

The background of the entire page is a photograph of a paved road stretching into the distance, flanked by dense green forests. The road has a dashed white line down the center and solid white lines on the edges. The sky is visible in the distance, showing some clouds.

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD

IR35 ROAD AHEAD **SURVEY** 3,320 CONTRACTORS



IR35 ROAD AHEAD SURVEY

3,320 CONTRACTORS

Non-compliant firms can expect backlash from contractors

Introduction and Background

In a December 2020 survey of 3,320 contractors, we sought to understand their experiences of the Off-Payroll legislation in the build-up to its private sector implementation in April 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 gauges the various approaches hiring clients and agencies have taken to satisfy or mitigate their compliance obligations and attempts to forecast the projected fallout and the wider repercussions for the supply chain.

Executive summary

With the Off-Payroll private sector extension only a few months away, the key findings indicate that:

- 52% of in-work contractors are yet to be assessed.
- 23% of in-work contractors say their client has imposed a blanket ban on PSCs.
- 52% of firms are using CEST, but 41% of contractors will dispute an 'inside IR35' result from the tool.
- 65% of contractors will avoid 'inside IR35' contracts.
- 69% will increase their rate for on-payroll engagements.
- 8% of contractors are happy to work via an umbrella company.
- 86% of contractors have not been provided with a Key Information Document (KID).



CEST leads to disputes

Half of the market is yet to prepare, and firms using HMRC's Check Employment Status for Tax (CEST) tool to assess IR35 status are likely to encounter considerable disputes due to the tool's questionable accuracy.

Costs will increase

Likely fallouts from Off-Payroll for some firms include heightened costs as contractors seek to avoid 'inside IR35' engagements and quote higher rates for 'inside IR35' work.

Surge in tax avoidance schemes

Non-compliance by firms subjecting contractors to unfair tax treatment and an overall lack of transparency pose numerous risks to the entire supply chain, as many agencies and clients try to push contractors into an unregulated umbrella market. Only 8% of contractors say they are happy to use an umbrella company and 74% cannot tell whether an umbrella is tax compliant – so we are likely to see thousands of contractors being unwittingly pushed into tax avoidance schemes.

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 we foresee many firms rushing to assess their workforces at the beginning of 2021.

Entrenched positions appear to be developing again, resulting in standoffs between the parties at either end of the supply chain. A common scenario involves hiring firms banning contractors using limited companies whilst trying to reduce fee rates by 20%. At the same time, many contractors refuse to engage in any other manner unless their rates increase by up to 40%. Between the two lies the rather tricky renegotiating terrain that needs to be traversed.



Following the April 2017 public sector implementation, we also saw a plethora of third-party payroll companies enter the unregulated umbrella market, which resulted in 6,000 contractors unwittingly becoming involved in dodgy tax avoidance/evasion schemes. This is a particularly unfair outcome when many wind up on a third-party payroll reluctantly – our survey found only 8% of contractors are happy to work via an umbrella company.

If firms permit the use of alternative payroll companies over in-house agency payrolls, they will need to conduct due diligence to ensure compliance. To aid transparency and compliance, agencies must also start providing contractors with Key Information Documents (KIDs), a legal requirement since April 2020. Our survey indicates only 14% currently are.

Whilst we anticipate many firms to apply knee-jerk approaches, we expect the market to return to normal, by which time most end-clients and agencies will have discovered IR35 isn't quite the bogeyman some proclaim.

Having been in this arena for 20 years and helped fight cases at 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.

The market will eventually settle, as firms realise that wholesale blanket measures make them less competitive. Firms that simply refuse to hire contractors on an 'outside IR35' basis will be behind their competitors at the back of the queue when the free market decides to allocate its best talent.”

Summary of all findings

Clients leaving Off-Payroll compliance until the last minute

With only a few months to go until Off-Payroll is introduced to the private sector, more than half of hiring clients are still to conduct status assessments. Many are instead applying blanket measures, and a comparison of data from contractors currently in work and those without a contract suggests compliance is key for hiring firms to retain talent.

- 52% of contractors currently in contract are yet to be assessed by their client.
- 41% of inactive contractors said their last client had imposed a blanket ban on limited companies.
- For in-work contractors, 23% observed that their client had enforced a similar ban.
- 34% of currently engaged contractors observed that their clients were conducting case-by-case assessments, compared to just 20% of inactive contractors.

52%

OF CONTRACTORS CURRENTLY IN CONTRACT ARE
YET TO BE ASSESSED BY THEIR CLIENT

Agencies and clients driving umbrella company use

To circumvent their compliance obligations, many firms have offered contractors alternative working models. Umbrella companies are proving the most popular option amongst clients and agencies. But the feeling isn't mutual, with the majority of contractors expressing a reluctance to work in this manner.

- 36% of contractors have been invited to work via their agency's payroll.
- 62% have been invited to work via an umbrella company.
- 44% of contractors said they would never work via either agency payroll or umbrella.
- 61% of respondents claim they would not respond to an advert for an 'umbrella only' contract.
- Only 8% of contractors would be happy to use an umbrella company, but 52% said they would, if forced.

8%

OF CONTRACTORS WOULD BE
HAPPY TO USE AN UMBRELLA COMPANY

Contractors vulnerable as tax avoidance schemes proliferate

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 are unable to discern between a compliant and a non-compliant company, making them particularly vulnerable to the latter.

- 60% of respondents regularly or occasionally receive marketing from schemes offering take-home pay of circa 85%.
- 74% are unable to distinguish between a compliant umbrella company and a tax avoidance scheme.
- Only 43% are confident they could perform their own tax calculation to make sure it is correct.

74%

ARE **UNABLE TO DISTINGUISH** BETWEEN A COMPLIANT UMBRELLA COMPANY AND A TAX AVOIDANCE SCHEME

Government transparency initiative proving ineffective

Government efforts to tackle these schemes clearly aren't working. As of April 2020, agencies are required to provide workers with a Key Information Document (KID), designed to offer transparency around aspects such as pay. However, the survey findings show that the vast majority of agencies are failing to do so.

- 86% of respondents said their agency had not provided them with a Key Information Document.
- 67% weren't even aware of what a Key Information Document is.

86%

OF RESPONDENTS SAID THEIR AGENCY HAD **NOT PROVIDED THEM WITH A KEY INFORMATION DOCUMENT**

Covid-19 compounds IR35-imposed difficulties for contractors

Roughly one in five respondents aren't currently working, with IR35 and the Covid-19 pandemic cited as reasons in the majority of cases. The difficulties caused by the current climate raises serious questions about the timing of the private sector extension.

- 22% of contractors are currently without a contract.
- 67% attribute their lack of work to either IR35, Covid-19 or a combination of the two.
- 26% of out-of-work contractors terminated their most recent contract due to IR35, while 32% had their last contract terminated by the client citing the same reason.
- Of those out of work, 65% have been without a contract for more than six months.

22%

OF CONTRACTORS ARE **CURRENTLY WITHOUT A CONTRACT**

'Inside IR35' contracts could prove costly for hirers

Despite the difficulties faced by many contractors, clients shouldn't expect current circumstances to aid their efforts in attracting and retaining talent. In fact, those who aren't willing to engage contractors on an 'outside IR35' basis look set to have to pay a premium for contingent labour beyond April 2021.

- 65% of contractors say they will seek to avoid 'inside IR35' contracts.
- 72% will quote separate rates for contracts depending on IR35 status.
- 46% will increase their rates for 'inside IR35' roles by more than 20%.
- 16% of contractors have already successfully increased their rate.
- 86% of respondents said they would either avoid travelling for an 'inside IR35' contract that is far away or would only travel if the rate was increased.

65%

OF CONTRACTORS SAY THEY
WILL **SEEK TO AVOID 'INSIDE
IR35' CONTRACTS**

72%

WILL QUOTE **SEPARATE
RATES FOR CONTRACTS**
DEPENDENT ON IR35 STATUS

Contractors unhappy with questionable status assessments

Off-Payroll compliance is clearly crucial for clients to attract contracting talent, but only if it's done properly. Questions remain over the practices adopted by many clients.

- 47% of assessed contractors were not provided with a Status Determination Statement (SDS) by their client.
- 55% said their client hadn't provided reasons for status determinations, rendering the SDS legally invalid.
- Only 46% of contractors were invited to provide input into the assessment process.
- 37% don't believe their client's assessments fulfilled the Off-Payroll 'reasonable care' requirement.
- 44% claim their assessment was unfair.

44%

CLAIM THEIR **ASSESSMENT WAS UNFAIR**

CEST use likely to prove problematic for clients

More than half of clients are using HMRC's controversial Check Employment Status for Tax (CEST) tool to assess IR35 status, despite a distinct lack of trust in the tool amongst contractors. The survey indicates that firms that continue to use CEST can anticipate recruitment struggles and status challenges from contractors.

- 52% of contractors have been assessed using CEST.
- 71% of respondents say CEST doesn't reflect the law on employment status.
- 75% believe CEST to be inaccurate, and only 3% trust the tool.
- 41% said they would challenge an 'inside IR35' CEST decision.
- 64% would always seek an alternative status assessment from an expert.
- Only 7% trust HMRC to stand by the determinations made by CEST.

41%

SAID THEY WOULD
**CHALLENGE AN 'INSIDE
IR35' CEST DECISION**

7%

**TRUST HMRC TO STAND BY
THE DETERMINATIONS MADE
BY CEST**

Status disputes threaten breakdown of engagements

Despite many contractors expressing a willingness to challenge their deemed status, few have succeeded in doing so. However, clients that aren't willing to compromise may yet feel the repercussions, with many contractors having expressed uncertainty over the future of their engagement.

- 41% of contractors who received an 'inside IR35' assessment tried to dispute their status.
- 36% couldn't be bothered to dispute an 'inside IR35' status.
- Of those disputed, only 9% successfully overturned their status.
- Only 1% reported being charged to challenge their status.
- 32% of contractors said for certain that they will remain with their current client beyond April 2021.
- 51% are unsure of where they will be after April 2021.

36%

**COULDN'T BE BOTHERED TO DISPUTE
AN 'INSIDE IR35' STATUS**

How will Off-Payroll impact UK firms?

In addition to heightened costs, many survey respondents anticipate further struggles for the clients, with short-term and long-term impacts expected as a result of recruitment struggles.

- 57% said at least half of contractors would likely leave their client's contingent workforce due to IR35.
- Just 6% said Off-Payroll would have no impact on their client's ability to retain contractors.
- 39% of contractors said they anticipate some short-term damage to their client.
- 36% expect their clients to suffer long-term damage.
- 36% reported that their client was moving some or all of their projects outside of the UK due to IR35.

36%

EXPECT THEIR CLIENTS TO SUFFER LONG-TERM DAMAGE

Qualitative data

In the survey we asked respondents to share their views on a number of specific issues.

Main themes from the qualitative data

- Risk-averse compliance decisions by clients are driven by consultancies with vested interests.
- Status assessments are being derailed by lack of understanding of IR35 and neglect by clients.
- Contractors with little bargaining power are being held to ransom and made to fund employer's NI.
- Other contractors are refusing 'inside IR35' positions, with many more sourcing work overseas to avoid Off-Payroll.
- Off-Payroll has rendered contracting unviable for many contractors, some of whom have retired altogether.

“

Risk-averse compliance decisions by clients are driven by consultancies with vested interests.

”



Consultancies encouraging risk-averse approach to compliance

When asked why their client hadn't assessed their IR35 status, specific reasons provided by contractors ranged from interruptions caused by Covid-19 to clients simply leaving it late. Many clients' compliance decisions have also been informed by large consultancies who are advising a risk-averse approach.

- *"I've mentioned Off-Payroll but their head is still in the sand. I assume they'll get round to it eventually, but who knows?"*
- *"They're undertaking informal assessments at a corporate level without engaging us, or the day-to-day clients we work with. Our day-to-day clients have advised them we're out of scope but corporately they are refusing to listen. It appears top 4 accountancy firms are driving bad practice and poorly advising clients, with introducing a blanket ban being the easiest advice."*

“

I've mentioned Off-Payroll but their head is still in the sand. I assume they'll get round to it eventually, but who knows?

”

Many clients failing, or refusing, to grasp Off-Payroll compliance

Many contractors expressed dismay at the approach taken to assessing their status, with clients accused of ignoring contracts, providing inaccurate answers, and failing to understand IR35.

- *"We received blanket assessments for job titles rather than our actual contracts. These were carried out by non-experienced personnel without contact with the role holder."*
- *"I received a blanket assessment even though CEST and an independent assessment both deemed me outside of IR35. These assessments were done pre-April 2020."*
- *"They have no idea what IR35 assessments entail."*
- *"My client had stated that they would apply a blanket 'inside IR35' determination from March 2021 because the role could be done by a permanent employee. This shows complete lack of understanding of the regulations!"*

“

They have no idea what IR35 assessments entail.

”

Contractors pick up employment costs for non-compliant firms

Many contractors with little bargaining power already appear to have been held to ransom and subject to brazen non-compliance by firms enforcing specific engagement models and offloading their employment costs onto the contractors themselves.

- *"It's a fudge. We are paying employer's NICs and the use of umbrella companies is a tax and obligation dodge."*
- *"We were all determined as outside IR35, but this wasn't the answer they wanted so they banned all limited companies and forced us into umbrellas."*
- *"They decided to cut our rates by 13.5% and put us inside IR35."*
- *"My client liaison told me one month before the assessment started that 'everyone was going to be inside IR35'. It's just a formality."*

“

It's a fudge. We are paying employer's NICs and the use of umbrella companies is a tax and obligation dodge.

”

Firms feel the repercussions as contractors put their foot down

Other contractors have put their foot down. Whereas some are making increased rates for 'inside IR35' contracts a non-negotiable, others are refusing to work in this way altogether, with many exploring opportunities overseas.

- *"I have increased my rates to pay for the extra costs of IR35. This is a non-negotiable cost that I am passing onto my clients."*
- *"It's not really worth my while working inside IR35 once earnings hit the higher tax bracket. I will be taking a lot more holidays and will only consider local or fully remote working contracts."*
- *"I am actively investigating possibilities for working abroad."*
- *"I will never work inside IR35. I didn't go into business to pay 56% tax and have no benefits and no rights. I am not an employee and don't want to be treated like one. I am an entrepreneur providing interim leadership and consultancy."*

“

I will never work inside IR35. I didn't go into business to pay 56% tax and have no benefits and no rights. I am not an employee and don't want to be treated like one. I am an entrepreneur providing interim leadership and consultancy.

”

Off-Payroll spells end of contracting for some

For others, the Off-Payroll legislation has rendered contracting an unviable option, causing a number of contractors to wind up their company and quit contracting, or retire altogether.

- *“Travel and expenses are key here. I have done contracts up to 200 miles away, but this won't be possible in future.”*
- *“It's too expensive to live and work away from home inside IR35 and rates have not gone up to compensate, so I have given up contracting and will accept the big drop in money.”*
- *“I'm now taking a permanent role with a consultancy. I'll pay less tax and have less disposable income. I will lose. The taxman will lose.”*
- *“The prospect of IR35 in the private sector has encouraged me to retire completely.”*

“

The prospect of IR35 in the private sector has encouraged me to retire completely.

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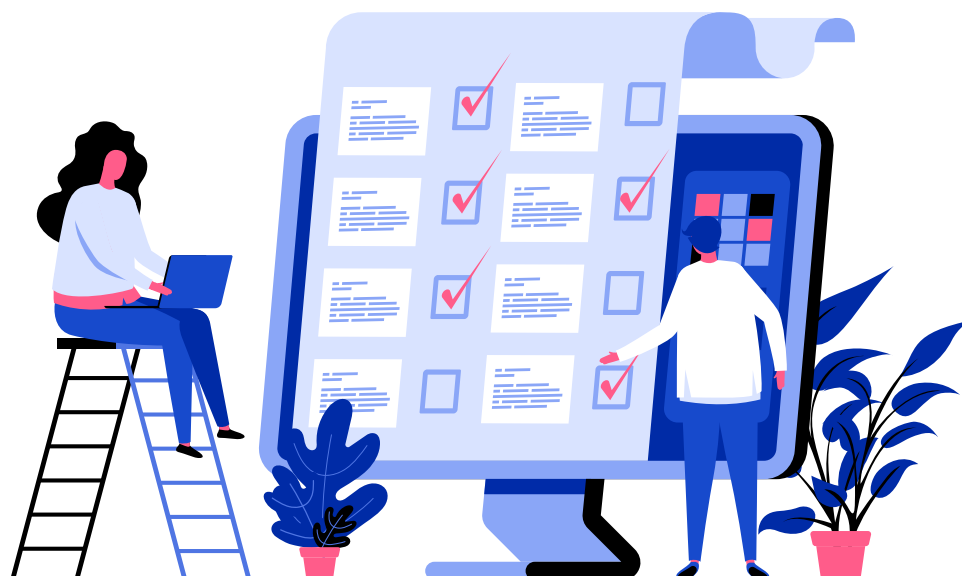
Survey demographics

We received responses from 3,601 participants, of which 3,320 were contractors, 229 were permanent employees, and 52 were neither.

Sector breakdown: IT (34%); Interim or project management (5%); Engineering (14%); Finance (12%); with the rest categorised as 'Other'.

93% of contractors said they usually trade via a limited company.

The survey was conducted in December 2020.



About IR35 Shield



IR35 Shield is the market leading status assessment solution for business and individual contractors.

It was built by the development team at ContractorCalculator, who have 20 years' experience of the contractor market and have been developing IR35 tools since its inception in 1999. The team combines decades of enterprise software development experience with know-how in the crucial areas of employment case law and tax.

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