

Source.

IR35:

**Demonstrating reasonable care
- mitigating your risk**



IR35 Explained

IR35 is legislation that was introduced nearly 20 years ago, to prevent 'disguised employment' tax avoidance.

The aim of this legislation is to capture individuals operating through a personal services company (PSC) to avoid income taxes and to manipulate NI contributions, where for all intents and purposes they would be an employee of the end hirer.

The Off-Payroll in the private sector legislation comes into effect for payments made to contractors PSCs from 6th April 2021.

This document is designed to take you through:

Your responsibility

Consequences for lack of compliance

Our Solution to ensure complete compliance

What is 'reasonable care'?

One of the most important parts of the new IR35 legislation, is the requirement for end-clients to show 'reasonable care' when making Status Determinations.

If you cannot demonstrate that you have taken reasonable care when assessing a contractors' IR35 status, any liability will remain with you.

Reasonable care is defined by HMRC that clients should act in a way that would be expected of a "prudent and reasonable person in the clients position". Clients will be expected to make a correct Status Determination and have an audit trail evidencing how the decision was made.



Reasonable Care

According to HMRC there are example of behaviours that would indicate that a client has taken reasonable care.

These include, but are not limited to:

- Accurately applying and keeping a record of the employment status principles
- Accurately completing a Status Determination
- Applying HMRC guidance on determining status
- Seeking the advise of a qualified, professional adviser
- Having someone with a good understanding of the work to be undertaken involved in the determination process
- Checking existing individual determinations to ensure they remain valid and accurate
- Reviewing the processes being applied and amending for future determinations where necessary
- If there are any changes to a workers' terms and conditions, or working practices, a new status determination is made
- Ensuring they check and review processes of other parties where they subcontract the determination process to another party. The client remains responsible for the accuracy of the Status Determination Statements even if it subcontracts that responsibility to another party

Making and monitoring Status Determinations for contractors is going to be a continual process of evaluation. You'll be required to not only do the initial assessments, but also keep up to date on the employment status principles, guidance and case law.

Not Reasonable Care

According to HMRC there are examples of behaviours that do not constitute to reasonable care.

These include, but are not limited to:

- Determining that every worker who provides their services through a PSC is caught by the off-payroll working rules without giving considerations to facts for each individual case
- Determining that the off-payroll working rules apply to a large group of workers who have some variations between the work that is being carried out, without giving proper consideration to the different working arrangements for each worker
- Failing to reconsider determinations where there has been a material change in circumstances
- An absence of any proper support or training within the organisation to enable those individuals responsible for making determinations to properly consider the off-payroll working rules
- Inputting inaccurate information into your Status Determination Statement tool
- Failing to take into account all relevant evidence
- The person tasked with completing the Status Determination Statement does not possess the knowledge required to complete it and is not provided with the level of support provided



Blanket Bans & Role based assessments

HMRC are clearly stating that blanket bans do not constitute to reasonable care.

If an organisation puts in place a blanket ban, they remain liable for the tax, NICs and apprenticeship levy deductions. This is also the case even if the end client simply says they are not dealing with PSC's anymore (as many have done), there is a strong argument that this could still constitute as a blanket ban.

However, HMRC do approve of role based assessments, providing the contractors are engaged under the same terms and conditions and work under those same terms and conditions in working practice. It is recommended that Status Determination assessments are done on a case by case basis in order to demonstrate reasonable care and therefore giving yourself maximum protection.

Experts advise you carry out a role based assessment before the PSC is involved for the purposes of advertising, and then complete a collaborative assessment once you have the individuals details. There is high potential for the PSC to challenge a determination under new process rules, and they can challenge it based on the fact that the client has not taken reasonable care or that there is evidence that it hasn't been thoroughly assessed by the client.

Source Comply

Source Comply provides a 360 solution that managed the entire process from status assessments to process consultation so you have a fully compliant workforce and can demonstrate reasonable care whilst mitigating full tax liability relating to IR35.

Source Comply vs CEST		
Feature	Source Comply	CEST
Individual Assessments	✓	✓
Role bases assessments	✓	✗
Expert review of boederline results	✓	✗
Online platform to make & store SDSs	✓	✗
Downloadable SDS reports & recommendations	✓	✗
Interaction with the whole supply chain	✓	✗
Access to realtime reporting	✓	✗
IR35 protect insurance underwritten by Zurich	✓	✗
IR35 training for staff	✓	✗
Unlimited access to IR35 helpline	✓	✗
Full Assessment of contracts	✓	✗
Removes tax risk from the entire supply chain	✓	✗
Annual review & risk assessments	✓	✗

BENEFITS



Access to the best talent



A compliant workforce



Insurance backed



No disruption to your projects



Removal of your tax liability



Save on unnecessary costs

OUR SOLUTION COMBINES THE BEST TECHNOLOGY & EXPERT SUPPORT FROM OUR MARKET LEADING PARTNERS.



KINGSBRIDGE
CONTRACTOR INSURANCE

Provides insurance and support for over 55,000 contractors



ZURICH

Underwritten by Zurich insurance plc



Andy Vessey is an IR35 expert having previously worked for HMRC

Book Demo

To book your assessment and to find out more about our Source Comply service, contact our team of experts today.

ir35@wearesource.co.uk

020 3116 0000



Why is Source a trusted supplier?

Ahead of the changes, it is essential that going forward you are only using compliant and trusted suppliers.

Source have always taken compliance very seriously right from the moment we opened our doors, some 30 years ago. We have always ensured compliance with all key legislation that our industry requires such as the Employment Agencies Act, the Equality Act and GDPR to name a few. For us, IR35 is just another key piece of legislation that needs to be adhered to and in particular this legislation requires us to work extremely closely with and in support of our clients.

To enable us to work collaboratively with our clients and help navigate and support them through these changes, we invest hugely in our business infrastructure, provide all of our team with industry leading training. We only engage with industry leading advisers, compliant and insured candidates and suppliers, to minimise risk to our clients and candidates.

We hope this booklet helps you further your insight and help with your planning. We would welcome the opportunity to come and meet with you to further explore our Source Comply solution, and how best it can support your business.

Please contact me at ir35@wearesource.co.uk to arrange a meeting.



Annika de Friend
Founding Director



Thank you



020 3116 0000



ir35@wearesource.co.uk



www.wearesource.co.uk