

# ARE YOU READY FOR IR35?

---

OUR GUIDE TO GETTING  
READY FOR IR35



THE ANSWER IS **simplicity**<sup>™</sup>



- 1. WHAT IS IR35?**
- 2. WHAT IS CHANGING?**
- 3. IR35 CHANGES WORKFLOW**
- 4. WHAT DO MY CLIENTS NEED TO DO?**
- 5. STATUS DETERMINATION STATEMENT (SDS)**
- 6. HOW WILL IR35 AFFECT CONTRACTORS?**
- 7. HOW WILL IR35 AFFECT MY AGENCY?**
- 8. WHAT DO YOU NEED TO DO MOVING FORWARD?**
- 9. HOW CAN SIMPLICITY HELP?**

# IR35 OFF-PAYROLL WORKING RULES – DUE 6TH APRIL 2021

You will undoubtedly be aware of the 'Off-Payroll' working rules (IR35) that will apply from the 6th April 2021.

The new rules impact contractors and freelancers who currently engage in assignments via their own Limited company or more widely known as a PSC (Personal Service Company). These reforms will address so-called "disguised employment" and provide the UK Government with a large increase in tax revenues each year.



# 1 | WHAT IS IR35?

IR35 has been around for over 20 years and is legislation that the Government introduced to identify whether off-payroll workers are genuine contractors/freelancers (outside IR35) or deemed employees (inside IR35).

## INSIDE IR35

Workers are considered, for tax purposes, an employee of the end client and therefore subject to tax and NI deductions.

## OUTSIDE IR35

Workers determined outside IR35 are operating legitimately as a genuine business providing services, and therefore, they are not subject to tax deductions by the contracted employer.



Until now, the PSC has been responsible for determining if a contractor is inside or outside of IR35. Following the introduction of IR35 reforms in the public sector in 2017, HMRC confirmed that these new rules will now be extended into the private sector, effective 6th April 2021.

# 2

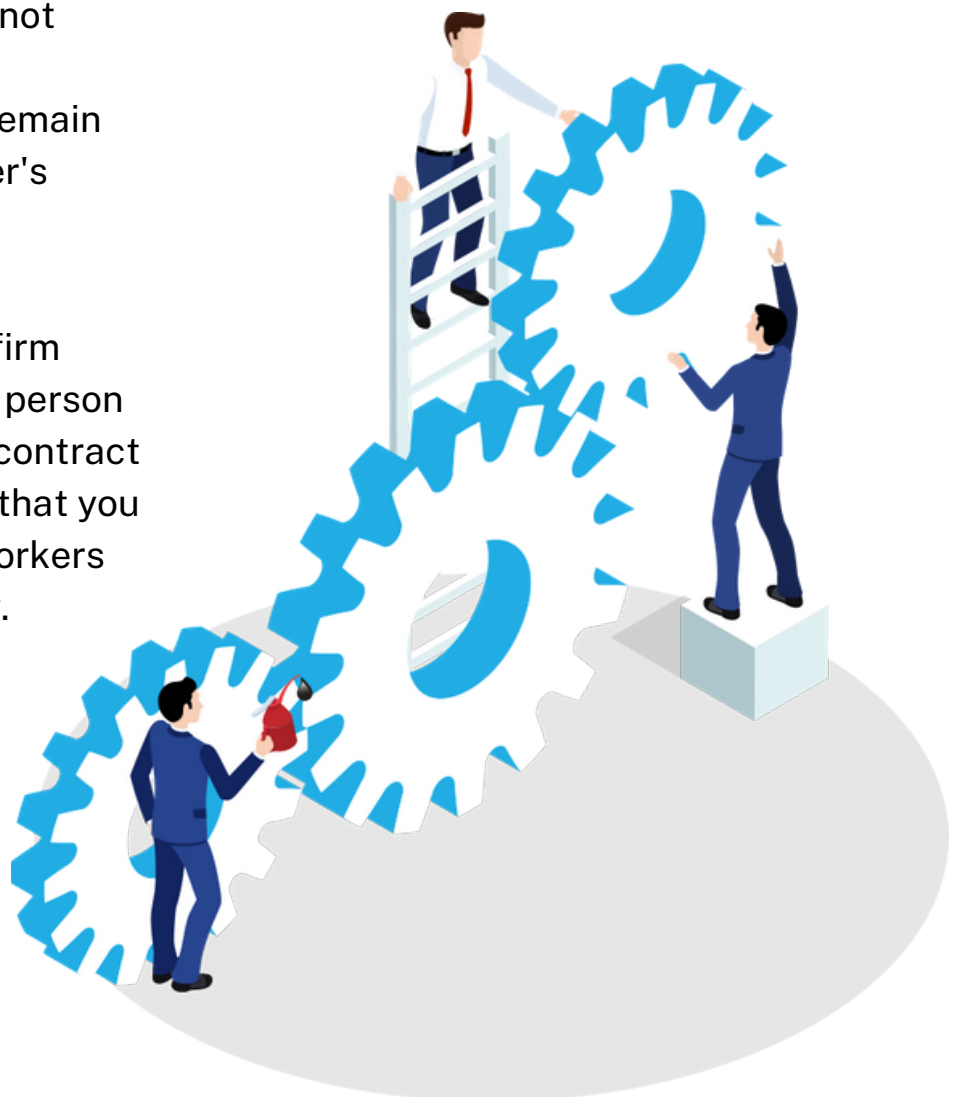
## WHAT IS CHANGING?

**From the 6th April 2021, the responsibility for determining a contractor's status is moving to the end client, and the rules apply to all public sector clients and medium and large-sized private sector companies that meet two or more of the following conditions:**

- They have an annual turnover of more than £10.2 million
- They have a balance sheet total of more than £5.1 million
- They have more than 50 employees

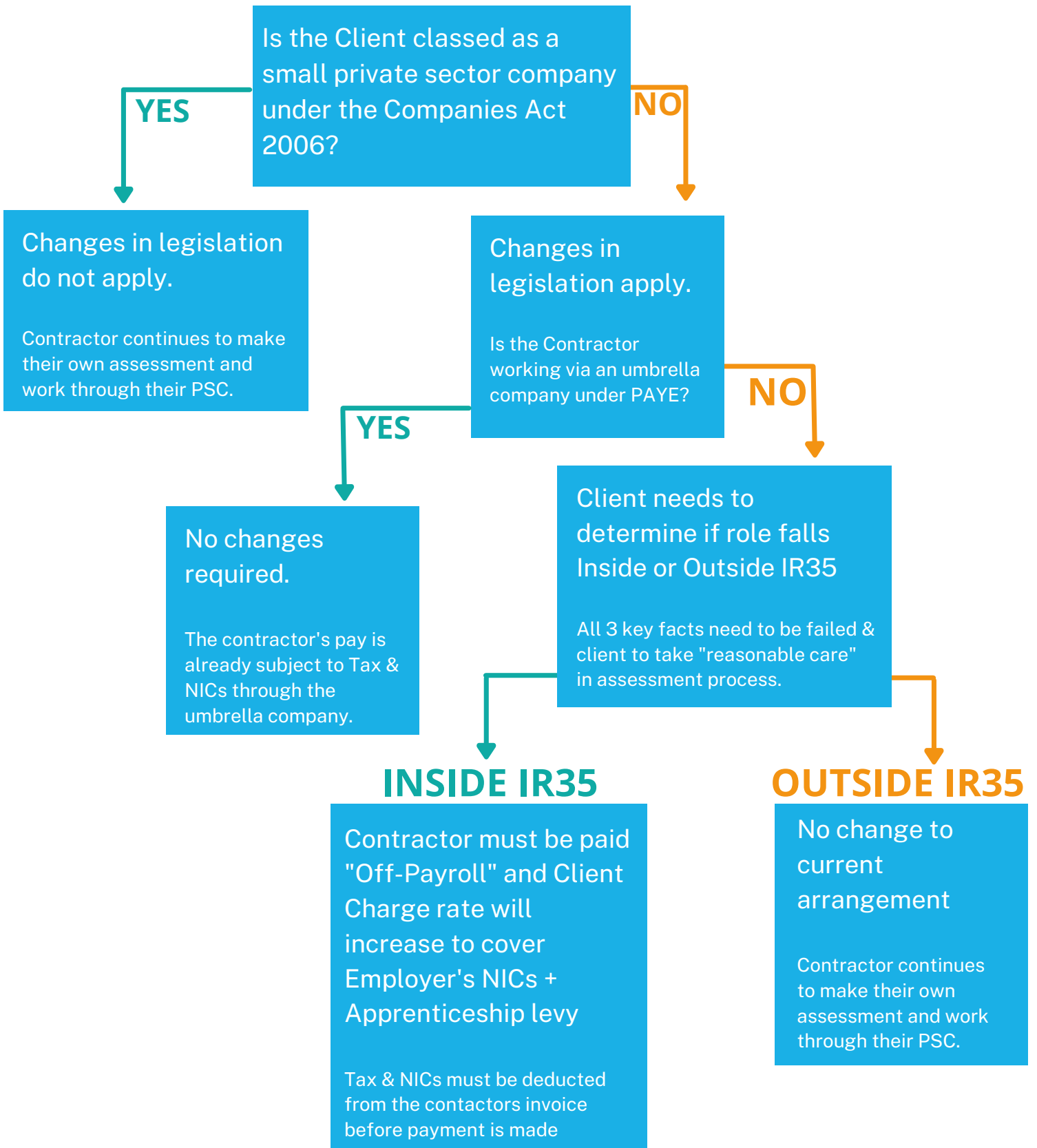
If the client is a small-sized business in the private sector, they will not have to decide the worker's employment status. This will remain the responsibility of the worker's intermediary.

However, the client must confirm their size if questioned by the person or organisation they hold the contract with or the worker. To ensure that you (the agency), the client and workers can consider what rules apply.



# 3

## IR35 CHANGES WORKFLOW





# 4 | WHAT DO MY CLIENTS NEED TO DO?

**Clients who fall within the IR35 conditions will need to decide every worker's employment status who operates through their intermediary, even if provided through an agency.**

Guidance on how clients determine the employment status of a worker can be found on GOV.UK - <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0500>

The following factors tend to be used, but not limited to, to test the workers employment status;

## **CONTROL**

If the employer controls the workers' workload and how it is carried out, it suggests the worker is inside IR35 as they are not providing a specialist service.

## **SUBSTITUTION**

If the employer can send a substitution to complete works in place of the original worker, it suggests that the worker isn't providing a personal service. The worker is NOT an employee.

## **RISK**

If a contractor can make a profit/loss from work carried out, this would suggest that the contractor is outside IR35.

## **MUTUALITY OF OBLIGATION (MOO)**

If both parties pass the other tests, it is unlikely that MOO applies as it is outside IR35. MOO can be present in both contracts of/for service.



Clients must take reasonable care when determining the employment status of a worker. Failure to do so will result in the worker's tax and National Insurance contributions becoming the clients responsibility.

Examples of a behaviour that would indicate a client has taken reasonable care include, but are not limited to;

- ➔ Accurately applying and keeping a record of the employment status principles (ESM0500)
- ➔ Accurately completing and applying the results of HMRC's Check Employment Status for Tax (CEST) tool
- ➔ Applying HMRC guidance on determining status

- ➔ Seeking the advice of a qualified, professional advisor
- ➔ Having someone with a good understanding of the work to be undertaken involved in the determination process

Further examples can be found on GOV.UK - <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10014>

Clients will only need to determine whether the rules apply for contracts they plan to continue beyond 6th April 2021 and should communicate the determination using a Status Determination Statement (SDS).





# 5 | STATUS DETERMINATION STATEMENT (SDS)

The client will be required to communicate the workers' determination using a Status of Determination Statement (SDS). The SDS must be passed to the worker and the first agency in the supply chain and conclude the workers employment status.

Until this is confirmed, the client will be liable for making any tax deductions as required. Once the status has been determined and the SDS passed to the first agency in the supply chain, then the responsibility for tax deductions will fall to the agency or "fee payer".

This significantly increases your risk when recruiting contractors that use PSC's and care should always be taken to ensure that you mitigate and manage such risk.

Clients need to keep detailed records of their employment status determinations, including the reasons for the decision and fees paid, and they must have processes to deal with determination disagreements.



# 6 | HOW WILL IR35 AFFECT CONTRACTORS?

**For contractors assessed as "outside IR35", there will be no change, and contractors intermediaries will be responsible for taking care of their tax liabilities.**

Workers assessed as "inside IR35" will need to consider the deduction and payment of tax and NICs from the PSC's invoice or find another suitable engagement option (preferably PAYE or Umbrella PAYE).

If a worker disagrees with the client's determination, they can raise an appeal. They'll need to give details of the employment status determination they disagree with and the reason for their disagreements. They should also keep copies of any record regarding their appeal.

A worker can raise a disagreement until the last payment is made for a workers services, and the client will have 45 days from the date of receiving the disagreement to respond. During that time, the fee-payer should continue the rules per the clients original determination.

If the determination changes, the client must provide the worker with the new status and confirm a date on which the new status is valid. If there is no change to the status, the client will need to tell the worker.

## **IR35 INDEMNITY INSURANCE**

Many contractors are opting to take out an IR35 Insurance policy, which will cover the costs of professional representation in the event of an HMRC investigation. Several insurance providers within the industry can provide sufficient IR35 Indemnity Insurance cover.



# 7 | HOW WILL IR35 AFFECT MY AGENCY?

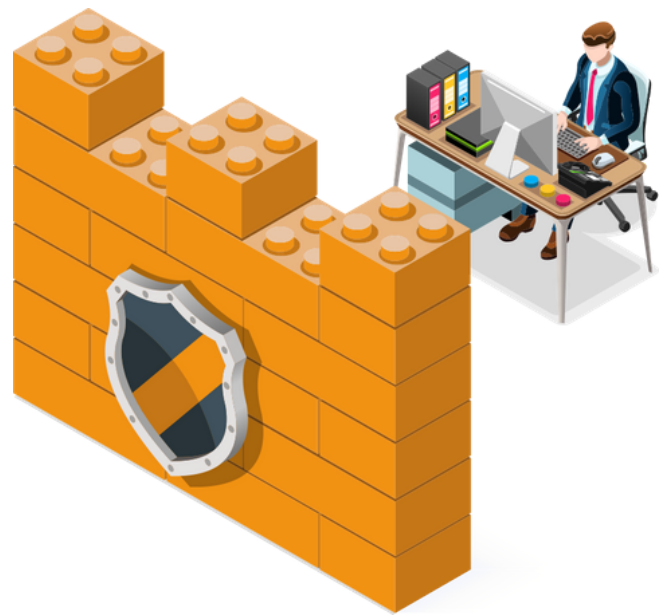
**Recruitment Agencies are classed as the 'Fee Payer' within the supply chain. Therefore, your agency will be responsible for processing payment to the worker/PSC based on the client's status determination.**

## **INSIDE IR35**

Payment for labour supply becomes subject to tax and NI calculations (tax and NI deductions/employer NI is payable to HMRC).

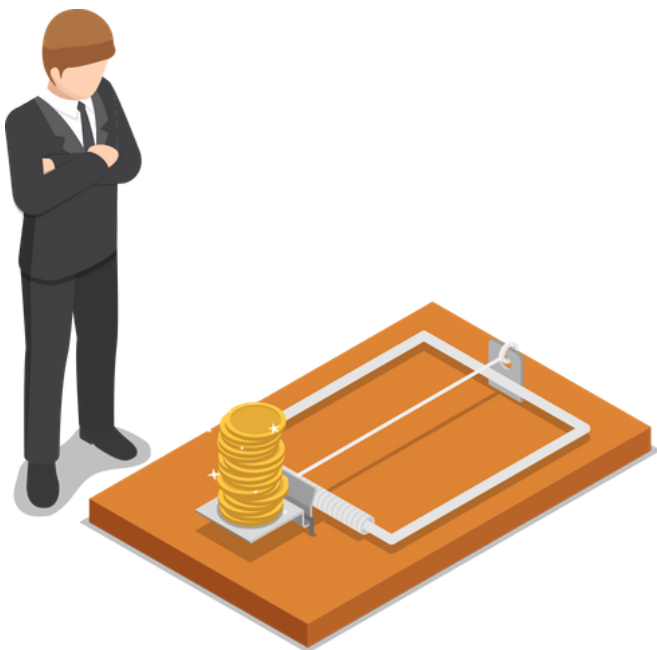
## **OUTSIDE IR35**

Outside IR35 – Payment is processed as usual, and there are no tax deductions or NI calculations required.



If calculations/deductions aren't processed as per the client's SDS, your agency could be at risk of becoming liable for the taxes potentially due, as the agency forms part of the supply chain.

**Agencies that fail to adhere to the IR35 legislation are at risk of penalties from HMRC.**



# 8 | WHAT DO YOU NEED TO DO MOVING FORWARD?

It would be best to discuss the IR35 changes with your clients and contractors as early as possible. Being more aware of IR35 legislation and the actions required is vital to reducing the impact of the changes and ensuring compliance for you, your clients and your workers.

When legislative changes occur, it is always good practice to audit your current processes and determine whether changes need to be made to ensure compliance.

## THINGS TO THINK ABOUT;

- How many clients are public sector or medium and large-sized private sector companies?
- How will you keep a record of which clients the off-payroll rules apply to?
- Do the off-payroll rules apply to any contracts that will extend beyond 6th April 2021?
- Do your clients have a process in place for issuing Status Determination Statements?
- Where can you store SDS's for each worker?
- Do your clients have an SDS disagreement process in place?
- How will you manage the allocation of compliant contractors to correct client bookings?

- Have your contractors got access to a compliant Umbrella PAYE solution?
- Do you have compliance measures in place to confirm that workers are legitimately being paid via a compliant Umbrella PAYE?
- How will you reassure your clients that contractors are being paid according to their determinations?
- How will you keep contractors and umbrella companies notified?
- Can you manage this process manually, or can tech simplify the process for you?
- Evaluate what the risks are to your business?



# 9 | HOW CAN SIMPLICITY HELP?

**Simplicity provide Recruiters with 100% Finance on temps and contractors. Whether you have one or 100+ PAYE or Umbrella workers, our scalable funding pays your workers and you, your margin – every week – without fail.**

Our Finance is inclusive of our market-leading back-office support services and comes complete with FREE recruitment technology – **GEMS**.



GEMS combines your front and back-office systems into one simple platform, including online timesheet functionality. It also has an IR35 compliance module, specifically developed for recruitment businesses, supporting you to manage your clients, workers and umbrella companies through a simple and transparent IR35 process.

**To find out more about our recruitment finance options or innovative technology, please feel free to contact the team on [01594 888518](tel:01594888518) or email [sales@simplicityinbusiness.com](mailto:sales@simplicityinbusiness.com)**



The Aspen Building  
Vantage Point  
Mitcheldean  
Gloucestershire  
G17 0DD

✉ [sales@simplicityinbusiness.com](mailto:sales@simplicityinbusiness.com)

🌐 [www.simplicityinbusiness.com](http://www.simplicityinbusiness.com)

📞 01594 888518



 **simplicity**™  
For faster smarter **growth**

This eBook is meant as a guide only and is the opinion of the Simplicity team following many years of working with recruitment businesses. However, this does not constitute professional advice or direction and the final decisions made in relation to any new business are the responsibility of the business owner and/or director. Simplicity does not accept responsibility for any outcome based on the opinions given in this document.