

# Your Guide to Off-Payroll IR35

MAKE THE  
**OFF-PAYROLL/IR35**  
MINEFIELD,  
A CINCH!



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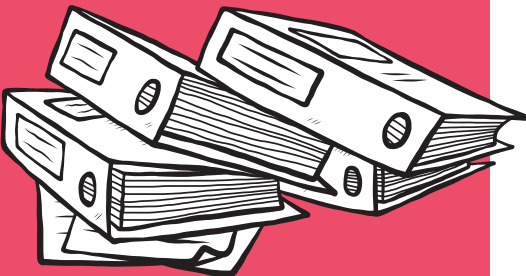
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**The now postponed Off-Payroll reforms due to come into legislation in April 2021 provide the temporary market and the majority of those operating within it a huge challenge.**

In the run up to April 2021 many will feel they have more questions than answers, many will feel lost among a host of information and conflicting comment, many won't know where to turn for the best.

This guide aims to go at least somewhat towards addressing those fears in simple, jargon free language that will leave you as a bare minimum with a better understanding of the next steps you will need to take.

IR35 is a complex topic and judging whether an individual or role is inside or outside the scope can be a difficult decision to arrive at. At Cinch we have spent years making these decisions and creating bespoke systems to allow you to do so accurately, fairly and with the confidence to stand by those decisions. More about that later on...



# Introduction

**Technically this is not new legislation and has in fact been in play for decades. However, subtle changes to liable parties post April 2021 will have a wide ranging and substantial impact.**

If you engage with workers who are operating via/through a personal service company (PSC) you're going to have to change the way you currently facilitate that process, and in many cases completely change the method of engagement. The main amendment which will drive change is who is classed as the "liable" party for fines and penalties in the event that HMRC successfully argues that a contractor is/was acting as a disguised employee and therefore additional tax/NI contributions are now due.



## WHAT'S CHANGING?

- Private sector to mirror Public sector
- "PSC" worker no longer responsible for determining employment status
- That responsibility now sits with the "engager"
- Fines/penalties no longer sit with the PSC
- Fines/penalties will now sit with the "fee payer"



**SMALL COMPANY  
EXEMPTION**



**STATUS DETERMINATION  
STATEMENT**



**CHAIN OF  
COMMUNICATION**



**DISPUTE PROCESS**



**TRANSFER OF DEBT**

# IR35 - The Key Points!



In its simplest form, making an IR35 assessment comes down to whether the contractor provides their service as a genuine business or looks/acts/operates more like an employee.

There are a whole host of factors to consider when looking to decide on someone's IR35 status and often the answers are not black and white. It can certainly be argued that legislation is written with intentional "grey" areas to further complicate matters.

## SO, WHERE TO BEGIN?

We have focused on the 3 key areas over the coming pages that should be considered in IR35 conversations. Assessing these areas will set you well on the road to understanding the probable outcome of a full status determination.

**1**

**RIGHT OF SUBSTITUTION**

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**2**

**CONTROL**

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**3**

**MUTUALITY OF OBLIGATION (MoO)**

1

2

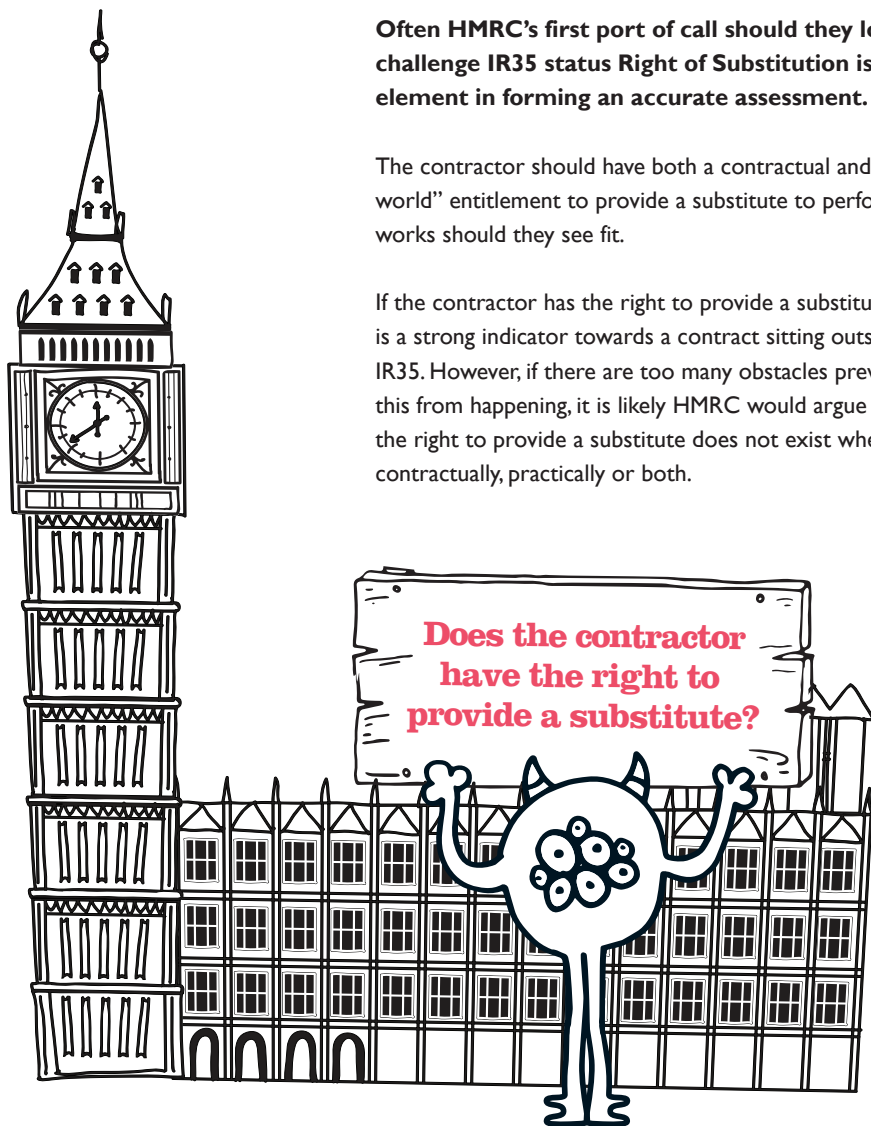
3

# Right of Substitution

Often HMRC's first port of call should they look to challenge IR35 status **Right of Substitution** is a key element in forming an accurate assessment.

The contractor should have both a contractual and "real world" entitlement to provide a substitute to perform the works should they see fit.

If the contractor has the right to provide a substitute this is a strong indicator towards a contract sitting outside IR35. However, if there are too many obstacles preventing this from happening, it is likely HMRC would argue that the right to provide a substitute does not exist whether contractually, practically or both.



1

2

3

# Control

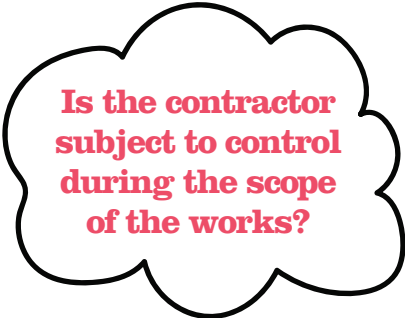
**For a contract to sit outside IR35 the contractor should not be subject to control during the scope of the works beyond reasonable briefing, checks and agreed updating during the project.**

Control is likely to be to a point that is not viable for an outside assessment if the client can:

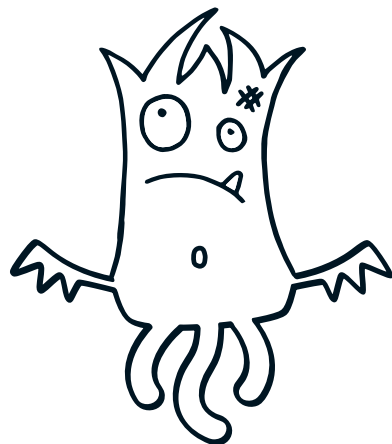
- Stipulate working hours and locations.
- Directly advise or instruct how the work should be carried out.
- Insist that the contractor commits exclusively to the client.
- Tell the contractor **HOW** to perform the works.

If the above epitomise the relationship it is highly likely to lead to an inside IR35 assessment as it would lead toward and expected relationship between that of an employer and employee.

If the above scenarios are not present and the contractor is instead working on their own accord, managing their own time and workload and carrying out the work as they see fit, status is likely to lean towards being outside IR35.



**Is the contractor subject to control during the scope of the works?**



1

2

3

# Mutuality of Obligation (MoO)

MoO is perhaps the most controversial element when conducting assessments due to the fact that HMRC do not assess this area and instead take the stance that it always exists. A stance that has time and time again failed to be supported in court.

Aligned with control, a lack of MoO should allow the contractor the freedom to carry out and complete works on their terms while offering the client the same level of flexibility. Think a lack of MoO will often mean a lack of stipulated working hours, pay outside of completed work, notice periods and commitment to undertake further future projects.

MoO is still absent criteria within the HMRC CEST tool for the reasons mentioned above. It has been rumoured that it will be introduced in an update but at the time of writing this has not proven to be the case...

**HMRC's stance on MoO fails to be supported in court time and time again...**



# Make finding your way... a Cinch!

You may have begun to build a picture of whether you need to act and may even have formed an opinion of action required, what happens next?

Even if you feel a little lost still, don't worry... here's your route to conquering off-payroll reforms!



Q4 2020

- Consult with Cinch!
- Devise individual plan
- Understand your Workforce
- Understand liability
- Engage clients

Jan 2021

- Commit to process to manage the coming months
- Engage your preferred tech to support

Feb 2021

- Confirm POA with clients
- Communicate with affected workers
- Begin engaging new workers under post April method

Mar 2021

- Implement new process
- Re-align rates/pay model where needed
- Ensure SDS for those remaining off-payroll

Apr 2021

- **Relax! You've already done the work!**



# What next?



We would advise getting in touch with the team at Cinch, we'll ask a few questions to get a feel for your circumstances and begin to make some recommendations on required actions!

We'd also like to point out some things we WILL NOT do!



**Sell you an expensive all singing, all dancing piece of software you most likely DO NOT need!**



**Sell you an insurance policy that you most likely DO NOT need!**



**Look to mislead contractors into expensive accountancy arrangements that may have little to no benefit to them!**

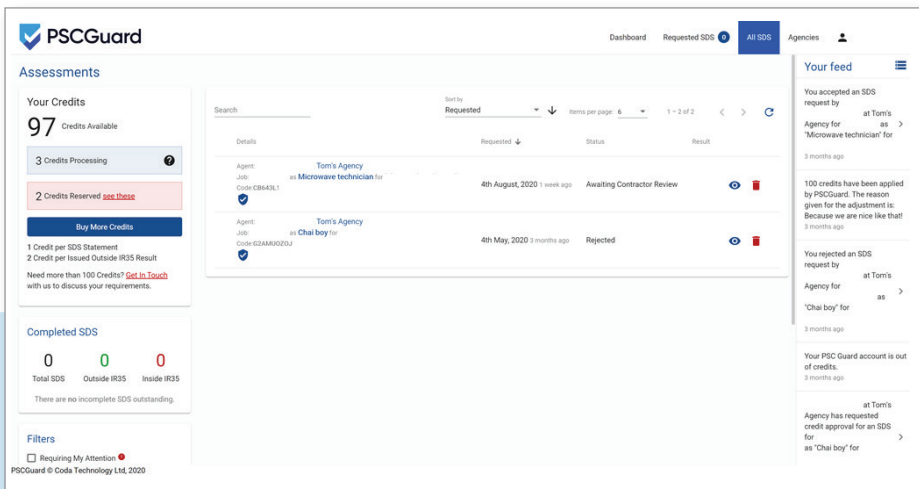


**Scare you, your clients and contractors half to death in order to unfairly promote our Umbrella solution.**

When the time comes to begin collating data and carrying out SDS we are offering a couple of solutions, PSCGuard and Cinch Off-Payroll Manager.

**Both systems are explained in further detail over the coming pages and would be available for demo at any time.**

**PSCGuard provides a licensee with the ability to issue status determination questionnaires to all parts of the recruitment chain. Connecting intermediaries, agencies, contractors, and hirers (end client),**



The screenshot shows the PSCGuard dashboard with the following sections:

- Assessments:**
  - Your Credits:** 97 Credits Available. 3 Credits Processing, 2 Credits Reserved. Buttons for 'Buy More Credits' and 'Get in Touch'.
  - Completed SDS:** 0 Total SDS, 0 Outside IR35, 0 Inside IR35. Note: 'There are no incomplete SDS outstanding.'
  - Filters:** A checkbox for 'Requiring My Attention'.
- Table of Requested SDS:**

Details	Requested	Status	Result
Agent: Job: Tom's Agency Code: CBM43L1 as Microwave technician for	4th August, 2020 1 week ago	Awaiting Contractor Review	
Agent: Job: Tom's Agency Code: Q2AMK0ZU as 'Chai boy' for	4th May, 2020 3 months ago	Rejected	
- Your feed:** A list of recent events, including 'You accepted an SDS request by...' and '100 credits have been applied by PSCGuard...'.

PSCGuard allows each party to confirm their understanding of the assignment in question and how off payroll legislation impacts its status as being inside or outside.

Each party in the chain is further responsible for reviewing the complete set of answers to the status determination questions, providing the option to accept or reject the outcome. Full acceptance of the status decision closes the determination and records all responses, comments and the final outcome of inside or outside IR35.

Invite your agency and intermediary partners to begin creating new SDS'. Manage your

agencies' and intermediaries' users and rights. This includes the option to auto-approve utilisation of your credits upon SDS creation; or if you would prefer to authorise usage yourself, you can disable this feature.

Review all requested and completed SDS', as well as those open that may require some chasing beyond our automated email notifications. Understand which partners are issuing the most SDS'. The integrated news feed means you are able to navigate directly and seamlessly to any action required within the portal.

# PSCGuard Continued

**PSCGuard** AWeSoMe Agency Ltd

Completed SDS: 1, Total SDS: 1, Outside IR35: 1, Inside IR35: 0

There are no incomplete SDS outstanding.

**Filters**

- ☐ Requiring My Attention
- ☐ Awaiting Credit Approval
- ☐ Awaiting Agent Questionnaire Answers
- ☐ Awaiting PSC Review
- ☐ Awaiting Answers Review
- ☐ Inside IR35
- ☐ Outside IR35
- ☐ Rejected
- ☐ With Reserved Credits
- ☐ With Insurance
- ☐ Include Deleted

Job	ContractorName	ClientName	Code	Requested	Status	Result
Job: 0VSDY7ADKX	Commercial Brown Hovverly	ClientName	Review: 1	11th June, 2020 2 months ago	Awaiting Client Review	
Job: Boss Man as Devoted Developer for The Client			Code: AF1UJ2W76 Review: 1	22nd May, 2020 3 months ago	Completed	Outside

**Start New SDS**

The contractor Boss Man has accepted your SDS answers. All parties have now completed their review.  
3 months ago

Boss Man has commented on an SDS answer for "Is the contractor an office holder of the client here?"  
3 months ago

The client The Client has accepted your SDS answers.  
3 months ago

The client The Client has accepted your SDS answers.  
3 months ago

The Client has commented on an SDS answer for "Is the contractor an office holder of the client here?"  
3 months ago

You started a new SDS for Boss Man as Devoted Developer for The Client.  
3 months ago

Your SDS request for Boss Man as Devoted Developer for The Client has been approved.  
3 months ago

PSCGuard © Code Technology Ltd, 2020

- Understand on a per SDS level what the current status is and where any delays are occurring.
- Deep-dive into individual SDS' to review comments and responses.
- Analyse bottlenecks to determine points of conjecture that are holding up a unanimous decision to certain questions.
- See how many credits you have available, top-up, and review how many 'reserved' credits are being held by pending SDS decision outcomes where optional insurance has been chosen (reserved insurance credits are held up automatically and refunded for INSIDE IR35 decisions).



# Cinch Off-Payroll Manager

(This system can be branded with your agency branding)

- Cinch can support with initial data capture and/or analysing that data to consider your potential change/liabilities.
- Initial and full assessments carried out by industry experts who understand in full Off-Payroll regs.
- You would receive visual reports detailing findings, liability and next step guidance (E.g. below).
- PDF SDS which can be held for audit purposes.

## Initial Assessment

Is the work inside CIS?	Weekly gross pay	Initial determination - Off Payroll
No	£2,260.00	✗
Yes	£1,750.00	✓
No	£860.00	!
No	£1,345.00	✓
Yes	£2,675.00	✓
	£1,750.00	✓
	£860.00	✗
	£975.00	
	£2,125.00	

## Example Company

### Overview Sheet

- ☐ Contractor Assessment
- ☐ IR35 SDT

### Liability PA

EMP NI Liability PA: **£58,125.60**

### Liability PW

EMP NI Liability Per Week: **£1,117.80**

Primary	Initial determination - Off Payroll	Client	Expected end date	LTD Co Name if known	Notes	Start date
Candidate A	✓	Orange Projects	June 2020	ABC Consulting	Proceed to proofing	08/07/19
Candidate B	✓	Pink Projects	Aug 2020	ABC Consulting	Proceed to proofing	11/11/19
Worker 19	✓	Pink Projects	June 2020	ABC Consulting	Proceed to proofing	03/11/19

Primary	Initial determination - Off Payroll	Client	Duties	Start date	Weekly Gross Pay	EMP NI Liability PA
Worker 23	!	Red Power	Engineer	08/07/19	£1,250.00	£8,970.00
Candidate C	!	Red Power	Engineer	11/11/19	£1,125.00	£8,073.00
Worker 8	!	Red Power	Engineer	03/11/19	£1,250.00	£8,970.00

# umbrella

By enlisting Cinch to get your contractors up and running, you'll have lots more time for placing candidates, sourcing talent and growing your client list. With Cinch Umbrella, you won't have to spend your time dealing with payroll queries, because at Cinch, **we see to it!**

## Why Cinch Umbrella?

There are many reasons to use Cinch as your umbrella provider, but here are just a few...

- Competitive worker margins
- Professional Indemnity, Public Liability and Employers Liability insurance cover
- Drivers Negligence cover (Maximum single Claim of £15,000)
- Experienced advisors
- Dedicated account manager
- Unparalleled customer service

In brief, the umbrella option is probably for your contractors if...

- They choose to have their tax affairs managed at source (PAYE)
- They're working within the public sector and/or inside IR35
- They're not sure how long they are going to be contracting
- They are completely new to contracting
- They want to do very little paperwork

Contact Cinch today on: 0114 478 9351





We ensure you and your contractors always remain compliant with all legislation. Our role in life is to make sure your contractors enjoy all the good things about being self-employed, with none of the payroll monsters to drag them down.

## Why Cinch CIS?

Cinch knows CIS inside and out, we can advise you and your workers on the best options available:

- Unlike other providers, Cinch work with you to understand whether your workers can operate as Self-Employed
- Competitive worker margins
- Dedicated account manager
- Comprehensive insurance cover
- It doesn't stop with Construction. We have experience helping Self-Employed workers in all sectors, including Driving and Rail

In brief, the CIS option is probably for your contractors if they...

- Are skilled workers
- Are not under direct control and supervision
- Want to do very little paperwork

Contact Cinch today on: 0114 478 9351

[www.thecinchgroup.com](http://www.thecinchgroup.com)



# outsource

As the temporary labour market continues to evolve, we at The Cinch Group have ensured we stay ahead of the curve by offering a comprehensive range of support services to recruiters and hirers. Our services include a range of finance options, audits, HMRC compliance checks, software enhancements and Payroll outsourcing models among others.

## Why Cinch Outsource?

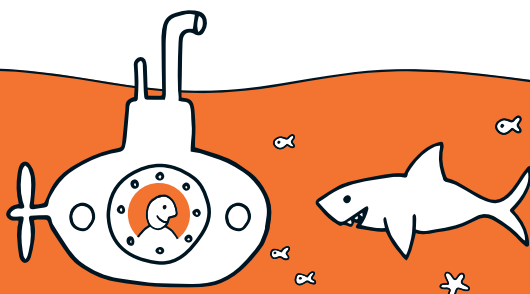
True industry experts are hard to find, now you need look no further to find the perfect advisors to your business:

- Many decades experience within the recruitment and contractor marketplace
- Bespoke packages to assist where you need support, Payroll/Accounts/Invoicing/Credit Control
- Our services are proven to support our clients in growing existing and attracting new clients
- Free consultation and proposal

Speak to our team if you are:

- A new start up looking to finance your business
- Looking at finance options to take your business to the next level
- Would like to hear how our free vendor management and compliance software can give you a competitive edge
- Looking to outsource your payroll function, including PAYE staff, Accounts, Invoicing and/or Credit Control
- Spending too much time focusing on back office function distracting you from growing your business
- Concerned about your supply chain and would like a no obligation review

Contact Cinch today on: 0114 478 9351



[www.thecinchgroup.com](http://www.thecinchgroup.com)

# Get in touch!

If you want to find out how we make navigating through Off-Payroll/IR35 a cinch, speak to one of our friendly team today. It could be the start of a beautiful relationship...



Call us today:  
0114 478 9351

Email:  
[sean@thecinchgroup.com](mailto:sean@thecinchgroup.com)

**cinch**

We see to it.

The Cinch Group, Unit 2, Shepcote Office Village, Shepcote Lane, Sheffield, S9 1TG