

Revised & updated

# Off-Payroll (IR35) Reforms

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## A Guide for Contractors

# Introduction

**Reforms to IR35 rules in the private sector are due to come into effect in April 2021.**

They apply to large businesses and mean that the party responsible for determining a contractor's IR35 status will change.

Under the current IR35 rules, it's your responsibility as a contractor to determine your own IR35 status for each assignment and to re-examine your IR35 status if that assignment changes. If the correct rules are not followed and HMRC makes a successful challenge, you are liable for any unpaid tax, interest, and penalties.

When the planned reforms to off-payroll (IR35) rules are implemented next April, the responsibility for determining your IR35 status will switch to your end hirer (unless they qualify as 'small' according to the legislation).

This could have a significant impact on you.

We anticipate that some contractors will find that their status changes from 'outside' to 'inside' as end hirers may make a different interpretation of the IR35 criteria as it applies to a particular assignment. This would mean you have more tax to pay.

Other end hirers may decide it is too difficult or risky to continue using limited company contractors (personal service companies) altogether.

You may already be aware of how your end hirer plans to respond to the off-payroll reforms, but if you're unsure then it's important to start the conversation as early as possible so that you can consider your options. If you work with an agency or recruitment business, it's sensible to ask them if they know what's going to happen first.

**We are here to help you to understand and prepare for the changes.**

## What's changing?

The new rules apply where the end client is a large business in the private sector, and are called the 'off-payroll' rules. It's important to note that IR35 itself isn't changing - but a new version of it will apply where the supply chain includes a large end user. The liability for compliance changes significantly under the new rules.

Current rules	New rules
<p><b>You, the contractor, are completely responsible for working compliantly and paying the correct taxes.</b></p> <p>If you undertake an 'outside' IR35 limited company assignment, your limited company is paid a gross rate by your agency.</p> <p>This money can be withdrawn from your company in a very tax-efficient manner using salary, expenses, and dividends in accordance with HMRC's rules.</p> <p>If the assignment is later judged not to be 'outside' IR35, you are liable for all of the unpaid tax plus any penalties and interest levied.</p>	<p><b>Unless your end hirer is classed as 'small', they become responsible under the new rules for determining the status of an assignment - whether it is 'inside' or 'outside' IR35.</b></p> <p><b>Your employment agency (if there is one) is liable in the first instance for the payment of unpaid taxes should HMRC successfully challenge the assessment.</b></p> <p>Your end hirer has to issue what is known as a Status Determination Statement (SDS) to you and your employment agency.</p> <p>In theory, if your end hirer issues an 'inside' IR35 SDS then they have complied with their obligations. If your agency (and any other agencies in the supply chain) then ensure you are paid via PAYE and taxed as a normal employee (eg. via a compliant Umbrella company) then there is no liability or risk for anyone regarding unpaid tax.</p> <p>If your end hirer issues an 'outside' IR35 SDS, they may consider a number of options to mitigate potential risk if the status is successfully challenged.</p>

**The shift in responsibility for IR35 status determination and liability for unpaid tax means your agency and end hirer will need to balance the financial risks they face with the challenge of retaining their contractor talent pool.**

### SCENARIO 1

#### End hirer makes an 'outside' IR35 decision

If you are deemed to be 'outside' IR35 then you would, in theory, be able to continue to work as a contractor through your PSC and enjoy the tax efficiencies this offers you.

However, there are risks for your end hirer and employment agency which you need to be aware of as they may impact how your status assessment is handled.

### SCENARIO 2

#### End hirer makes an 'inside' IR35 decision

If you are deemed to be 'inside' IR35 then you may be able to continue to operate through your own PSC, but your PSC would be paid a net amount after tax and other employment costs have been deducted from your gross pay.

Alternatively, you may be required to work through a compliant Umbrella company.

**Both options would mean you have more tax to pay.**

#### What your agency may do:

Your agency may agree with your end hirer to use a reliable, insurance-backed assessment tool to be sure the 'outside' IR35 determination is safe and the liability is insured.

Your role would be assessed at the outset, then re-assessed at regular intervals to ensure compliance.

This would mean you could continue to operate via your PSC and benefit from the tax efficiencies available to you.

#### What your agency may do:

Your agency may agree with your end hirer to use a reliable, insurance-backed assessment tool to be sure the 'inside' IR35 status determination is correct.

If there are small alterations that can be made to your contract or working practices to allow you to work 'outside' compliantly, these may be made.

However, in the majority of situations your agency will present you with a choice of compliant Umbrella companies to work through.

## Determination of IR35 Status

**The easiest and most accurate way to determine your IR35 status is with a professional assessment. If a high quality assessment is done, there should be no challenge from HMRC. It is important that you discuss with your recruitment agency and end hirer how they are determining your IR35 status and if they are using a professional assessment tool.**

Broadly speaking, to decide if an assignment is 'caught', it is necessary to examine both the contracts in the supply chain and the actual working practices. There are lots of different factors at play which all have to be considered together to reach a decision on whether an assignment is 'inside' or 'outside' IR35.

### 1. Mutuality of Obligation ('MoO')

*The key question is: are you and the end hirer obligated to one another on an ongoing basis?*

An employer and employee are obligated to each other so a good status assessment will explore whether this is the case with your assignment. For example, if the end hirer is obliged to continue to offer work on an ongoing basis, and you're obligated to accept it, that looks like employment, or an 'inside' IR35 situation.

Another indication would be the worker being paid even if no work was available on a given day. If there are not these types of obligations on both sides, then there is not sufficient MoO to show employment.

### 2. Right to substitute

*The key question is: can the worker be substituted, by the PSC, for a suitably qualified and experienced replacement?*

The end hirer can make only reasonable demands regarding a substitute, such as a particular trade credential or level of experience. If you, the contractor, can offer a substitute for a role, then the assignment is more likely to be considered 'outside' IR35.

Importantly, this isn't the same as an agency making a substitution - you/your PSC should be making the substitution happen. Your PSC would also process payment to the substitute/the substitute's PSC.

### 3. Control

*The key question is: who controls how, when, and where the work is delivered/carried out?*

Sometimes, due to operational constraints or security concerns, work can only be carried out in a certain environment or at certain times. If there is no operational reason for a particular location or timing, then you (as the contractor) should have control over how you deliver your output and when and where you work. If you have to comply with requirements from an end user, which are not based on operational necessities, then you are working more like an employee, or 'inside' IR35.

If you are master of your own working pattern, provided you meet certain deliverables or milestones, then you are working more like a self-employed person, or 'outside' IR35.

#### 4. Financial Risk

*The key question is: could you, the worker, suffer financial loss?*

If you/your PSC could suffer a financial loss then that would be an indicator that you are not 'inside' IR35 - you are working like any other business, not an employee.

Do you need insurance? If not, why not - most businesses do need insurance. If work is not completed satisfactorily, will you have to put it right without charging for or being paid for those corrections? Self-employed people can make a loss if they quote badly or a job goes wrong. They are also able to make more of a profit if they complete work ahead of schedule. Is that true in the situation you're in?

#### 5. Behaving like an employee

*The key question is: do you behave like an employee?*

If you behave like an employee, for example if you're on the holiday rota, in the employee performance management system, or use a lot of end-user equipment, for example, then you would be considered more likely to be 'inside' IR35.

### To help make their decision, HMRC requires the following information to be gathered:

- The services the worker was originally contracted to provide and what they actually provide
- Who the worker works with, why, and when
- Where the worker works, why, and when
- Who checks the worker's work, why, and when
- What work has been checked, by whom, why, and did any work have to be re-done
- Whether the worker has been moved from one job to another - when, why, and by whom
- In what circumstances the worker can refuse to do work and whether they have done so
- Who the worker reports to, why, and when
- Whether the worker had to seek guidance from anybody to do the work and what guidance was required, who gave it, and when.

If HMRC are trying to establish if an assignment is 'inside' or 'outside' IR35, they would start by looking at the contracts in place, but would not stop there. They would also try to gather information about how a contractor was working in reality – known as the 'working practices'. Then, they would consider getting more evidence about those by consulting people involved at the time – project managers, other people working on site, and so on, to get a real picture of how work was carried out on the assignment.

#### Our tip for proving compliance

If you're happy with your IR35 status, you should therefore keep copies of anything that helps to support your position. If you've used a substitute, keep documents that record this. If you've been able to decide when and how you work, keep evidence of that. Getting a status assessment done for an assignment will cover the relevant areas and help you be sure about your status for that piece of work. By retaining these, it will usually be easier and quicker to deal with any difficult questions from HMRC later.

# IR35 COMPLETE

## IR35 Complete from JSA

**IR35 Complete from JSA is a holistic suite of solutions designed to ensure all parties can comply with the reforms.**

Our in-house assessment tool will enable end hirers and agencies to quickly and seamlessly determine their contractors' IR35 statuses. The outcomes are insurable for additional peace of mind for end hirers, agencies, and contractors.

Where end hirers wish to continue to use PSC contractors, 'outside' IR35, we can provide specialist accountancy services to ensure ongoing compliance.

Where contractors cannot safely operate 'outside' IR35, we can provide a market-leading, transparent Umbrella service, which will reassure contractors having to switch to this model.

We also offer an Outsourced Employment model for contractors who find themselves newly 'inside' IR35, this operates in a similar manner to an Umbrella service, and is simple and easy to understand and work compliantly.

Alternatively, if you're planning to take on a mixture of 'inside' and 'outside' assignments, we offer a toggle solution which allows you to seamlessly switch between PSC and Umbrella contracting compliantly.

**From April 6th 2021, end hirers will need to issue an SDS for every contract engagement. Before that, the supply chain will need to have classified all existing and ongoing assignments as either 'inside' or 'outside' IR35.**

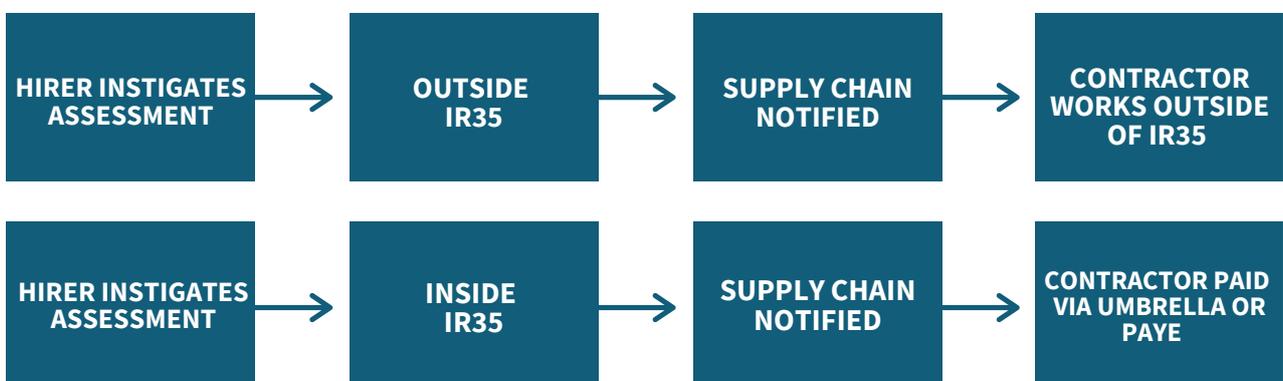
Putting in place a robust and transparent assessment process means that limited company (PSC) contractors can continue to be used where appropriate, and alternative contracting payment options (ie. PEO/Umbrella) can be used for assignments which are 'inside' IR35.

JSA's IR35 Complete service includes a fast and easy-to-use assessment tool that makes it simple for agencies and their customers to classify assignments, generate compliant status determinations, and communicate this to the whole supply chain.

Our tool:

- Quickly delivers reliable, clear, and insurable status determinations for each role or engagement.
- Allows the supply chain to continue to engage 'outside' IR35 contractors, where compliant, with confidence and reduced risk.
- Can operate quickly and at high volumes.
- Makes a firm judgement in borderline cases.
- Easy-to-use & fast.
- Complete supply chain solution - clear and transparent communication between all parties.
- Efficient and straight-forward online user portal to access all your data quickly and in one place.
- Easy access to preferred suppliers, so you can make a great choice if you have to reconsider your payroll options.

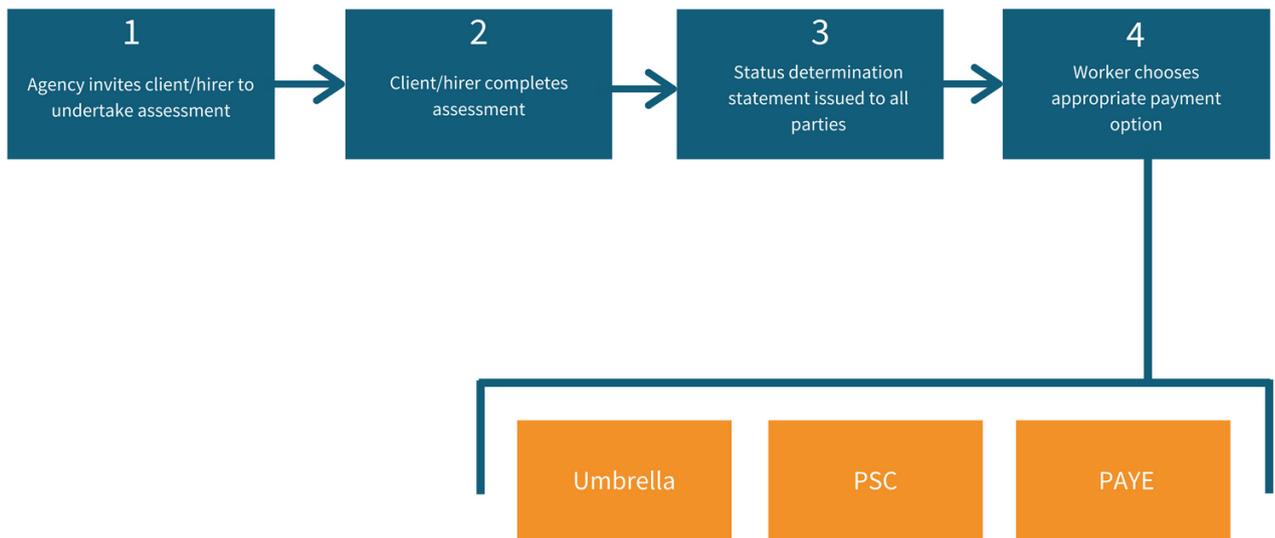
The chart below illustrates our straight-forward contractor assessment process.



# The Assessment Process

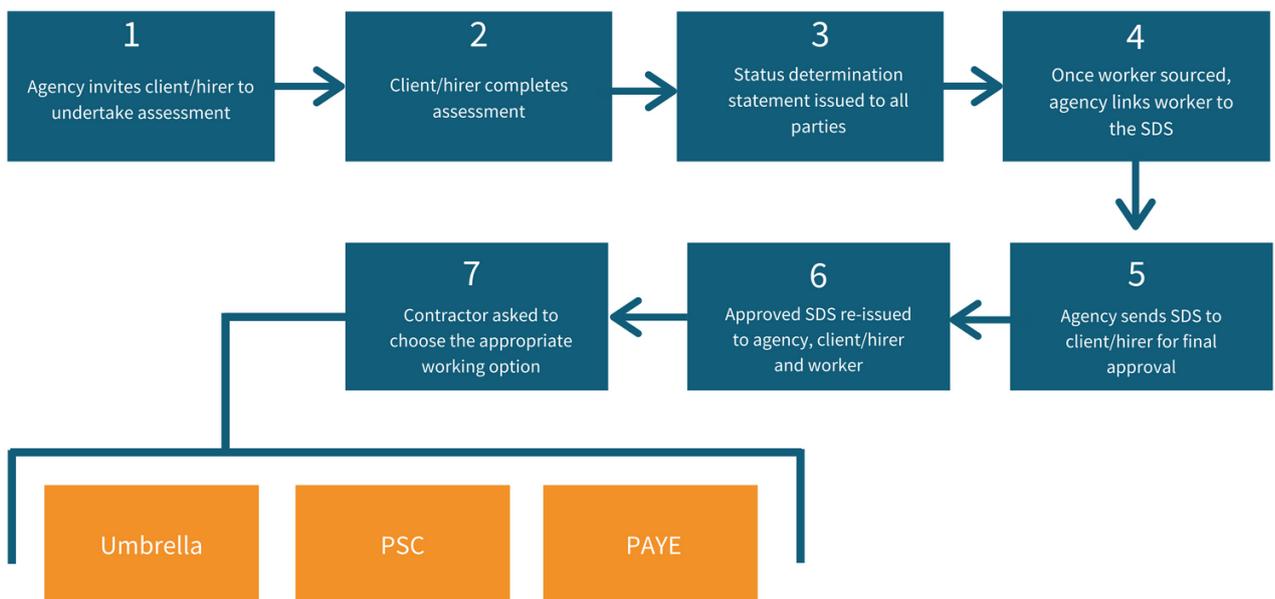
## Contractor Assessments

The chart below illustrates the process for assessing an individual contractor.



## Role Assessments

The chart below illustrates the process for assessing roles. These assessments can be carried out before a contractor is appointed.



### Contractors who are deemed to be 'outside' IR35

For contractors who are deemed after assessment to be working 'outside' IR35, we can help you to continue operating compliantly through your own limited company (PSC).

### Contracting via your PSC

Running your own PSC is one of the most tax-efficient ways to work: you can pay yourself a salary as an employee, and receive dividends as the owner of your own company.

At JSA, we've been operating specialist accountancy services for limited companies and small businesses for over 30 years. Our team of experienced accountants are proficient in the financial requirements of a PSC, meaning they can provide unlimited help and clear support to ensure the smooth running of your business. Plus, our accountancy service is fully comprehensive and fixed-fee, ensuring you receive bespoke advice, tailored to your company, with no unexpected costs - so you can enjoy the flexibility of contracting with complete peace of mind.

### If your assignment changes

When we work as your PSC accountants, we can conduct regular re-assessments on your assignments using our in-house assessment tool, to ensure you remain compliant. In the event that your working practices change, or you begin a new assignment classed as 'inside' IR35, we offer a toggle solution that allows you to switch between PSC and Umbrella. This enables you to take on a mixture of 'inside' and 'outside' contracts while we help manage your finances. No matter which option you choose, we'll ensure you're always 100% compliant.

## Why choose our PSC accountancy service?

- Your own expert, dedicated accountant.
- Initial tax planning service and continued tax-efficient advice and health checks.
- MTD-compliant VAT returns.
- Year-end accounts submitted.
- Unlimited expert advice - we've been providing expert support to the contractor market for over 30 years.
- Range of leading, specialist partners - we can help set you up with a bank account, insurance cover, and more.
- Fixed-fee plan with no surprise costs.
- Compliance is guaranteed.
- FCSA and IPSE accredited accounting service.
- We are open from 8am to 8pm Monday to Friday and 9am to 12pm on Saturdays for advice and support.
- Free online accounting software - provided by FreeAgent.
- Quarterly management accounts.
- Payroll processing for one director.

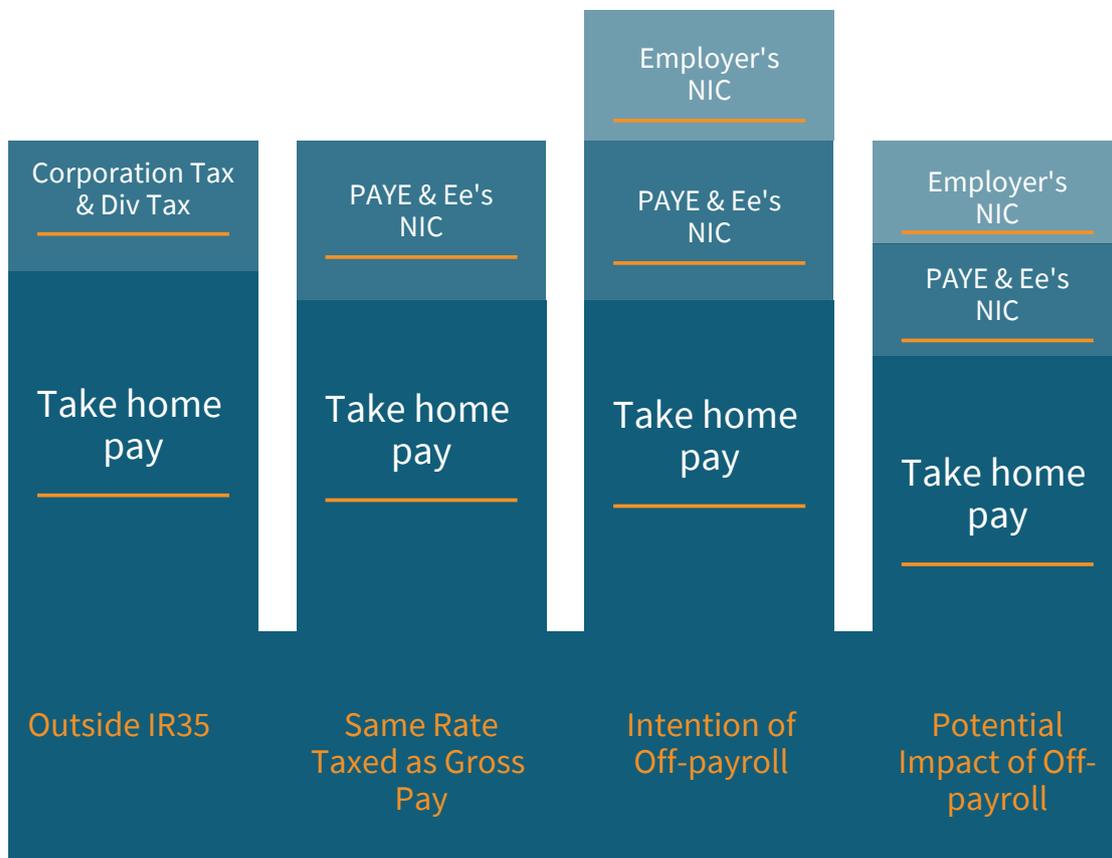
## Contractors who are deemed to be 'inside' IR35

For contractors who are deemed after assessment to be working 'inside' IR35, we can provide compliant, high quality Umbrella employment solutions.

## Contracting via our Umbrella solution

Our established and FCSA-accredited Umbrella company would act as your employer and you would be taxed just like any other employee. The Umbrella company passes on payment to you and provides full employment rights and employee benefits.

To help contractors, agencies, and end hirers to understand the implications of using this option, we can provide tailored illustrations that show how pay is calculated under the Umbrella model (see below). If you find yourself facing a change of working arrangements and are considering Umbrella, you may be able to look again at the effective rate of pay you receive, using our illustrations to understand your new take-home pay.



## How Umbrella Pay is Calculated

**Before you join our Umbrella company, we will provide you with a detailed pay illustration which shows you exactly how your take-home pay is calculated, but we've also included some more general information below.**

### Assignment Fee

This is the rate you see in the advert for a role. It's the fee paid by the employment agency to the Umbrella company for supplying its employee (ie you).

### Umbrella margin

The Umbrella will take a margin from the assignment rate it receives from the agency.

### Employment costs

These are the costs your employer would need to account for, such as Employers' National Insurance, on the salary that it pays you. These are deducted from the Assignment fee the Umbrella receives from the agency.

### Gross rate of pay

As an employee of the Umbrella, you will be paid a salary for the work you do, which will be set out in your employment contract. Your salary will typically be the value received by the Umbrella (the Assignment fee) less the Umbrella margin and Employment Costs.

## Standard Deductions

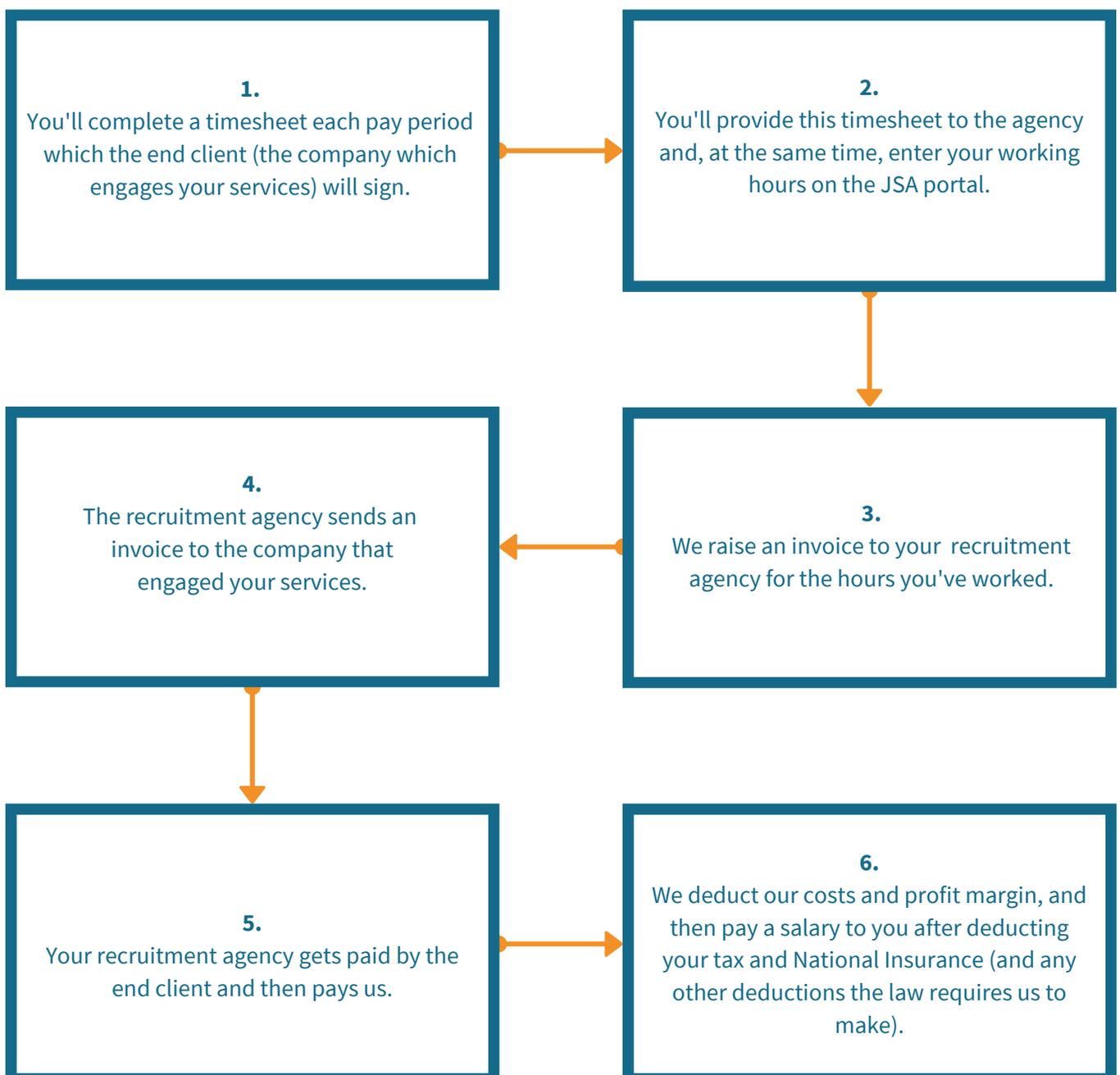
### Income tax

Your salary is subject to income tax. There are different tax bands – basic rate, higher rate, and additional rate – applied according to how much you earn.

### Employees' National Insurance

As you are an employee of the Umbrella company, you have to pay National Insurance.

This diagram shows you how your payment is processed through the supply chain.



**We support thousands of contractors to work compliantly through our FCSA-accredited Umbrella company.**

### Why choose our Umbrella?

- SMS notification when you've been paid.
- Peace of mind knowing your tax, NI and other deductions are properly taken care of.
- Ability to join our pension scheme, accrue holiday pay, claim statutory benefits such as sick pay and maternity/paternity leave.
- Build a record of continuous employment while enjoying flexible working. This will help you when applying for mortgages and other loans.
- Clear expert advice - we've been providing expert support to the contractor market for over 30 years.
- Compliance is guaranteed.
- We are open from 8am to 8pm Monday to Friday and 9am to 12pm on Saturdays for advice and support.
- Secure online portal for timesheet submission, payslips, communication etc.
- A wide range of insurances provided as standard.
- Additional employee benefits available to all, including our market-leading 24/7 personal accident insurance.
- FCSA accredited.

# IR35 COMPLETE

**With IR35 Complete from JSA, we make it easy for contractors, agencies, and end hirers to work compliantly with the new off-payroll rules.**

- ✓ Your end hirer and agency can continue to use your services as a PSC contractor with the security of insurance-backed IR35 assessments. We can provide you with accountancy services for your PSC to ensure you make the most of your finances, and you're always acting compliantly - even as your assignments change.
- ✓ If you are deemed to be 'inside' IR35, you can use our FCSA-accredited compliant Umbrella service or Outsourced Employment solution and enjoy employment benefits such as holiday pay, sick pay, and access to a company pension, as well as a host of perks.
- ✓ Ability to toggle between your PSC and our Umbrella service, so you can enjoy the flexibility of contracting and take on assignments that are both 'inside' and 'outside' IR35.

### What you need to know

- Does your end hirer and agency understand their risks and obligations under the new rules?
- How do they wish to engage with contractors going forward?
- Do they intend to continue using PSC contractors?
- How do they intend to carry out status assessments?
- Do they understand what will happen if their competitors are able to engage 'outside' IR35 and they are not?
- Is your end hirer keen to retain PSC contractors where possible?
- Can your employment agency carry out assessments?
- What will your end hirer do with rates if engagement models change?

### Here to help

We're here to help you prepare for IR35 reforms. Please get in touch with a member of our team to discuss your requirements. We can provide expert support to ensure you're properly prepared to work compliantly with a solution that suits you.

## **JSA is one of the largest providers of contractor accountancy, employment, and payroll services in the UK.**

We have significant expertise in IR35 legislation and are able to work alongside contractors, end hirers, and agencies to navigate the complexity of IR35.

We provide payroll, limited company, and Umbrella contracting services. If you need to switch, it's good to know that our Umbrella solution is underpinned by a great rewards programme giving fantastic access to a range of perks, benefits, and discounts. We can support you to switch to Umbrella to ensure compliance, if required. We also offer you the ability to toggle between PSC and Umbrella as necessary, so you can continue to enjoy the freedom of contracting.

### **Why work with us?**

- Preferred supplier to the UK's largest recruitment agencies.
- Rigorous contractor assessment process to assess and verify suitability for CIS, Umbrella, or limited company contracting.
- Fully FCSA accredited.
- Expertise in IR35 legislation.
- Exclusive discounts for our contractors and family members.
- Experience in 2017 public sector off-payroll reform rollout.
- Great customer service with advice and support 6 days a week.
- Tested business continuity environment in place.



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