

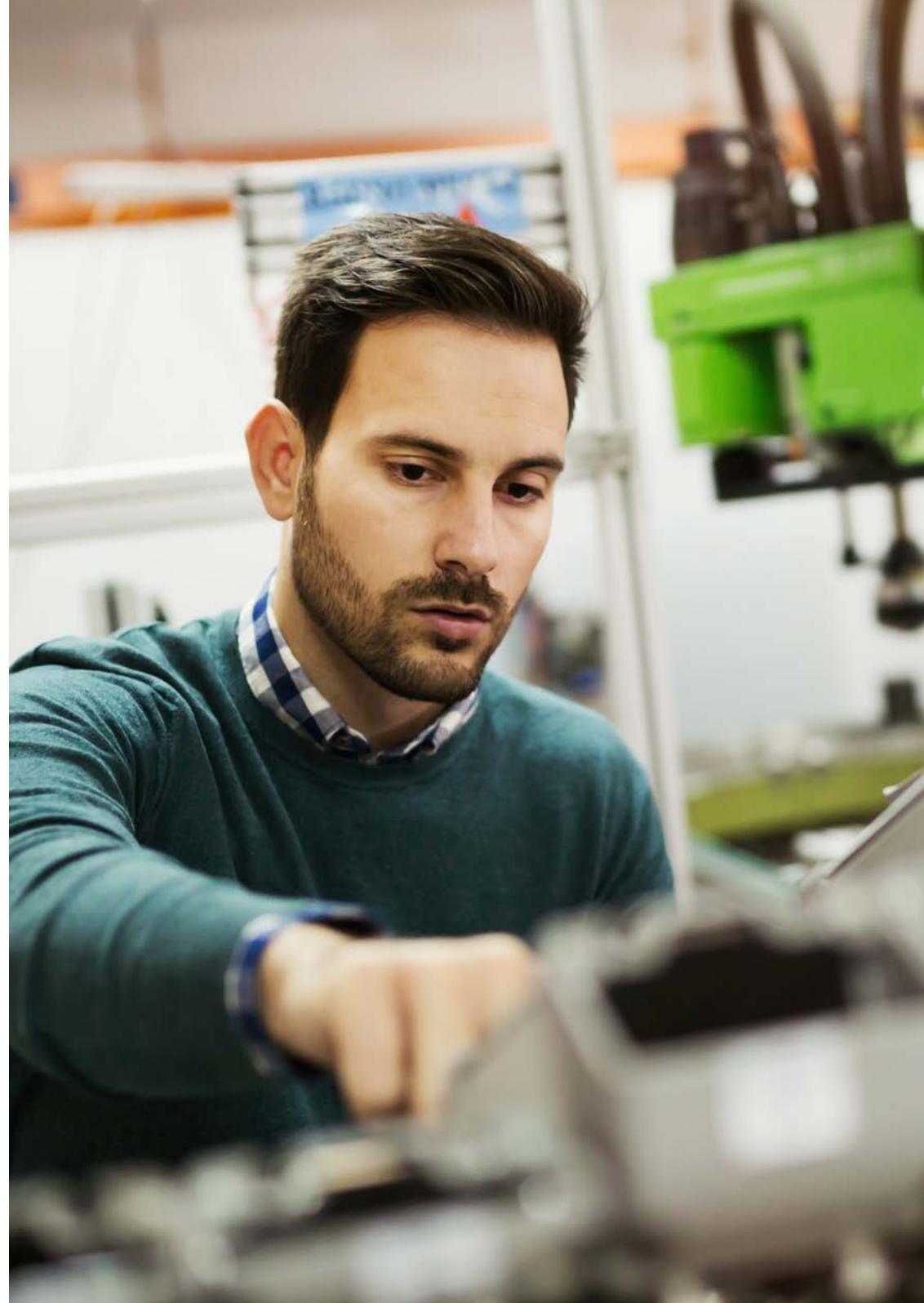
A photograph of a business meeting in a modern office. In the foreground, a man with glasses and a beard, wearing a blue denim shirt, is seated at a table and writing in a notebook. Next to him, another man with a beard and a brown jacket is looking towards the right. In the background, two women are standing and talking; one is wearing a teal top and the other a blue top. The office has large windows and papers pinned to the wall.

SThree Customer Guide To IR35

IR35 - the upcoming changes and what they mean to you

This guide is for anyone who is engaging with flexible workers/contractors. If you are part of a business that **hires contractors** (you may be a hiring manager or engager or perhaps part of a senior leadership team, HR or procurement function) it's important that you **understand the upcoming changes**, the impact and potential risks on you and your business.

We also break down how you might want to think about future talent management and contractor engagement strategies to ensure that you are not only compliant but also ensure your business remains commercially attractive to potential contractors.



What is IR35?

IR35 is tax legislation that is **designed to combat tax avoidance** by workers supplying their services to clients via an intermediary – Limited Company (Ltd) or Personal Service Company (PSC) – who would be classified as an employee if the intermediary was not used. These workers are called 'disguised employees' by Her Majesty's Revenue and Customs (HMRC).

IR35 has been in existence since 2000. In 2017 the UK Government made some changes specific to the Public Sector and now plan to roll out similar changes to the Private Sector in April 2020.

Genuine self-employed individuals operating through a PSC in the Private Sector will receive a gross payment to their company and are usually able to pay some of their income as dividends, which usually creates a tax benefit to the contractor resulting in a higher net retention.

HMRC is trying to clarify instances where a contractor is using a PSC to provide services but is operating like an employee. In this scenario, HMRC expect these 'disguised employees' to be paying roughly the same amount of Income Tax and National Insurance contributions as someone who is employed.

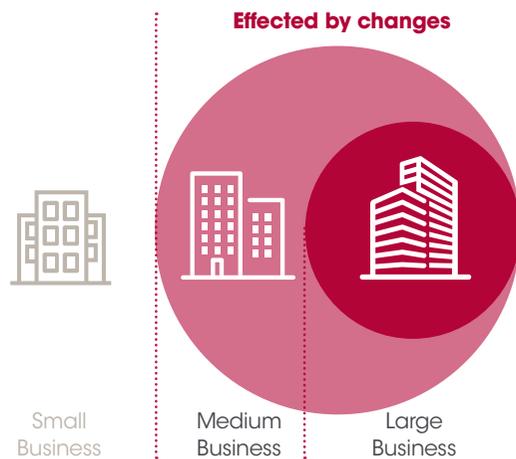


Who will these changes affect?

The change in legislation has already been implemented in the Public Sector and will be rolled out to the Private Sector from April 2020 onwards.

It is likely that any **medium or large businesses** as defined by the Companies Act 2006 will have to implement the new rules. The new legislation will be confirmed in the Finance Bill 2019 and small businesses in the Private Sector will continue with the existing rules. Smaller businesses are defined as those which satisfy two or more of the following requirements:

- Turnover no more than £10.2m
- Balance sheet total no more than £5.1m
- No more than 50 employees.



What is changing?

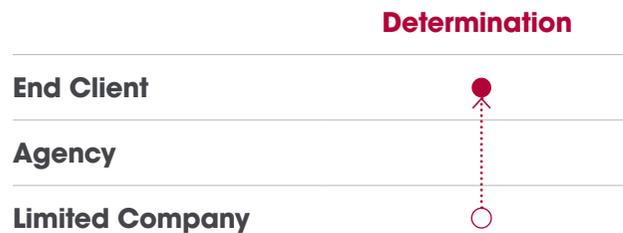
Until now it has been the Limited Company or PSC deciding if the assignment a worker is being engaged to complete is within the rules (Inside IR35) or that the rules do not to apply (Outside IR35).

The big change is that the determination of the IR35 status for the assignment will now move to the Engager or End Client.

This now means that the client, or someone in the client company, has to decide on the IR35 status of the assignment on behalf of the worker.

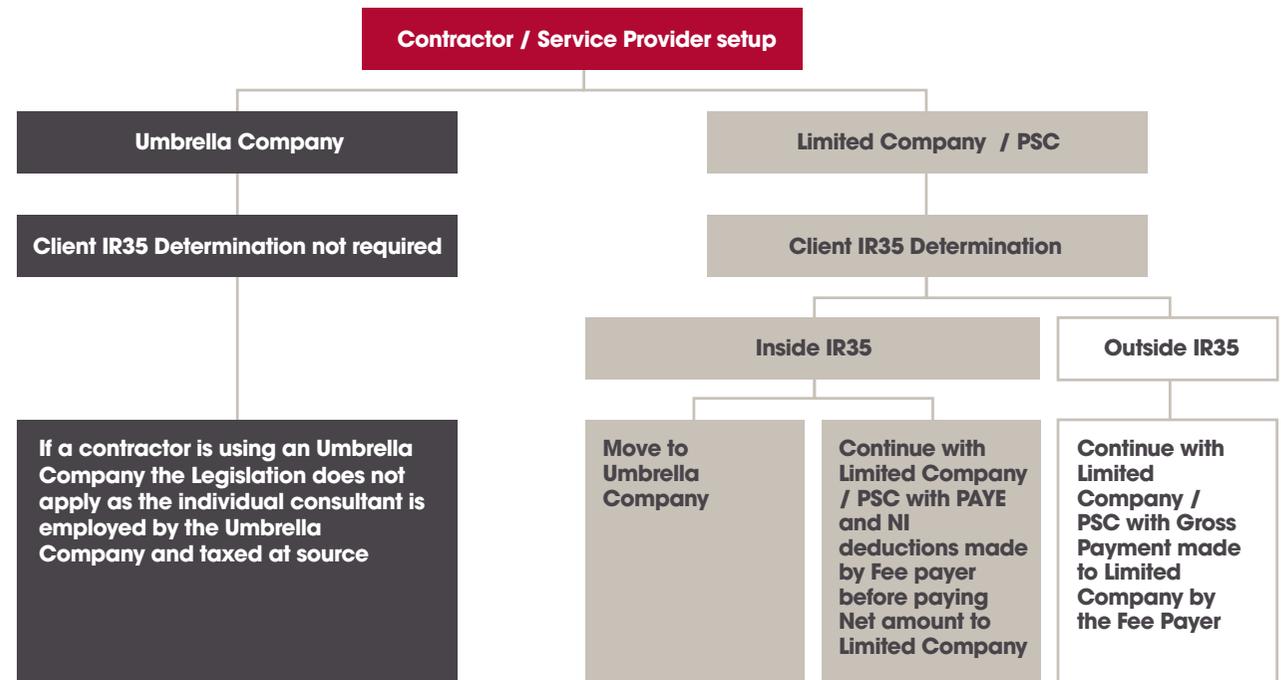
If the rules do apply to the assignment (**Inside IR35**) then the Fee Payer (whoever is closest to the Limited Company in the contractual chain and making the payment to the Limited Company) has to make a deemed payment to HMRC including PAYE Tax and National Insurance contributions before paying the net amount to the Limited Company.

If the decision is that the rules do not apply (**Outside IR35**), then the Fee Payer would make a normal gross payment to the Limited Company with no deductions.



Existing Private Sector rules: ○

New Private Sector rules: ●



Determining the IR35 status

For a client to decide if a contractor is genuinely self-employed (Outside IR35) or a 'disguised employee' (Inside IR35) they have to consider a number of factors.

Some of the key factors that are considered, based on existing case law, are 'Control', 'Personal Service' or 'Mutuality of Obligation (MOO)'.



Control

Most contractors supplying services to an end client will be highly skilled in their area of expertise. As a result, **they should not be subject to control from the client in relation to how they deliver the services** they have been engaged to provide. Some of the areas of 'Control' most commonly reviewed look at whether or not a client can dictate **how** the work is to be provided, **when** the work is to take place and **where** it is carried out.

If a client has the ability to and in reality does dictate the **how, when and where** elements of control, then it could be argued that the PSC/Limited Company is under control of the end client. A client simply reviewing the progress of services that are being delivered would not be considered on its own as control.



Personal Service

Personal Service is a strong indicator of employment status. In a 'normal' employment relationship, the employee would not be able to send in a substitute to carry out their services.

Where a contractor is operating outside IR35 there should be a 'right of substitution' clause in the contract. However, **it's not enough just to have this clause in the contract and it must be reflected in the working practices of the arrangement**; meaning that if a substitute was provided at any point, that substitute would be accepted by the client.



Mutuality of Obligation (MOO)

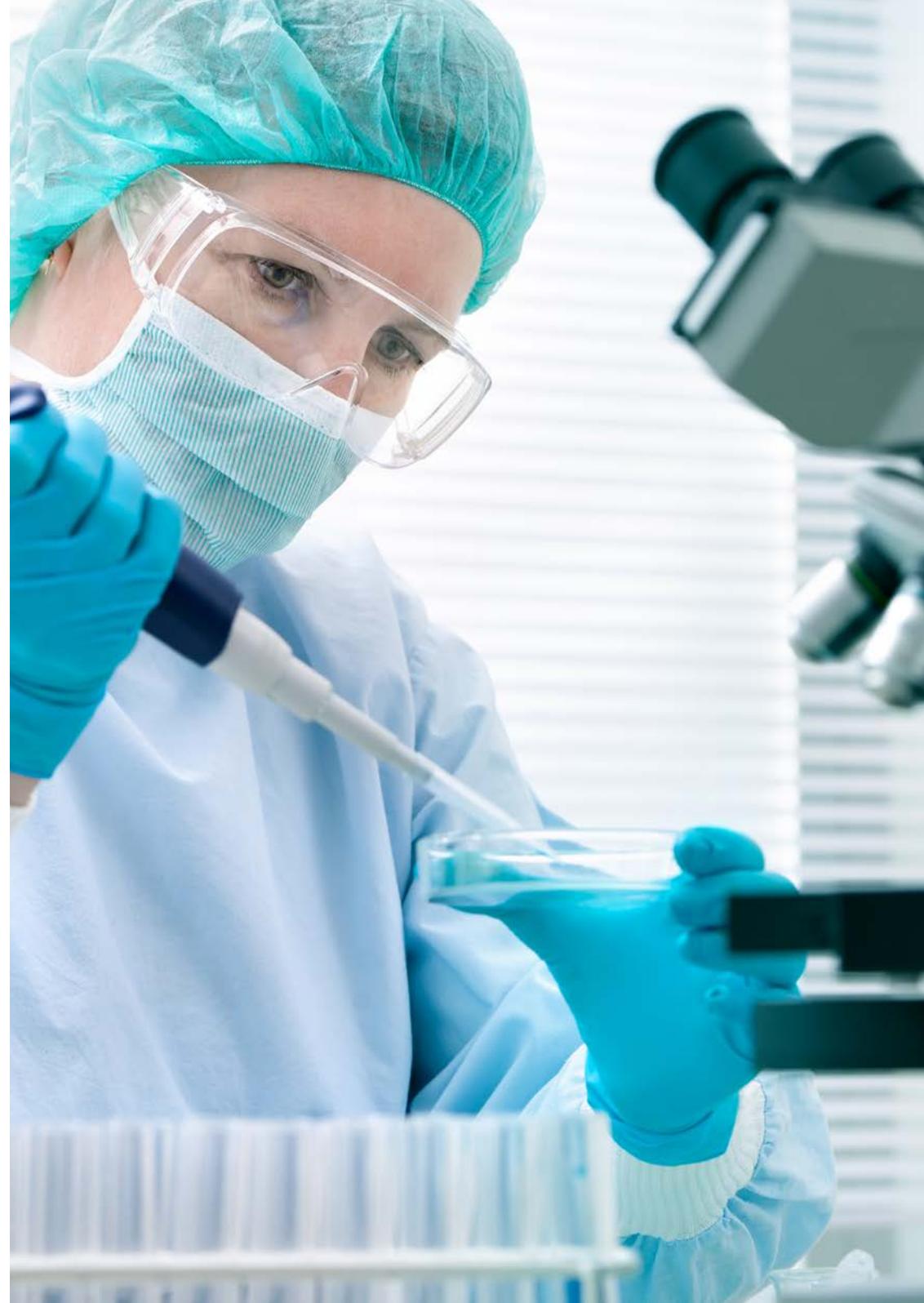
This examines the obligation of the end client to provide the contractor with work on an ongoing basis and whether or not the contractor is obliged to carry out that work. **A genuine self-employed outside IR35 setup would see the contractor engaged for a specific project or piece of work and if anything else is offered, the contractor would not be obliged to accept it.** If they do, this could be acceptable but would need to be agreed under a separate contract, specific to the new piece of work or assignment.

Umbrella Company Contractors

Anyone supplying services using an Umbrella Company does not fall into this legislation. This is because they are employed by the Umbrella Company and the relevant Income Tax and National Insurance contributions are paid in the same way as any traditional employee.

It is important to understand which Umbrella Companies are being used in the supply chain. Some companies are not providing compliant solutions and with the Criminal Finance Act in place, having a compliant supply chain where an Umbrella Company is involved has never been more important. Here at SThree we have a compliant Umbrella Company Approved Supplier List and only trade with compliant companies to remove any risk from the supply chain and protect our contractors, our clients and ourselves.

Our approved suppliers are listed below:



Things to consider when making IR35 determinations



Audit

Firstly, make sure you are able to identify and understand how many flexible workers you have within the organisation; this is a great way to start to prepare your business. Not only knowing how many contractors but being very clear on understanding how they are engaged is vital. With many different engagement models, contractors supplying services directly or through an agency, through a consultancy, via a Limited Company or an Umbrella Company it's important to understand the structure of each one individually.

Once the audit is complete and you know which contractors need to be determined, the next step is to create a strategy for determination. This will very much depend on the size of the flexible workforce and it's important to consider a few things when going through this process...



Reasonable care

Reasonable care was added to the legislation before the rollout to the Public Sector to ensure that hirers take reasonable care in making their decision on the status of an assignment. This was a result of some clients making 'blanket' decisions and saying that everyone was to be deemed inside IR35 or that Limited Companies could no longer be used. This was not in keeping with the intention behind the legislation and the reasonable care element was added to prevent this.

The Government has indicated this could be further enforced in the Private Sector and has stated in the consultation that it "intends to further explore options for the consequences of businesses failing to use reasonable care in making their decisions". It's going to be important for businesses in the Private Sector to be able to show that they have documented processes and procedures in place; including training and support to assist anyone looking to engage with a flexible worker to ensure the correct IR35 decision has been reached.

If clients/engagers make a determination that a contractor is Outside IR35, but on subsequent audit is found to be Inside IR35, the question then arises as to whether an incorrect determination was made, resulting in the hirer becoming liable for any income tax that should have been deducted. Hirers are protected from this scenario through the introduction of a reasonable care clause. This states that so long as the hirer can demonstrate they have taken reasonable care in making a determination, a subsequent re-characterisation does not in itself result in the hirer becoming liable. Instead, documentation e.g. correspondence with the fee payer and/or contractors explaining the reasons for the determination, can be used to protect hirers. It is therefore important for businesses to evidence their IR35 determination process. Failure to do so will leave hirers exposed to potential liabilities.



Role-based determinations

Taking reasonable care into account, blanket decisions are not an option. However, if you have a number of contractors carrying out similar assignments and providing the services against that assignment in a similar way, a role-based determination can be a good place to start to understand if roles are likely to be deemed inside or outside IR35. This will set the scene for you to give an overview of the flexible workforce where there are a number of workers in a similar assignment. Once this has been done, an individual assessment must be completed to ensure that reasonable care has been taken in reaching the decision.



Tools that can help

HMRC released a CEST (Check Employment Status for Tax) tool in advance of the Public Sector rollout. It is an online tool that either the end hirer, contractor or agency can complete to help determine the status. The output, once the online process has been completed, is a determination confirming the IR35 status and HMRC have said they will stand by that determination as long as the information that has been entered was accurate. It is important to note that although anyone in the chain can complete the tool, the responsibility is on the end client to make the determination on the IR35 status.

To use the CEST tool please [click here](#)



Other tools/services to help with determinations

There are a number of other companies in the market who can help with providing independent IR35 determinations. They will usually look at a combination of the contractual setup, the working practices and have conversations with either the individual supply services or the end client before making a determination.

IR35 & Off Payroll Legislation Timeline



Public Sector Update

If you are a business operating in the Public Sector, you will already be familiar with the Off Payroll Legislation and the changes that were implemented in April 2017.

It is important to note that after the new consultation having been released, HMRC have made it clear that the changes being proposed to the Private Sector would equally apply to engagements in the Public Sector from April 2020.

Q1 2019 The further consultation has been released where we have seen a few key points / learns from the Public Sector rollout being covered, including: updates and improvements to the CEST tool, changes to Reasonable Care, clarity on if the Fee Payer has to follow the end hirer decision, additional reporting obligations, anti-avoidance measures.

Q3 2019 Following the completion of the further consultation, in Q3 we are expecting the Draft Legislation to be published. This will be the first time we get to see the changes that have been confirmed.

April 2020 We will see the new legislation implemented into the Private Sector.

How is SThree able to support you?

As a compliant PLC with extensive experience in contract staffing and IR35, a large part of our UK business trades in the Public Sector. As a result, we have been through these changes before and have built up great knowledge and ways to support our customers in the lead up to and through the transition that we will see in April 2020 in the Private Sector.

We can provide support in a number of ways...

Contractor engagement models

Engagement types and supply chain compliance are two of the key elements to carefully consider. With 33 years of contract staffing experience, working with a compliant PLC such as SThree will ensure your business minimises the potential negative impact of not handling this change effectively; meaning you can instead make positive changes to the way you engage with contractors. To complement our contingent staffing and consultancy services models, we are also able to transition any direct contractors into our Direct Model. Despite the proposed changes in legislation, the contract/flexible workforce is set to grow and SThree are able to support your business to engage with the right suppliers, in the right way.

Contractor population and supply chain audit

Audit to review the current flexible workforce engagement and risk profile. Worker numbers, engagement type, supply chain compliance, an indicative risk analysis of your current population, cost impacts and sample IR35 determinations. We can also include recommendations on options to transition workers into alternative engagement models to reduce risk and to improve contractor productivity.

Readiness for business as usual

Readiness for change assessment that helps you build a targeted IR35 change management plan. This can include workforce and supply chain strategy, on/off boarding, compliance checking and IR35 determination processes. Guidance on best practices and processes aligned to the changes in IR35 legislation.

Business Impact and opportunity analysis

This service looks at the potential business impacts and the business opportunities presented to re-engineer how you manage your flexible workforce. Cost impacts are addressed including potential liabilities, rate increase requests and new systems. Opportunity analysis looks at the opportunity to mitigate the potential financial impacts through supplier re-negotiation and industry innovation to mitigate financial impacts as well as to develop your external workforce as a business asset to deliver competitive advantage.

Education and training

Training modules are flexible and can include: customer understanding of IR35 legislation with advice on what we anticipate happening and the new requirements on the customer, new business processes and working practices for hiring managers. Practical training on how to engage contractors on different models such as Statement of Work (SOW) contracts that include specific work results.

Charlie Cox, Commercial Manager

Charlie has held a number of key roles within SThree's contract staffing business over the last 13 years. In 2017, as Commercial Manager, Charlie contributed in a leading role on the successful strategy and implementation to the reform of IR35 in the Public Sector. Using this experience from our Public Sector exposure, SThree are ready to support our current, as well as any new clients or contractors with the planned extension of this legislation into the Private Sector in 2020.



Please contact your consultant or get in touch with Charlie Cox on c.cox@sthree.com to find out how we can support you.



SThree is a global staffing organisation providing specialist services in the STEM industries (science, technology, engineering and mathematics) since 1986. We have UK offices in Birmingham, Bristol, Glasgow, London, Leeds and Manchester.

sthree.com

SThree in numbers

Global reach

16 **44**

Countries

Offices

Contract runners

11,203

Total headcount

2,979

Total sales headcount

2,332

Brands in the SThree group:



Computer Futures is a leading IT recruitment consultancy, specialising in placing IT experts in permanent and contract roles across Asia, Europe and the US.

computerfutures.com



Real Staffing is a global leader in the provision of pharma, biotech and medical devices recruitment services. Within the UK, Real is also a leading specialist in the provision of public sector, IT, banking & finance and engineering recruitment services.

realstaffing.com

Huxley

Huxley delivers a world-class recruitment service that adapts to your changing needs. We work across our global network of offices based in the world's leading financial, commercial, and technology hubs.

huxley.com

progressive[®] experts in your field

Progressive Recruitment is a global leading, specialist recruitment company, dedicated to providing fully compliant staffing solutions for the following core industries; Engineering, Life Sciences, IT, Construction and Supply Chain.

progressiverecruitment.com