

Public sector contractors: 6 step plan to carry on working outside IR35



The [public sector IR35 reforms](#) have prompted widespread concern with their far reaching impact on clients, recruiters and contractors. If you're a contractor in the public sector, alarm bells should be ringing because the new measures could see you forced into an inside-IR35 contract, costing you thousands of pounds in extra tax.

You should carefully consider your next move and take action now so that you don't suffer as a result of these damaging changes. Here's what you can do:

1. Speak to your public sector client right now about their compliance plans as a result of the changes to IR35
2. Evaluate your IR35 status by taking an online test and by securing an IR35 contract review from an expert
3. Work with your client to ensure you stay outside IR35 and renegotiate your contract if you need to
4. If all else fails, seriously consider leaving the public sector and securing a better paid outside IR35 contract in the private sector where the reforms don't apply.

Step 1 - Educate your client

HMRC is developing an online HMRC's Employment Status Service (ESS) tool in order for public sector bodies to test the status of it's contractors. And the taxman is encouraging mass adoption of the tool amongst public sector clients.

However, this tool poses a serious threat to your future as a public sector contractor, because in many cases it will falsely imply that a worker should be classed as caught by IR35 contrary to case law.

The tool is expected to provide three results – pass, fail and borderline. The criteria for a pass result is expected to be so tight **only a handful of contractors will achieve an outside IR35 status.**

The tool is not expected to align with IR35 case law, and is based on HMRC's biased view of how the legislation should be applied. As a result, thousands of legitimate contractors will be found inside IR35 and risk paying out huge amounts of unnecessary tax.

HMRC claims that it is bound by the tool's outcome, meaning public sector clients will see it as a solution that eliminates their tax risk. HMRC's constant referral to the tool in its [technical note](#) also gives the impression that the tool is the only means of ensuring compliance. This isn't true.

If you're a public sector contractor, then it will be essential that you make your client aware that they are not legally bound to use the tool, that it gives results that are untrue.

You need to ensure your client doesn't only use HMRC's tool and falsely determine you to be inside IR35.

Step 2 – Independently test your IR35 status

If you want to stay contracting in the public sector and remain outside IR35, you'll need to start building up a body of evidence to prove your status. You can start by getting your status independently tested.

ContractorCalculator has a [free online IR35 test](#) that provides the most comprehensive IR35 status evaluation available. The test displays your level of IR35 risk on a spectrum, helping you to make a fully informed decision regarding your IR35 status.

Step 3 – Secure an expert IR35 review

Securing an IR35 contract review by a qualified expert should be your next step. But remember, any IR35 review needs to be conducted by an IR35 expert with the necessary expertise. These will typically be ex-tax inspectors or lawyers either of whom specialise in employment status.

A contract review can provide the thorough, objective evaluation of your working practices that HMRC's tool can't. It also proves that you are conducting your own due diligence, an important piece of evidence if you end up fighting your status in a tax tribunal.

Step 4 – Renegotiate the contract

Another benefit to securing a contract review is your IR35 expert can advise on elements of the contract that need to be amended to ensure you remain outside IR35. Having your contract reviewer negotiate these changes with the client on your behalf is an effective way to minimise your risk.

Step 5 – Get a confirmation of arrangements

For added assurance, you'll want to have a confirmation of arrangements signed by your client. This document provides a detailed overview of your working practices, including:

- The precise nature of the services you provide
- Confirmation that you can't be asked to do something not stated in your contract.

Step 6 – Build a compliance file

On top of this, you'll need to be prepared to provide plenty of evidence that you can use to prove your status. Start building an IR35 compliance file that can be presented should HMRC investigate you, including correspondence highlighting key facts such as your right of substitution and the fact you have completed some of the work at home.

Public sector IR35 reforms – how you can mitigate your impact

Following these steps should prove more than enough to reassure your client that your contract is outside IR35. However, some clients might initially refuse to accept your evidence and still insist that you should be taxed as an employee. But there is more you can do:

- **Negotiate a higher rate** – Increasing your rate by roughly 20% will see you retain your current net pay as an outside IR35 contractor.
- **Claim extra rights and benefits with AWR** – Being forced into an inside-IR35 contract could mean after twelve weeks you qualify for rights granted by the Agency Workers Regulations (AWR), including holiday pay and access to company facilities.
- **Line up alternatives** - Seek alternative options in the private sector, and inform the client that you will leave if they force you inside IR35.

There will be strong resistance from your client to agree to such a huge rate increase, and they certainly won't want to be giving your any

rights. Both of these factors, combined with the threat of simply walking away provide sufficient motivation for the client to reconsider their harsh stance and look closer at the evidence you have provided.

Sign up to ContractorCalculator for latest IR35 updates and guidance

The public sector reforms are the biggest thing to happen to IR35 in its history, with potentially devastating effects for contractors, clients and agencies. With experts predicting that the measures will soon be rolled out to the private sector, the changes could soon impact all UK contractors.

ContractorCalculator will be working hard to uncover further information that will impact on IR35, and is on hand to help you mitigate your impact. [Sign up to ContractorCalculator](#) and join thousands of contractors by receiving up-to-date news, guidance and reaction from the sector in your inbox.

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