

Revised & updated

IR35 Reforms 2021

A Guide for Agencies

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 responsibility for determining a contractor's IR35 status, and ensuring the correct taxes are paid, will switch from the contractor to the end hirer. Liability for correct taxation will ultimately rest with end hirers, but HMRC will often look to collect first from employment agencies.

This means you need to understand and mitigate the financial risks - and we can help.

IR35 Complete from JSA is a holistic suite of solutions designed to help you and all members of your supply chain to work compliantly. We have significant expertise in this area so can work alongside your agency to help you prepare for the reforms.

We hope you find this guide helpful.

“ To prepare for IR35, we worked in partnership directly with JSA supporting us on both client and contractor briefing seminars and sessions. Their knowledge and credibility to support us gave confidence to our customers... the team were on call to us whenever we needed them. ”

Scott Siwicki, Group Client Solutions Director, Advantage Group UK

What's changing?

The new rules apply to large businesses in the private sector. It's important to note that IR35 itself isn't changing, it's the liability for ensuring compliance that will be different under the new rules.

Current rules	New rules
Contractor is completely responsible for working compliantly and paying the correct taxes.	End hirer is responsible for IR35 assessment. But the agency is liable in the first instance for the payment of unpaid taxes should HMRC successfully challenge the assessment.
If a contractor undertakes an 'outside IR35' limited company assignment, the contractor's limited company is paid a gross rate by the agency.	The end hirer now takes responsibility for deciding the status of an assignment - whether it is 'inside' or 'outside IR35'.
This money can be withdrawn from the contractor's company in a very tax-efficient manner using salary, expenses, and dividends in accordance with HMRC rules.	The end hirer will have to issue what is known as a Status Determination Statement (SDS) to the agency and to the contractor.
If the assignment is later judged not to be 'outside IR35', the contractor will be liable for all of the unpaid tax plus any penalties and interest levied.	In theory, if the 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 that the contractor is paid via PAYE and taxed as a normal employee (e.g. via a compliant Umbrella company) then there is no liability or risk for anyone.
	If the end hirer issues an 'outside IR35' SDS, we offer a number of options which are designed to mitigate potential risk.

As you can see, the new rules come with significant compliance and tax risks for agencies and end hirers. The agency is the first port of call for HMRC should a successful challenge be made to an 'outside IR35' status assessment.

Each part of the supply chain could protect itself but there is no way to completely remove liability.

- End hirer - if an 'inside IR35' determination is given, the end hirer passes on the liability if it does the assessment using reasonable care and passes that on correctly. In the case of an 'outside' determination, the risk remains with the fee payer (often the agency) and the end hirer.
- Agency - in the case of an 'inside IR35' determination, the agency passes on liability if there is another link in the supply chain and it can be shown that the decision was correctly passed on to the next party.
- Separate fee payer - if there's a separate fee payer and tax was not paid when HMRC think it should have been, then the fee payer is the first port of call. However, if HMRC can't collect from the fee-payer, then they go to the agency. If they can't collect from the agency, they go to the end hirer.

If an accurate, professional assessment is done, there should be no challenge from HMRC. This means that a high quality assessment is critical. Risk is further mitigated if the outcome of the SDS is insured. The following diagram illustrates responsibility for liability.

Pre-April 2021



Post-April 2021



RISK 1 - End hirer makes an 'outside IR35' decision

If an 'outside' status is successfully challenged by HMRC, the liability for unpaid tax sits first with the organisation that paid the contractor's limited company, then the top agency in the chain supplying the worker to the end hirer, even though the end hirer made the 'outside IR35' status determination in the first place. If the fee payer or the top agency in the chain can't or won't pay, the liability goes up to the end hirer.

Solution: Agree with end hirer that all contracts/roles will be assessed using a reliable, insurance-backed assessment tool, agreed between the parties. That way, all parties can be sure the 'outside IR35' determination is safe and the liability is insured. JSA Complete includes an assessment tool with insurable outcomes.

RISK 2 - End hirer makes an 'inside IR35' decision

Even if the worker is treated in a compliant manner by the end hirer and your agency, there is still a risk to your organisation if, further down the supply chain, the contractor is paid by another party as an 'outside IR35' contractor.

In this case, the liability would sit first with the organisation that paid the contractor's limited company. The top agency in the chain supplying the worker to the end hirer (next to the end hirer), which may be your agency or an agency which you supply, will be the next in line, even if that agency has itself acted compliantly. If the agency can't or won't pay, the liability moves up to the end hirer.

Solution: Pay workers via a compliant PAYE model such as our market-leading JSA Umbrella or Outsourced Employment solution, but ensure full visibility with all workers going through one compliant supplier engaged near the top of the chain.

RISK 3 - Commercial risk – costs increase/talent is lost

Many contractors and contract roles have become accustomed to being paid and fulfilled using the 'outside IR35' limited company route. When these change to 'inside', having to be paid via PAYE (i.e. taxed as an employee), the cost of employment is greater and the contractor will face a higher tax bill on the income they receive.

Where the same rate is then paid by the agency to the contractor, the company paying the contractor now has to deduct employment expenses (Employers' NI, pension, the Apprenticeship Levy) from the rate they receive before passing it on to the contractor. From the reduced rate that the contractor receives, they will have to pay a larger proportion in PAYE and Employees' NI.

Some contractors may refuse to work on this basis. Consequently, end hirers and agencies that no longer engage contractors via a limited company may be left with a skills gap and the risk that talent will transfer to a competitor. For the contractor to receive the same net pay, the end hirer/agency would need to add an additional amount to the contractor's rate to cover these extra taxes and costs of employment, increasing cost to the supply chain for engaging important resources.

Solution: Ensure that all contracts/roles will be assessed using our reliable assessment tool. This will give you the confidence to continue placing as many contractors as possible in the 'outside IR35' category, maintaining a competitive advantage over those that choose to cease engaging in this way.

The Risks in Summary

It is important to be clear about the risks posed by the new legislation, and the steps you can take to mitigate the impact.

RISK 1

End hirer makes an 'outside IR35' decision

Solution

Agree with end hirer that all contracts/roles will be assessed using our reliable assessment tool, agreed between the parties alongside insurance cover. That way, the 'outside IR35' determination is safe and, if challenged, the liability is insured.

RISK 2

End hirer makes an 'inside IR35' decision

Solution

Pay workers via a compliant PAYE model, such as our market-leading JSA Umbrella solution or Outsourced Employment service. Ensure full visibility with all workers going through one compliant supplier engaged near the top of the chain.

RISK 3

Commercial risk – costs increase/talent is lost

Solution

Maintain PSC workforce by ensuring all contracts/roles are assessed using our reliable assessment tool. This will give you the confidence to continue placing as many contractors as possible in the 'outside IR35' category, maintaining a competitive advantage over those that choose to cease engaging in this way.

Introducing IR35 Complete

IR35 Complete is our holistic suite of solutions designed to ensure all parties can comply with the reforms.

Our in-house assessment tool will enable you to quickly and seamlessly determine the IR35 status of your contractors. The outcomes are insurable for additional peace of mind.

Where contractors can safely operate 'outside IR35', we can provide specialist PSC accountancy services to ensure ongoing compliance.

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

Outsourced Employment can be simpler for contractors to understand, can help to save your agency cost and admin, and provides a solution where no payroll function already exists.

From April 1st 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'.

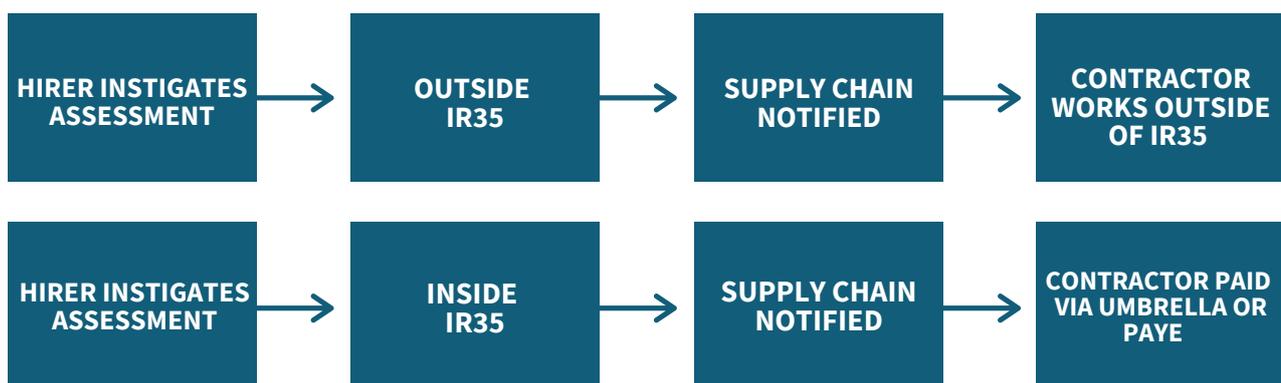
Putting in place a robust and transparent assessment process means that limited company (PSC) contractors can continue to be used where appropriate, and alternative contracting payment options (ie. PEO/Umbrella) can be used for assignments which are 'inside IR35'.

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:

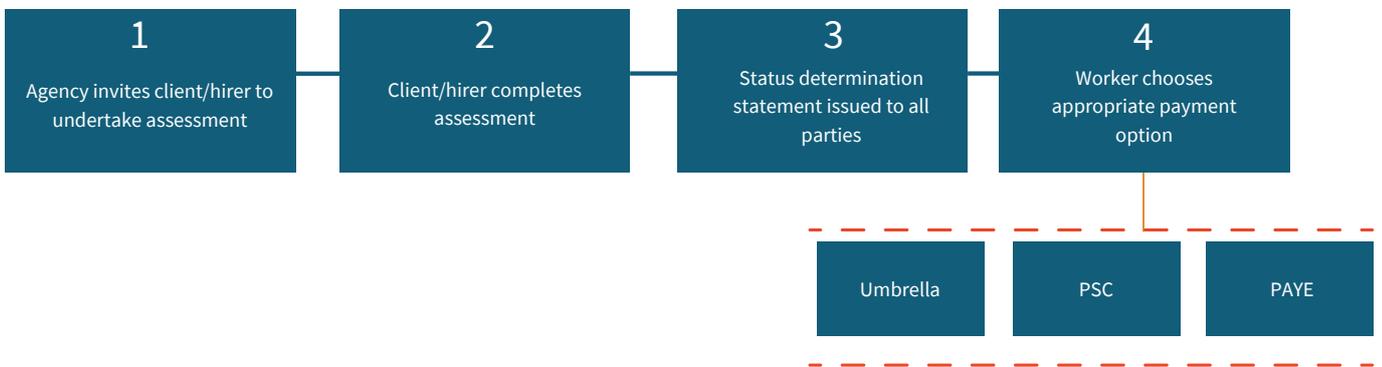
- Quickly delivers reliable, clear, and insurable status determinations for each role or engagement.
- Allows the supply chain to continue to engage 'outside IR35' contractors, where compliant, with confidence and reduced risk.
- Can operate quickly and at high volumes.
- Makes a firm judgement in borderline cases.
- Easy-to-use & fast.
- Complete supply chain solution - clear and transparent communication between all parties.
- Can be white-labelled for agency use with end clients.

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



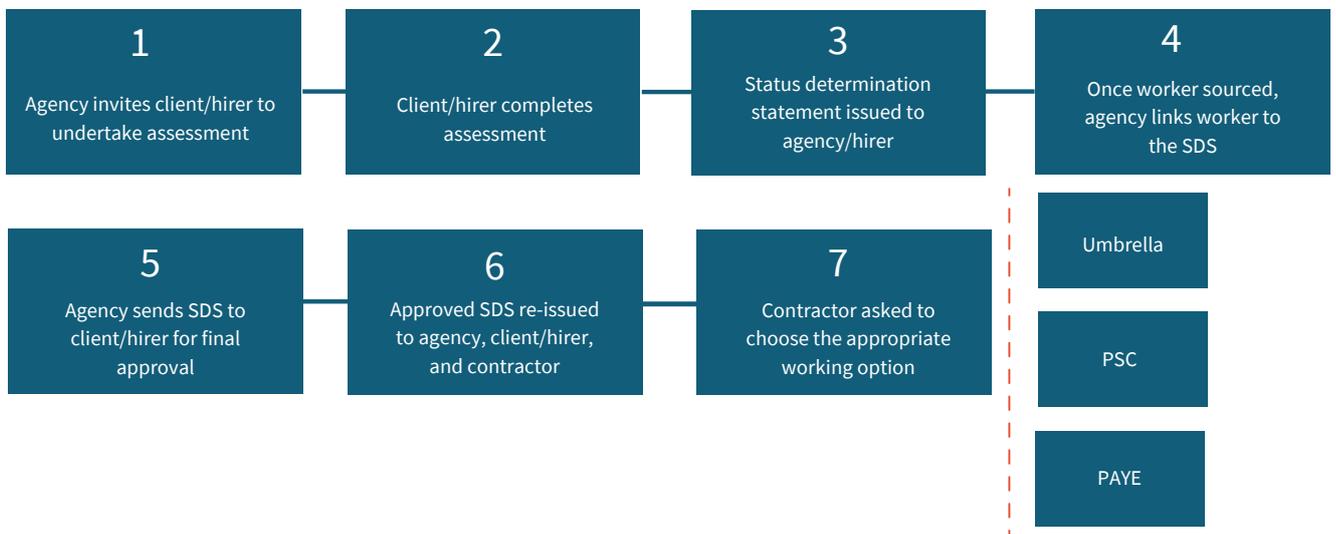
Contractor Assessments

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



Role Assessments

The chart below illustrates the process for assessing roles before a contractor is appointed.

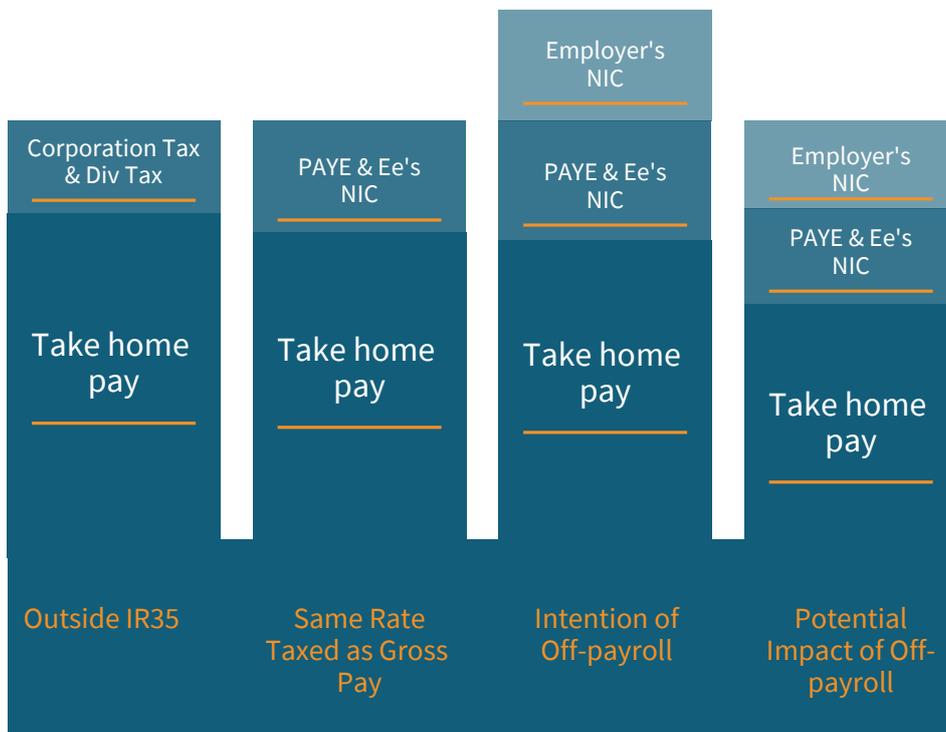


For contractors who are deemed after assessment to be working 'inside IR35', we can provide FCSA-accredited, compliant Umbrella employment solutions.

Our Umbrella company acts as the contractor's employer, passing on payment to the contractor and providing employee benefits. Using a compliant Umbrella company protects everyone in the supply chain, from the worker to your agency, and your end hirers.

To help you and your clients to understand the implications of using this option, we can provide tailored illustrations which show how pay is calculated under the Umbrella model (see below). Remember, Umbrella contractors usually have less take-home pay than PSC contractors, so you may need to offer an increased rate to your PSC contractors when they move to Umbrella to account for the additional employment costs.

Under JSA's Umbrella model, contractors receive full employment rights and a continuous employment record.



End hirers may decide to offer permanent employment to contractors who have previously worked via PSCs, or recruitment agencies may decide to employ and pay them directly. However, an alternative option, which may be attractive to the supply chain and to contractors themselves, is to use JSA's outsourced employment model (often called PAYE or PEO).

Where a large volume of PSC workers are transferred to PAYE, this can create a resource requirement within recruitment agencies, causing them to employ, process, and pay significant numbers of contractors weekly, which not all agencies wish to set up and manage in-house.

We offer complete, comprehensive, and compliant outsourced payroll services, removing this burden from the agency and the end client, saving time, cost and distraction on a non-core activity.

Under this model, the contractor's gross pay would be paid to JSA, and tax and NI deducted before paying the worker. The agency would then separately reimburse JSA for the statutory employment costs - employer's NI, Apprentice Levy, employer's pension contributions, and our outsourcing fee.

This model tends to be well received by contractors who benefit from one continuous employment, taking advantage of statutory benefits like pensions, holiday pay, and our wide-ranging employee benefits scheme. In addition, contractors will not encounter any employment costs or deductions from their rate, as these costs are invoiced separately. Since the model operates via PAYE, this also mitigates all compliance risk and removes any IR35 related concerns or liability.

We can work alongside your agency to provide pay calculations and discuss the right option to suit you and your clients.

Benefits

- Complete payroll management solution tailored to your needs.
- Ensures a compliant workforce.
- Supply chain transparency with reporting and evidence – particularly important with the introduction of IR35 reforms in April 2021.
- Simple for contractors to understand.
- Suitable for NMW/NLW workers, as well as higher earners.
- Potential reduction in contractor payroll costs.
- One consolidated monthly invoice.
- We manage all aspects of tax, holiday pay, and employment rights.
- Saves your time & reduces the overhead of in-house staff, training, and IT systems.
- Ongoing advice and support from our team of Outsourced Employment and contractor experts.

Our service includes everything you need

- A reliable payroll partner.
- Dedicated account management support for ease and simplicity.
- Processing of timesheets and pay details.
- Generation of payslips.
- RTI (Real Time Information) submissions to HMRC.
- Processing of holiday pay and expenses.
- Administration and support of auto enrolment pension.
- BACS payment management.
- HMRC BACS payments.

Our in-house experts are able to advise and guide your clients, your agency, and your contractors on all aspects of Outsourced Employment.

With IR35 Complete, you have all the tools you need.

- ✓ If your clients wish to **continue using PSCs**, they can do so safely with our **assessments which produce insurable outcomes**. This allows your clients to maintain competitive advantage where possible, whilst also protecting you against risk and liability.
- ✓ If your clients have contractors who are deemed to be **'inside IR35'**, or if you have clients who do not wish to take on the **risk** associated with PSC contractors, they can continue to benefit from a flexible workforce by using our compliant, FCSA-accredited **Umbrella service**. This mitigates compliance risk and removes future liability.
- ✓ We provide a complete Outsourced Employment service to help agencies work with PSC contractors that want an alternative to Umbrella, and for agencies that do not want the administrative burden of in-house payroll and employment. This is a straight-forward and hassle-free option which mitigates compliance issues and the risk of HMRC challenge.

We are here to help your agency 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, your clients, and contractors are properly prepared.

We are here to help you prepare for the off-payroll reforms.

Our specialist team has the in-depth knowledge and expertise to help you make sense of the new legislation, understand the potential impact, and put in place the right solution for your agency, your contractors, and your end hirers.

Whatever the off-payroll reforms mean to your organisation, we are here for you every step of the way.

Please get in touch to arrange a **no-obligation discussion** or **meeting** to talk about the IR35 reforms and how we can help you prepare.

As well as providing all the tools and services you need, we can help you work with your consultants, contractors, and end hirers by hosting seminars and webinars to help people understand how they are affected.



Chris James
Director of Accounting Services
chris.james@jsagroup.co.uk



Del Williams
Sales Director
del.williams@jsagroup.co.uk

About Us

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 your agency to help you, your clients, and your contractors to navigate the complexity of IR35.

We have a proven track record in the migration of large numbers of contractors from PSC working to Umbrella, so you can rest assured you are in safe hands.

- 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 for 9 years.
- Expertise in IR35 legislation.
- 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.



Not only were the JSA team highly knowledgeable, but they were also great at communicating the complexity of IR35 and helping us to understand how the legislation relates to our business and our specific circumstances. It makes a big difference on a project like this to work with people you respect but who are also very likeable and generous with their time and knowledge.



Crystal Metcalfe, Vice President at RGP.



T: 01923 257 257
E: hello@jsagroup.co.uk
www.jsagroup.co.uk