

# Off-payroll working (IR35)

Are you ready for the changes?



6th  
APRIL  
2021

## What's the danger?

- New tax liabilities
- O-Licence at risk
- Recruitment challenges

## This affects your business - act now!

The rules for off-payroll working (often called 'IR35') were reformed in 2017, following a series of disputes over whether workers were really self-employed or were taking advantage of a tax benefit. Initially rolled out in the public sector, and following a one-year delay due to coronavirus, the reforms are now to be extended to the private sector.

As of 6th April 2021, you, as the hiring company or "End User", will have to determine the employment status of anyone working for your business – whether a worker is 'inside' IR35 (effectively an employee) or 'outside' (operating as a genuine contractor). See below for some simple tests to help you answer this question.

Crucially, the rules also say that HMRC will be able to work 'up the chain', including to the end user, for any unpaid tax liabilities. And operators have already had their O-Licence removed by the Traffic Commissioners for mistakes in the way they engaged with self-employed drivers.

Companies that rely on short-term contractors need to act now to avoid problems in April. Do nothing, and you could face skills shortages, additional costs and operational and financial risks.

## What you must do to be ready

- 1 Understand** what is 'inside' of IR35 and what is not (visit [www.gov.uk](http://www.gov.uk) and search 'Check Employment Status' for a useful, fully upgraded tool)
- 2 Properly assess** the extent to which these rules apply to your operation. "Smaller company" rules may mean you are exempt - but you will have to be able to prove it
- 3 Carry out an audit.** Do you know how many of your contractor workforce are 'outside' IR35? Don't make any assumptions about any of your PSC (Limited Company) workers – do the tests
- 4 Speak to any agencies** you use for temporary recruitment, and ask how they are managing this change

## Inside or outside? Some tips:

Consider the following questions. If ANY of these points apply, the chances are the candidate falls *inside* IR35:

1. The 'self-employed' driver only works for you
2. The driver is under your 'Supervision, Direction or Control'
3. The driver doesn't have an accountant
4. The driver is not using a vehicle they own or operate
5. The driver cannot send another person in their place
6. You pay the driver on a monthly invoice at a fixed rate in line with your other drivers
7. The driver would not have to rectify incomplete or unsatisfactory work at their own cost



# Self-employment – the Traffic Commissioners’ view

**The Traffic Commissioners’ view on whether a commercial driver can be self-employed or not is well established.**

Their answer – that whilst not impossible, it will be “rare” for a driver to be genuinely self-employed unless they are an owner-driver.

HMRC is primarily concerned with the loss of tax revenues, of course. The question for them has been, if a driver is only supplying their time and expertise and is driving the vehicles of another O-Licence holder, can they really be described as self-employed?

There has now been at least one case where a haulage business, which relied on “self-employed” drivers, had its O-licence revoked by the Traffic Commissioners.

The judgement rested on the fact that if the drivers were genuinely self-employed, the operator would not have power to give instructions on a particular route to be taken. Such an arrangement would most probably also fail the IR35 “Supervision, Direction or Control” test.

So a full audit of the employment status of all your drivers is a vital part of your preparations for IR35, and important for your compliance with HMRC and the Traffic Commissioners.

The simple IR35 tests in the panel overleaf will help. For a full, official determination, use the Government’s “CEST” service online.

Given the potential impact of the IR35 changes, including a risk to your O-licence, make sure you know what it means for you. Your Driver Hire office can help.



# Why use a reputable agency

From this April, your choice of agency will be more important than ever. Working collaboratively with a good agency will significantly reduce the risk to your business.

**Financial risk** – Remember that as the end user, you will be responsible for determining the employment status for any Limited Company / PSC worker and communicating this to the agency you use. You would be financially liable for an incorrect assessment.

Plus, HMRC will be able to work ‘up the chain’ for any unpaid tax liabilities. For example, if your chosen agency did not fulfil its obligations or had financial difficulties, you might have to foot the bill.

**Recruitment risk** – It is likely that the IR35 changes will squeeze the candidate pool that is available in the logistics industry. People who currently work as a PSC but no longer can from April 2021 may decide to retire or even move into a different industry altogether.

**Compliance risk** – Remember that compliance becomes more difficult the more diverse your worker supply arrangements. If your workers are sourced from a broad panel of suppliers, ensuring IR35 compliance may be a challenge.

Any reputable employment agency will have planned ahead and be well prepared. This is certainly the case for Driver Hire.

IR35 compliance is all part of our wider commitment to legal compliance, robust processes and high standards of service.

Plus, the vast majority of Driver Hire workers are already paid via PAYE, so our candidate pool will not be significantly affected.

