

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD



IR35 IMPACT **SURVEY** 3,750 CONTRACTORS

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IR35 IMPACT SURVEY

3,750 CONTRACTORS

Firms were ill-prepared but confidence rising for 2022

Introduction and Background

In a November 2021 survey of 3,750 contractors, we sought to understand their experiences of the Off-Payroll legislation as it came into effect in the private sector in April 2021 and how it compared seven months later in November 2021

The Intermediaries Legislation, better known as 'IR35', was enacted in April 2000. This required contractors to assess their IR35 status – or 'deemed employment' status - before declaring their position to HMRC and paying the appropriate tax. The Off-Payroll legislation was introduced to the public sector in April 2017, imposing a new compliance burden upon end clients and agencies. The subsequent extension of the Off-Payroll legislation to the private sector means the same rules apply to medium and large companies from April 2021.

The survey results indicate that whilst firms were attempting to recover from the pressure of a global pandemic, the new legislation created an additional and unwanted hurdle. The changes caused considerable disruption to supply chains and firms ability to complete projects. Many contractors have also experienced a reduction in both work and income.



Executive summary

With the Off-Payroll private sector extension more than seven months underway, the key findings indicate that:

- 47% of in-work contractors during the transition said firms chose to impose blanket bans.
- 58% of respondents claimed firms moved “most” or “some” of their work out of the UK.
- 50% of in-work contractors during transition believed firms would have some long-term damage.
- 46% of contractors said firms seeking to retain contractors had to pay more.
- 65% of in-work contractors said that firms lost at least half their contractors during the transition.
- 35% of contractors said that firms cancelled projects.

For those moving to on payroll:

- 88% are only offered “Inside IR35” contracts if prepared to use an umbrella company.
- Only 6% of contractors are happy to work via an umbrella.
- 78% said they are unable to detect a tax avoidance scheme.
- 74% of contractors are not given a Key Information document, despite being a legal requirement.
- 5% of respondents thought CEST was accurate. Only 4% trusted HMRC to stand by its results.

Blanket bans ensued but are lifting

The pressure on businesses during the pandemic, and the complexity faced by firms engaging with hundreds of contractors, meant that many firms adopted the least worse option of pressing the reset button and temporarily blanket banning the use of limited company contractors. However, those blankets are starting to lift as firms compete for in-demand talent.

CEST not trusted

Firms are reducing their reliance on HMRC’s Check Employment Status for Tax tool (CEST), as almost all contractors signal they do not trust its accuracy or HMRC’s non-statutory promise to stand by the results.

Non-compliance increases on all fronts

Non-compliance and a lack of transparency by firms subjecting contractors to unfair tax treatment are widespread, as most on-payroll contractors work via unregulated umbrellas. Marketing of avoidance schemes is rife, and contractors cannot tell what’s good or bad.

Commentary by Dave Chaplin, CEO of IR35 Shield

Dave Chaplin is an expert on contracting and IR35 and is the CEO of IR35Shield.co.uk and ContractorCalculator.co.uk. He is also the author of 'IR35 & Off-Payroll explained' (published in March 2020).

Due to business disruption created by Covid-19, many firms chose to implement either a blanket ban or overly risk-averse approaches whilst they rushed to assess their workforce, much of which resulted in commercial harm.

The “IR35 PR wars” resulted in considerable mixed messaging, fuelling the decisions of firms to issue blanket bans, leading to delayed and cancelled projects as contractors abandoned firms. Many firms attempted to mitigate this by moving some projects offshore - unnecessarily benching workers may not have been what HMRC had in mind to increase the tax take.



Many contractors were given no option other than to engage via an umbrella company or agency payroll. Of those unable to work outside IR35, 88% are now forced into umbrellas, despite only 6% happy to use one. The tax avoidance market reached 72% of contractors with their marketing, yet 78% can't tell the difference between avoidance and compliance. Despite the legal transparency requirement on agencies to give a Key Information Document to contractors, only 26% did so. Regulation and heavy enforcement are inevitable.

Despite the IR35 meteorite, we are seeing green shoots emerge, as blanket bans decrease and the use of specialised assessment firms increases. Firms using HMRC's CEST tool are declining, as trust in its accuracy plummets. The supposed protection it provides, by way of HMRC's non-statutory promise to stand by its results, only gets a 4% vote. The decline in use is perhaps due to the government bodies who used CEST and followed HMRC's guidance, but face combined tax bills of circa £250 million.

That said, as the dust is settling, firms are discovering that the IR35 bogeyman never existed and that wholesale blanket measures make them less competitive, putting them at the back of the queue when the free market allocates its best talent. Small consultancies, not subject to the new rules, thrive as contractors turn away from unequipped recruitment agencies to cope with the new regime.

Having been in the IR35 arena for 20 years, including helping to fight cases at tax tribunal, I'm confident that when a firm properly adheres to its compliance obligations, the chances of it falling victim to a successful HMRC challenge are virtually zero.

We are expecting a much more positive year ahead.

Summary of all findings

Blanket bans caused firms considerable self-harm

When the reforms finally hit the private sector in April 2021, many firms had decided to introduce blanket bans of contractors operating via limited companies. However, this decision is slowly being reversed after seven months. Unprepared firms projects suffered from when contractors voted with their feet.

- 47% of respondents said firms had implemented blanket bans in the lead-up to the reforms. This figure reduced to 41% for contractors being engaged seven months later, indicating that firms are slowly lifting their bans on using limited company contractors.
- 50% of the contractors who saw first-hand the impact on firms around April 2021 said that firms would experience some long-term damage due to the reforms.
- 46% said firms seeking to retain contractors on an “inside IR35” basis needed to pay more.
- 35% of in-work contractors said firms cancelled projects.

47%

OF RESPONDENTS SAID FIRMS HAD IMPLEMENTED
BLANKET BANS IN THE LEAD-UP TO THE REFORMS.

Contractors fled firms rather than work on an “inside IR35” basis

The majority of contractors responding to the survey said they departed from the client they were working for, with a small portion staying on. More than half of contractors cited that their clients had offshored some or most work outside the UK.

- During the transition in April 2021, 65% of respondents said firms lost at least half their contractors.
- Only 17% stayed working for the client on an outside IR35 basis.
- 23% stayed whilst working on an inside IR35 basis.
- 60% of contractors said they left their clients, whether contractor terminated (29%), the client terminated (14%), or the contract naturally ended (17%).
- 58% of respondents said firms moved “most” or “some” of their work out of the UK.

65%

OF RESPONDENTS SAID THAT
FIRMS LOST AT LEAST HALF THEIR CONTRACTORS

Status assessments improve as blanket bans begin to lift

As blanket bans are lifting, the percentage of contractors now being assessed is rising, although few contractors determined as “inside IR35” are given Status Determination Statements.

- 65% of respondents got an assessment during the transition. 35% didn't.
- Of those assessed, only 42% in April 2021 said they thought the assessment was fair – a figure rising to 82% by November 2021. The significant rise is likely due to “inside IR35” roles being advertised as payroll only, and contractors being told they are “outside IR35” (87% in November's cohort) are unlikely to complain.
- More contractors are involved in the assessment process: Respondents in the April 2021 cohort said 53% were involved, compared to 63% by November.

35%

OF RESPONDENTS DID NOT GET AN IR35 ASSESSMENT

Trust lost with HMRC's CEST status tool

According to respondents, the use of HMRC's CEST service is reducing, and firms are moving to alternative tools, either in-house or outsourced. Only single-digit percentages of contractor respondents believe CEST is accurate or aligns with the law, and almost all disbelieve HMRC's promise to stand by the results.

- Around the transition in April 2021, 56% of respondents received CEST determinations, which dropped to 49% by November 2021.
- The numbers of respondents receiving assessments from external tools rose between April 2021 and November 2021 from 39% to 44%. And the use of internal tools rose from 16% to 20%.
- Asked how they would treat a CEST assessment, 60% said they would seek an alternative.
- Only 5% of respondents said they thought CEST was accurate, and just 3% said they believed it accurately reflected the law on status.
- Only 4% said they trusted HMRC to stand by the tool's results.

4%

SAID THEY TRUSTED HMRC TO
STAND BY THE TOOL'S RESULTS

Movements to on-payroll Umbrellas

Most contractors who were unable to work genuinely “outside IR35” were told they must use an umbrella company; otherwise, the work wasn’t available to them.

- Clients and agencies pushed 68% of contractors taking “inside IR35” contracts into using umbrellas at the time of the transition in April 2021, which increased to 75% by November 2021.
- Of the “Inside IR35” cohort, 69% were given the option of umbrella or no work. In November, of those unable to work “outside IR35”, 88% were using umbrellas.
- The majority (April 70%, November 87%) of on payroll contractors were given a list of umbrellas to choose from, although some were only given one choice (14% April, 12% November).
- Of in-work contractors in November, only 6% said they were happy to use an umbrella.

88%

OF THOSE UNABLE TO WORK “OUTSIDE IR35” IN NOVEMBER, **WERE USING UMBRELLAS**

Who is paying the secondary Employers National Insurance (NI)?

Despite the law and HMRC guidance clearly stating that secondary class 1 National insurance contributions (“Employers NI”) are payable on top of the contract rate, workers continued to be misled on who is responsible for paying this tax, with the vast majority picking up the bill.

- 88% of contractors using umbrellas in April 2021 said they paid the employers NI.
- In November 2021, 84% said it was taken out of their rate when asked the same question. 10% said the tax was paid on top of the rate (correct in law). 6% didn’t know.
- 46% of those using umbrellas around April 2021 were unlawfully told the new rules meant the contractor had to pay secondary class 1 NICs out of their rate.
- The misrepresentation continued, as the November cohort indicated it was 53% who were told they had to pay this tax when asked the same question.

46%

OF THOSE USING UMBRELLAS AROUND APRIL 2021 WERE **UNLAWFULLY TOLD THE NEW RULES**

Government transparency initiative still proving ineffective

As of April 2020, agencies must provide workers with a Key Information Document (KID) designed to offer transparency around aspects such as pay. However, the survey findings show that most are failing to do so.

- 57% of respondents did not know what a Key Information Document is.
- Only 26% said their agency provided them with a Key Information Document despite being a legal requirement.

26%

SAID THEIR AGENCY PROVIDED THEM WITH A
KEY INFORMATION DOCUMENT

Contractors remain vulnerable to tax avoidance schemes

Many tax avoidance schemes have emerged in response to the Off-Payroll legislation, operating under the guise of umbrellas and payroll companies. The survey findings indicate such schemes are already targeting the majority of respondents, many of whom cannot discern between a compliant and a non-compliant company, making them particularly vulnerable to the latter.

- 72%* of contractors say they are regularly (30%) or occasionally (42%) marketed to by payroll companies offering take-home pay of circa 85%.
- 78% of contractors cannot distinguish between a compliant umbrella company and a tax avoidance scheme.

**Note that the same question asked to contractors in our Dec 2020 survey received a figure of 60%, indicating that promoters of these schemes are gaining wider reach.*

78%

OF CONTRACTORS **CANNOT DISTINGUISH**
BETWEEN A COMPLIANT UMBRELLA COMPANY
AND A TAX AVOIDANCE SCHEME.

Flexible workforce losing experienced talent and Treasury losing tax

Flexible workers, many with considerable experience, removed themselves from the market, and as a result, became considerably financially worse off, likely also generating less tax for the Treasury. The vast majority are poised to return once they secure a contract that is “outside IR35”.

- 426 respondents said they had moved to permanent work due to IR35.
- 44% of those moving to permanent employment had been contracting over ten years, and 29% had contracted for 5 to 10 years. Half cited the reason as the inability to secure an outside IR35 contract.
- 60% said working inside IR35 was not financially viable, and 73% said they were considerably worse off financially.
- 74% said they would move back to contracting if they could secure an outside contract.

74%

SAID THEY WOULD **MOVE BACK TO CONTRACTING** IF THEY COULD SECURE AN OUTSIDE CONTRACT

Contractors unusually benched with some retiring due to reforms

The survey indicated that more contractors than usual were out of work, for more extended periods than expected, with the majority citing the IR35 reforms as the reason. Almost three quarters said it was harder to find work, and the majority will never work “Inside IR35”. Of those retiring, most cited the IR35 reforms as the catalyst.

- 17% of contractors told us they were out of contract at the time of the survey in November 2021, with 69% blaming the IR35 reforms.
- 41% were out of work for six months or more, and 15% were out of work for 3 to 6 months. 87% indicated it was abnormal to be out of work for long.
- 74% of all survey respondents said it was more challenging to secure work after April 2021.
- 59% said they would never work on an “inside IR35” basis.
- 82 respondents told us they left the UK due to IR35, and 42 said they had retired now, with 36 doing so because of the reforms.

59%

SAID THEY WOULD **NEVER WORK ON AN “INSIDE IR35” BASIS**

Qualitative data

We asked respondents to share their views on many specific issues in the survey.

Main new themes from the qualitative data

- *Blanket bans remained rife through the industry.*
- *HMRC's Check Employment Status for Tax (CEST) tool caused considerable problems.*
- *Disputes by contractors were futile.*
- *Damage to firms projects ensued as contractors voted with their feet.*
- *Outsourcing to overseas resources was common where possible*
- *Contractors were forced to use umbrella companies, and many had employers NI deducted from their rate or the rate reduced to account for it.*
- *Flexible workers have left the market into jobs generating less tax*
- *For contractors who usually commute, freelancing is no longer viable.*

“

Contractors were forced to use umbrella companies, and many had employers NI deducted from their rate or the rate reduced to account for it.

”



Blanket bans by clients during the transition period

- *"They just put a blanket on it"*
- *"Announced in November that all contacts would be terminated by the end of January as they would not work with PSC's. No assessments, just a "strategic decision"*
- *"Blanket ban on all contractors. Poor understanding of regulations."*
- *"They ejected ALL contractors and offered employment on 'worker' contracts."*
- *"I had to go PAYE through an agency. Despite CEST and independent assessors both saying that I should definitely be outside IR35."*
- *"They did not assess they just blanket banned PSC contractors and cut the project work force to a skeleton team."*
- *"Blinkered and hard rule - either move under Umbrella or leave."*
- *"The company basically said, you are all inside IR35 or your contract is terminated."*
- *The majority of Financial Institutions have made and enforced a blanket Inside IR35 decision for their existing contractors"*
- *"HR overruled this stating they simply did not wish to engaged and suffer any bad press as a result. All costs were passed to each contractor with no change in rate."*
- *"Lots of evidence for outside IR35 but everyone inside IR35 with no exceptions."*

“

Blanket ban on all contractors. Poor understanding of regulations.

”

Government and Big 4 encouraged blanket assessments

- *"A senior manager at [REDACTED] told me they had been obliged to use blanket assessments in order to retain their place on a government preferred supplier list, and that they had to terminate any contractors who disputed the assessment."*
- *"It appears that [REDACTED] attitude is that they work for HMRC and so adopt the rules defined by HMRC...i.e., all PSC's should be inside IR35."*
- *"It was a sham and conducted in a way intended to deliver the outcome that they wanted."*
- *"Blanket assessments based on advice given to them by one of the Big Four (who incidentally also have consulting interests at the same client)."*
- *"In April 2021 [REDACTED BIG4 NAME] did assessments, not on a per-service basis but based on roles. This lead them to asses 99% of contractors to be on an inside basis, which is contrary to HMRC's own expectations."*
- *"They brought in a big 4 consultancy to perform the determinations on their behalf with the consultancy providing replacement resource in the event of contractors not continuing in the job for whatever reason."*
- *"The entire process was a shambles at best. We were given [REDACTED BIG4 NAME] assessments to fill out in February 2021 and we were not told the results until 4pm on Thursday 1st April 2021 (considering Friday 2nd & Monday 5th were bank holidays)."*
- *"CEST tool actually advised we were outside IR35 but then [BIG 4 NAME] advised [REDACTED] that all contracts were inside IR35. PWC ruling essentially forced [REDACTED] to say all contractors were inside IR35."*

“

It was a sham and conducted in a way intended to deliver the outcome that they wanted.

”

CEST caused problems for all parties.

- *"The CEST tool is not a fair assessment and companies are having to pay more because they are using a Conservative blanket approach."*
- *"They attempted to use CEST but it did not produce accurate results"*
- *"A lot of the questions in CEST are not clear"*
- *"CEST isn't fit for purpose, and the answers given were deliberately wrong to justify an inside determination."*
- *"The CEST tool is the default tool, but is untrusted."*
- *"The CEST tool is unfairly geared towards inside ir35."*
- *"The CEST tool should not be used as a primary method of 'determination of status' as it is completely biased towards the Government, who clearly have their own agenda."*
- *"It became obvious that they were manipulating CEST to ensure inside IR35 outcomes."*
- *"They tried using the CEST tool but had such pushback they switched to a blanket ban on PSCs."*
- *"They answered the CEST tool questions in a way which gave them an inside determination instead of assessing each contractor on an individual basis."*
- *"They used the same answers for all contractors for the CEST. Some were blatantly false statements."*

“

They attempted to use CEST but it did not produce accurate results.

”

Disputes by contractors were futile

- *"Despite numerous contractors coming together with IR35 assessments done using something other than CEST and providing evidence to the fact the client had answered questions on CEST incorrectly the client refused to make any changes to their blanket assessments"*
- *"Were not interested in hearing individual cases despite my compelling appeal to their 'insideIR35' status determination."*
- *"Appeals process was a joke"*
- *"Client Led Dispute schemes are loaded against the contractor. If Large/medium client companies don't want you Outside IR35, the process will be routinely friggged to force results, regardless of actual arrangements."*

“

Client Led Dispute schemes are loaded against the contractor.

”

Contractors voted with their feet

- *"Many I know work international projects. Some have left UK."*
- *"Most walked out in April 2020"*
- *"I didn't hang around after March 2021"*
- *"[REDACTED AGENCY NAME] tried to get all of the contractors to become full time employees. Most of us left."*
- *"They tried to move contractors over to PAYE/umbrella - my contract for services was terminated because I chose not to sign the new PAYE/umbrella contract."*
- *"I left and found a project working for one of the few oil operators doing proper assessments."*

“

I left and found a project working for one of the few oil operators doing proper assessments.

”

Projects were damaged as resources left

- *"Badly, projects were decimated, roles couldn't be filled/removed quickly, costs went up."*
- *"Loss of contractors; projects on hold"*
- *"Projects either canned or continued through consultancy at significantly higher cost."*
- *"Delay to projects and eventual adoption of using third parties which have adversely impacted budgets"*
- *"As far as I could tell, the ongoing projects were canned. To be honest I have no idea how they managed after I left."*
- *"It totally crippled the projects that were ongoing at the company!"*
- *"Delay to major strategic project"*
- *"Major walk-out of contractors on blanket ban forced the company to halt projects mid- stream."*

“

It totally crippled the projects that were ongoing at the company!

”

Poor management of reforms backfired for some firms

- *"They kept contractors in the dark until the last minute to avoid damage to their own business."*
- *"I know they had great difficulty recruiting and are short of resource."*
- *"They are struggling to deliver projects due to lack of resources. Some projects have been postponed or lost due to IR35 impacting on revenue sales."*
- *"Resulted in huge skill drain, quality and timeliness of work impacted. No perm hires made to compensate, so existing permies had to pick up the work with no compensation for extra workload. Very poorly managed."*
- *"Had to pay uplifts to any contractor they wanted to retain to offset costs the contractor incurred through umbrella company."*

“

I know they had great difficulty recruiting and are short of resource.

”

Companies offshored work where it was easy to do so

- *"They employ a greater proportion of offshore staff and fewer contractors you must work on a PAYE contract."*
- *"The firm got completely confused and panicked, jobs got shifted offshore..."*
- *"Blanket ban and off shores as much as possible."*
- *"Pushed most roles previously filled by contractors to offshore consultancies."*
- *"Most, project work were sent offshore to India."*
- *"They just outsourced bulk of projects to India, Guangzhou, Hong Kong, Toronto with staff in UK reduced to 10pc of original size and complete ban on fresh hiring in UK either permanent or contractors"*
- *"Blanket ban - moved contracting locations to other locations where these rules do not apply"*

“

The firm got completely confused and panicked, jobs got shifted offshore...

”

Contractors forced to use umbrella companies

- *"Umbrella industry is a minefield"*
- *"The fact that umbrella companies are even being used is abhorrent. A persons wage should not be subject to an employment agencies cut, HMRC's cut then an umbrella company picking through them and leaving people with the scraps."*
- *"We were placed under an umbrella company as of 28 Feb 2020. Day rates converted hourly rates, resulting in c. 20% pay cut and tax/PAYE hike."*
- *"They told us to go and find an umbrella company that they only dealt with so we had no choice in the matter."*
- *"I made valid reasons why I believed I was outside IR35, yet these were ignored and I was moved to an Umbrella company."*

“

They told us to go and find an umbrella company that they only dealt with so we had no choice in the matter.

”

Unlawful deductions of employers NI from contractors pay rife

- *"Forced into PAYE based roles with a 25% day rate cut to pay for employers NI, pension and holiday etc"*
- *"Firm refusal to increase rates and take liability for Employers NI increase."*
- *"I don't think they lost many contractors but they forced all to move to an umbrella company and rates dropped as a result as they looked at the overall rate from the umbrella which included employers NI."*

“

Firm refusal to increase rates and take liability for Employers NI increase.

”

Treasury earning less tax contractor left market

- *"Firms stopped hiring contractors, it was no longer viable to be a contractor, either for me or the firms that employed me. As a result I now earn and pay less in tax."*
- *"Tried to push contractors into FTC on less money"*
- *"Since IR35 I am paying much less tax."*
- *"Due to IR35 I know for a fact that millions of pounds are now going to outsourced workers in India rather than people in Britain."*

“

Since IR35 I am paying much less tax.

”

Unaffordability of commute now restricts contract work

- *"It is now not viable to contract if you can't commute it."*
- *"I am based in Birmingham and used to commute to London as I work primarily in Investment bank projects. With the change in rules, I am unable to claim the Train Season Ticket as expense. This has left all the midlands and northern IT contractors out of London contracting market."*
- *"I do not want to serve under this regime anymore where my 12 hour working days (and commute) are met with me being penalised through heavy taxes."*
- *"Inside reduces my work area to a short commute from home now."*

“

It is now not viable to contract if you can't commute it.

”

For some, it wasn't all bad

- *"No real issues. A small number of CAD draughtsmen who worked 5 days a week all year and used the companies facilities that were there for staff people were deemed to be inside IR35."*
- *"They underwent a detailed assessment of the working practices before completing the IR35 assessment. I believe this company is a only a few that carried out this correctly."*
- *"They did a 180 when all the contractors on my project refused to go forward under inside IR35 contracts"*
- *"Everyone deemed outside ir35 so that they wouldn't leave."*
- *"They used [REDACTED] and got most contractors outside IR35"*
- *"My case was fairly unique for the company. All other contractors were either terminated or blanket deemed inside IR35."*

“

Everyone deemed outside ir35 so that they wouldn't leave.

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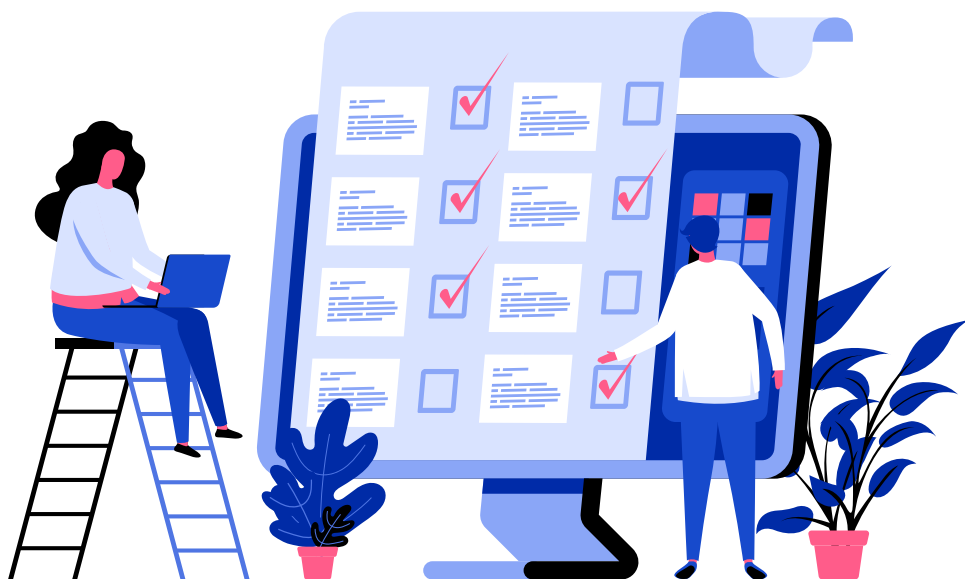
Survey demographics

We received responses from 3,750. Of those, 2,561 were contracting in the private sector before the reforms came in, and 1,845 were contractors in November 2021, when the survey was conducted.

Sector breakdown: IT (18%); Interim or project management (1%); Engineering (16%); Finance (22%); Oil and Gas (11%) with the rest categorised as 'Other'.

Of those classifying themselves as contractors at the time of the survey, 83% said they usually trade via a limited company.

The survey was conducted in November 2021.



About IR35 Shield



IR35 Shield is the market-leading status assessment solution for business and individual contractors. The service was built by a development team headed by Dave Chaplin, who has 20 years of experience in the contracting market and helps defend IR35 cases at the tax tribunal. The team combines decades of enterprise software development experience with the know-how in the crucial areas of employment status case law. [Find out more.](#)

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