

IR35 Off-Payroll Regulations

Existing Contractor Roadmap

Overview

In April 2021 the new IR35 Off-Payroll Regulations will come into force.

It is already clear that these regulations will have a severe and disruptive impact on how organisations engage with contractors working as Personal Service Companies (PSCs). It is also clear that the new regulations will impact the role of consulting firms and how they provide solutions to their clients.

As yet there is no consensus about the longer-term effects of the new regulations. However, there is already agreement that they will have a deep and lasting effect on organisations and their contractors.

This briefing document provides a practical assessment of how the ecosystem looks like changing. It does NOT provide a full overview of the new regulations themselves, as we expect that most medium and large clients will by now have familiarised themselves with the new regulations.

Available responses and solutions

In this document we attempt to identify available options in a practical and helpful way by employing a Q&A format that endeavours to track likely decision-making processes.



Can I simply wait and see?
This would be very high risk.

HMRC have made it clear that any contract engagement that is already in place on 6th April 2021 will be covered by the new legislation (with its serious obligations) AND **BACK-DATABLE**.

So that would apply to any extensions you are considering offering current contractors.

We believe that it is increasingly likely that the forthcoming legislation will start to impact existing contractor engagements before the end of 20202 and / or the next extension date (whichever is earlier).

Likely Impacts

- 1** Confusion regarding the status of existing contractors
- 2** Confusion about / disruption to future contractor engagement
- 3** Loss of high-quality expertise
- 4** Increased administration
- 5** Increased costs
- 6** Reduced operational flexibility
- 7** Increased financial risk
- 8** Increased legal risk



Should I make existing contractors a priority?
Absolutely Yes!

As mentioned, HMRC have made it clear that the new legislation does not only apply to new contracts signed after April 2021.

Any of your current contracts (including extensions) will be subject to the new regulations.

Your contractors will very likely be aware of this and soon start approaching you to seek information about what will be happening. It is best that you are prepared with clear information to give them.



What is the first step I can take? Conduct an IR35 audit of your existing contract roles.

This means establishing whether your existing contract roles are likely to be deemed **INSIDE IR35 or OUTSIDE IR35 under the new legislation**.

It's important to remember two things about the new legislation:

- It is the **contract ROLE that is assessed**, not the contractor.
- It is the **responsibility of the end-user client** to conduct the assessment, not the contractor.

In many organisations, especially large ones, there will already be some clarity regarding who will actually be responsible for conducting IR35 status determinations. We suspect that various functions (Line Management, HR, Talent, Legal, Procurement and Finance) will be working together to resolve this issue.

We also suspect that in medium-sized organisations the responsibility for status determination may become a more vexed issue with the possibility of specialist external organisations being engaged to support decision making.

Whichever the approach taken, we judge it important to initiate the process as soon as possible in order to be able to respond to short- and medium-term business imperatives that are currently dependent on the availability of skilled, flexible resources.



What if the role is confirmed as OUTSIDE IR35? Ensure you have IR35 compliant operating methods.

Advantages

- Business as usual from a legal and cost / value perspective
- Retention of specialist skills
- Positive contractor relationship

Challenge

- A clear obligation to align actual working practices with contractual frameworks and keep these working practices going throughout the entirety of the engagement.



What can I do if one or more of my roles are deemed to be INSIDE IR35? Confirm the status determination.

How you do this will depend on whether you have made the determination yourself or were advised by another person / function within your organisation. This is particularly important in the case of **EXISTING CONTRACTORS** who may object to the determination.

We anticipate a period of potential confusion / tension between organisations and their existing contractor base caused by disagreements about status determinations.

It is important to find out whether there is an internal procedure for questioning / appealing a status determination not made by yourself before you advise the existing contractor(s).



What if the role is confirmed as INSIDE IR35? There are a number of options / combination of options.

1. Terminate contractors / PSCs and re-deploy existing permanent resource and / or discontinue / delay projects.
2. Seek to make the contractor / PSC a full-time employee.
3. Make a judgement that the value of the contractor / PSC is so great that it's worth continuing the engagement INSIDE of IR35, paying employer's NICs and the fee payer (usually an agency) will be responsible for deducting employee NICs and PAYE tax.
4. Only engage contractors / PSCs via Umbrella Companies.
5. Seek to replace the contractor's expertise with that of an established consulting firm.
6. Outsource project deliverables to a genuine SoW provider, rather than the supply of labour via a staffing agency. (See "The New Normal").

Inside IR35 Options

Advantages

Challenges

1. Terminate contractors / PSCs and re-deploy existing permanent resource and / or discontinue /delay projects.

- All financial and legal risk removed.

- Quantity of resource reduced. Also, quality in the form of specialist expertise, reduced.
- Project delay / curtailment.
- Reduced workforce flexibility.

2. Seek to make the contractor / PSC a full-time employee.

- All financial and legal risk removed.
- Continuity of resource (quantity and quality).

- Inherent direct / indirect costs of permanent employment.
- Increased operational risk associated with contractors declining permanent roles including loss of specialist skills.
- Reduce workforce flexibility.

3. Make a judgement that the value of the contractor / PSC is so great that it's worth continuing the engagement INSIDE of IR35, whilst increasing the contractors pay to compensate for the additional tax and NICs that will be deducted at source by the fee-payer (usually the agency).

- No debt transfer risk to you for tax liabilities as the liability will sit with the fee payer (usually the agency).
- More likely to keep the contractor onsite as it avoids a rate reduction to the contractor to account for employer's NIC avoiding delays to projects.

- Increased cost to you for the contractor of at least 13.8% but likely to be significantly more.

4. Only engage contractors / PSCs via Umbrella Companies.

- No debt transfer risk to you for tax liabilities as the liability will sit with the Umbrella Company.
- Contractors will have security and longevity of service being an employee of an Umbrella Company which will aid them financially (e.g. Mortgage applications).
- Contractors will see the benefits of being an employee of the Umbrella Company and you will not have to bear these costs / responsibilities e.g. pension, holiday pay etc.

- Less choice for the contractor in how they can be paid.
- Reduction in take home pay to the contractor due to tax deductions.
- Agency Worker Regulations – the contractor's pay will need to be aligned with those of a permanent employee carrying out the same role. Where the contractor is currently being paid less, an uplift in daily rate will be required.
- Reduction in available talent (the best interim resource will secure legitimate outside IR35 engagements).

5. Seek to replace the contractor's expertise with that of an established consulting firm.

- No debt transfer risk to you for tax liabilities - the Consulting Firm will become the End Client for this arrangement.

- Increased costs.
- Project squeeze due to increased costs.
- Your requirements do not align with scope of consultancy minimum size / durations etc.
- Often consultancies cannot provide the best niche available skillsets for your project or programme.

The new normal

It is clear from HRMC that having an “IR35 friendly” contract will be insufficient for it to treat the role as outside IR35. Actual working practices MUST match the contractual relationships established in the contract.

This will require end-user clients to embrace a new relationship and operating methodologies with a Personal Service Company, thereby establishing a SoW model that genuinely places the role (and the PSC) outside IR35.

Accordingly, the first thing is to acknowledge the emergence of a new reality, a new normal. And this reality requires organisations to genuinely adopt a new mindset in respect of engaging with PSCs.

It will be insufficient to simply agree an “IR35 friendly” contract that promises to protect you and the PSC. The actual working reality must genuinely and legitimately demonstrate that the role is outside IR35.

We believe that it is important for end-user organisations to embrace, whether it is welcome or not, this new reality.

A new mindset

Establishing new working procedures that truly respect the letter and the spirit of the new legislation (thereby significantly minimising legal and financial risk) will require sustained commitment from end-user stakeholders.

In this document we wish only to emphasise what we see as two essential changes in attitude that will inform the new flexible resourcing ecosystem in terms of SoW.

We must emphasise that McGregor Boyall Associates is **NOT** a legal or accountancy firm. Accordingly, we **strongly recommend** that organisations and contractors seek professionally qualified advice on how the new regulations may impact them.

Old normal

PSC is viewed as an individual whose time has been purchased by the client to use as it sees fit.

Old normal

Client relationship with the PSC is essentially a Business to Person (corporate to individual) relationship.

New normal

PSC is viewed as a specialist to deliver agreed outcomes that the Client requires to achieve business goals.

New normal

Client relationship with PSC is a genuine Business to Business (corporate to corporate) relationship.

How we can help

As an organisation, McGregor Boyall can support you in your response choices:

1

Permanent (including fixed-term) recruitment

2

Identifying and engaging high quality Umbrella based contractors

3

Full pay-rolling services for inside IR35 contractors

4

Low-risk, genuinely outside IR35 SoW solutions for engaging with Personal Service Companies

5

Full-service, SoW-based consulting solutions for your business requirements.