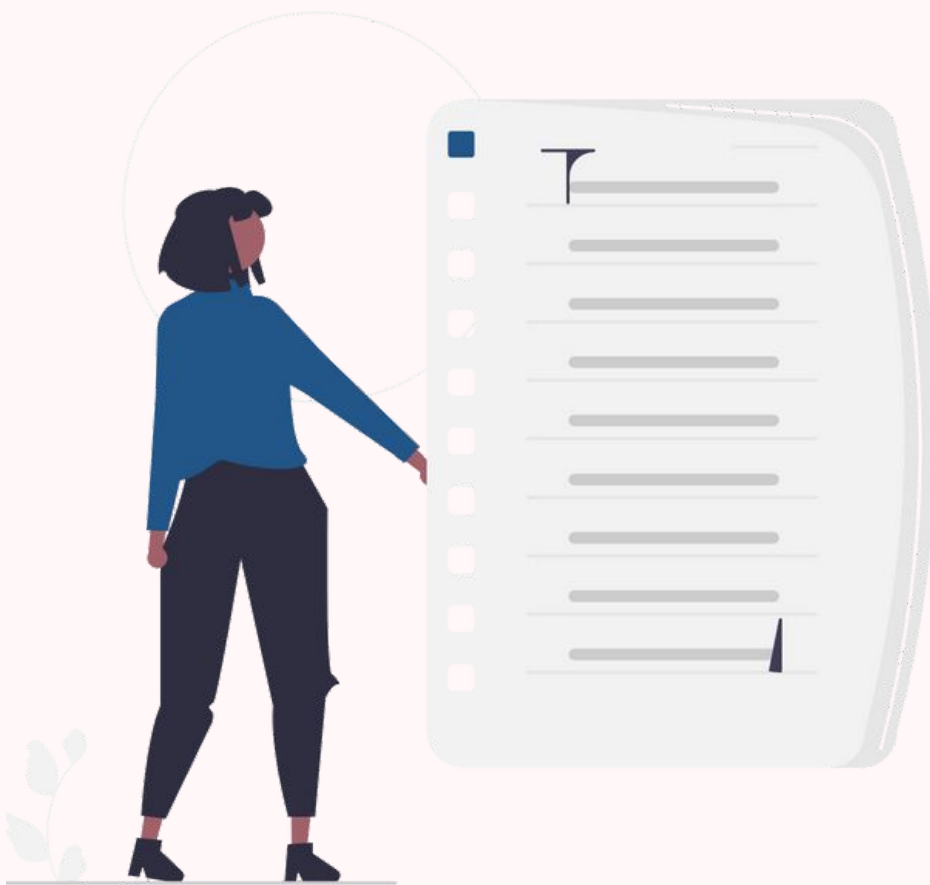
The value of a confirmation of arrangements letter has been well-established. Provided it is correctly structured, you can use it to very quickly close down any enquiry into your IR35 status by HMRC.

A confirmation of arrangements letter can also be used if you work for an agency, and are unsure if the agency-client contract itself (which it is unlikely you will get to see) is IR35-compliant. Or you may have already signed a contract which could be interpreted as ambiguous.



A confirmation of arrangements letter should clearly state the reasons for why your working arrangements falls outside of IR35. It should also record that every party in the contractual chain agrees on the IR35 status of the contractor.

This is an area where it's worth paying for professional advice.



4. Get your contract professionally reviewed for IR35 before you sign it.

You have to be certain that your contract does not contain mistakes, inconsistencies or omissions which could inadvertently land you inside IR35.

If you have to provide your own contract, then at the very least use a professional template and submit your final version for professional review. If your client provides the contract, you should have it professionally reviewed early on, so as to allow time for negotiations.

IR35 is a complex area of case law, and an ordinary solicitor is unlikely to have the expert knowledge needed to identify and resolve potential issues. Only hire someone who specialises in dealing with IR35 issues in the contracting sector.

[Book a Free Consultation](#)

IR35 Action plan: Part II.

Whilst professional advice is essential when drafting your paperwork, you also need to personally understand what is involved and how to approach it. This enables you to be consistent in your working practices.

Knowing what to look for in a proposed contract also enables you to recognise whether you need to negotiate different terms.

In the following pages, we dive into what you always have to keep in mind.

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1. Ensure you are a free businessperson - not a controlled employee.

Control used to be the defining factor for determining whether someone was an employee or genuinely in business on their own account. Even today, most other factors in your contract will be interpreted through the lens of control.

If the only controls that your client can exercise over you are that the work must be completed by a certain deadline and to a sufficient standard, then it is likely you will be classified as an independent contractor.

It can also help you to be classified as falling outside of IR35 if you are:

- responsible for your own training and expenses
- free to do your work wherever and whenever you want
- able to decide for yourself how the work is to be done

You are likely to be classified as falling within IR35 if your contract gives your client the right to:

- monitor your work on a continual basis
- expect you to follow instructions in the same way an employee would
- control your working methods
- have you subject to a line manager

2. Mutuality of obligation.

While this is a key test, case law has shown that HMRC is prone to misinterpretation or misunderstanding what is involved. As such, it is not worth making this factor the main part of your argument.

Keep it simple - you want to ensure that you are not obliged to accept contracts and that your client is not obliged to offer them.

If work is repeatedly offered and repeatedly accepted then HMRC may take the view that an employment contract has been created "by custom and habit". In practice, this is most easily offset by securing contracts from several different clients.

3. Exclusive service.

If your contract explicitly states that you are not allowed to provide your services to other clients, then you will likely fail assessment.

Clauses can however be included to preclude you from working for competitors, or where another conflict of interest would be created.

4. Financial risk.

Creating risk and uncertainty around how you are paid can be a convincing indicator of self-employment. Relying on a single, stable paymaster is characteristic of ordinary employment.

5. Financial records.

Contractors are usually paid on completion of a contract, while employees are paid at regular intervals.

Contractors also usually issue an invoice for their services. Be careful though: this factor is often **inconclusive**, and should not be relied upon as the main feature of your argument.

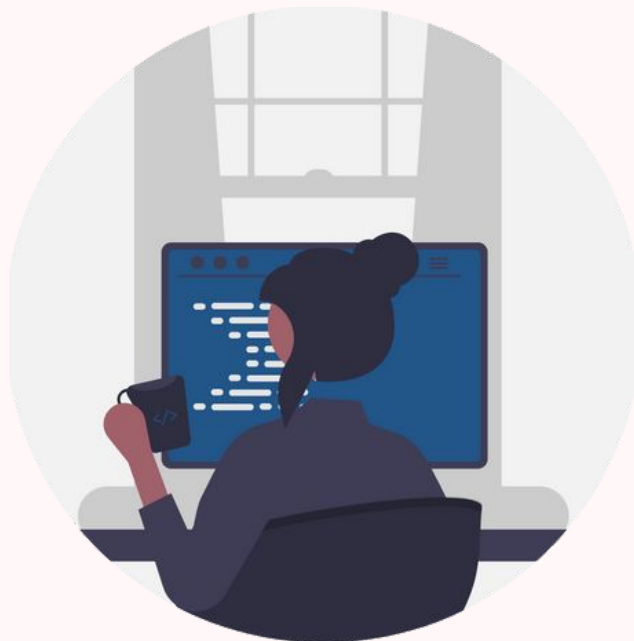
6. Business-like trading.

An independent contractor should have all the trappings of a normal business: a registered limited company, a business bank account, VAT registration, expenses for things like office equipment and advertising and so on.

7. Provision of equipment.

You should provide and use your own equipment where it is practical to do so.

If there are good reasons as to why you need to use your client's equipment - such as for safety or security concerns - then this factor will not normally cause you to fail an assessment.



8. Part and parcel.

You need to keep your distance from your client's organisational structure, and only fulfil the obligations which are in your contract. Also, do not use facilities normally reserved for staff such as a staff car park, gym or canteen.

If you start appearing on telephone lists and organisational charts, then you may be classified as "part and parcel" of your client's organisation. In which case you would fall inside IR35 no matter what your contract says.

This is an easy IR35 test to fail, and you need to be careful with your working practices on this score.

9. Appraisal of personnel.

If you appraise personnel within your client's organisation or allow yourself to be appraised, then you will likely be viewed as part and parcel of your client's organisation. Appraisal is for employees, not contractors.

10. Be careful about who you work for.

Even if you get everything on point in terms of both your contract and your working practices, HMRC may still assess you as falling within IR35.

This is because if the client organisation you are working for as a contractor has previously been found to have used "disguised employees" then HMRC can insist that all future contractors be automatically treated as employees.

In such an instance ,neither your contract nor your working practices will make any difference. The only way to dispute such a decision is through court proceedings.



IR35 Changes: 2020-2021.

What remains unchanged?

None of the **assessment criteria** for determining whether a contract is located within IR35 will change with the IR35 reform (now set for April 2021). All of the recommendations given above will still hold.

The name of the game will remain making sure you look like a limited company rather than like an employed individual. And it will still be the overall picture of your activities that you have to watch out for.

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What has changed?

Prior to 6 April 2021, contractors and private service companies remain responsible for determining their status.

From 6 April 2021, the responsibility to assess IR35 for private sector contractors will shift from the contractor to the engager - if they are a medium or large company.

The new IR35 Off-Payroll Working rules were initially scheduled to be implemented in April 2020, but have been postponed as a result of the COVID-19 outbreak.

These rules will apply will apply for all services **provided on or after 6 April 2021**, regardless of when the contract started.

1. Contracting for a medium or large-sized non-public sector organisation (companies with more than 50 employees or a turnover greater than £10 million).

Your client will be responsible for deciding your employment status. They're required to provide you with a 'Status Determination Statement' that details and explains their decision.

If your contract is deemed to be inside IR35, you'll be considered an employee for tax purposes. As such, your agency or client will deduct Income Tax and NICs before making a payment to you.



2. Contracting for a public authority.

Your client will continue to be responsible for deciding your status. In addition, they will now need to provide you with a 'Status Determination Statement' that declares your deemed employment status, and the reasoning for their decision.

3. Contracting for a small non-public sector organisation.

Your limited company will continue to be responsible for deciding your status, as well as paying the relevant Income Tax and NICs.

According to the Companies Act 2006, a small business is an organisation whereby two or more of the following factors apply:

- Turnover of £10.2m or less
- A balance sheet total of £5.1m or less
- 50 employees or fewer

FAQs.

What are the responsibilities of the end-client?

As we've mentioned in the previous section on IR35 changes, the end-client will be responsible for deciding your employment status. This must be carried out with 'reasonable care'.

They'll also need to provide a Status Determination Statement (SDS). This is a document that declares a contractor's IR35 status, and the end-client's reasoning for their decision.

They're also responsible for:

- Giving the SDS to the worker, as well as to the next party in the supply chain. In most instances, there may be a single intermediary, such as a recruitment agency. However, in more complex supply chains, there may be a number of parties between the end-client and contractor
- Keeping detailed records of the determinations and reasons for them
- Introducing a status disagreement process that enables the worker or deemed employer
- Providing a response within 45 days of receiving notification that the worker or deemed employer raises a disagreement
- Informing the worker and deemed employer if they become a small company

FAQs.

What are steps I can take if I disagree with a client's assessment?

Presently, contractors may contest HMRC's IR35 determination through an Alternative Dispute Resolution or IR25 tribunal.

However, once the IR35 reform kicks in, you'll need to appeal through your client's status disagreement process.

Your client will have 45 days to respond, in which they could either change the determination and provide a new statement, or confirm that their initial determination was correct along with providing reasoning for their decision.

What if I am contracting for multiple clients?

IR35 will apply, regardless of the number of clients or projects you're working on.

Your status is evaluated on a contract by contract basis. This means that you may find that one of your contracts may be deemed to fall inside IR35, others may not.

If I am deemed to be inside IR35, will I benefit from employees' rights?

If your contract is deemed to fall inside IR35, you will be taxed as an employee, but you won't qualify for statutory employment rights such as holiday pay, sick pay, pension contributions and more.



What are my options if a contract is deemed to fall inside IR35? Will this affect my career as a limited company contractor?

You can:

1. Continue working through your limited company: You'll need to treat the income earned from that contract as ordinary employment income. It will be taxable under Schedule E and subject to Class 1 NICs.

2. Work through an umbrella company: You'll be considered an employee of the umbrella company; the umbrella company will handle invoicing and deduct the appropriate taxes from your pay at source.

There are pros and cons to working through an umbrella company. While it can be less tax efficient, it does bring greater convenience and may be a worthwhile option for " short-term projects.

3. Work on a range of assignments: Whether IR35 applies to a work arrangement is assessed on a contract by contract basis. If one of your contracts is deemed to fall inside IR35, your remaining contracts won't be affected as a result.

You can continue trading through your limited company for contracts that fall outside IR35. For contracts that are deemed to fall inside IR35, you may choose to run IR35 payroll or work through an umbrella company.



What can I do to prepare ahead?

1. Follow the IR35 advice as given above.

We have already decoded HMRC's process for you, and that works no matter who is taking the decision.

Whoever takes the decision will still be contracting for your services via your limited company. You still need to structure your contract terms intelligently and with an eye to IR35 legislation. You still need to ensure your working practices are in alignment with those contract terms.

What does change is the value of a Confirmation of Arrangements letter from your client. You can even secure this before you agree to take on the contract.

2. Have a discussion with your client or agency well ahead in advance.

In doing so, you're sending across the message that the upcoming changes are important. You'll also get to find out about your client's or agency's plans for the reform, which will help you prepare for any upcoming changes.

3. Plan ahead and explore other alternatives.

Reading our article and other guides in our [contractor resource hub](#) is a great first step to understanding the new IR35 changes.

You should also plan ahead, and think through important questions such as: if your contract is deemed to fall inside IR35, what would be the minimum rate you would charge? And would working through an umbrella company be an option you'd consider?



Who we are.

Forma was created by contractors for contractors. We wanted a company that would manage our accounting, reduce our admin, enable us to network and find new opportunities. Nothing came close, so we built GoForma.



START YOUR BUSINESS, SWITCH YOUR
ACCOUNTING GET A VIRTUAL OFFICE.