

IR35

Client

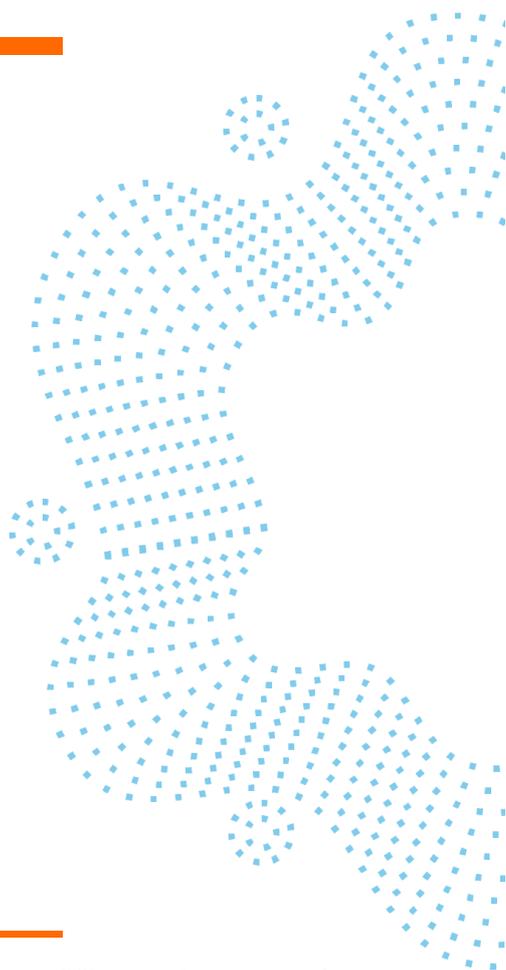
Guidance

Inside

How QCS Staffing Can Help

Blanket Assessments
and Reasonable Care

How You Can Prepare



Definitions

End-Client - The end-client should be interpreted as the organisation or entity receiving the off-payroll worker's services. i.e. where the contractor is placed and performs the work.

Fee-Payer - The fee payer is to be interpreted as the agency that pays the contractor's Personal Service Company. i.e. it will be the entity closest to the Personal Service Company in the contract chain/the entity paying the Personal Service Company.

Determination - The process of assessing a contractor's employment status by careful consideration of all the facts.

Umbrella Company - An umbrella company is a company that employs agency contractors who work on temporary contract assignments, usually through a recruitment agency.

Personal Service Company - A personal service company is a limited company that typically has a sole director (the contractor performing the services and main fee earner of the company).

CEST - The "Check Employment Status for Tax" is the tool created by HMRC to complete status determination tests.

PAYE - Pay As You Earn. This is the method of deducting and paying income tax and national insurance contributions.

NIC - Abbreviation for National Insurance Contributions.

Contractor - A person who undertakes a contract to perform a service on behalf of their limited company or partnership (including LLP)".



Summary

The government will extend the off-payroll working rules (known as IR35) in the private sector on 6th April 2021.

Responsibility for determining an IR35 status (as inside or outside) will shift from the contractor providing their services, to you as the end-client in the chain.

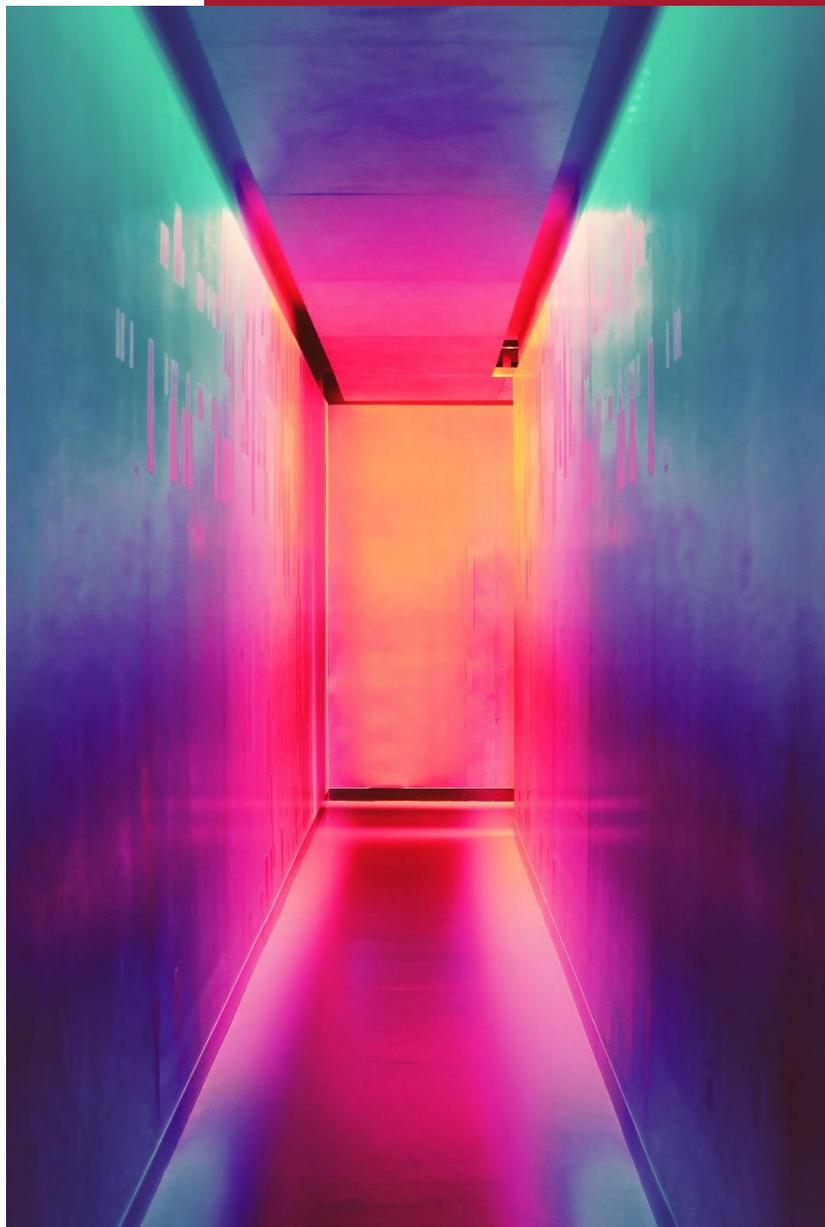
If there is a recruitment company in the chain, such as Quanta, they will take on the responsibility of deducting & paying PAYE tax & NIC as the “fee-payer” if an inside determination is made.

If there is no recruitment company and you are considered as “the fee-payer”, you will take on the responsibility of deducting & paying PAYE tax & NIC.

Who is Affected?

This change will only affect medium and large private sector end-clients, so small companies are set to be exempt and the old rules will apply.

A small company is defined as one that meets two or more of the following three criteria - does not have annual turnover of more than £10.2 million, a balance sheet total of more than £5.1 million and the number of employees more than 50.



Determining The Status Of An Assignment

When determining an assignment, under the IR35 legislation, a decision must be made about the relationship between you as the end-client and the contractor providing their services, and whether, a quasi-employment relationship has been created.

As the end-client, you must ensure that reasonable care has been demonstrated.

If you are providing the contractor with similar working conditions, responsibilities and control as an employee would have, then they are likely to be classed as “inside IR35” (Inside IR35 is defined as the contractor being considered, for tax purposes, as a quasi or disguised employee of yours and therefore subject to PAYE deductions).

There are several factors that determine a contractor’s IR35 status, however the two key tests are personal service (including right of substitution) & right of control.

Financial risk - Is the contractor taking any financial risk when providing the services?

Those contractors who don’t have to rectify poor quality services at their own cost, are more likely to be viewed as employees for tax purposes if other aspects of the financial test are absent.

If the services undertaken by the contractor are found to be in error, would the contractor be financially liable to correct that error?

There are three common separate insurances that are often required to prove that financial risk has been considered within their personal service company, these are Professional Indemnity, Public Liability and Employers Liability insurance.

Mutuality of Obligation - As the end client, if you offer the contractor work which is not specified within the contract, are they able to refuse it? And does the contractor expect work to be provided from yourself after the contract has expired?

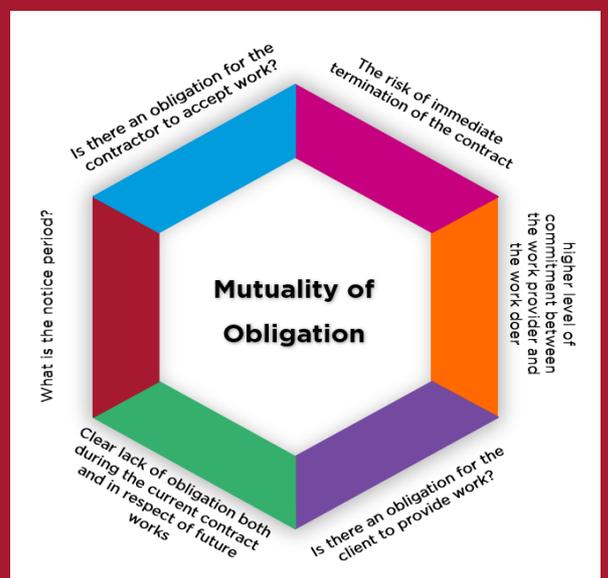
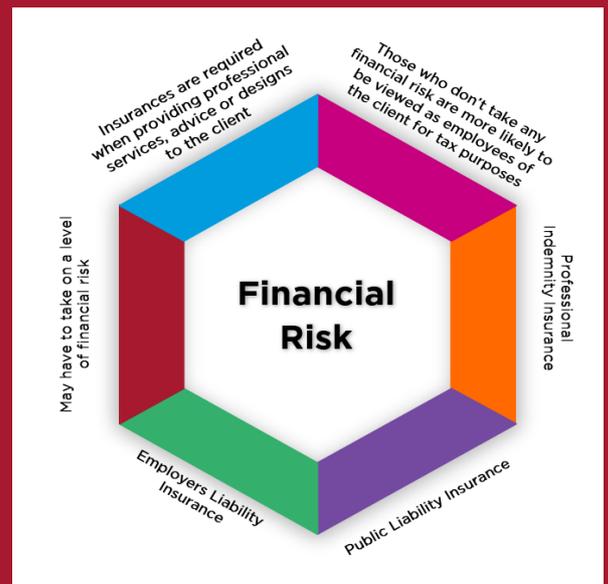
Mutuality of obligation is essentially a higher level of commitment between the work provider and the work doer.

In an employee style relationship the employer is obliged to provide work and the employee is obliged to accept it.

An employer will try to ensure that their employees have a continuous supply of work and will also expect the employees to carry out the work when they require.

A self-employed person will do the work they are contracted to do and will finish with no expectation of further work.

It is important to address mutuality on all levels. There should be a clear lack of obligation both during the current contract and in respect of future works.



Substitution - Substitution reviews the right of the contractor to send a representative with equivalent skills, experience and qualifications to complete the services, if they are unable to provide the services personally.

The right of substitution is not the only way of disproving that the personal service of the contractor is a feature of the contract. Sub-contracting and the ability to engage helpers is also an effective way of satisfying an absence of personal service.

Substitution clauses are often covered within a contractual clause, however for substitution to be considered as genuine, the contractor must pay for the substitute through their PSC and as the end-client, you must agree to it in practice ensuring that you are satisfied with the substitute's skills and experience.

Right of Control - A contractor must be able to demonstrate autonomy in the way that they undertake the services. The right of control is broken down into 4 sub-tests - how, what, where & when.

This means that as the end-client, you should have no influence over the manner in which they perform the services as they must also be responsible for the delivery.

Control and direction, although very broad, is possibly the most important factor when determining a status as it can require answering questions surrounding supervision.

Other factors to look at when determining a status could be whether the contractor has line management responsibilities over your employees as this could demonstrate the contractor being integrated into your business.

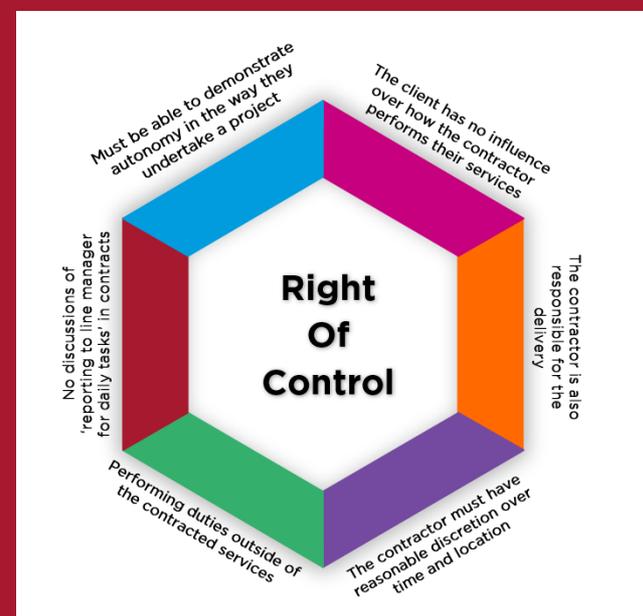
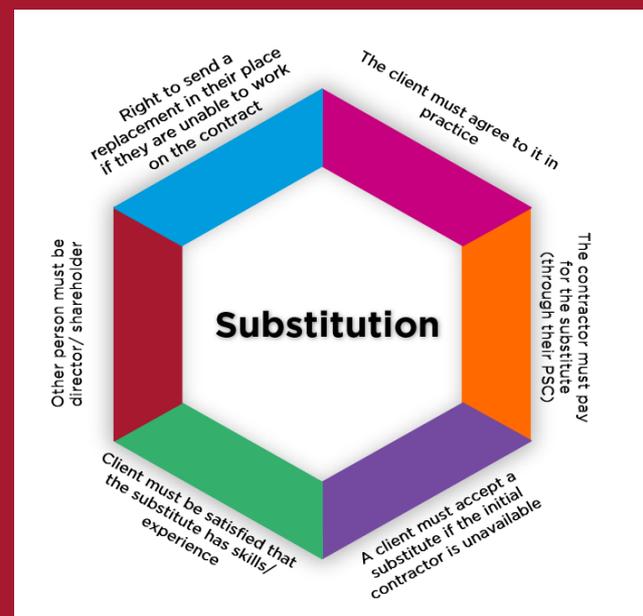
Although small, every effort to demonstrate contractors as non-employees should be taken. Changing email addresses or email footers so it clearly demonstrates that contractors are external workers is an effective change along with the change of a lanyard from "STAFF" to "VISITOR".

After the determination has been made, it must be passed down the contractual chain and a Status Determination Statement must be completed for each contractor assignment. This must include the reasons for the decision chosen.

If there is a challenge to the decision (such as the claim of a different scenario to your determination) by the contractor or fee-payer, this must be addressed by you within 45 days otherwise your business will be held liable for the PAYE tax & NIC deductions.

This is known as the dispute resolution process.

It is important to note that determinations should be carried out on an assignment by assignment basis therefore, where one assignment could be determined as outside, another could be considered inside and the PAYE tax & NIC liabilities must be deducted.



Blanket Assessments And Reasonable Care

A “blanket ban” is the term used when a group of contractors are determined as either inside or outside IR35 without completing an individual determination for each contractor.

Although seemingly an easy solution to the problem, blanket assessments do not demonstrate that reasonable care has been taken and in turn may mean that your business will be held liable for the PAYE tax & NIC deductions come April 2021.

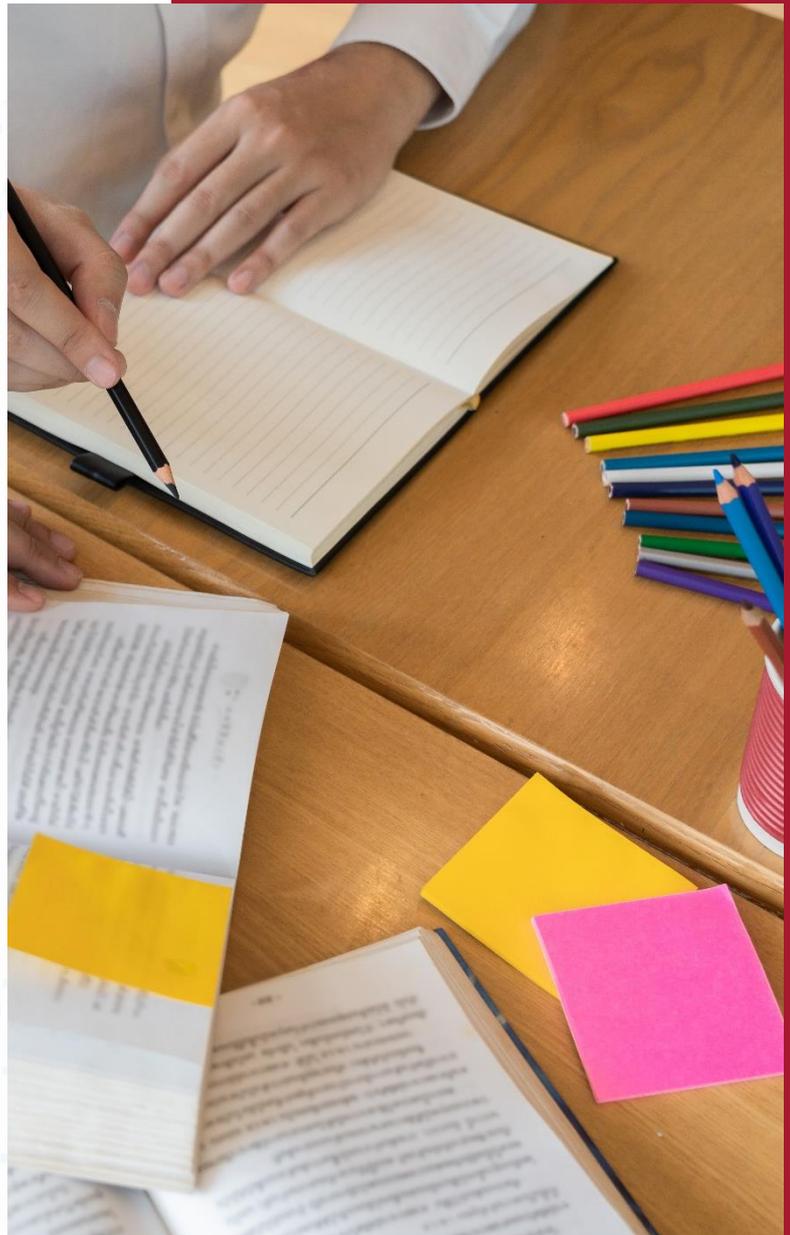
Currently reasonable care has not been defined by HMRC, however in the absence of a current definition of ‘reasonable care’ we can look to HMRC’s guidance concerning tax returns which states doing everything you can to make sure that the tax returns and other documents you send to HMRC are accurate.

Using this same interpretation, this would mean end-clients being able to demonstrate to HMRC that they have carried out a proper assessment of a contractor’s status.

Whilst the work involved may vary depending on the organization concerned, the concept will remain the same, i.e. evidencing your process and reasoning behind your decisions by ensuring there is a transparent audit trail.

Transport for London (TfL) took this approach when the off-payroll working rules were rolled out in 2017 for public sector organisations. They issued a memo confirming all contractors were caught by IR35 and therefore, “blanket banned” the use of personal service companies by their contractors.

Although they later retracted this policy, TfL has become synonymous within the media for the negative use of blanket assessments.



How You Can Prepare

As the end-client, it is your responsibility to act sooner rather than later as this will ensure that discussions regarding IR35 are clear and precise, resulting in harmonious decisions with little disruption to projects or services being provided.

If you have not already done so, you should be taking steps to understand what approach you will be taking pre and post April 2021.

Assemble a steering committee

Assemble a group within your business that will be the driving force behind the changes. Aim to include staff from all aspects of your business such as Directors, Hiring Managers, Finance, Legal and Procurement. This will ensure that all elements of the changes have been thought of and points of view have been considered.



How You Can Prepare

Audit your current contractor workforce

If there is a fee-payer in the contractual chain, open the discussion with them early surrounding how the contractors operate. Personal service company, umbrella company and PAYE in house are routes that may have been taken, however personal service companies will be the only solution to audit, due to tax and NIC already being considered for umbrella and PAYE contractors and therefore not falling inside the scope of IR35.

Once this information has been collected, you will be able to determine the IR35 status of each individual contractor, utilising the contracts and considering the actual working practises on site.

It then must be decided on whether CEST, an outsourced provider or professional opinion (heavily utilising case-law) will be utilised to make the determinations.

All three options have pros and cons and must be considered for the needs of the business however, CEST has been disputed in the media for its inaccurate results.

Once decided and the test has been completed, you will be provided with an overview of tax risk, overheads and liability. If required, QCS Staffing can help to audit and determine IR35 statuses with our specialist industry expert, who will utilise case law.



How You Can Prepare

Communication and Education

If there is a fee-payer in the chain, it will be necessary to firstly communicate your audit findings to them to open discussions and ensure that the findings are accurate. The fee-payer has often built up a strong relationship with the contractor and will be able to answer any uncertainty surrounding the audit, such as information personal to their company's affairs that may influence their employment status, such as providing services to other clients.

It is in the interest of both the fee-payer and you as the end-client to collaborate for the purposes of making the status determination. Statistically, contractors who feel that their employment status has not been determined fairly are more likely to issue employment tribunal proceedings, if they do not agree with their determination.

It is important that the contractors understand why they have been given the determination as they will be significantly impacted post April 2021, with factors such as take-home pay being affected if the determination is given as inside. A proactive approach will help to ultimately retain and attract new contractors whilst protecting you from risk.

Education is a large element to consider as training will need to be provided internally and your policy must be updated or created for external contractors entering the business. Businesses that forward plan and implement compliance practices early will ensure a clear understanding by the contractors, minimising any disruption to services.

Thought must be put into the dispute process that you will provide to the contractor, should they want to dispute the determination that you have provided. This should also be confirmed to the fee-payer as early as possible in the process.



How You Can Prepare

Alternative Options

A Statement of Work (SoW) is a method used by third party contracted-out service providers which fall outside the scope of the off-payroll rules.

The SoW model utilised a document that captures and defines all aspects of a project.

The activities, deliverables and terms are all defined in this document for the project.

The SoW will lay the groundwork for the project.

Where the statement of work route is utilised, you as the end-client, will not need to determine the IR35 status of any contractors who are providing services to you as the party who provide the statement of works to you, will effectively become the end-client within the off-payroll working rules.



How QCS Staffing Can Help

QCS Staffing have decided to take a progressive stance to the updates, partnering with specialist industry experts, to ensure that our contractors are advised, supported and understand what their new method of working will look like from April 2021 and onwards.

We will be offering status reviews, role assessments, training, legislative updates, round tables and documentation.

We also often update our website and LinkedIn page with videos and blog posts regarding the updates, these can be found here:

www.linkedin.com/company/QCS-Staffing

www.qcsstaffing.com/posts

We are keen to share this information with our end-clients, as this will ensure little disruption to projects or services being provided.

We have appointed an IR35 Project Manager, **Bhavna Dooman** to oversee the changes and have a contact email address that is dedicated to answering any queries that you may have, this is: IR35@qcsstaffing.com

Please feel free to contact Malvina for further information about IR35 and the impact this potentially may have on your business to assist with the determinations.



Contact Details

Bhavna Dooman

IR35 Project Manager

01442 860 523

IR35@qcsstaffing.com