

PRACTICUS™

2021
1R35
CHANGES

WHAT IT MEANS FOR INTERIMS

ONE+MANY

PRACTICUS™

HELPING PEOPLE
NAVIGATE
CHANGE

ONE+MANY

2021 IR35 CHANGES

The Off-Payroll Working Rules (IR35) are not new tax legislation. Rules have been in place since 2000. However, changes to these rules were implemented in the Public Sector in 2017 and are due to be rolled out to the Private Sector from 6th April 2021.

The rules seek to prevent contracting from being used as a vehicle for employment tax avoidance. For most of its history the legislation has allowed for the Personal Service Company (PSC) to determine their own IR35 status and pay the required taxes to HMRC.

The incoming changes aim to tighten up the system, broadly by moving the responsibility for determining a contractor's IR35 status to the end-client, and moving

responsibility for the payment of any resulting HMRC taxes to the organisation paying the PSC.

Unlike in 2017, the market has had a lot of time to prepare, this includes the extra year we have had following the abandonment of the rules in 2020 due to the pandemic. We are confident that – together – we can navigate the changes successfully.

DARREN TOLHURST
CEO, PRACTICUS LTD.



THE CHANGES

KEY POINTS

KEY POINTS	OLD RULES	CURRENT RULES APPLIED TO PUBLIC SECTOR ONLY	NEW RULES TO BE APPLIED TO PUBLIC SECTOR AND MOST OF THE PRIVATE SECTOR
Which contractors are affected?	n/a	PSCs only (those operating as sole traders or via umbrella companies are unaffected)	PSCs only (those operating as sole traders or via umbrella companies are unaffected)
Who determines the IR35 status of a contract?	PSC	End client	End client
What form does the IR35 determination take?	A PSC would use their experience and might also call on a specialist contract reviewer to help determine their status.	A simple In or Out decision which must be reached using reasonable care. There is no obligation to provide reasons for reaching that decision unless requested.	A new Status Determination Statement (SDS) must be provided stating if the contract is In or Out, plus supporting reasons for reaching that decision.
Who should receive the result?	n/a	The agency who contracts with the end client.	The end-client must send the SDS to the agency they contract with AND the contractor.
Should 'reasonable care' be applied?	n/a	Yes - no guidance issued.	Yes - guidance has now been issued by HMRC and is available on the gov.uk website.
Can the contractor challenge the decision?	n/a	No - but there is a 31 day rule whereby, if requested, the client must provide reasons for reaching a status. However there is no right to appeal a decision.	Yes - there is a clear client-led Status Disagreement process where the contractor or fee-payer* can challenge the end clients determination - the end client has 45 days to respond .

KEY POINTS	OLD RULES	CURRENT RULES APPLIED TO PUBLIC SECTOR ONLY	NEW RULES TO BE APPLIED TO PUBLIC SECTOR AND MOST OF THE PRIVATE SECTOR
Are blanket decisions acceptable?	n/a	No - they do not demonstrate reasonable care.	No - they do not demonstrate reasonable care and this is now detailed in the reasonable care guidance.
Who deducts the Employee taxes and pays the Employer contributions?	PSC	This is a Fee-payer* obligation.	This is a Fee-payer* obligation.
Does the end client have to give employment rights if a contract is found to be inside IR35?	n/a	No - the PSC (or umbrella if they switch) is the employer and is responsible for employment rights.	No - the PSC (or umbrella if they switch) is the employer and is responsible for employment rights.
Define an end client?	n/a	All public sector bodies and associated organisations who are subject to FOI requests.	All public sector PLUS all private sector clients with the exception of those who are either 'Wholly Overseas' or meet the 'Small Companies' criteria. To be classed as small the company must meet two of the following: *Turnover is under £10.2m *Balance sheet is less than £5.1m *Fewer than 50 employees To be classed as wholly overseas the company must not have a UK connection. The company will have a UK connection if you either: *Are resident in the UK *Have a permanent establishment in the UK

*The fee-payer is the entity in the chain that pays the PSC

THE SUPPLY CHAIN

THE TYPICAL PRIVATE SECTOR SUPPLY CHAIN AT PRACTICUS:



OTHER PRIVATE SECTOR SUPPLY CHAIN AT PRACTICUS:



*Managed Service Provider

PREPARATION FOR 2021

The government's roll out of changes to the public sector in 2017 were widely described as shambolic. The draft legislation created more questions than answers when it came out in November 2016. HMRC's CEST tool to aid IR35 determinations and the final legislation both came out less than a month before go-live on 6th April. This left no time at all for the market to really understand the impending legislation and adjust.

The good news for the private sector is:

- Clarity and time – the private sector roll out has been communicated much better and well in advance, giving you time to understand and plan.
- Nearly 4 years of learning – Practicus has made hundreds of public sector placements since the changes, working with our clients on IR35 aspects on every one of them.
- Case law – there have been a number of well documented tribunals so clients can incorporate case law into their decision making when reaching an SDS.
- Less fake news – information from HMRC and the government is more forthcoming and there is not the same vacuum of misinformation and scare stories.
- 2020 – last year's false start gave the market a practice run. Many clients have taken the time to improve on the processes and policies readying themselves for 6th April 2021 (all while battling through the pandemic!)

WHAT IS INSIDE AND WHAT IS OUTSIDE?

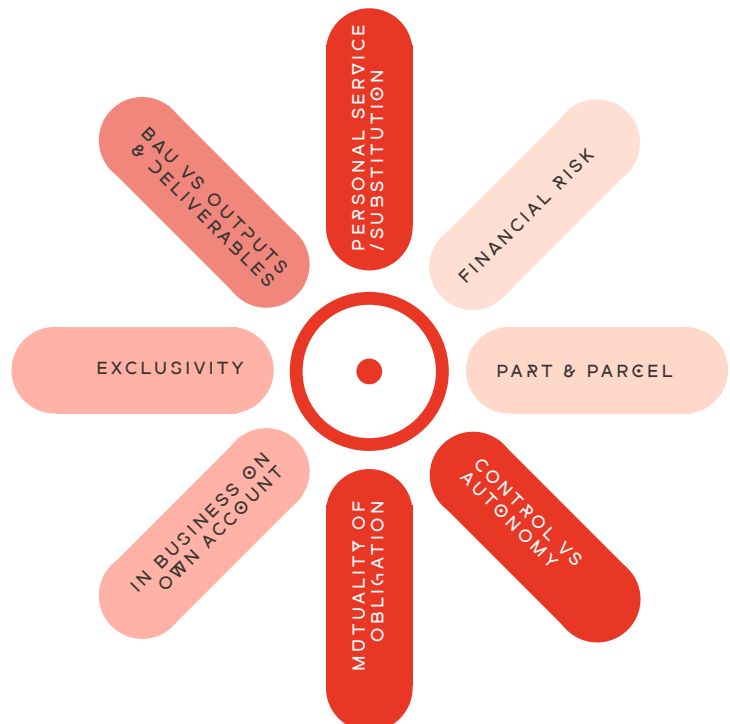
The legislation makes it clear; if the assignment is an Office Holder (CEO, FD etc.) then that is automatically 'caught' and is inside IR35. If an assignment is a role in the permanent structure (i.e. you are covering maternity) then it will be hard to argue this is outside IR35. Forgive us for stating the obvious, but covering a post while it's going through a permanent recruitment process and 'temp to perm' opportunities are also inside.

Everything else requires careful consideration and the client should consider:

- Is this a distinct project / piece of work not able to be delivered within BAU?
- Are niche skills required that are not commonly found in the organisation?
- Will the role exist after the contractor exits the contract?
- Do they act/are they treated differently to employees?
- Is the contractor in business of their own account – do they hold insurances, use their own equipment, have their own premises etc?
- Does the contractor provide services to other organisations or are their services exclusive to this one client?
- Is the client obliged to offer/contractor obliged to accept work beyond the scope?
- How much autonomy will the contractor have?
- What financial risk does the contractor bear – are they expected to put poor / undelivered work right in their own time at their own expense?
- Will a suitably qualified substitute be offered and accepted should the initial contractor become unable to perform the Services?
- Are they considered 'part and parcel' of the organisation?

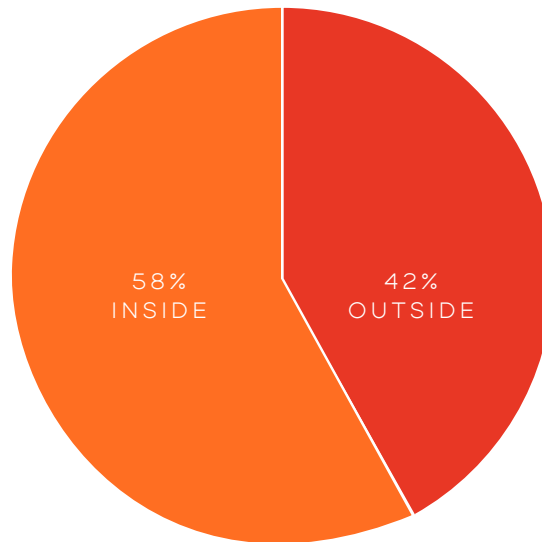
The above is not exhaustive, however, it will provide a holistic view and help answer the overriding question – and main principle of IR35 - if it were not for their PSC (and an agency) would this person be an employee of the business? HMRCs three key tests are mutuality of obligation, personal service/substitution and control. Plus there are 'lesser' tests of part & parcel, financial risk (of the interim), exclusivity and in business of own account. There are a number of tools on the market to help clients with informed decision making, including HMRC's CEST tool.

EMPLOYMENT STATUS ASSESSMENTS



THE GOOD NEWS

The public sector market has adjusted and settled down and clients are still able to obtain the temporary skills and capacity they need to deliver key projects or BAU. Levels of contractors are very similar to before the changes. Of our own circa 650 public sector placements since the changes 42% are outside IR35, and rarely have we been unable to fill inside IR35 roles.



Based on 659 placements made between April 2017 and December 2020

CONTACT

We will continue to engage with the market via our social media, LinkedIn and email communication, informing you of legislative updates and any other key commentary. In the meantime, please do not hesitate to get touch with Practicus if you have any queries at all.

...WE'RE PASSIONATE
ABOUT HELPING
OUR CLIENTS AND INTERIMS
NAVIGATE THE UPCOMING
LEGISLATIVE CHANGES
IN THE PRIVATE SECTOR....

PRACTICUS™

HEAD OFFICE

RIVERSIDE BARN
REMENHAM CHURCH LANE
HENLEY-ON-THAMES
RG9 3DB

01491 577122

BRISTOL OFFICE

1 TEMPLE BACK
BRISTOL
BS1 6FL

0117 922 1777

PRACTICUS.COM

