

## How HR advisors can help clients with Off-Payroll IR35 rules – 7 simple steps



HMRC is edging closer to extending the public sector Off-Payroll rules into the private sector, with changes expected to be introduced [as soon as April 2019](#). The changes will make contractor clients responsible for assessing the IR35 status of each contractor they engage.

As the fallout from the reforms in the public sector has shown, non-compliance is not an option but, with no prior experience of IR35, clients cannot implement the rules alone.

HR advisors will play a critical role in ensuring that their clients navigate the Off-Payroll rules efficiently, effectively and fairly. Here, we explain how that can be done in seven simple steps.

### Step 1: alert clients to the dangers posed

Clients need to understand the impact of IR35 on contractors, and the likely response when it is forced upon them. Being placed inside IR35 can reduce a contractor's take-home pay by roughly 25%, a tax hike which very few are likely to accept, and who will instead seek more lucrative work outside IR35 elsewhere.

Many public sector organisations attempted to circumvent the compliance burden and the tax liability risk associated with engaging a contractor outside of IR35 by imposing blanket rules, effectively banning contractors from operating outside IR35.

[As has been demonstrated in the public sector](#), actions such as these can result in:

- Rising project costs as contractors increase their rates to compensate for tax loss
- Struggles to retain existing contractors and source new ones, causing delays and cancellations to projects
- Costly employment rights claims from contractors.

HR advisors need to inform their clients that compliance with the rules is a legal requirement, and that non-compliance could prove far more costly than they think.

### Step 2: review contract templates for IR35 risk

All parties benefit when a contractor can work outside of IR35, but clients still have the compliance burden to contend with. An effective way to mitigate this is an upfront examination of the contract templates that clients use when engaging contractors.

With specialist legal assistance, HR advisors can assess their clients' contract templates, enabling them to understand IR35 risk factors better and amend any clauses that pose an unnecessarily high IR35 threat.

### **Step 3: brief clients on the 'notional contract'**

Though contracts certainly need to be addressed, they are often deemed worthless if they are not reflected in the working practices. Clients need to be well aware of the concept of the 'notional contract'.

This is the figurative contract that IR35 tribunal judges create, based on evidence of a contractor's day-to-day working arrangements. It will typically override the written contract.

Clients, therefore, need to be fully briefed on the contract terms that their contractors agree to, to prevent deviation from them. Failure to address this could result in significant legal costs and tax penalties.

### **Step 4: get compliance practices in place**

Once clients are aware of the risks, they need to implement practices to ensure compliance. HR will play a key role in establishing practices that are efficient, cost-effective and fair.

HMRC has been promoting the use of its Check Employment Status for Tax (CEST) tool to assess contractors. However, it omits key areas of employment case law and has been widely exposed as inaccurate. Contractors have traditionally sought contract reviews from IR35 legal specialists, but these are typically slow to process and can cost upwards of £200 per contractor.

ContractorCalculator offers [IR35 Shield](#), which is a free-to-use, AI-powered solution providing a swift, accurate and assured means of compliance. Encompassing all relevant case law, it guarantees accuracy and, vitally for clients and HR advisors, can assess contractors in bulk.

### **Step 5: assist in making changes to contracts**

Having assessed contractors for IR35, some contracts may still require further tweaks to be safe from IR35, although carrying out step two will help to mitigate this requirement.

Engaging an IR35 legal expert will help ensure that any contractual changes are within reason. HR advisors will then need to brief their clients on the changes that are being made and what they mean in relation to IR35.

### **Step 6: make provisions for contract terminations**

When the Off-Payroll rules hit the private sector, some contractors who were previously taxing themselves as outside IR35 might be caught when assessed by the client. Some might also be reluctant to accept their new tax status.

In this situation, HR advisors must explain to the contractor that they have taken every possible measure to grant them a fair assessment and terminate the contract if the matter can't be resolved.

There is a danger that contingent staff numbers could reduce during the transitional phase. Provisions may need to be made for this period, such as reassessing project goals or seeking other sources of labour for the short-term.

### **Step 7: guarantee protection from tax risk**

Adopting an accurate and comprehensive compliance solution alone should be enough to mount a strong IR35 defence, but this won't necessarily deter HMRC's advances.

HR advisors should ensure that their clients have sufficient protection in place for such an event. With IR35 Shield, contractors can obtain a comprehensive report and pass certificate, which can then be assured by a legal expert. These can be used as strong evidence, demonstrating that due diligence has been carried out when assessing their status.

However, to fully minimise all risk, clients can choose to insure against a negative judgment, by accessing a host of additional third-party services, the costs of which can be offset to the contractor.

### **How HR advisors can guarantee compliance with IR35**

For clients, the only way to negate HMRC's threat, while keeping contractors onside, is rigid compliance with the Off-Payroll rules. HR advisors need to identify an efficient and cost-effective solution.

IR35 Shield provides an ideal fit, offering affordable, accurate IR35 assessments for entire contingent workforces in a single day. Every step in this guide is covered by the IR35 Shield solution, which also provides access to a range of legal offerings for guaranteed compliance.

The solution is scalable, with packages available for contractor clients of varying caseloads. To learn more about how your client could benefit from [IR35 Shield](#), [visit the website](#) or [get in touch](#), now.

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