



Navigating IR35

A Guide to Hiring Contract Workers

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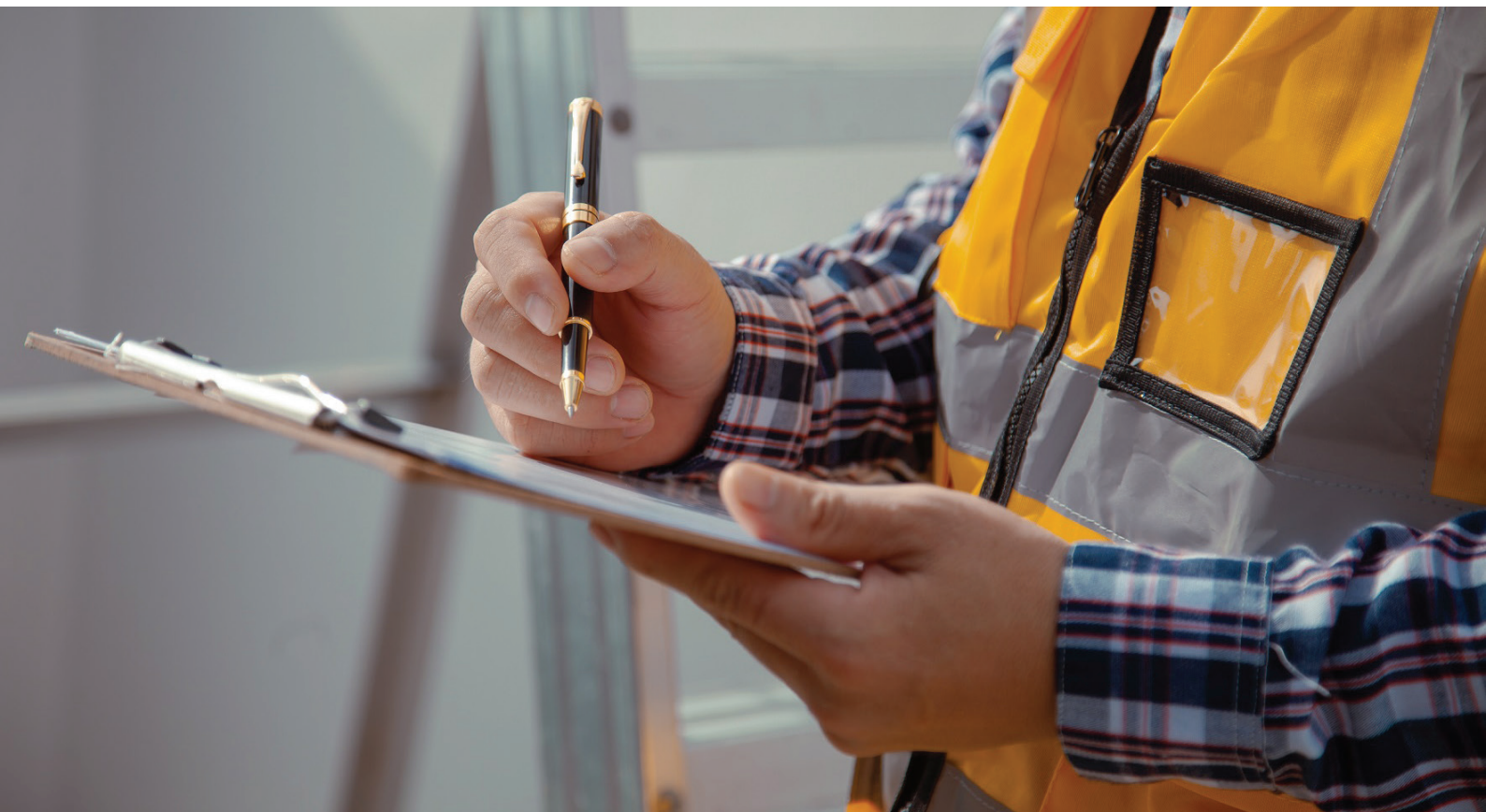
What is IR35?

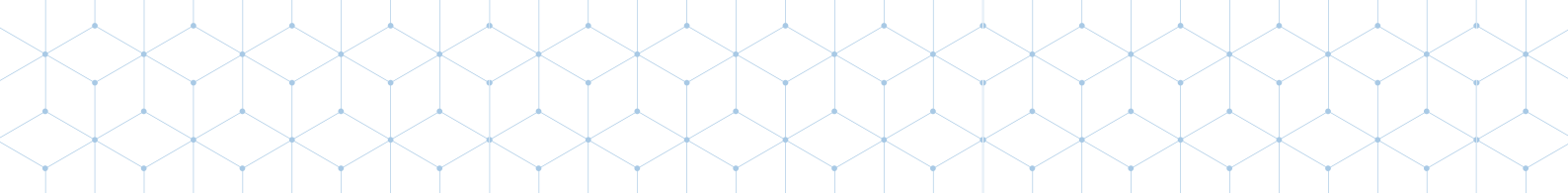
IR35 is the HMRC off payroll legislation that was introduced in 2000 to address concerns relating to workers who supply their services via an intermediary PSC (Ltd Company) instead of as an employee, and therefore had avoided paying employee income tax and national insurance contributions.

Put simply, IR35 ensures contractors that undertake work in the same way as permanent employers are liable to pay the same NI and tax as permanent workers. Responsibility of determining statuses and liability of getting it wrong has evolved over the years and most recently updates have been rolled out so now larger private sector organisations must ensure individual contractors are assessed to be “inside” or “outside” of IR35 and then their employment and therefore tax obligations are accordingly compliant.

The benefits of using contract workers.

Employing contract, temporary or interim workers is a necessary and integral element of a large proportion of UK companies' talent supply. The benefits are wide ranging and include flexible, quick and cost-efficient access to staffing for situations such as parental, long service leave or sick leave, niche skill requirements, business growth, business development or one-off project delivery. Equally attractive are the benefits to the contractors themselves, such as work/life balance, being able to hand pick projects, actively develop certain skillsets and generally have more control over how and where they work.





Changes to IR35

Why have there been changes to IR35?

Whilst many PSCs have operated according to the regulations, some have been found to have been the incorrect tax vehicle for the contract at hand. Where an assignment is deemed 'inside' IR35, PAYE deductions must be made from the contractor's pay. Any assignment 'outside' IR35 is classed as a genuine B2B service and is therefore not subject to the same tax treatment as employees. In their assessment, HMRC look at the 'hypothetical contract' between the worker and the end employer, and how the contract is actually carried out.

What are these changes?

Up until 2017 the legal responsibility for determining whether an engagement is inside or outside IR35 was with the worker themselves. With legislation released in April 2017 that responsibility switched to the End Client. This was initially limited to the public sector but was extended to the private sector in April 2021. The liability of an incorrect determination, in back taxes and fines, has also been switched from the worker to the organisation paying the worker. In many cases this can be an intermediary recruitment agency, unless the worker is paid directly by the end employer, in which case it sits with them.

Other changes to the legislation in 2021.

- **Small company exemption.** The government proposes to exempt small companies from the off-payroll rules. A small company is defined in the Companies Act 2006 as a company which meets two or more of the following criteria:
 - i. Annual turnover of not more than £10.2 million
 - ii. Balance sheet total of not more than £5.1 million
 - iii. No more than 50 employees
- **Right to information on the determination.** HMRC have stated that the worker will have the right to request information on how the end employer has reached their determination on the worker's status.

As an Employer, What Do I Need To Do?

Engage with stakeholders

Open communication and a clear process are key. We are able to work with you to help create processes to best protect the business with minimal impact. Carrington West, along with our supply chain partners, have a huge amount of experience of navigating the legislation changes and can help your organisation further understand IR35 and its implications.

Conduct an audit

Understand who your contingent workers are, how are they engaged, what the contracts look like, how they are paid and what the associated risks are.

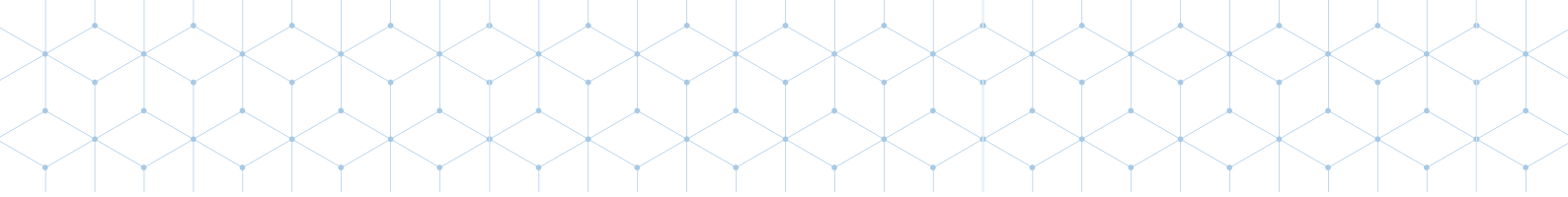
Create a process

Following a process which allows fair and thorough assessments of Workers and safeguards the organisation against any liabilities, with minimal impact to the day to day operations.

Implementation

Consistent implementation involving all stakeholders ensuring 'Reasonable Care' is demonstrated.





How Can Carrington West Help?

There are few employment agencies who have more experience with IR35 than Carrington West. During 2017 we helped hundreds of contractors and many of our major public sector clients around the UK deal with IR35 changes. If your current agency does not have exposure to the public sector market, you are potentially already at a disadvantage in terms of their knowledge and experience. The cost of non-compliance can be high.

How can we make the process time and cost efficient?

- We can provide a workforce management and assessment tool which will streamline your processes and ensure compliance throughout the contract chain.
- We would offer an initial audit of your workforce to help you gain an understanding of the current situation.
- As an agency we can act as an intermediary for your direct Workers and therefore assume liability.
- We work with legal experts in IR35 to offer a review service of all current contractors and the supply chain involved in those payments.
- We can offer role reviews prior to starting a new recruitment process.
- We can provide regular audits of your contractors and the contracts themselves to ensure ongoing compliance with the legislation.
- We can provide alternative methods of payment for any workers affected.

Important Information About Assessments

It all starts with the assessments

The organisations we work with vary in size and scope and unsurprisingly there is a similarly broad range of approaches to incorporating IR35 assessments. Just being aware of responsibilities is not enough, an audit trail is essential to mitigate liability and provide a framework for any queries or challenges that may arise. Put simply, what is needed is a robust process that is simple to follow, stands up to scrutiny and adds value to the talent supply chain rather than hinder it.

As an employer legal obligation to make the IR35 status determination and produce and distribute a Status Determination Statement (SDS) as a means of communicating that determination to the relevant parties in the supply chain. You are further obligated to take “reasonable care” in reaching its determination and must also have a disputes process in place to deal with any challenges to their determination which can be mounted by either the feepayer (the entity that pays the PSC – usually a recruitment agency) or the PSC itself.

Our advice is to research the tools available to you and use a tried and tested assessment tool such as our own IR35 Assure to manage the process, and to ensure you demonstrate reasonable care. Using IR35 Assure means you fulfil your requirements for compliant and accurate workforce management in many of the areas that other tools such as that HMRCs CEST, fall short.

What information do you need to make an assessment?

- The worker's responsibilities
- Confirmation of who is responsible for determining what work will be undertaken
- Who decides when, where and how the work is completed
- How the Worker will be paid
- If the engagement includes any benefits or reimbursement for expense

How and when you should run the assessments?

- Begin by assessing all existing temporary Workers
- Reviewing and determining the IR35 status before each contract starts
- Obtaining expert advice
- Conducting regular audits on your contract agency staff
- Recording information on the determination process
- Showing ‘reasonable care’ at every stage of the process

IR35 Assure

Reasonable care

HMRC defines reasonable care as “doing everything you can to make sure the documents you send to HMRC are accurate”. If the end employer does not take reasonable care in making their decision, they may be liable for unpaid tax and national insurance.

IR35 Assure

IR35 Assure (powered by Kingsbridge) offers our clients a free-to-use process for dealing with their off-payroll obligations of creating and distributing IR35 determinations, dealing with disputes, and even has functionality for ensuring that contractors migrate to suitable payment alternatives when engaging via their own Limited Company is not an option. Determinations are insurable, and the tool is better aligned to established case-law than the highly criticised government CEST tool.

Mitigating the risks and HMRC enforcement

The heart of HMRC enforcement is a strong emphasis on the employer’s ability to demonstrate ‘reasonable care’. Organisations that have a robust process in place to hire outside-IR35 are more confident than ever that they are mitigating their risks and fulfilling their obligations. So much so that they are also able to benefit from being able to have their pick of the best contractors on the market.

Overall, contractors are happy that their status determinations are accurate, but only where HMRC’s CEST tool is not used. CEST instils little confidence, with 50% of contractors surveyed in a recent report by Kingsbridge, saying they do that they do not trust the tool.

The knock-on effect of the issues around CEST are significant and low confidence in its output is probably one of the biggest factors affecting the contract market. Contractors and recruiters recognise the short comings and understand their liabilities, so are choosing to exercise caution with end-clients that rely on CEST. The report goes into considerable detail on the tool’s shortcomings. We would prefer to use a tool like IR35 Assure as we are confident it is fit for purpose and is insurable, offering better protection to those in the supply chain.

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