

What will new IR35 rules mean for freelancers?

Confused by IR35 rules? Our guide explains what the new rules will mean for freelancers working in the private sector and how you can prepare.



With no signs of further IR35 delays, we're here to help you understand the ins and outs of the new off-payroll working changes being introduced in the private sector from 6 April 2021, so that you can stay compliant.

What is IR35?

IR35, also known as the [off-payroll working rules or intermediaries legislation](#), is designed to make sure that in an engagement, which is considered to be akin to an employment relationship, those working through their own companies, and their engagers (your clients), pay the same income tax and National Insurance contributions as those who are employed directly.

Will IR35 changes go ahead in April 2021?

Yes. It was announced that the [changes to IR35 legislation](#) will come into force from 6 April 2021, following a [delay due to the coronavirus pandemic](#).

The new rules will apply to services carried out from 6 April 2021.

What is changing in the private sector?

Under the new IR35 reform, responsibility for determining your employment status will shift to your client, where eligible, from 6 April 2021. This is already the case for all businesses and workers in the public sector, where [changes were introduced in 2017](#).

Who does IR35 apply to?

Off-payroll working rules apply if you provide services to a client through an intermediary (usually your own company e.g. a personal service company), but would be classed as an employee for tax purposes if you were contracted directly.

If the rules apply and you're deemed to be inside IR35, tax and National Insurance contributions must be deducted from your fees and [paid to HMRC](#).

What's the difference between inside IR35 and outside IR35?

IR35 applies on a contract by contract basis, so you may have some contracts that are inside IR35 and some that are outside IR35. Your status impacts the employment taxes you will pay. How and who pays the appropriate taxes depends upon the a number of factors which are considered below and ensures that IR35 still remains a complex piece of legislation.

Inside IR35

You pay the same tax and National Insurance as you would if you were an employee. Your client will be required to pay the necessary tax and NIC, which includes Employers' NIC and the apprenticeship Levy where applicable.

Outside IR35

Nothing changes. You are paid a flat fee as normal and are responsible for managing your own taxes.

Not sure whether your contract is inside or outside? You can [check your employment status for tax using this tool from HMRC](#).

Who decides my IR35 status?

Responsibility for determining your status as inside or outside IR35 will lie with the end-client under the new legislation. This means the business using your services will be responsible for deciding your employment status.

From 6 April 2021, you won't have the responsibility for determining the IR35 status of an engagement unless you're working with a small company in the private sector that has:

- An annual turnover of £10.2 million or less
- A balance sheet total less than £5.1 million
- Less than 50 employees

New rules will apply to parent companies, so larger businesses won't be able to setup smaller companies to avoid paying contributions where a freelancer is deemed inside IR35.

What affects my IR35 status?

The way your status will be judged by your client - and HMRC - will remain the same.

There are three key factors which determine employment status and if all are present then the relationship is one of employment. The three elements are used to assess whether your contract is for services (outside IR35) or of employment (inside IR35):

1. Control

Whilst how much control you have over where you work, what you do and when, as well as your client's expectations of you are relevant, the key factor of control is whether you are 'responsible for the performance of the services; i.e. **how** you do the work. If your contract demonstrates that you will be supervised or can be moved from task-to-task, this may indicate your engagement is inside IR35.

2. Mutuality of obligation

This is a commitment to offer and accept work. For example, when you show up to an office every day, you expect to be given tasks and your employer expects you to do them. Unlike with an employee, it can be more difficult to establish this relationship for a freelancer or contractor.

Your contract should be specific about the work that will be carried out in the project, and it should not imply any automatic renewals of your services, nor should there be any expectation that you will continue to be paid if no work is available.

3. Personal Service

Does your contract specify that your client only wants you? With a short-term freelance contract, you should be able to demonstrate that your personal service is not a requirement of the engagement and ideally you have a genuine right to send a substitute: someone else who could take your place to carry out the contracted work.

Technically, if one of these three factors is not present, the relationship cannot be one of employment; but most experts would say that to have a realistic prospect of winning your argument, you need to be able to demonstrate either a lack of personal service (e.g. you have a genuine right to send a substitute) or you can demonstrate that your client cannot exercise control over how you do your work.

It is important to remember that these contractual rights must be supported by the actual working arrangements.

In those cases where it is impossible to determine the status on the basis of the three key tests, then that is when you need to consider secondary factors like being in business on one's own account and taking financial risk.

If you're unsure about whether your contract will be considered inside or outside IR35, it's advisable to [speak to a legal expert](#).

“IR35 enquiries are extremely detailed, based on case law and interpretation of facts. They are highly technical and often take several years to conclude. It’s good to know that if HMRC start an IR35 enquiry you can call on a team of specialists to guide you through the process.”

Jacqui Mann,
FSB Tax Investigation Protection

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What is a Status Determination Statement?

A Status Determination Statement is a legal requirement of the new legislation and determines your employment status for tax purposes only following an IR35 assessment which the end client must undertake (and take reasonable care in doing so). Your client should have processes in place, not only to determine the IR35 status of each and every engagement, but also to deal with any challenge you might make if you disagree with that determination.

Your client must provide the SDS to you in writing with clear reasons why the status of the engagement has been determined as inside or outside of IR35. The SDS must be given to you as the individual, but if an agency or recruiter is involved (also known as the fee payer), the end client must provide them with the SDS which they must pass on to you.

Will the IR35 changes apply to my previous contracts?

HMRC have sought to reassure contractors that their focus is on ensuring that businesses comply with the reforms rather than focusing on historic cases; unless they have reason to suspect there is deliberate avoidance of employment taxes or fraud.

Therefore, it will not mean that HMRC will assume that a contractor being deemed to be in an inside IR35 engagement from April 2021 should have been treating their engagements as inside prior to that date. There are too many variable from the post April contract being with a different end client (or with different terms) to changes in the nature of an existing engagement through to who is actually making the status determination for that assumption to be made (i.e. previously it would have been you, in future it would be the end client).

Nevertheless, HMRC are still starting IR35 enquiries and seeking to collect unpaid employment taxes from earlier years from contractors. Whilst members have the benefit of the FSB’s tax investigation service; it would still be our advice to have your current contracts reviewed to have an independent opinion on your current IR35 status. Indeed, where your contract continues beyond 6th April 2021, your end client might be willing to consider the independent assessment as part of their SDS process.

My client says I'm inside IR35 but I don't think I am, what should I do?

With the responsibility set to shift to your client, there may be times when you disagree with their decision about your employment status.

The legislation gives you the right to submit a written challenge to the SDS and requires the end client to respond within 45 days to respond to further explain their reasoning.

Don't panic. The first thing to do if you disagree is to seek [advice from legal and tax experts](#) before you begin any work.

Our specialists will be able to guide you through the process of challenging the decision.

I'm dealing with an IR35 enquiry from HMRC, what can I do?

An IR35 enquiry can be daunting, especially when you're managing it on your own. Employment status is a very technical, complex and grey area of tax and we strongly recommend that you seek professional advice. Whilst there's no way of avoiding selection, you can prepare with our [guide to tax investigations and what to expect](#).

Tax investigations can be stressful and time consuming, which is why our members have access to professional advice and support from tax specialists through [FSB Tax Investigation Protection](#).

More questions about IR35?

To learn more about IR35 legislation, FSB members have access to a detailed IR35 guide on the [FSB Legal Hub](#), or you can read our guide on [how to prepare for IR35 changes](#).

Signing contracts is part of everyday life as a freelancer, but that doesn't mean it should be stressful. Make more time for your next project with contract templates, IR35 support and a 24/7 legal advice line for all your questions.

"IR35 has never been straightforward and the changes in April 2021 won't make it any easier for contractors. So, it's reassuring to know that there are specialists who can help you stay compliant. If HMRC do start an enquiry, FSB membership gives you access to the best defence without you worrying about the cost"

Steve Price,
FSB Tax Investigation Protection

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