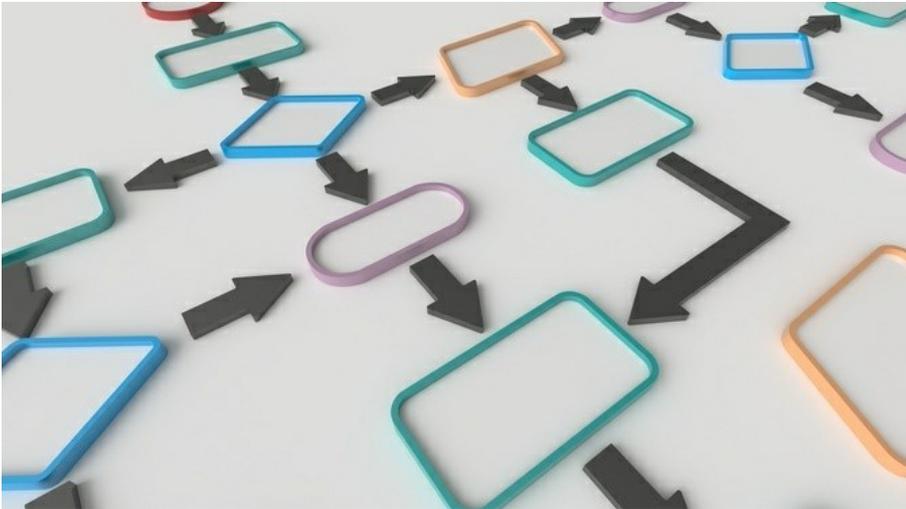


How to get an IR35 pass using the HMRC status tool



If you have been asked to use HMRC's IR35 tool to assess your IR35 status, it may be useful to know the routes through the tool that can help you achieve your 'IR35 pass ticket'. Of course, this is provided that your answers align with your contract and working conditions.

According to case law, an individual's employment status is determined by an evaluation of their working arrangement as a whole. However, contrary to this logic, [comprehensive analysis of HMRC's online questionnaire](#) shows that providing certain answers alone can guarantee a pass result.

HMRC has engineered its tool to only pass contractors in cases of absolute certainty. This means that if you don't provide specific questions to particular questions, you won't pass HMRC's tool. HMRC may be trying to enforce its own [flawed take on employment case law](#) with its tool, but a pass can still be achieved.

ContractorCalculator says: Remember, HMRC will challenge your status if it believes your outcome is contrived or that you answered questions incorrectly. And with many agencies and clients asking contractors engaged outside of IR35 to sign a [confirmation of arrangements](#), any arrangements that don't align with your answers on HMRC's test will be easy to spot – and could cost you an outside IR35 contract. By no means should you knowingly manufacture a pass from HMRC's IR35 tool.

How does HMRC's IR35 tool work?

HMRC's questionnaire consists of four sections, covering two of IR35's primary factors, and two secondary factors:

1. Personal service
2. Control
3. Financial risk
4. Part and parcel

The user is guided through these sections sequentially. If HMRC decides that they strongly pass either section one, two or three, it will skip the remainder of the questions and the user will be told that they are outside IR35.

Beware though, if you make it to the fourth section on part and parcel, you have missed out on your chance to achieve a pass. However you answer the questions from this point on, there are only two possible outcomes:

- IR35 applies; or
- Unable to determine status

ContractorCalculator says: Startlingly, HMRC completely ignores 'mutuality of obligation' (MOO), one of the most important factors when considering IR35. Right from the start we know that HMRC's tool is unable to deliver the thorough evaluation required to reach an accurate IR35 judgment.

How can I achieve a pass with HMRC's IR35 tool?

According to HMRC, certain indicators prove beyond all doubt that a contractor is outside IR35. When asked about personal service, you have two opportunities to claim your IR35 pass ticket. You do this by stating either:

- That your company arranged and paid for a substitute to carry out some work during the engagement, which was agreed upon by the client; or
- That a substitute wasn't sent, but the client would have accepted a substitute, providing they met the required criteria

ContractorCalculator says: Having an unfettered right of substitution paid for by the contractor's limited company has long been seen as IR35's 'silver bullet'. But supposedly having a right of substitution but not enacting it isn't a sure-fire way to escape IR35.

If control and MOO are considered to be present, a judge could rightfully argue that the substitution clause is merely 'window dressing', as they did in [the case of the Alternative Book Company](#). Every factor must be examined. HMRC's tool loses yet more credibility.

How to answer questions about 'control'

The section on control provides further opportunities to pass the tool. To guarantee a pass you must confirm the following:

- That any change in 'task' throughout the contract would need to be arranged under a new contract
- That the client cannot provide input as to how work is carried out
- That where you carry your work out is determined either by yourself or the task itself, not the client

In addition to this, you need to answer with either of the following when asked whether the client can decide the schedule of the working hours:

- 'No – the worker decides their own schedule'
- 'Not applicable – no schedule is needed as long as the worker meets any agreed deadlines'

ContractorCalculator says: The above example might seem straightforward enough, but in most cases it isn't realistic. A contractor will typically agree a schedule of flexibility with their client, and will often remain comfortably outside of IR35 according to case law. But reveal this to HMRC and you won't get the 'pass' you need.

How to answer questions about 'financial risk'

HMRC's financial risk section is another tricky one to navigate. If you're a contractor on a daily or hourly rate – as the vast majority are - the only way you'll achieve an IR35 pass is if you either:

- Claim a significant amount in expenses; or

- Incur significant costs to rectify errors

ContractorCalculator says: Financial risk is a relatively minor factor when considering IR35 which HMRC has curiously prioritised over MOO. Either way, a contractor is unlikely to pass the tool based on this, given that most don't incur costs rectifying errors.

That is unless HMRC classes time spent working free-of-charge as an 'incurred cost'. This is highly unlikely, but also an example of where HMRC's tool lacks clarity.

Why most contractors won't pass HMRC's IR35 tool

Beware, whilst each question is multiple choice, often answers that many outside-IR35 contractors could legitimately give won't yield a pass from HMRC's tool. Questions are often vague, and the wording of several of them could also cause you to slip up. It's difficult for contractors, because honest answers to these questions are rarely as black and white as HMRC wants them to be.

ContractorCalculator says: The shortcuts available to an IR35 'pass' with HMRC's tool can only be achieved by very few contractors, but many more will pass IR35 when assessed correctly. HMRC has set the pass bar far too high, and contractors need to ensure they aren't misled by the wording of questions, which could further reduce their chances of passing.

HMRC's IR35 tool – a word of warning for contractors

Even if you've managed to pass HMRC's IR35 tool, you're not necessarily out of the woods. Despite claiming during consultation phase that it would be bound by the outcome of its IR35 tool, HMRC has inserted two caveats that are the equivalent of a 'heads they win, tails you lose' scenario.

The taxman reserves the right to challenge the tool's judgment if it believes answers have been answered incorrectly or that the situation is contrived. In other words, a pass from HMRC may not count for anything. Beware.

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