

## ‘Pro Contractor’ status proposed by Professional Passport could remove IR35 threat

Contractors could find themselves automatically exempt from legislation such as [IR35](#), the [Agency Workers Regulations](#) (AWR) and the [‘Conduct Regulations’](#) if proposals to create a new designation of ‘Professional Contractor’ were to be adopted. According to Crawford Temple, Managing Director of independent professional membership organisation [Professional Passport](#), genuine contractors who consider themselves in business providing clients with a business service were never the intended target of much of the government legislation that is now viewed as ‘anti-contractor’.

And, he notes, everyone in the sector should recognise that many contractors don’t really see themselves as ‘career contractors’. “In our contractors’ survey at the end of 2009, it became clear from the responses that contractors are highly segmented,” explains Temple, “and not just by the sector in which they operate. We also identified that some are only contracting as a temporary measure between permanent appointments, or as a lifestyle choice, or part time, rather than seeing contracting as a dedicated career choice.”

### Regulation - one size fits none

Within the sample surveyed by Professional Passport, Temple also found that there were some contractors who fitted the profiles identified by legislation like the AWR and IR35. Those people wanted protection and employment rights. But most who were making contracting their long-term career did not.

Temple continues: “If you look at the [press release](#) issued by the government in 1999 when IR35 was first announced, it is clear that the intention was to prevent unscrupulous employers exploiting their workers by forcing them to adopt limited company status and in doing so disqualifying themselves from employment-rights eligibility.”

That, he says, has not changed and the [AWR](#) seeks to protect workers in the same way. The unfortunate side effect has been to create legislation written for the lowest common denominator. The unintended consequence has been to draw genuine contractors into the same net, offering them rights most contractors say they neither need nor want.

“Clients, agencies, genuine contractors, regulators and legislators – including HMRC and government departments – all ultimately want the same thing,” claims Temple. “They want to reduce risk through compliance with fair and unambiguous legislation. Professional Contractors would by default be exempt from the legislation targeting vulnerable workers, but the legislation would still be there helping the flexible workers who need it.”

### Defining the ‘Professional Contractor’ designation

Professional Passport is currently running a [consultation on its website](#) about the designation of Professional Contractor and how the role might be defined and recognised in practice.

As Temple explains, any definition must be unambiguous: “Each test of being a Professional Contractor should have a simple ‘yes/no’ answer, so we have created a list of potential eligibility criteria on which we’re now consulting.”

The suggested criteria include:

- o Should a Professional Contractor operate through a limited company?
- o Should there be a minimum turnover threshold, and should this be £30,000?
- o Should there be a diversity of end-user clients, and if so how many?
- o Should there be a minimum level of experience, or minimum period of trading?
- o Should there be a P60 income test, and should this be a £12,000 benchmark?
- o Should there be a specific professional qualification?
- o Should Professional Contractors be excluded from legislation not designed for them, such as IR35, AWR and the Conduct Regulations?
- o Should the test be applied annually, and if so should it be the same full list of criteria to satisfy?

“We’re not saying that we have all the answers and want contractors and other contracting sector stakeholders to tell us what they think,” says Temple. “We aim to come up with a definitive list of questions that can be asked of any professional contractor designate to establish their credentials.”

### Competitive advantage

Because genuine career contractors are in [business on their own account](#) and take risks

“ Professional Contractors would by default be exempt

commensurate with that status, Temple believes that contractors should be rewarded for their risk. He feels that becoming a Professional Contractor would bestow a competitive advantage on those contractors holding this designation.

“End-user clients and agencies will know that they can contract with a Professional Contractor without risk of non-compliance and falling foul of the legislation,” he explains. “This immediately cuts costs and time out of the process and makes a Professional Contractor a much more attractive proposition. Flexible workers who need protection can get it, and be taxed accordingly.”

### Protection for those who need it

IR35, the AWR, Conduct Regulations and the [Managed Services Company \(MSC\)](#) legislation will all still be on the statute book to protect those workers who need protection, but those who don't and who can prove it will be exempt, just like any other business supplier.



“In its report on ‘[The Shape of Business: the next 10 years](#)’, the [CBI](#) forecasts that a major business model of the future will be firms retaining a few core essential employees with a network of flexible workers, like contractors, providing the bulk of the skill and expertise,” says Temple. “Flexible working, and with it contracting, are set to increase and the Professional Contractor designation will ensure the contractors of tomorrow are able to operate on a level playing field.”

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Crawford Temple, Professional Passport



**Crawford Temple**  
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Crawford Temple has been involved in the contracting market since the mid 1990's; and is Chief Operating Officer at Professional Passport.

Professional Passport is independent of providers and agencies. It provides unbiased advice; as well as setting the standards for compliance across the market. [Read Full Profile...](#)

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