

Off-Payroll audit guide: How to accurately assess status without IR35 expertise



One of the most significant changes to IR35 compliance introduced by the Off-Payroll rules is the requirement that the end-client conduct the contractor's IR35 status assessment.

Crucially, the Off-Payroll rules also require that clients take 'reasonable care' when making their status determinations to ensure accuracy, while the draft legislation for the private sector iteration of the rules require that this is demonstrated through the provision of a [Status Determination Statement \(SDS\)](#).

This creates a perceivably high administrative burden that requires a degree of IR35 expertise that clients and their HR departments simply don't have. Ultimately, Off-Payroll compliance is something that firms will need to outsource.

Fortunately, compliance solutions are available that offer accurate IR35 status assessments that meet the 'reasonable care' requirement, which don't require you to become an expert in employment case law.

Off-Payroll: what does the legislation say?

The 'reasonable care' requirement was a late addition to the Off-Payroll public sector legislation following criticism that the rules in their previous format permitted clients to flaunt their compliance responsibilities.

Although there is little clarity over what 'reasonable care' constitutes in the context of the Off-Payroll rules, [expert analysis has determined it to be akin to negligence](#). Elsewhere, legal experts have suggested that in the context of a contractor facing an IR35 enquiry, [reasonable care constitutes acquiring independent legal advice](#).

From this, we can gauge that 'reasonable care' under the Off-Payroll rules requires the client to examine the contract, working practices and contractor's circumstances in keeping with employment case law, all having enlisted expert assistance.

For public sector hirers, this all needs to be demonstrated by presenting the contractor with a Status Determination Statement (SDS). This is a statement which:

- Declares a contractor's deemed employment status following an IR35 assessment
- Provides comprehensive reasoning for reaching this conclusion

The draft legislation states that if a client fails to provide an SDS, or if an SDS provided doesn't meet the reasonable care requirement, then the client will assume the tax liability risk originally held by the fee-payer.

The challenge with IR35

The problem with IR35 is that it's highly complex. Assessing IR35 status is not a crude box-ticking exercise, it typically requires a high degree of understanding. As a result, conducting a comprehensive status assessment for each contractor that meets the reasonable care requirement can seem like a tall order.

And for hiring organisations alone, learning the law is simply too much of a mountain to climb in such a short space of time. A novice couldn't gain the understanding of IR35 needed to confidently issue status assessments come April 2020 - even HMRC takes 3-5 years to train its own inspectors.

This is a task which needs to be outsourced. However, be careful to ensure that you enlist the help of experts who have many years of proven experience in this arena, and beware of the 'pop-up IR35 experts' entering the market.

What to look for in an IR35 compliance solution

IR35 expertise isn't the only necessary requirement of a compliance solution or provider. Other key characteristics include:

- Ability to segment individual assessments to ensure the relevant questions are answered by the most relevant parties
- Scalability for timely, accurate and consistent assessments of large numbers of contingent workers
- Comprehensive feedback contained in an SDS for each assessment, detailing reasons for the determination
- Ability to data mine and group assessment data across tailored groups or workers to ascertain compliance observations
- Insurance-backed, to further reduce exposure to risk while indicating credibility on behalf of the solution

With many organisations engaging hundreds, sometimes thousands, of contractors at a time, a scalable solution which can meet the compliance demands of a large contingent workforce is essential. Given that IR35 assessments ask questions specific to the contract, the working conditions and the contractor's individual circumstances, the ability for each party to contribute towards the assessment is also vital.

Far from simply issuing a binary verdict on IR35 status, the Off-Payroll rules' 'reasonable care' requirement means any chosen solution needs to provide sufficient reasoning to inform an SDS for each assessment. Meanwhile, a solution which mines assessment data to identify compliance recommendations applied across the workforce can help establish compliance and minimise tax risk in a swift and efficient manner.

How IR35 Shield ensures accurate IR35 assessments

[IR35 Shield](#) is arguably the only solution that meets all the necessary compliance requirements imposed by the Off-Payroll rules, enabling its users to conduct comprehensive, accurate IR35 assessments without becoming experts on IR35.

The AI-powered compliance solution includes a 'collaborative assessments' feature, enabling contractors and their clients to individually contribute their input to a status assessment. By initialising an assessment and inviting contractors via email to answer the questions pertaining to their business, clients can arrive at a fully considered status determination, as required by the employment case law underpinning IR35.

Each assessment identifies the contractor's level of IR35 risk, as well as providing detailed reasoning behind the outcome, creating a ready-made SDS for clients to provide to their contractors, in turn demonstrating 'reasonable care.' Meanwhile, data from each assessment is stored and used to inform compliance recommendations to help clients minimise IR35 risk across their entire workforce.

The tool's automated nature means it can assess a firm's entire contingent workforce within a matter of minutes, and the fact that it's insured provides clients with necessary assurances.

Guarantee Off-Payroll compliance with the Shield Passport Process

Firms that don't adopt IR35 Shield as their compliance provider must at least make sure that they have rigid compliance practices in place to ensure accurate IR35 assessments and minimise the risks imposed by the Off-Payroll rules. The [Shield Passport Process \(SPP\)](#) is a four-stage, 12-step compliance process enabling clients and their recruitment partners to do exactly this.

Developed by industry experts IR35 Shield and [Professional Passport](#), these private workshops teach attendees a structured approach which helps them fast-track their Off-Payroll compliance. Recruitment agencies can book an SPP workshop at a location of their choosing before inviting their clients to attend, encouraging the aligned approach to compliance that the legislation necessitates. For more information, get in touch.

Published: 22 November 2019

© 2019 All rights reserved. Reproduction in whole or in part without permission is prohibited. Please see our [copyright notice](#).

200,000+ monthly unique visitors

© Copyright 2019 Byte-Vision Limited UK. All rights reserved [Copyright notice](#)