

IR35
One Year On

KINGSBRIDGE

We at Kingsbridge are in a unique position to be able to reflect on the first year of the private sector operating under the IR35 reforms. The strength and depth of our relationships with contractors, recruiters and end clients enables us to investigate the impact the reforms have had across these key groups in the contractor supply chain.

Our team of market leading IR35 experts provide support to over 4,000 end clients and more than 400 recruitment businesses. Since April 2021, in excess of 35,000 IR35 assessments have been concluded using Kingsbridge expertise. This gives us a valuable market perspective. The IR35 - One Year On whitepaper uses datasets from these crucial IR35 stakeholders to shed light on how problems brought about by the reforms are being addressed, and a look at what the future holds.

Paul Havenhand
CEO, Kingsbridge Group



Research was conducted online in February 2022 amongst a combined sample of 1,269 contractors, recruiters, and end clients.

Executive Summary

One year on, it is clear that the fall out and confusion from IR35 reforms are stifling access to specialised talent and could have significant ramifications for end clients, recruiters, contractors and the UK economy.

Too many companies are relying on HMRC's Check Employment Status for Tax tool (CEST), despite its limitations, and too many companies have adopted misguided stances of blanket bans or working with umbrella companies, which are restricting their ability to engage a much needed, highly skilled, flexible workforce.

- End client and recruitment businesses have seen a drop in contractors since the IR35 reform (approx. 70-80% of respondents agreed with this point). The reform has clearly had a dramatic and inhibiting effect on the willingness to hire contract labour.
- 50% of end clients reported that IR35 was the biggest obstacle to hiring contractors in the past 12 months.
- The majority (both independent employment status tool and CEST users) appear to be struggling to place inside of IR35 roles.

- The stats show that using CEST can result in losing contract labour. Recruitment agencies who reported that their end clients use CEST appear to have seen a larger reduction of limited company contractors engaging in providing services compared to independent employment status tool users.

  38% of the respondents who state their end clients use CEST have seen a 61% or greater reduction in their contractor pool vs 23% who use independent employment status tools.

- Recruiters have suggested that, on the whole, they are involved in the process of determining status but a higher percentage of recruitment businesses that have stated their end client uses CEST have not been involved in their client's process.

- 70% of end clients have adopted a collaborative approach with the recruiter to determine the IR35 statuses of their contractor base. This evidences that recruiters have a big part to play in determining status as they ultimately hold the tax liability.

- Where the recruiter is not involved in the process, they could be blindly accepting liability as the fee payer. The CEST tool does not promote collaborative assessments with all parties being engaged in the process. Status requires holistic reviews to get the right information in order for the IR35 status determination to be accurate.

- 50% of recruiters felt that end clients were still not well prepared for IR35 reform in the private sector - somewhat surprising given the amount of time they were given - and suggests that further education is required.

- Recruiters are foreseeing fewer bans in the future and end clients making U-turns on their blanket ban decisions. Significantly, more independent employment status tool users have seen more blanket ban U-turns from their end clients than CEST users (44% versus 26%), making it nearly twice as likely for a U-turn to happen if using an independent employment status tool for an end client, thereby increasing access to contractor talent.

- Additionally, more independent employment status tool users see these figures changing over the next 6 months for the better (fewer bans) compared to CEST (50% independent employment status tool vs 31% CEST), where the prevailing belief for CEST is that there will be no change in the number of bans (51% for CEST vs 38% for independent employment status tool).

- 71% of contractors surveyed are looking only for outside IR35 roles over the next 6 to 12 months, yet these account for less than 41% of roles on offer.

- Some contractors have considered closing their businesses (49%), retiring, or leaving the UK entirely, with a quarter seeking work abroad due to IR35 reform.

- The majority of recruitment businesses (63%) increase rates for inside of IR35 roles, however, the cost of Employers' National Insurance Contributions (NIC) in 41% of instances is being absorbed by the limited company and 41% of instances its being absorbed by the end client.

- 65% of contractors said they have or would try to negotiate an increased rate if placed inside IR35.

- 37% of contractors deemed inside IR35 have seen their day-rate increased compared to 20% of contractors deemed outside IR35, so engagers are almost twice as likely to have to pay a contractor more to work inside IR35.

- From a recruitment business' perspective, the key challenge, alongside greater compliance burden and workload, is the increased difficulty of placing inside IR35 roles.

- 66% of contractors have said they would not consider an inside IR35 role.

- Of all respondents, a positive 60% of contractors said they were involved in the process of determining status.

- Of those contractors who have had an inside IR35 determination in the last 12 months, 90% did not find the appeal process easy, and/or believe they did not have a fair hearing.

- Despite some contractors (29%) not feeling positive about the future, there is a growing body of contractors who *are* confident about the future (42%) working comfortably outside IR35.

- There is a willingness from contractors to play their part in supporting the supply chain, with 47% of contractors holding IR35 insurance.

Whilst better prepared than the 2017 IR35 public sector reform, it could be argued that HMRC was really under prepared with the private sector reform, imposing a short-sighted tax reform with seemingly no other goal than to raise revenue from an industry already devastated by Brexit and COVID-19. The unintended and disregarded consequences are clear.



Whilst there have been significant challenges, and end client projects have ultimately suffered, progress is being made and there are signs of positive change as businesses become more familiar with the risk associated with their IR35 responsibilities. With labour market forces favouring contractors, this group will be leading the charge. They will be able to be more selective, rejecting inside IR35 roles or increasing their rates to ensure their net fee is unaffected.

To avoid losing access to the skilled talent businesses need, and the subsequent economic impact this will have, three things need to happen:

1. More education is needed to address the issues still being experienced. A better understanding of IR35 would be much healthier for the market as a whole.

2. CEST must be made fit for purpose and take Mutuality of Obligation (MOO) into consideration.

3. Companies must be more thorough in their approach to status determination. They need to use more sophisticated tools and advice to find a way to legitimately have more outside IR35 roles, and to have insurance in place to protect them if they do.

Introduction



The business landscape in recent years has been challenging, especially for contractors. But as has been proven many times before, the flexible resource and staffing industry showed incredible perseverance and resilience in the face of adversity to overcome Brexit, COVID- 19 and the introduction of off-payroll working reform (IR35) in the private sector.

Changes to IR35 were implemented in the private sector on 6 April 2021 and moved the responsibility for deciding the employment status of contractors to end clients for medium and large sized businesses/organisations.

These changes were initially implemented in the public sector in 2017, predominantly impacting individuals operating through a limited company, however, there is a wider impact on the sector which has had a rippling effect up and down the supply chain.

The intended impact of the reform was to prevent 'disguised employment'– whereby end clients engage individuals through limited companies and remove the requirement to pay Employers' NIC, sick pay and holiday pay, with the possibility of a reduced tax bill for the individual – but IR35 reforms have had much wider consequences as predicted by many industry bodies and stakeholders alike.

Many industries have reported wholesale changes to the way they now operate with flexible resource. Many sectors report that companies have introduced blanket assessments, deeming all contracts as 'inside IR35' or blanket bans on hiring those operating through limited companies.



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For example, **according to a recent survey of hauliers by the Road Haulage Association[1], over 53% believed that a key reason for the driver shortage in 2021** was down to the new IR35 rules that were introduced in April 2021. This was clearly unforeseen whilst that particular sector battled with Covid-19 and Brexit restrictions.

Unintended and disregarded consequence of the reform is a continued theme with HMRC's own IFF Research titled 'HM Revenue and Customers Research Report 639 - Long-term effects of the Off-Payroll working rules reform for public sector organisations'[2] downplaying not only the cost of implementation to organisations and the difficulties of finding contractors, but also rates of pay increasing and the increased usage of umbrella companies often for no benefit other than to the hiring company.

Compare this to the National Audit Office's 'Investigation into the implementation of IR35 tax reforms'[3] which is a much more inciteful, useful and credible document in comparison to the recent IFF research and contradicts HMRC Research Report 639 in a number of areas.

Kingsbridge is committed to helping contractors, recruiters and end clients overcome the challenges of IR35 reform in the private sector. This research assesses the impact of the changes to IR35 across the self-employed sector by evaluating how engagements have changed over the last year, how companies are making status determinations and the impact the changes have had on freelancers and their incomes, including where contractors are being required to utilise the services of an umbrella company.

1 LinkClick.aspx (rha.uk.net)
2 Long term effects of the Off-Payroll working rules reform (publishing.service.gov.uk)
3 Investigation into the implementation of IR35 tax reforms (nao.org.uk)



Impact of IR35 on employment agencies

IR35 reform has transferred the responsibility of making IR35 status determinations away from the contractor and instead made the end client responsible for that decision. It has also, in most instances, made the fee-payer liable for the tax due, which is the party closest to the contractor. This is often the recruitment agency; which plays an important role in the supply chain and carries the most risk in the form of tax liability. It is therefore important for recruitment agencies to play an active role in ensuring IR35 compliance.



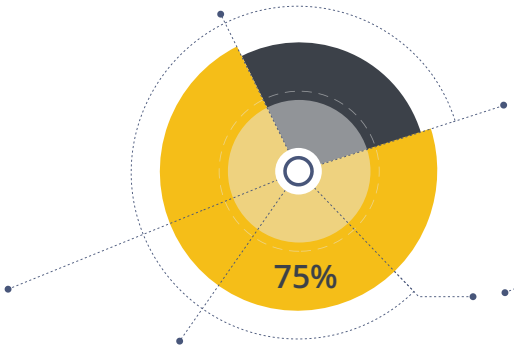
Where the recruitment agency is the fee-payer, they will be required to deduct the appropriate tax and NICs from the contractor's fee before making payment. Fee-payers will also be responsible for paying the relevant Employers' NIC and Apprenticeship Levy to HMRC or utilise an alternative service such as umbrella companies.

Naturally with risk comes compliance and IR35 reform is no exception. **76% of recruitment agencies have reported that their compliance costs have increased since the reforms were introduced last year**. This is partly down to recruiters choosing to engage the services of an independent employment status tool provider, such as Kingsbridge, who have their own IR35 status tool to assess status and provide expert IR35 consultancy to support the supply chain. This will come at a cost but it's a cost that recruiters most often believe is worth paying to access experts who can provide guidance to the supply chain and ease the IR35 compliance burden.

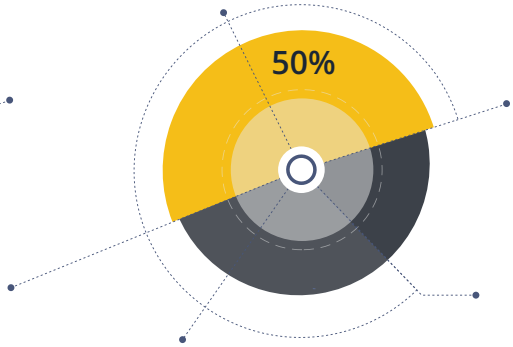


Drop in contractor numbers

Almost half (47%) of our recruitment business respondents have said that 41% or more of their recruitment pool is made up of contractors. Whilst this could be read as a reasonably healthy number, **around 75% of our respondents have indicated that this has decreased since the reform in 2021.** This indicates that the IR35 reform has had a rather dramatic effect on the willingness to engage contract labour by end clients and recruiters.



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50% of end clients reported that IR35 was the biggest blocker to placing contractors in the past 12 months.

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CEST versus independent employment status tools

In 2017, HMRC created an online tool to be used in line with the public sector changes to assist organisations in assessing IR35 status: Check Employment Status for Tax (CEST). It is a free service consisting of multiple-choice questions leading to a decision on IR35 status. However, whilst being optional, free to use and despite HMRC's encouragement to use it, the tool remains insufficient for assessing status, having been damningly criticized by the industry and the House of Lords.



HMRC is committed to updating CEST to make it clearer, reduce user error and to enable it to consider more detailed information. CEST has undergone several iterations since its launch in 2017 and has been updated several times before HMRC settled on its current version, but industry experts believe it hasn't gone far enough.

Interesting then that the choice of status tool appears to play a part in the drop in use of contractors. **Recruiters who indicated their end clients use HMRC's free CEST tool appear to have seen a larger reduction of limited company contractors engaging in providing services compared to independent employment status tool users (38% versus 23%).**

The fact that large numbers of end clients are using independent employment status tools to assess IR35 status also clearly shows the industry has doubts about CEST which are shared by Kingsbridge's head of tax Andy Vessey:

> *CEST fails to address Mutuality of Obligation (MOO), which is one of the three key tests of status. This is because HMRC refuse to accept that MOO goes beyond the creation of the "irreducible minimum". This basic feature is present in employment and self-employment contracts alike, so MOO has to be explored beyond this*
>
> *Andy Vessey*
> **Head Of Tax, Kingsbridge Group**

Taking CEST data in the period between 25 November 2019 and 31 August 2021[4], CEST generates an inside IR35 determination 30% of the time. A potential explanation to this high percentage is that end clients who have initially conducted a CEST determination have been overly cautious in the process, which has given rise to inside determinations. These inside IR35 determinations may ultimately lead to contractors refusing to accept an offer of work inside IR35.



CEST produces indeterminate results in 21% of instances, so end clients may not be able to rely on getting an inside or outside result. This can cause concern over unresolved status matters, forcing end clients to err on the side of caution in the event of an indeterminate result, leading to an inside determination being produced.

Conversely, independent employment status tools often do not have this flaw. A key selling point for most external providers is having an IR35 expert behind the process ready to resolve borderline cases (should they arise) when looking at IR35 status.



4 Check Employment Status for Tax (CEST) usage data - GOV.UK (www.gov.uk)

Sharing the burden



Over the last 12 months, supply chains have often worked collaboratively to get a holistic view of IR35 status. Of those surveyed, a surprising 23% of recruitment businesses were not involved in the process of determining IR35 status. This suggests that, where the recruitment business is not involved in the process, they could be blindly accepting liability as the fee payer. Whilst the responsibility sits with the end client, the fact that **74% of respondents indicated a collaborative approach had been adopted to determine IR35 status** shows that recruiters have a huge role in determining status as they ultimately hold the tax liability once the end client discharges their responsibility.

As CEST is a web based questionnaire, it does not promote a collaborative approach to IR35 status with all parties being engaged in the process. Status requires holistic reviews to get the right information from the relevant parties involved. Independent employment status tools generally promote a framework external to the question set to encourage a collaborative approach. This in most cases is a preferred method of working which is echoed by Kingsbridge's Commercial Director, Andy Robinson:



"As we expected, many recruitment businesses have provided significant support to their clients in navigating the Off-Payroll reform. From general education to actual involvement in the Status Determination process, those recruiters who have provided this support to their clients have often seen a commercial benefit from the further collaboration. Many ultimately engage with a partner like Kingsbridge to provide the platform for a collaborative assessment methodology."

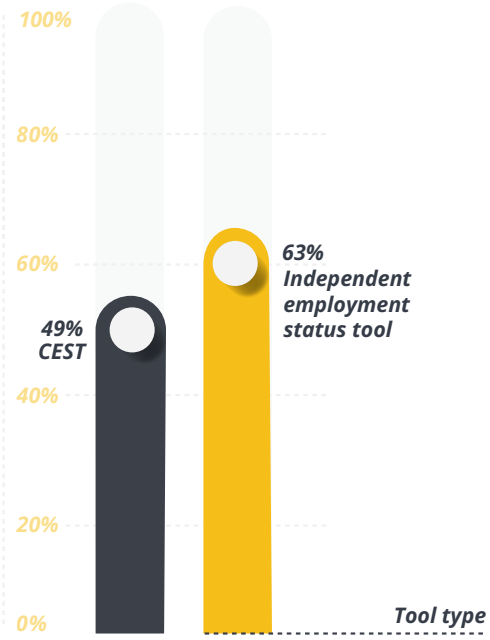
Andy Robinson
Commercial Director, Kingsbridge Group

Inside versus outside IR35

Our research suggests that independent employment status tools are assessing more contractors outside of IR35 when compared to CEST.

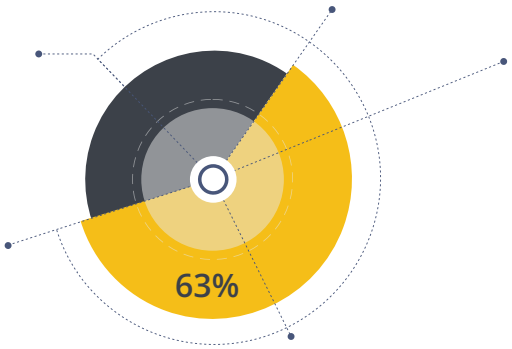
When it comes to placing roles, **49% of CEST users surveyed place more outside roles than inside on average, compared to 63% of independent employment status tool users.** Given that the IR35 reform shifted the burden of determining employment status onto the end client, it is likely that independent employment status tool users are getting more support from their supplier to help drive more accurate determinations. Certainly, for CEST users facing a high percentage of indeterminates, having the results reviewed by an expert will avoid forcing some contractors unfairly inside IR35 or making vacancies harder to fill.

From a recruitment business' perspective, the key challenge, alongside greater compliance burden and workload, is the increased difficulty of placing inside IR35 roles.

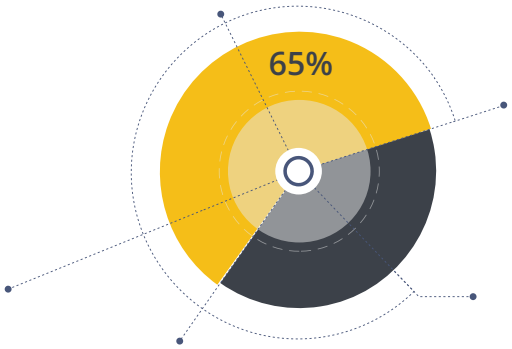


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63% of recruitment businesses said they increase rates for inside IR35 roles.

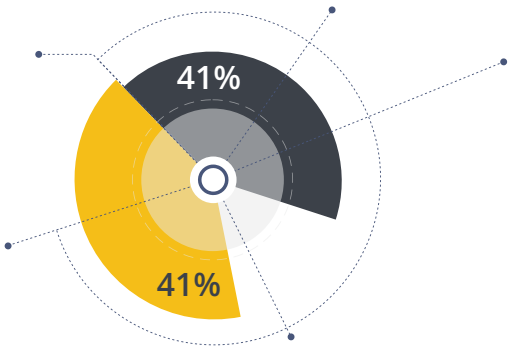


This mirrors the 65% of contractors who would ask for increased rates if placed inside of IR35.

As the labour market becomes more favourable to the worker, more contractors are going to be in a position where they can afford to be selective and therefore able to reject inside IR35 roles or demand an increased rate to ensure that their net fee is unaffected. Indeed, this is reflected in our research. **63% of recruitment businesses said they increase rates for inside IR35 roles. This mirrors the 65% of contractors who would ask for increased rates if placed inside of IR35.**

However, in 41% of instances, the cost of Employers' NIC is being absorbed by the contractor's limited company, and in 41% of instances it is being absorbed by the end client. It is unfair to force the contractor to accept a lower fee, particularly if the end client has not properly considered the worker's status by blanket banning the use of limited company contractors, or not engaging with IR35 status at all.

This disparity between contractors wanting outside IR35 roles and clients offering inside IR35 roles could, in part, be because much of the private sector is still nervous and uneducated about IR35, so they perceive not working with limited company contractors at all, or making them inside IR35, a safe solution to the problem.



However, in 41% of instances, the cost of Employers' NIC is being absorbed by the contractor's limited company, and in 41% of instances it is being absorbed by the end client.



From experience, it is quite often the case that end clients and agencies are perhaps not as educated on IR35 as the market as a whole would like, leading to situations whereby clients are forcing roles inside (or not engaging with contractors at all) where they could quite reasonably position the engagement outside and attract the best talent by simply understanding IR35 a little better. Recruitment agencies are possibly feeling this most keenly as they are receiving pressure from both sides of the fence – the contractors wanting outside engagements or at the very least a clear and understandable determination, and the client wanting to mitigate their risk.

Matt Tyler,
IR35 Consultancy Manager, Kingsbridge Group

A fair status determination

Over the last 12 months, the industry has seen contractors and stakeholders campaign for fair IR35 status determinations. This will ultimately lead to better compliance and a more transparent IR35 determination process.

Overall recruiter data shows that **30% of all users believe their contractors are being treated unfairly** in respect of their IR35 status determination.

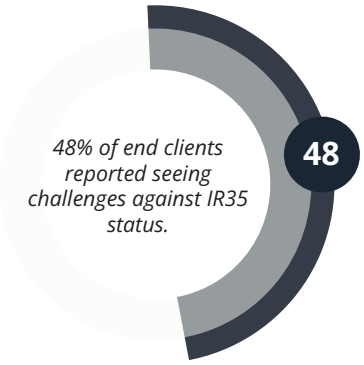


30% of all respondents' believe their contractors are being treated unfairly.

Amongst contractors, complaints of unfairness led to appeals. In fact, **48% of end clients reported seeing challenges against IR35 status.**

Amongst recruitment businesses (fee-payers) where their end client is using CEST, two thirds have not challenged the IR35 status provided by their end client, whereas over half of independent employment status tool users have.

There are a couple of explanations for this. Recruitment businesses might feel that because CEST is HMRC's tool, perhaps HMRC are the leading authority on employment status and CEST must be producing an accurate result. It could also be because CEST users are less supported and therefore may not feel emboldened or equipped to appeal the Status Determination Statement (SDS). Like contractors, they could also be resigned to the fact that the end client is unlikely to change their mind.



48% of end clients reported seeing challenges against IR35 status.

Independent employment status tools are more likely to have an integrated dispute process which would also make a difference when comparing appeals from CEST versus independent employment status tool users. Equally a business using an independent employment status tool is probably more likely to have a stronger eye on compliance, making their dispute process more visible than someone using CEST.

Once again, this may be a failing of the framework around CEST. The integrated dispute resolution features in independent employment status tools make disputes of status more accessible to the supply chain, giving the contractor more confidence that the process is fair and manages status appropriately.

Interestingly, **32% of end clients feel they do not have a robust appeals process in place, which may be storing up problems for them going forward.**

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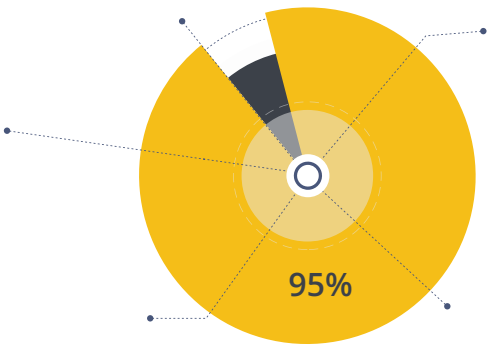
Blanket bans



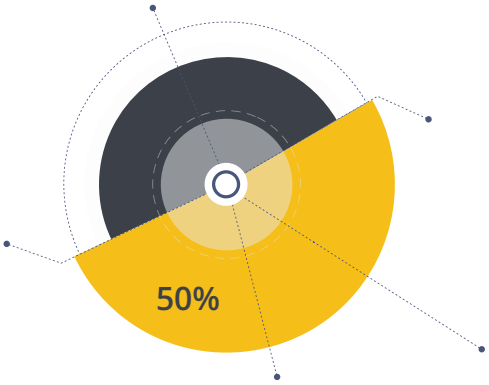
A consequence of IR35 reform has been the blanket banning by end clients of working with limited company contractors, a short-sighted move by some businesses which restricts the pool of talent from which to select highly skilled contingent labour.

95% of end clients believe blanket banning contractors restricts access to talent. Bans are potentially a knee-jerk reaction to the legislation with only a short-term effect, especially if market forces shift in favour of the contractor. This short-sighted reaction also ties in with the findings that **50% of recruitment businesses felt that end clients were still not well prepared for IR35 reform** - somewhat surprising given the amount of time they were given to prepare, and the fact we are one year post reform. This suggests that further education is required.

Surprisingly, construction is one of the industries appearing to be worst affected by IR35 reforms. This industry has had to deal with employment status for a long time now and has its own Construction Industry Scheme (CIS) rules, so perhaps the impact of IR35 reforms indicates a high level of risk aversion in the industry.



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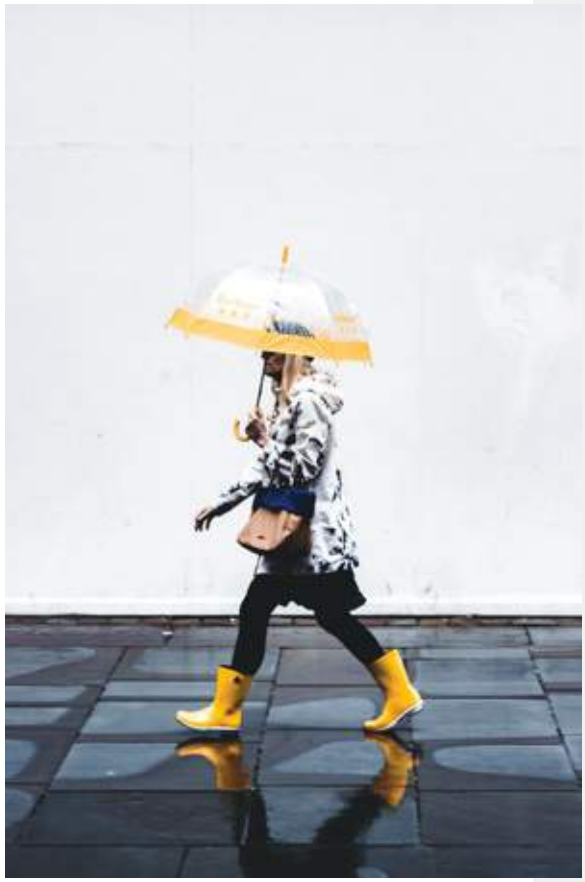
Umbrella companies

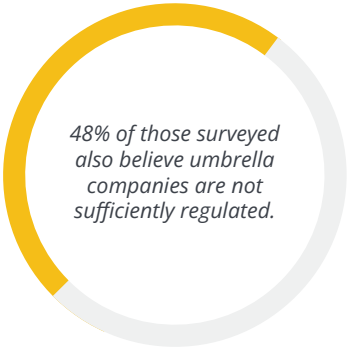


The use of umbrella companies is another consequence of IR35 that featured heavily in our research findings. The government's recent IFF research downplayed the use of umbrella companies when the evidence suggested otherwise. Our research shows that after limited companies, **81% of the rest of the recruitment businesses' workforce is made up of umbrella company users.**

It is therefore notable that 78% of all respondents indicated a significant shift towards the use of umbrella companies. This could be down to risk averse organisations introducing blanket bans on the use of limited company contractors. Umbrella companies may be perceived as a solution to IR35 concerns and are a good alternative, but sometimes can be misused. Working as part of an umbrella company takes away some of the traditional freedoms of being self-employed, and so, whilst it might be good for recruiters and end clients in the short term, it won't be good for the contractor market in the long run. This was echoed by the majority of contractors.

A further complication is that the umbrella market is largely unregulated, meaning that contractors are often attracted by the high returns offered by a small number of companies, not realising that what they are entering into are tax avoidance arrangements that have significant financial consequences for them later on. **48% of those surveyed also believe umbrella companies are not sufficiently regulated.**





If I fell inside IR35, I would have to use an umbrella company and lose nearly 40% of my income, which I am not prepared to do so I would find another type of employment. I have decided to retire at 64, not because I've had enough but because I am not going to have my income siphoned off by umbrella companies. Once things settle and companies are more confident about hiring contractors I may return.

A construction contractor

Positive change

There is, however, reason to be optimistic about the future.

Recruitment businesses are confident of seeing fewer bans in the future along with clients making U-turns on their early short-sighted blanket ban decisions, whereby the end client decides to start engaging with limited companies again.

Recruitment businesses whose end clients are using (or have started using) independent employment status tools have seen significantly more blanket ban U-turns from their end clients than those that continue to use CEST (44% versus 26%), making almost it twice as likely for a U-turn to happen if using an independent employment status tool.

> *IR35 is entirely manageable for organisations when engaging with true IR35 experts. It is important that hirers and supply chains do the heavy lifting in respect of IR35 status as early as possible and adopt a solution like the one Kingsbridge offers to protect their position from the outset. This keeps a complete audit trail of how status was determined for any future enquiries and gives confidence that status has been determined accurately.*
>
> *Ryan Dawson*
> **Kingsbridge Group**

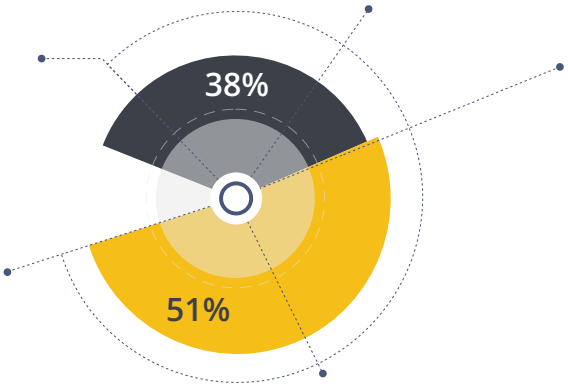
Additionally, more independent employment status tool users predict these figures will improve over the next six months, with fewer bans – 50% of independent employment status tool users versus 31% of CEST users. Again, this could highlight the importance of the IR35 support which is often part of a solution provided by independent employment status tool providers.





This can only be a good thing given the impact of blanket bans on talent selection. A big factor that recruitment businesses believe will see U-turns is education on IR35 and how it could impact the projects which often depend on flexible resource. 44% of recruiters think that more U-turns will happen with a better education programme on IR35.

HMRC would appear to have learned the same lesson as the education series provided for the private sector reform was much more extensive than what the public sector had prior to the 2017 reform.



The prevailing belief for recruitment businesses whose end clients use CEST is that there will be no change in the number of blanket bans in the near future (51% for CEST versus 38% for independent employment status tool users).



Recruitment businesses whose end clients are using CEST appear to be less optimistic, perhaps because they do not see CEST evolving for the better. **The prevailing belief for recruitment businesses whose end clients use CEST is that there will be no change in the number of blanket bans in the near future (51% for CEST versus 38% for independent employment status tool users).**

However, there are still a number of end clients that remain risk averse, and it is difficult to see how they will be persuaded other than by market forces.

When asked whether recruitment businesses were seeing a change in attitude towards IR35 status determinations from end clients, 46% of recruitment businesses whose end clients use CEST had seen positive change, with a move towards more outside IR35 roles. 30% saw no change, but only 23% saw a negative change i.e., their end clients' attitudes towards IR35 are worsening (leading to more inside IR35 roles).

This is an encouraging trend. Recruitment businesses whose end clients use Kingsbridge's own tool reported even more positive changes in client attitudes to IR35, with 60% agreeing it was improving. End clients appear to be becoming more comfortable with the legislation and emboldened by the support they are receiving from third parties such as Kingsbridge.

Impact of IR35 on contractors



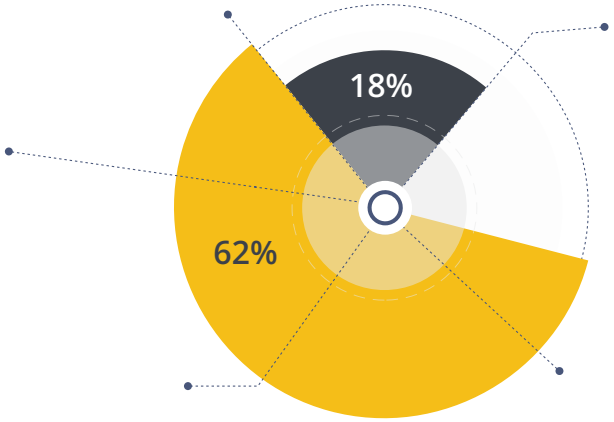
It is clear from the research data that IR35 private sector reform has had a destabilising effect on the contracting market, as anticipated. This destabilisation has been caused by forcing contractors to change the way they operate, the shifting status of roles, tension between what contractors want and what end clients offer, and indeed the whole process of determining status.

The feedback received through the research has been either damning or has reflected resigned acceptance. Phrases such as “totally restrictive with negative growth for diversity and opportunity - in fact it's killed it off”, “companies are scared to re-hire you”, “the government has killed contracting” and “it limits the careers and flexibility of specialists” were received. Similarly, views such as “I think the legislation is clumsy and unfair, but the market seems to be adjusting to it and thankfully outside IR35 roles are still available”. Also “I expect the reforms to bring less tax to HMRC as people take on permanent roles, take on roles overseas or retire. I also expect there to be less contractor resources for industry to use, impacting economic growth” were among the comments.

Changes to operating method

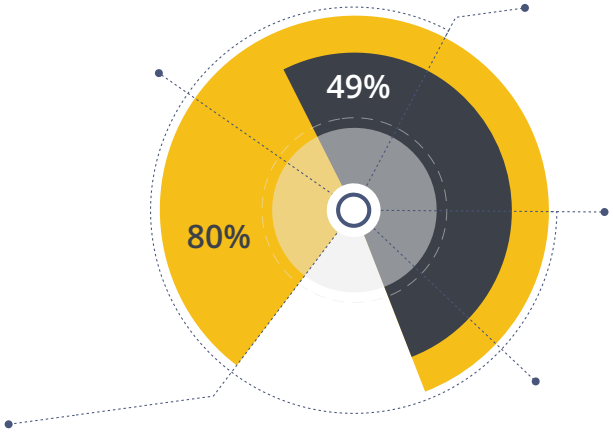
Of all contractors surveyed, 32% have had to change their operating method to work via umbrella companies or on agency PAYE. In fact, only 19% of contractors with inside IR35 status determinations have been allowed to continue operating via their own limited company. The vast majority with inside IR35 status determinations (81%) have been forced to operate via umbrella companies or PAYE.

62% of contractors were unhappy to have to work through an umbrella company or agency PAYE and 18% of contractors suggested that their umbrella company had not been transparent with their payments and deductions, perhaps justifying recruiters' concerns over the regulation of umbrella companies.



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The change to operating methods goes beyond company structure. **Nearly half (49%) of respondents have considered closing their limited company entirely due to the IR35 reform**, rather than try to find outside IR35 roles, or change their operating method. **This number rises to 80% for contractors deemed inside or mostly inside IR35 over the last year.** In addition, a quarter of respondents have reacted to the reforms by seeking work outside the UK in a bid to avoid the risk and challenges the reforms bring.



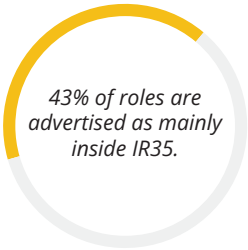
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Inside versus outside IR35

This attitude to inside IR35 versus outside IR35 roles is further clarified by 66% of contractors surveyed stating that they would not search for an inside IR35 role, searching exclusively for outside IR35 roles instead. As seen in our recruitment businesses data, this is likely to increase the cost of the placement as contractors are likely to command a higher day rate to offset the difference in tax.

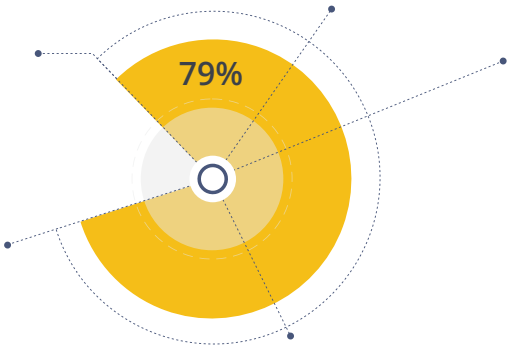


Over the last year, respondents have seen **43% of roles advertised as mainly inside IR35**, with 44% seeing a combination of both inside and outside. This is likely to be reflective of the market's hesitancy at the time reform was introduced, as businesses were unsure how to manage the changes, instead choosing not to work with contractors or determining them inside IR35.



Only 11% saw mainly outside roles advertised and 62% of contractors don't think this will change over the next six months. Clearly this suggests that more work is required in giving confidence to contractors that outside IR35 roles will become more frequent in the future. Education around IR35 will play a major part in increasing confidence as our recruiter data suggests.

Only 17% of contractors intend to switch to an umbrella company and fewer still (12%) to PAYE employment. This positive outlook suggests a resilience and commitment to keep contracting, and a belief that there will be enough outside IR35 roles to maintain their businesses.
Supporting this point further, it is interesting that **most contractors (79%) still intend to use their own limited company over the next 6 to 12 months perhaps showing a sign of optimism for the times ahead.**



Most contractors (79%) still intend to use their own limited company over the next 6 to 12 months perhaps showing a sign of optimism for the times ahead.

This optimism sits alongside a clear determination to take outside IR35 roles where possible, a further strong indication of contractors' opinions on inside roles. 71% of contractors surveyed are looking only for outside IR35 roles over the next 6 to 12 months. Just 2% are actively looking for inside IR35 roles. This resolve holds firm when looking at what contractors would be willing to accept, as opposed to actively looking for. 58% would only be willing to accept outside roles. Just 2% would accept an inside IR35 role, although 39% of respondents conceded they would accept either inside or outside if necessary.

The reluctance of contractors to take the inside IR35 roles that are on offer – which make up the majority of roles at the moment according to our survey - coupled with the proportion of contractors either closing their businesses, retiring, or leaving the UK entirely, will restrict the talent pool open to UK businesses. This, in turn, could have a detrimental economic impact and reduce the ability for the UK to compete internationally.



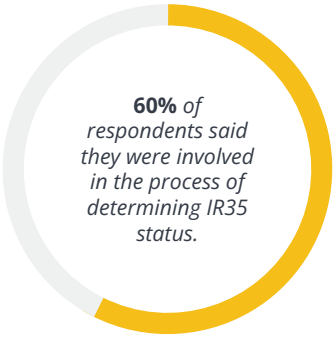
Status determination

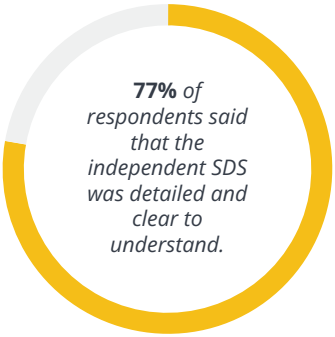
Despite the findings we have seen so far, 65% of contractors felt they have been treated fairly by their end clients in respect of IR35. This is partly driven by confidence in the status they have received, although there were interesting insights into attitudes to CEST.

In our survey, the specific industries that did use CEST are:

1. Engineering 33%
2. IT/Telecoms 32%
3. Offshore/ Energy/Oil & Gas 16%
4. Construction 12%
5. Banking & Finance 9%

For those contractors whose end client is using an independent employment status tool to assess IR35 status, the experience appears to be broadly positive. A heartening **60% of respondents said they were involved in the process of determining IR35 status**, which is good given how much more effective it is for end clients to involve contractors in determining their IR35 status.





When using independent employment status tools, there is trust in the process. **77% of respondents said that the SDS was detailed and clear to understand. (This figure rises to 96% if contractors have received a Kingsbridge SDS).**

When IR35 reform was introduced in the private sector, there was concern over whether or not contractors' status would be assessed fairly.

Interestingly, 61% of contractors deemed inside IR35 believe their status was not fairly assessed. This may be a naturally abrasive reaction to not getting the status they wanted or because many contractors who are deemed inside IR35 may not have been involved in the assessment process, so will be unclear as to how the conclusion was reached.

The different interpretation of the facts considered in the process highlights the subjective nature of employment status. This emphasises how important it is to get all parties involved in the process for a holistic view, rather than just a few.

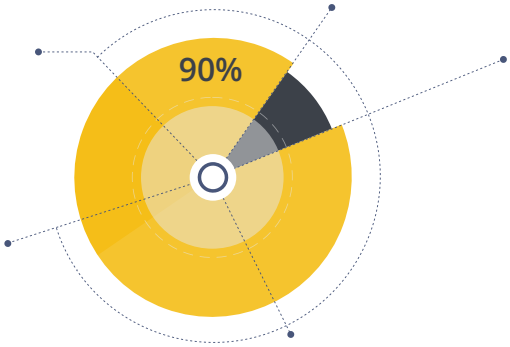
Appeals

It is of course possible to dispute an IR35 status determination, yet this doesn't appear to be a common choice. 87% of contractors have not disputed an IR35 status determination although this could be down to contractors receiving outside of IR35 status determinations and having no need to challenge it.

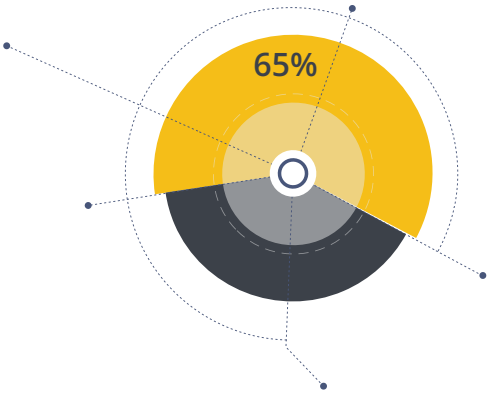
Of the contractors who have reported their status as inside or mostly inside in the last 12 months (the more likely to appeal), 73% have not disputed their inside IR35 status determination. More telling still is the fact that of those who have appealed following an inside IR35 status determination in the last 12 months, **90% did not find the appeal process easy or believe they had a fair hearing.**

The high number of workers who haven't disputed their determination suggests contractors have an attitude of resignation. Equally, it may indicate that contractors do not fully understand the appeals process and are not gathering enough evidence to support an appeal. This is one of several areas which would benefit from additional education.

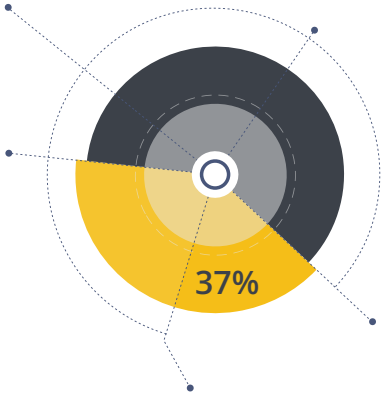
Appealing the decision isn't the only push back to an inside IR35 status determination. **65% of contractors said they have or would try to negotiate an increased rate if placed inside IR35,** which would impact the supply chain and prolong the placement process. **37% have actually seen their day-rate increased** compared to 20% of contractors deemed outside IR35, so end clients are almost twice as likely to have to pay a contractor more to work inside IR35. Anecdotal feedback suggests the day-rate increase is typically 25% which is significant when costing a project.



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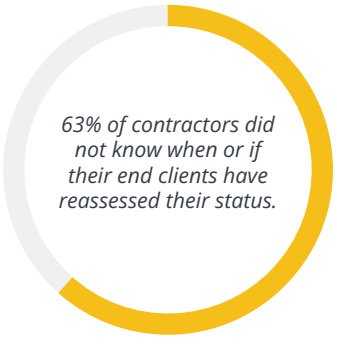


37% of contractors have actually seen their day-rate increased.

A much higher than expected third of contractor respondents have had to determine their own IR35 status in the last year. This indicates contractors are securing roles with small or foreign companies who sit outside of the IR35 reform entirely.

Worryingly, 22% of contractors did not use a tool or seek advice to determine their own IR35 status which generates risk in the form of PAYE tax and NIC arrears, interest and potential penalties if they have been careless. This liability could run into tens of thousands of pounds if the contract spans several tax years. It's important that contractors remember that businesses such as Kingsbridge are available to help determine IR35 status when the responsibility still rests with them in the form of contract and working practice reviews.

There is further risk in the reassessment of status. **63% of contractors did not know when or if their end clients have reassessed their status.** End clients should be reviewing status with appropriate regularity as an ongoing process. Contractors unaware of this could be vulnerable, so ought to be pushing for end client transparency over the assessment. This insight is further complicated by the fact that 35% of contractors are concerned about their end clients' understanding of IR35, and 73% do not believe their end clients will handle IR35 any better in the next six months. In contrast, however, 27% are hopeful that their end clients will be better equipped.







Only 15% of contractors were asked to pay for their status determination, which is still too high given that the burden sits with the end client. For 83% of those who had to pay, it cost £50 or more, and for an unlucky 33% it was more than £100.

Despite the disruption, there may be reason to be cautiously optimistic about the future. **47% of contractors hold IR35 insurance which shows a willingness to protect their supply chain to work outside of IR35.** 42% of contractors researched also said they felt optimistic about business prospects for the next six to 12 months. **90% of end clients said that contractors were important or key to operations within their business.** Furthermore, 95% of end clients said that they intend to use more limited company contractors over the next 6 to 12 months. That said, 29% of contractors are concerned about their future, and 53% still do not hold IR35 insurance, leaving them potentially at risk should they be responsible for, and liable for, their IR35 status.

KINGSBRIDGE
CONTRACTOR INSURANCE



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