



**NEVER
COMPROMISING
SERVICE**

IR35 POLICY PACK

POLICY OVERVIEW



Purpose of the policy

From April 2021, medium and large sized private companies, as defined by the Companies Act 2006 became responsible for deciding if off-payroll working rules (commonly known as IR35 Intermediaries legislation) apply to workers engaged in this way.

The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees.

If the rules apply, we must provide a worker that has an appropriate payment mechanism where we or other third party (Umbrella Companies) are responsible for paying the worker must deduct employment tax and Class 1 NICs and pay them to HMRC. Only those third parties on the Approved Supplier List (ASL) shall be used, as each supplier is subject to due diligence and monitoring process. The Managing Director's approval is required should there be a need (in exceptional circumstances) to go to third parties outside the framework. Failure to comply with this requirement will be considered as gross misconduct.

It is important to ensure that we understand and are in receipt of 'status determination statement' from our clients or any associated policy. If the assessment made by a client determines the role is 'inside IR35', then we must use off-payroll workers in the interest of complying with this policy, our client's policy and HMRC regulations.

Some clients are setting a policy to not engage workers via a Personal Service Company (PSC).

This policy provides guidance to staff on the provision of off-payroll workers and the obligations on Network Construction Services (NCS).

Aims of the policy

This policy aims to provide guidance to staff on the sourcing, recruitment, engagement and retention of off-payroll workers for clients. Whilst the policy covers the detail and outlines the various aspects to be considered and evidence required, the main requirements upon staff when considering using of off-payroll workers are:

- Employment status (IR35) checks to be undertaken by the client as necessary.
- Evidence of the status determination to be retained.
- Only workers with the appropriate payment mechanism to be engaged.
- Only Umbrella companies on approved procurement frameworks should be used.

Legal Implications

This policy has been developed to assist staff to ensure that good practice is adopted when engaging off-payroll workers and that all appropriate and necessary checks are completed meeting both the HRMC guidance and the client's standards.

Legal considerations includes:

- HMRC (IR35) Intermediaries Legislation and Off-Payroll Working Rules.
- Agency Worker Regulations 2010
- Employment Rights Act 1996
- Finance Bill 2020

Network Construction Services (NCS) will be considered as the fee-payer and will be responsible for calculating, reporting and processing tax.

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Client Arrangements

In preparation for the legal change and to ensure we understand the policies and processes of all new clients we work with; an IR35 Client Policy Tracker (from hereon in shall be known as the Tracker) has been created. All existing and new clients shall be recorded on the Tracker, which includes details of their policy and processes to comply with IR35. This is the responsibility of the Payroll and Compliance Manager, supported by the Managing Director.

It will be the responsibility of the Business Development Team to secure a clear understanding of their client's stance on IR35 and have copies of supporting information, such as IR35 policies.

Each client shall be subject to a new client checklist. The checklist and supporting evidence, such as credit checks, contractual arrangements and policies shall be recorded on the client's file within the database. The Payroll and Compliance Manager will ensure we have total compliance before issuing an invoice to a client.

Some clients may be considered small and below the threshold where IR35 does not apply. This exemption is made by the client and must be supported with written communication. This information is recorded on the Tracker.

Contacting workers

Prior to approaching workers, each consultant should ensure that they establish an approved/authorised requirement from a client. Upon receipt of a requirement, NCS must be in receipt of 'Status Determination Statement' or have absolute clarity on the client's IR35 policies. If the client has not provided a status determination statement, a default status of inside IR35 shall be made and sourcing candidates can proceed on this basis. Details of the client's policies and procedures are recorded on the Tracker. Copies of individual 'Status Determination Statements' shall also be recorded on the client's file and the candidate's file within the database.

The legislation clarifies that the requirement for an SDS is not met if the client fails to take 'reasonable care' in arriving at its decision. Should this be the case, the client assumes the position of 'fee-payer' which would typically be held by a recruitment agency.

Introduced within the Finance Bill 2020 require that clients provide an IR35 'status determination statement' when assessing the IR35 status of contractors, before a contract begins. A 'Status Determination Statement' (SDS) is a comprehensive statement from the client which:

- Declares a worker's deemed employment status following an IR35 assessment.
- Provides reasons for reaching the conclusion.

Crucially, IR35 status is highly subjective, and therefore requires that all factors be considered holistically, which involves analysing the 'notional contract'. This means constructing a hypothetical contract from both the written and implied terms based on the working practices.

This is important, because it means a written contract could be considered a sham if it is inconsistent with the actual working practices.

The outcome of all assessments must be shared with the candidate for validity checking and action as necessary. The candidates are no longer required by statute to take measures to assess their own status. However, candidates would be advised to play an active role in the process for two reasons:

- To minimise the administrative burden on the client.
- To ensure that they receive a fair and considered status assessment.

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Each policy or Status Determination is recorded on the Tracker, where key information will determine how to source and recruit a compliant worker. This can be accessed by all staff members.

Prior to the start of an assignment, the Resource Delivery Team shall issue Assignment Details and a supporting contract (either inside IR35 or outside IR35). The contract shall be signed by the workers and files electronically in the candidate's file within the database.

Only approved/compliant workers that has an appropriate payment mechanism where we or other third party (Umbrella Companies) are responsible for paying the worker must deduct employment tax and Class 1 NICs and pay them to HMRC shall be used. Failure to comply with this requirement will be considered as gross misconduct.

Managers will be expected to review and monitor the engagement ensuring that all changes to service delivery outside of the initial agreement are handled appropriately. If there is any doubt with regard to the treatment of off-payroll workers for taxation purposes, please consult with the IR35 Champion for guidance.

Equality Statement

In applying this policy, the organisation will have a due regard for the need to eliminate unlawful discrimination, promote equality of opportunity and provide for good relations between people of diverse groups. In particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation, in addition to offending background, trade union membership or any other personal characteristic. This policy also complies with the Agency Workers Regulations 2010.

Monitoring and Compliance

Compliance with this policy will be monitored through regular reports and audits. Weekly and monthly reports shall be made to validate the payment mechanisms of the candidates and used as evidence for compliance. Audit shall also extend to working practices and contracts.