

# IR335.

## Don't panic.

We've  
got this.

profiles  
creative

Candidate Handbook  
v2. February 2021

# What is IR35?

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Originally introduced in 2000, IR35 is an HMRC initiative to uncover what they consider to be disguised employment within the UK contractor workforce. This legislation impacts contractors who are working through their own intermediary, often a limited or professional services company, also known as off-payroll workers.

The new legislation means that the way these workers are processed will change and that now (if the rules apply) then the correct action must be taken by the fee-payer (the agency).

The legislation will come into effect in April 2021.

Unlike the public sector, the private sector rules **will not apply to small businesses.**

If your assignment is for a client who is deemed to be a “small business” (this determination will be given by the client to Profiles Creative) then there is no change to your current way of working and you will continue to be responsible for determining your own IR35 status.

## **The definition of a small business is if a Company meets at least 2 of the following criteria:**

- An annual turnover of less than £10.2 million
- A balance sheet showing assets of less than £5.1 million
- Fewer than 50 employees

If a business does not meet the criteria for being defined as a small business than it will be considered as Medium or Large.

At present, contractors working through their own intermediary in the private sector are responsible for determining their own IR35 status. After April, where a contractor is working for a Medium or Large organisation (based on the guide above) it will be the end hirer not the contractor who makes the decision on the IR35 status of the assignment.

# How is IR35 determined?

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HMRC has created a specialist CEST tool to help you confirm your status when accepting specific bookings:

<https://www.gov.uk/guidance/check-employment-status-for-tax>

Unfortunately, this tool does not always reach a determination and there is no additional support alongside it. If the CEST tool does not give you the information you require, you may then elect to be supported by one of our Profiles Protect tools.

There are a number of (paid for) support tools available to help navigate these changes in a compliant way. We have chosen to partner with two of these suppliers in order to give you as much flexibility and support as we can. Read on to find more about our Profiles Protect offering.

## The three main factors when reaching a determination are:

Right to Substitution

Supervision, Direction and Control

Mutuality of Obligation

## What does this mean?

**Right to Substitution** - are you able to/have you ever offered your client a substitute if you can't complete the assignment? Does the client have the right to refuse your suggested substitute?

**Supervision, Direction and Control** – one of the most important factors. How much supervision power does the client have? Do they determine your hours, place of work, lunch break? Do you need consent for time off? Do you work on a project or to fulfil a role?

**Mutuality of Obligation** – do you work with one, or more clients at any one time? Do your clients have a say in which other clients you work with? Do you work set hours or on an ongoing basis?

## The other determining factors are:

**Financial Risk** – if you make a mistake, do you have to rectify it for free?

**Length of Engagement** – the longer the engagement, the more likely it is to fall inside IR35

**Right of Dismissal** – do you have a notice period in your contract? If so, this could contribute to an inside IR35 status determination

**Basis of Payment** – daily, weekly, monthly, project or milestone based?

**Part and Parcel of the Organisation** – do you act like an employee? Hours, holiday, staff canteen, gym, social/sports clubs

**Provision of Equipment** – your own, or the companies?

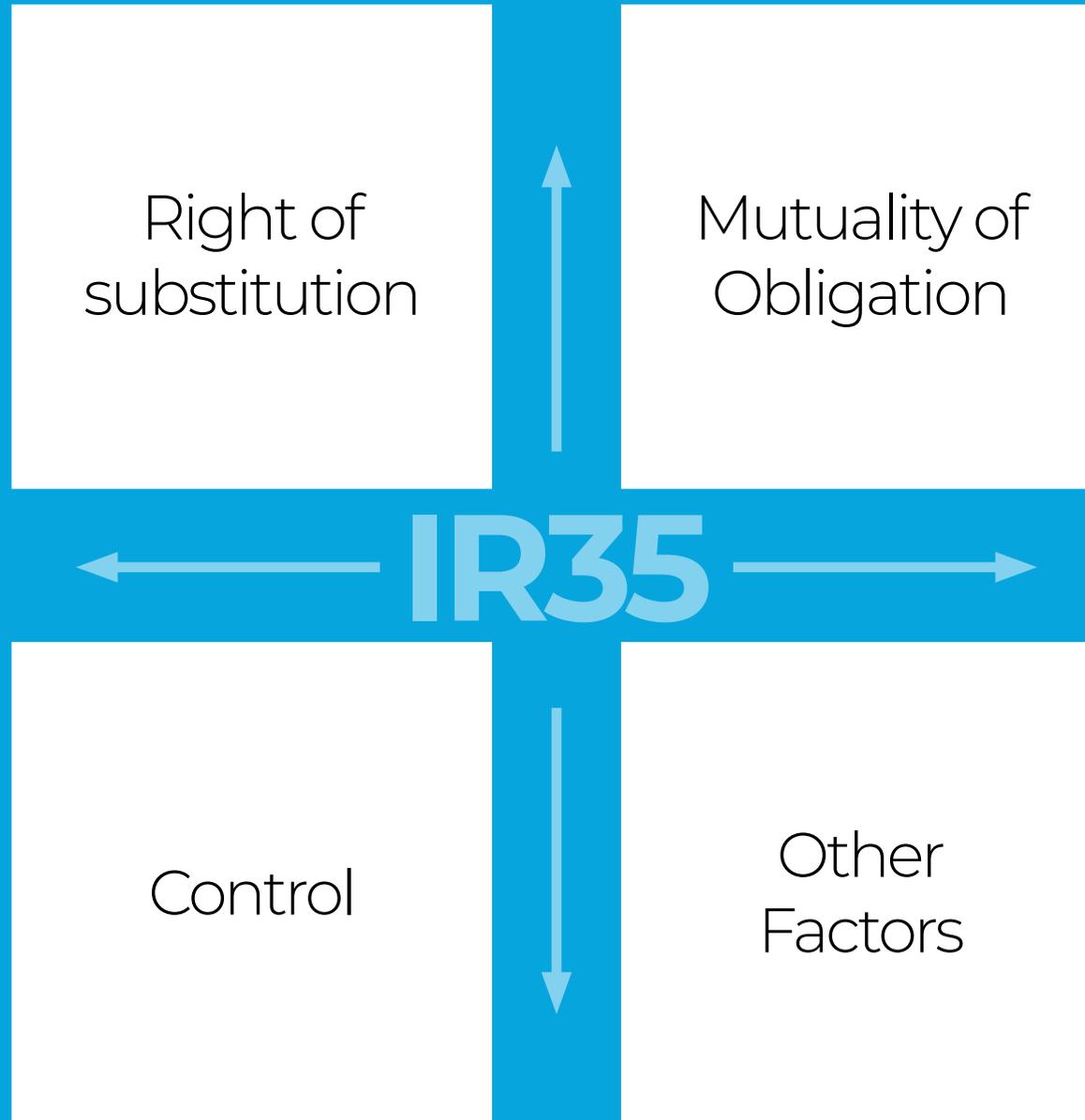
**Employee Benefits** – holiday and sick pay, Christmas parties, sports facilities

**Whether you benefit from Sound Management** – contract for service, or contract of service

**The intention of the parties** – did the client want a contract for services or a contract for employment?

# Factors in Determining IR35 Status

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# Example Determination Factors

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## Right of substitution

### **OUTSIDE:**

The contractor has an unfettered right to substitute the services to someone suitably qualified.

### **INSIDE:**

The contractor is obligated to personally carry out the services.

## Mutuality of Obligation

### **OUTSIDE:**

The client has no obligation to offer work and the contractor has no obligation to accept.

### **INSIDE:**

The client is obliged to keep offering the work to the contractor and the contractor is obliged to accept.

## Control

### **OUTSIDE:**

The contractor is free to decide how, what, when and where they do the work.

### **INSIDE:**

The contractor is told how, what, when and where to do the work.

## Other Factors

### **OUTSIDE:**

Project based, has an end date, uses own equipment, treated as independent contractor etc.

### **INSIDE:**

Rolling contract, appraisals, eligible for bonus, included in org chart, use of employee facilities, business cards etc.

# What happens if I am Inside IR35?

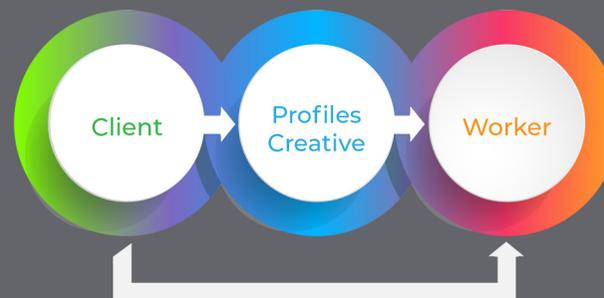
Any Profiles Creative contractor placed in a booking within a medium or large business may be considered inside IR35 by the end client. If this happens, you will receive a copy of the status determination from your Consultant. We would suggest you then take the following steps:

1. Make sure you agree with the determination by completing your own assessment.
2. If YES then read on. If NO then speak to your Consultant who will help navigate this for you, as you may be able to appeal the decision. This might be an appropriate situation to consider using one of our Profiles Protect tools, your Consultant will guide you on this.
3. Agree with your Consultant that you understand that accepting an Inside IR35 assignment means that we are required to make sure the necessary deductions are taken from gross pay as per HMRC's guidelines.
4. Consider your Payroll options: PAYE, Umbrella, Limited Company but with deductions taken from gross pay as per HMRC's guidelines.
5. If you are rebooked with a client, you will not necessarily need to complete a new assessment. Provided the working conditions remain the same, the previous SDS will cover the new assignment.
6. Complete the booking and time sheet process as normal – everything else remains the same.

If you are working directly with your own clients, we would encourage you to ensure the client makes a determination before the start of your booking. If your client does not make a status determination then they may be found responsible for any tax liability. However they may determine the assignment falls inside IR35 after you have started - this could impact your expected take home rate and you therefore need to be aware of this at the start.

You can also decide that you will only accept bookings which are determined to be outside IR35, that is absolutely your decision and, in that situation, nothing changes! Just let your Consultant know.

## Flow of information through labour supply chain



**Client required to provide status determination and reason for determination to agency and worker**

# What are my options if I don't agree with the client's determination?

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Under HMRC's new guidelines, the contractor has the right to appeal the end client's decision. In order to support their appeal, it is recommended that the contractor is able to evidence why they believe the determination to be incorrect. Once the client is in receipt of the appeal, they have 45 days to respond. You may also consider using one of our Profiles Protect tools to give you an additional assessment. Your Consultant will support you with this and you can read on for more information.

If the client does not believe the evidence provided by the contractor is substantial enough to overturn their initial determination, Profiles will then be responsible for ensuring tax and national insurance contributions are paid to HMRC.

# What are my payment options?

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We believe that our freelancers should be paid using whichever method best suits them. As such, we will still be engaging freelancers via; PSC's, approved umbrella companies and via our own PAYE payroll.

However, we will be ensuring that the correct deductions are taken at source as per HMRC's guidelines. We will also be increasing spot checks of our approved umbrella suppliers to ensure that they are doing the same.

# What support can I expect from PC?

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As a long-established supplier of freelance staff to the creative and marketing industries, the team at Profiles has seen our fair share of legislative changes over the years; AWR, WTD, GDPR - the acronyms are endless! This means, we understand that change often brings uncertainty. Behind the scenes, we have invested heavily in staff training, IT infrastructure and updating our operational processes to ensure that we are able to offer a smooth transition to our clients and candidates. We have also carefully selected two partners to work with in order to offer our Profiles Protect service. You can find more information on the next page and your Consultant will also be able to talk you through what these support tools could do to help you.

We are running a number of workshops for both clients and candidates in the lead up to April and beyond. If you like to see a schedule for these workshops please email: [IR35@profilescreative.com](mailto:IR35@profilescreative.com)

# Profiles Protect

We want every Client and Contractor to feel confident that when they brief to us or accept an assignment from us, they are working in a totally compliant and commercial way.

The HMRC CEST tool, whilst it is an obvious starting point for every booking, doesn't always reach a determination. We are also cognisant that there may be occasions where either or both parties may not agree with a determination and would like the opportunity for further review. We've scoured the market and have elected to partner with two leading suppliers of IR35 assessment and insurance. By choosing to engage two specialists, we are able to offer the fastest and most comprehensive cover on the market.

### Why is this important?

**Clients** – it gives you safe access to the widest pool of active Freelancers. Some of whom might only accept assignments through their PSC that fall outside IR35.

**Freelancers** – it gives you access to the widest scope of assignments across businesses who otherwise might only engage you on an Inside IR35 basis or through an Umbrella / paid as PAYE.

## Profiles Protect solution vs CEST

Benefit	Profiles Protect	CEST
Unlimited individual role assessments	✓	✓
A determination every time	✓	✗
An expert review of borderline results	✓	✗
Online portal with downloadable reports	✓	✗
Access to real-time reporting	✓	✗
Unlimited access to IR35 helpline	✓	✗
Insurance Backed	✓	✗

Our Profiles Protect Partners:



**KINGSBRIDGE**

The initial assessment using our advanced Profiles Protect tools will be fully funded by us. Should you then require either further support from a specialist IR35 professional OR would like to secure Insurance to protect an outside IR35 determination then we can supply these to you, through our partners at a very reasonable and reduced cost

For comparison purposes, the maximum cost will be £150 per Freelancer for a full 12 months of cover across multiple assignments. Please speak to your Consultant for more information.

# Thank you!

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This handbook is designed to help you better understand the upcoming changes to the IR35 legislation. We will do everything we can to help make this transition as smooth and as clear as we can for you but our advice should in no way be considered a substitution for formal legal or tax advice. You should always consult with your Accountant and /or legal advisor on any questions relating to your personal circumstances.