



The changes to IR35 are due to come into effect in April 2021. This FAQ sheet is based on the draft legislation published by the Government on 11 July 2019 and statements made by HMRC during recent meetings we have had with them.

The details of the changes will be confirmed when draft legislation is passed by Parliament, which is likely to be later this summer. We do not anticipate that Parliament will make any significant changes to the draft legislation, but will keep you updated.

This sheet will be updated if new questions are raised or further information comes to light that affects existing answers/responses.

QUESTION	ANSWER
<p>What is IR35, what are the changes to the legislation and how will it affect Limited Company contractors?</p>	<p>The Intermediaries Legislation (also known as IR35 or the Off-Payroll Rules) was introduced to make sure that people who do the same job in the same manner pay broadly similar amounts of income tax and National Insurance, whether they're employed directly or they work through an intermediary, such as their own limited company.</p> <p>From April 2021 the Government will make end clients and agencies responsible for operating the tax rules that apply to contractors and making deductions from contractor payments (this system already applies to public sector bodies). The client is responsible for determining whether a role is inside or outside IR35, and the agency (if the fee payer) is responsible for making the appropriate tax & NIC deductions.</p>
<p>When does the new legislation take effect?</p>	<p>This has been announced to take effect from 6 April 2021. The new rules will apply for all payments made after 6 April 2021, irrespective of when the work was carried out.</p> <p>The draft legislation was published on 11 July 2019 and we expect the rules to be confirmed by Parliament by the Chancellor's autumn budget statement (likely to be in October 2019).</p>



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<p>Will the changes affect my company?</p>	<p>The Government has announced that the new rules will not apply to clients who are ‘small companies’.</p> <p>The existing system, under which contractors are responsible for analysing their status and paying the appropriate tax , will continue to apply where the assignment is with a ‘small company’.</p> <p>The Government has now confirmed that the definition of a ‘small company’ will be a corporate company which fulfils any two of the following three criteria:</p> <ul style="list-style-type: none"> • Turnover – not more than £10.2m • Balance sheet total – not more than £5.1m • Number of employees – not more than 50 <p>For unincorporated companies, the definition of ‘small company’ has not yet been confirmed, but will either be a company that has both (i) Turnover of not more than £10.2m and (ii) Not more than 50 employees, or a company that meets one or other of these two criteria.</p> <p>Group companies will also be taken into account when working out how big a company is for these purposes; if the company has a parent company which does not qualify as ‘small’ then the subsidiary company will not be a ‘small company’.</p>
<p>Will this affect contractors who are already in place?</p>	<p>Yes, the client company will be required to determine whether a contractor’s assignment is inside or outside of IR35 ahead of the new rules coming into force in April 2021. The client will also need to communicate this determination and the reasons for it to the employment agency and, if requested, to the contractor.</p> <p>Where the client determines that an assignment is ‘inside’ of IR35, income tax and national insurance contributions will need to be deducted from the contractor’s pay by the ‘fee payer’ (the party which makes payments to the contractor’s Ltd company, which will usually be an employment agency).</p> <p>Where the contractor previously assessed themselves as being ‘outside’ of IR35, this could require a change in the agency’s contractual arrangements with the contractor. The contractor may wish to appeal against this decision. Therefore, it is important to conduct reviews of contractors’ status in good time prior to April 2021.</p> <p>Where the client determines that an assignment is ‘outside’ of IR35, payments to the contractor’s Ltd company can be made on a gross basis.</p>
<p>How do we determine whether a contractor’s assignment is ‘inside’ or ‘outside’ of IR35?</p>	<p>You will need to consider whether the contractor’s assignment has the minimum three essential features of employment, being: (i) personal service (ii) mutuality of obligation (iii) control.</p> <p>HMRC has an online tool known as CEST (Check Employment Status for Tax), which will provide an inside/outside assessment based on your answers to a brief questionnaire.</p> <p>HMRC has stated that it will not challenge a decision provided by CEST, as long as the answers provided are accurate.</p> <p>However, CEST has attracted a lot of criticism, with users and industry bodies saying that it provides inaccurate assessments and is weighted to give ‘inside IR35’ answers.</p> <p>HMRC has stated that it is happy for companies to come up with their own methods for making assessments, but that it will expect to see evidence and an audit trail of how the assessment has been carried out.</p> <p>There are many sets of guidance, tools and services from various companies/ organisations to assist you in making IR35 determinations.</p> <p>Click here for more information about Gattaca’s service offering.</p>

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<p>What if a contractor disagrees with the determination?</p>	<p>The draft legislation states that you will be obliged to provide contractors with an internal process to appeal against the determination outcome. The legislation does not go into detail about the process that you should follow and simply states that, if the worker or fee payer or the makes representations that the determination is incorrect, you must consider your determination again in light of those representations and within 45 days either change your determination or give your reasons for deciding that your original determination was correct.</p> <p>We have discussed this matter with HMRC directly, who have confirmed that it will be for the client company to deal with any appeals and that they will not require this to be judged by an independent third party.</p> <p>We expect further guidance to be published about the level of detail that you will be expected to go into when providing reasons for your initial determination and when responding to an appeal. We will update this guidance as soon as any further information is available.</p>
<p>Will this affect outsourced project work?</p>	<p>Where you have fully outsourced a piece of work or a project to a third party on a 'contracted out' basis (e.g. such as Gattaca Projects), then that party will be responsible for dealing with IR35, including determining contractors' statuses and dealing with any appeals.</p> <p>Click here for more information about Gattaca Projects.</p>
<p>What should we be doing to prepare for IR35?</p>	<p>We suggest that you should start considering how your business will adapt to the new rules and begin planning how to implement the new hiring and back-office processes that you will need. We would suggest that this includes the following, general steps:</p> <p>Start capturing a full picture of your non-permanent workforce</p> <ul style="list-style-type: none"> • How are you engaging with contractors (e.g. directly, via an agency etc.)? • Where do they work within your business? • Do you have any set rules or procedures for bringing contractors into your business? • How will your existing contractors react to the changes? <p>Consider what solutions you can deploy to get your business ready</p> <ul style="list-style-type: none"> • What changes will you need to make to your existing hiring and management practices? • How will you conduct IR35 assessments (or, how will you engage with third party assessors)? • How will you deal with any appeals from contractors? • How will you record IR35 determinations and the reasons for them? • How will you communicate these to agencies and contractors? • What support will you need from your suppliers/advisors?

