

IR35 Road Ahead survey reveals over half of firms are not ready for Off-Payroll



With fewer than four months to go until the Off-Payroll rules are introduced to the private sector, more than half of contractor clients are yet to prepare. This is according to a survey of more than 3,000 contractors by [IR35 Shield](#) which found that 52% of those currently in work are yet to have their IR35 status assessed by their client.

Published today, the 'IR35 Road Ahead' survey also highlights the risks that hirers and agencies run by attempting to circumvent their compliance obligations, including recruitment struggles, rising costs and damage to projects.

Other highlights include:

- 23% of contractors report that their clients have banned engagements with limited companies
- 52% of firms are using CEST to assess IR35 status despite 75% of contractors believing its results inaccurate
- 65% of contractors will avoid working 'inside IR35'
- 72% of contractors will quote a separate rate for 'inside IR35' engagements
- Only 8% of contractors said they would be happy to use an umbrella
- 74% of contractors cannot tell if an umbrella company is compliant and are therefore vulnerable to tax avoidance schemes

"It looks as though half of the market is leaving Off-Payroll compliance until the very last minute, which looks likely to cause some unnecessary complications and a considerable demand for assessments in a very short time window," says Dave Chaplin, CEO of IR35 Shield and ContractorCalculator.

"Firms using CEST to conduct status assessments or who apply blanket rules to negate their compliance obligations are likely to encounter considerable disputes and recruitment struggles. Meanwhile, unfair tax treatment and a lack of transparency when it comes to engagement models by agencies and clients threaten to push contractors unwittingly into tax avoidance schemes."

Off-Payroll compliance key to retaining contractors

While half of hiring firms are yet to adopt compliance protocol, the survey found that many of those who have acted have attempted to circumvent their responsibilities via the introduction of blanket measures.

IR35 Shield posed similar questions to contractors both inactive and currently engaged in a contract. From the answers provided by those currently between contracts who were aware of their most recent client's compliance approach, the survey found:

- 41% of clients had imposed a blanket ban on limited companies
- 20% of clients had conducted status assessments on a case-by-case basis
- 32% of contractors said their most recent contract had been terminated due to IR35

From the feedback provided by respondents who were still engaged in a contract, IR35 Shield found:

- 23% of contractors said their client had imposed a blanket ban
- 34% of contractors said their client was assessing status on a case-by-case basis

Though the prevalence of blanket bans by clients of currently engaged contractors remains high, the comparative figures suggest that clients that abide by their compliance obligations and assess contractors individually stand a significantly better chance of retaining their contingent talent.

Meanwhile, feedback from all respondents indicates that clients that are unwilling to engage contractors on an 'outside IR35' basis can expect to have to pay a premium for the key skills they require:

- 72% of contractors say they will quote separate rates depending on IR35 status
- 69% of contractors say they will increase their rates for 'inside IR35' contracts
- 16% have already successfully negotiated a higher rate

"Ultimately, many clients adopting a knee-jerk reaction look likely to prove the architect of their own downfall," says Chaplin. "Most contractors won't simply accept a rate reduction to pay the firm's new tax bill where they should genuinely be assessed as 'outside IR35'. Firms who have succumbed to overzealous scaremongering are likely to have a diminished long-term bottom line and be less competitive."

Clients risk backlash for non-compliant assessments

Questions also remain about many of the status assessments that are being conducted by hirers, with the survey finding:

- Only 46% of respondents who had been assessed were invited to provide input
- 47% of contractors hadn't been provided with a status determination statement (SDS) by their client
- 52% of assessments have been carried out using CEST

The popularity of CEST is particularly contentious for contractors, the majority of whom have expressed a distinct lack of trust in the demonstrably flawed tool. As a result of this:

- 41% of respondents said they would challenge an 'inside IR35' CEST assessment
- Only 11% of contractors said they would accept an 'inside IR35' CEST result
- 64% claimed they would always seek an independent assessment from an expert
- 75% of respondents believe CEST is inaccurate

- Only 3% of contractors trust CEST to accurately reflect status law

“This is bad news for clients who intend to use CEST at the eleventh hour to assess their contractors,” notes Chaplin. “These firms can expect a considerable backlash, numerous status disputes and terminated engagements.”

Only 8% of contractors are happy to use an umbrella

Many hiring firms and agencies have sought to circumvent their compliance requirements by offering alternative engagement models to contractors. Of those who had received such offers:

- 36% of respondents had been invited to work via an agency's payroll
- 62% had been asked to trade via an umbrella company

This is despite a reluctance by contractors to engage in this manner:

- Only 8% of contractors said they would be happy to use an umbrella company
- 44% of contractors said they would never work via either agency payroll or umbrella
- 52% said they didn't want to use one, but would if forced
- 61% said they would not respond to an advert for an 'umbrella only' contract

“It appears the use of umbrella companies in response to Off-Payroll is driven solely by agencies forcing the issue, and not by contractors actively wanting to use them,” observes Chaplin. “This is particularly concerning given that this is the approach adopted by so many hirers and agencies.”

Off-Payroll prompts spike in tax avoidance schemes

Even more concerning for contractors is the recent proliferation of disguised remuneration schemes and difficulties distinguishing between these and umbrella companies.

Many tax avoidance schemes have emerged in response to the Off-Payroll rules, often operating under the guise of umbrella companies. These companies often target contingent workers who have been assessed as 'inside IR35' and subject to additional unlawful deductions via a double NICs charge and will offer a rate of take-home pay more commensurate with their fee being treated as a salary.

The survey found that tax avoidance schemes are actively marketing to contractors, and are difficult for contractors to discern from compliant payroll companies:

- 60% of contractors have received marketing from payroll companies offering take-home pay of roughly 85%
- 74% are unable to distinguish between a compliant umbrella company and a tax avoidance scheme
- Only 43% claimed that they could perform their own tax calculation to check it is correct

“These figures demonstrate why HMRC's argument that contractors should be able to recognise when an arrangement is ‘too good to be true’ has no legs,” notes Chaplin. “Contractors are not accountants, and it's hardly surprising that many do not have the skills to work out whether their rate of take-home pay is lawful.”

Government transparency efforts to curb avoidance have failed

Government's efforts to tackle these schemes have proven highly ineffective. Since April 2020, agencies have been legally required to provide each worker with a [Key Information Document](#) (KID) before agreeing terms on a new contract. This is intended to provide transparency around aspects such as pay. Despite this:

- 86% of contractors said they weren't provided with a KID for their last contract
- 67% of respondents weren't even aware of what a KID is

"The purpose of the legislation that introduced KIDs was to deliver transparency and prevent contractors from unwittingly entering into tax avoidance schemes," says Chaplin. "Unfortunately, as this survey shows, this policy measure appears to be a complete failure, as it simply isn't being adhered to."

Non-compliance by hirers will result in "self-harm"

While some contractors will have to navigate the risks of the unregulated umbrella market, the threats to hiring firms are far more wide-reaching. The survey findings suggest that a failure by hirers to abide by their Off-Payroll compliance obligations looks likely to contribute to their own downfall:

- Only 32% of contractors are confident they will remain with their current client beyond April 2021
- 57% expect roughly half or more of their client's contingent workforce will leave because of the Off-Payroll rules
- Only 6% expect Off-Payroll to have no impact on their client's ability to retain contractors
- 39% anticipate Off-Payroll to cause short-term damage to their client's business
- 36% expect their clients to experience long-term damage
- 36% of contractors said their most recent client was moving some or all of their projects outside of the UK due to IR35

"For hiring firms and agencies, the message is clear," notes Chaplin. "Those who fail to comply will be at the back of the queue when contractors decide on their next contract, leading to recruitment struggles and damage to projects. Firms need to realise that blanket bans on limited companies are an expensive way of hiring lesser talent, whilst handing a competitive edge to their competition."

Compliant firms have nothing to fear

Chaplin continues: "The blanket ban decision by some firms is quite absurd when you consider that the probability of HMRC managing to overturn a status determination at a tax tribunal is minuscule. With the correct contracts in place and every party to the supply chain providing contrary evidence to their claim, it's difficult to see how a judge would rule in HMRC's favour."

"Firms who adopt best practice but are still convinced the IR35 bogeyman exists can [take out insurance](#) if they are still concerned. Premiums are a tiny fraction of the total exposure, and can provide extra comfort to those with a nervous disposition when it comes to status."

"Once some of these firms realise that the scaremongering was without foundation and that they've instead engaged in an act of self-harm, they will start to question their position. Within two years, I expect things will be back to a normal, with genuine contractors able to work effectively and without fear."

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