



Self-Employed Carer's Guide to IR35

This guide will help you understand what IR35 is, how it may affect you and what you may need to do.

It is not intended to be legal advice however is based around the legislation and April 2021 private sector reform.

The term contractor is used to represent a self-employed contractor operating as a limited company or sole trader.

Brief History of IR35

IR35 is a term used following a press release "Inland revenue 35", the actual legislation surrounding IR35 is the Intermediaries Legislation April 2000.

It arose essentially due to employers using contractors instead of employees for flexible working. This meant that these businesses did not take on the legal responsibilities of employment, such as paying national insurance contributions and other paid employment benefits, which in affect translated to considerable savings for the company and lost revenue for HMRC.

These flexible working arrangements also benefitted contractors who could set their own rates for providing these services, often a lot higher than if employed, choose their own hours, claim tax deductible expenses and reduce PAYE by paying themselves a low salary and taking profits via dividends which are taxed at a much lower rate.

For legitimate contractor relationships, this benefited all parties, however some businesses used this as a way to disguise employment and for tax avoidance by using contractors hired through limited companies, PSC's (Personal Service Companies) to connect with end clients.

Previously it was the responsibility of the contractor/PSC to ensure IR35 compliance however as of April 6th 2021, it is the responsibility of the company/entity to determine whether the relationship is genuinely self-employment or disguised employment.

Typically these PSC make it difficult to determine the relationship to the end client. HMRC recognise that there maybe no direct contractual relationship between the contractor and the client, if this is the case, then HMRC's position is that this is in affect disguised employment and falls within IR35.

If there is however, a 'contract for services' (self-employment), the engagement is considered to be outside IR35, even if the "contract for services" is a hypothetical one.

What does this mean as a self-employed carer?

As a self-employed carer, typically IR35 status and the recent changes will not affect you. If however you are working via a care agency, you could potentially be inside IR35.

The onus could either be on yourself for determining your employment status, or the agency you work through depending if they are considered a medium or large business and based on the relationship between you, the agency and the end client.

Most self-employed carers under our membership will be engaging with individuals directly to provide their services “contract for services” and thus there will be a direct contractual relationship between you and your client, therefore you will be considered as self-employed and fall outside of IR35. We provide you with HR services and fully support you with self-employment, as such, we are not considered as an agency.

The new legislation changes do not apply if the end client is a small company and meets two or more of the following:

- Turnover of no more than £10.2 million
- Balance sheet total of no more than £5.1 million
- No more than 50 employees

We are however remaining vigilant as we can foresee that issues may arise in the future across the social care sector if your “contract for services” (self-employment) is ever considered as a “contract of services” (employment) as this would mean the person you are providing your services to, should actually be your employer.

Should HMRC determine a person engaged as a self-employed worker to be an employee, the responsibility for unpaid tax and national insurance contributions lies with the engaging organisation (person).

IR35 Status – How do I check?

One of the key pieces of information that HMRC relies upon for determining IR35 status is the relationship between the end client and the contractor and if there is a contract of employment (contract of service) in place, even if it is a hypothetical one.

To determine this, there are key pieces of information. An employment contract must have these three main factors present to exist, if one or more is missing then it can not be a contract of service (Employment Contract).

Control – The employer to retain the right of control over the worker (i.e hours worker, shift patterns etc)

Personal Service – The requirement for the worker to provide the services personally (i.e they can not send a substitute to work)

Mutuality of obligations – An obligation to accept work offered and an obligation for the employer to provide work

As a self-employed carer, you should be providing your clients with your contract for services agreement, within your contract, it should state that you retain control over when you work and are under no obligation to accept work, equally your client is under no obligation to provide work to you.

In line with CQC guidance, as a self-employed carer, you are able to substitute work for regulated activities on a temporary basis to cover illness, holidays etc. If this work is substituted on a more permanent basis, you will need to register as a home care provider with the CQC.

HMRC also take into account other factors such as having your own business insurance, account, submitting your SA103 tax returns, your self-employment status with HMRC, business expenses and deductions.

We are of the opinion that IR35 is a good thing, it helps protect those vulnerable workers that are being exploited and disguised as self-employed when in actual fact they should be employed, with all the employment benefits and employment legislation that protects them.

Remember these changes arose primarily due to national insurance contribution and tax avoidance from companies hiding the true employment status of their workers and exploiting them.

We are not anticipating any of our members to be considered under IR35 however this will ultimately depend on your individual circumstances and if you are working via medium/large home care agencies as a self-employed contractor.

Should you be unsure as to your contractual relationship to your clients or your IR35 status, please do not hesitate to get in touch and we will support and advise you based on your individual circumstances.