
AVOIDING AN IR35 TALENT DRAIN

What can UK business do to retain its
contractor workforce?

BROOKSON
LEGAL

Brookson Legal provides advice to hirers, agencies and contractors on IR35 and carries out thousands of employment status assessments each year. Brookson Legal is the only law firm regulated by The Solicitors Regulation Authority that focuses on IR35.

RESEARCH METHODOLOGY



The Brookson Legal IR35 contractor survey was conducted by Brookson Legal between 11 April and 9 July 2019 with a total of 516 UK contractors surveyed.



The Brookson Legal IR35 hirer research was conducted by Censuswide between 9-12 April 2019. In total, 502 decision makers across multiple sectors, in medium and large companies (50+ employees and turnover of £10.2 million or more) who hire contractors or freelancers in Great Britain were surveyed. Censuswide complies with the Market Research Society Code of Conduct (2010) which is based upon the ESOMAR principles (for more information visit www.esomar.org).

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CONTRACTORS
HUGELY BENEFIT THE
ECONOMY

Andy Breeze, Construction contractor

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IR35 – THE CHALLENGE AND THE OPPORTUNITY

Changes to the IR35 tax legislation in the private sector, through the Off-Payroll Working Rules, are fast approaching.

As of April 2020, the responsibility for assessing the employment status of contractors in the private sector, for tax purposes, will pass from the contractor to the medium and large businesses that hire them. The onus will be on the end hirers to ensure that they are hiring genuinely self-employed contractors rather than 'disguised employees' who should be taxed the same way as employees.

The IR35 legislation is not new and was first introduced in 2000 to ensure contractors pay the correct tax. In 2017, the same change, moving this responsibility to the end-hirer, was rolled out in the public sector. A lack of preparation on the part of public sector hirers led to wide scale ramifications, including the loss of skilled contractors to the private sector, project delays and escalating costs.

To help understand the potential impact of the new rules in the private sector, Brookson Legal conducted research into the views of 516 UK contractors to understand their concerns about the upcoming changes, and importantly, the steps they are prepared to take if not treated fairly.

This builds on independent research into the views of over 500 decision makers within medium and large-sized businesses in the UK that hire contractors. Brookson Legal's ['Ticking Timebomb'](#) business report, published in May 2019, highlighted the value of contractors to UK businesses, the challenges that they face in addressing IR35 and the risk that some are prepared to take with the legislation.

While over half of UK businesses (60%) agreed that flexibility is the biggest benefit of hiring contractors, a similar number (59%) admitted that they are considering taking a blanket approach to managing the legislation – either no longer using contractors or treating all contractors as disguised employees – because they don't feel that they have the time to assess contractors individually or are worried about the penalties imposed by HMRC for non-compliance.

Our two research studies indicate that the private sector risks making the same mistakes that led to a talent drain in the public sector in 2017, but they also reveal the opportunity for companies that get it right.

Matt Fryer, Managing Director of Brookson Legal says: "This report gives contractors a voice and should provide much-needed guidance to businesses to understand the issues surrounding the changes to IR35 and help them to ensure that any decisions reached are in the best interest of both the hirer and contractor. With contractors able to take their skills elsewhere, it also sends a stark warning to businesses about a potential talent drain if handled badly.

"Our research clearly illustrates the fear of the new rules amongst both the business and contractor community, but with the right legal guidance and support, businesses can understand which of their contractors are genuinely self-employed and carry on business as usual. Our contractor survey suggests that firms with the right policies, processes and working practices in place, will not only continue to benefit from their use of skilled contractors but gain a competitive advantage over those who have failed to take action."

“ THE PRIVATE SECTOR RISKS MAKING THE SAME MISTAKES THAT LED TO A TALENT DRAIN IN THE PUBLIC SECTOR IN 2017

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THE COST OF IR35

“
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FLEXIBLE
WORKFORCE
REQUIRED
IN IT.”

Elena Vardoulaki, IT contractor

It is estimated that there are more than 500,000 Personal Service Companies (PSCs) in existence in the UK. According to HMRC, about one-third of those contractors are not applying the rules properly and are therefore not paying the correct taxes. If the appropriate action is not taken by all hirers, however, many more genuinely self-employed contractors could be negatively affected.

The Treasury confirmed in its draft Finance Bill published in July 2019, that the extension of the new rules to the private sector is expected to bring in £3.1bn in additional revenues between 2020 and 2024.

CONTRACTORS

Contractors assessed as working within IR35 (some rightly and some wrongly) will find their net take home pay severely impacted, as well as the expenses that they are currently able to set-off against gross income. This means that genuinely self-employed contractors wrongly judged to be within IR35 are at risk of having to pay thousands of pounds extra in tax.

BUSINESSES

Businesses that want to continue to attract and retain their contractor talent may well have to increase the amount they pay to any contractors that they class as inside IR35 to make up any tax losses. 50% of the contractors surveyed by Brookson Legal said that they will ask for a pay increase and employee benefits if assessed as caught.

WHAT CONTRACTORS ARE SAYING ABOUT IR35

53%

believe that these changes will deter people from becoming contractors

80%

are more likely to work with a company that has proper IR35 policies and procedures in place

WHAT HIRERS ARE SAYING ABOUT IR35

73%

of companies believe that IR35 will impact the contractors they hire

39%

expect there to be fewer contractors available

A POTENTIAL TALENT DRAIN

It is understandable why some businesses are considering taking a blanket approach to the changes - employment law is complex and IR35 presents a significant challenge. But caution should be exercised. Brookson Legal's research clearly shows that wrongly classifying genuinely self-employed contractors within IR35 could lead to a major loss of talent.

"Undertaking IR35 employment status tests takes time and resource" comments Matt Fryer, "and even HMRC has struggled to understand and apply the rules, as recent high-profile cases, such as its defeat in the Lorraine Kelly IR35 tax tribunal, testify. Businesses cannot avoid the issue, though. Those that panic and make a knee-jerk reaction, or try to take short cuts with a blanket approach, may find that they lose out in the long run."

TOP
THREE
IR35
FEARS
AMONGST
UK
BUSINESSES



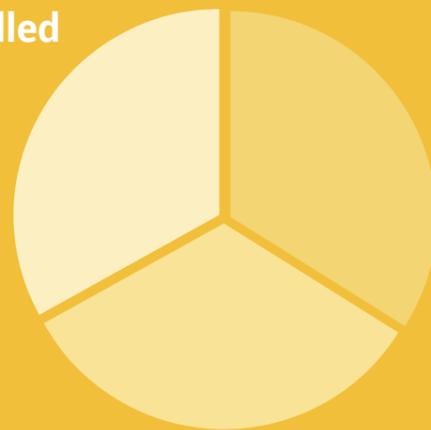
33% losing skilled contractors



32% wrongly categorising workers



32% increased costs



Of the 500+ contractors that Brookson Legal surveyed, 59% said that they will seek alternative contractor work with another business if judged to be inside IR35, 37% would never consider working inside IR35 and 21% will challenge the decision.

All the contractors surveyed agreed that the new rules will have a negative impact on the contractor market for them and other contractors. 53% believe that the IR35 changes will also deter new people from becoming contractors.

This is a view backed up by UK businesses. 48% of medium and large-sized businesses confirmed that the new rules will encourage them to reduce the number of contractors they hire, and 39% of businesses expect there will be fewer contractors available.

This matches with the experience of the public sector when the same changes to IR35 were

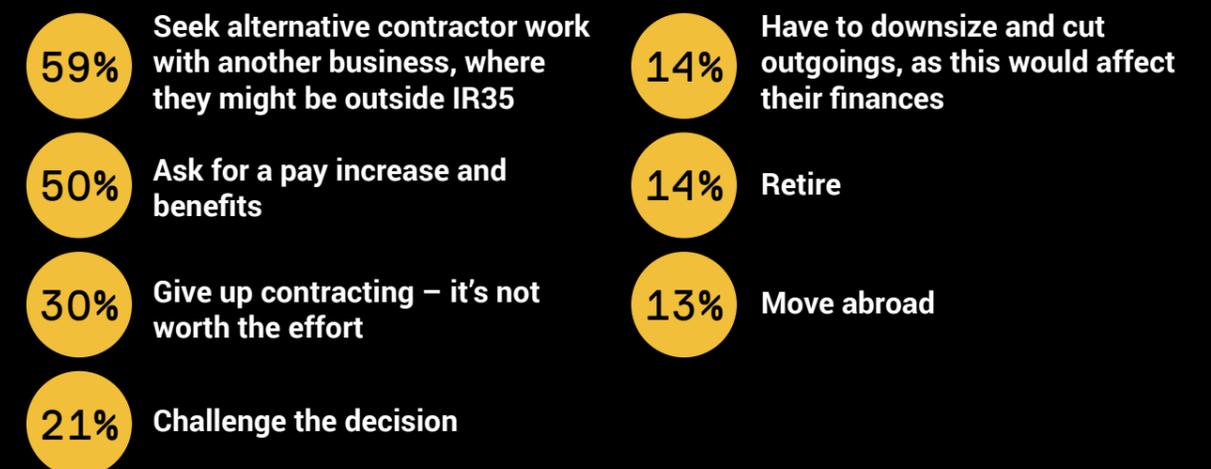
introduced in 2017, with blanket approaches leading to well-publicised negative outcomes, including delays to Transport for London's Bakerloo line extension and skills shortages in the NHS.

"No business wants to lose its skilled contractors but the failure of some businesses to take steps to even understand their exposure to IR35 means that they are putting themselves at risk. These risks include losing their vital flexible workforce, increased costs and the danger of wrongly assessing contractors – leaving them open to employment rights claims."

Matt Fryer continues: "With less than six months to go, the challenge facing UK businesses will only get more intense with increased risk of ill-informed IR35 decisions, last minute panic and even widespread blanket ban assessments as firms run out of time to get prepared."

CAUGHT BY IR35: WHAT WILL CONTRACTORS DO?

When asked which options they are most likely to consider if they are assessed as being inside of IR35, here are contractors' top responses:



BECOMING A HIRER OF CHOICE

“
ONLY 22% OF
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FAIRLY
”

The future of work is increasingly flexible. Recent data from Totaljobs has shown a 132% increase in the number of people looking for freelance roles from 2017 to 2019. Many people who became contractors in the 2000s chose to do so for the freedom and flexibility offered, while according to our own independent research, 60% of UK businesses agree that flexibility is the biggest benefit of hiring contractors and 37% value a reduced permanent headcount.

When the changes to IR35 come into effect in the private sector, it is likely that contractors who value this flexibility will vote with their feet. Findings from Brookson Legal's IR35 research amongst UK contractors found that 80% say they are more likely to want to work with a company that proactively advertises roles that are outside of IR35 and has proper IR35 policies and procedures in place.

According to the Brookson Legal contractor survey, however, 83% of contractors have not been spoken to about IR35 by the business or businesses they contract for and only 3% of contractors think the private sector will be ready for the IR35 changes in April 2020.

'reasonable care' in assessing the tax status of contractors, there is also an expectation from contractors that the companies which hire them will take reasonable care in assessing them fairly and preserving their contractor status if they can."

Trust is a big issue. Only 22% contractors say they trust the businesses they contract for to make the right assessment of their IR35 status compared to 78% who said no, they didn't trust or didn't know. Only 23% of contractors say they trust their recruitment agency to help them through the IR35 changes that are coming, compared to 77% who said no, they didn't trust or didn't know.

Our research demonstrates that if businesses don't take their IR35 obligations seriously, contractors are well prepared to jump ship to another hirer taking a much more proactive approach.

"Contractors are looking for reassurance from hirers," says Matt Fryer. "While there is a legislative obligation to demonstrate

"To retain flexible talent and get on top of the IR35 challenge, trust needs to be built. Businesses should act now while there is still time to review contracts, seek legal advice and speak to their contractor workforce about this new legislation," he concludes.

BENEFITS OF HIRING CONTRACTORS ACCORDING TO UK BUSINESSES

- 1 Flexibility on projects and support at peak times – 60% of UK businesses
- 2 Specialist skills – 58% of UK businesses
- 3 Reduced permanent staff headcount – 37% of UK businesses

THE CONTRACTOR VIEW

Brookson Legal has been providing IR35 advice to contractors since the law was first introduced in 2000. In surveying its contractors across the UK, Brookson Legal invited them to put forward their views and thoughts regarding the latest changes.

A recurring concern amongst those that were interviewed was the government's lack of understanding of contractors. When asked 'what do you think of the changes that HMRC is proposing?', 35% of contractors said it shows that they don't appreciate flexible workers.

With sectors like IT, construction, engineering and telecoms particularly reliant on specialist contractor talent, four contractors from those industries share their views.

1 IT

Elena Vardoulaki works in IT transformation and has been contracting for four years. "Contracting is having the flexibility to work on projects that suit my ambitions. There is a real skills shortage in the IT profession and contractors are vital for working on shorter term projects, often for intense periods of time. Flexibility is crucial and organisations won't want to pay people to sit around with nothing to do once a project has ended. IR35 could destroy the flexible workforce required in IT." Elena would not consider going back into employment and would take her skills abroad if contracting in the UK was no longer an option.

2 CONSTRUCTION

Andy Breeze has been contracting in the construction industry for over 20 years. Andy moved into contracting after being made redundant a number of times, finding plentiful work in the industry as a contractor where you are able to build up your reputation and are recognised for taking pride in your work.

"Forcing contractors into employment would destroy the construction industry. Firms would really struggle as they haven't got the cashflow to pay people all year-round on projects that only last six months, for example. Their only other option is to keep making people redundant. Contractors hugely benefit the economy."

If he could no longer work as a contractor, Andy would only stay in the industry for a short period of time and would look to retire instead. He enjoys the flexibility of contracting and the ability to take time off between projects and will continue to contract for as long as he is able and enjoys the work.

3 ENERGY

Brett Milligan has worked as a contractor for over 15 years and specialises in the power and energy sector.

"Engineering is very project-led and the industry relies on contractors with trusted reputations able to move quickly and work unsociable hours to get the work done. My fear is that HMRC doesn't seem to be concerned that the wrong people could be flagged as working inside IR35 and paying more than they should be in tax."

Considered a subject matter expert on various topics within his field, Brett likes the flexibility of contracting and the ability to be selective on projects. Brett intends to remain as a contractor and is now actively looking for opportunities overseas, specifically the Middle East. As such, he would not take on any projects where he is deemed inside of IR35.

4 TELECOMS

Jussi Kahtava is a contractor in the IT and telecoms sector, who moved into contracting more than seven years after his previous employer relocated, and Jussi didn't want to relocate with them.

"As a contractor, I would like the government to understand that we do not get paid holidays, health insurance or any of the benefits that employees receive from their companies."

Freedom is his key reason for working as a contractor but Jussi would consider moving back into employment if it was "made worthwhile".





ARE YOU TAKING ACTION?

Only 25% of contractors have taken steps to prepare for the changes coming to the private sector, while 55% still don't know what action to take. This may be because there is still confusion as to where the responsibility for IR35 lies, with 37% of contractors thinking the responsibility will lie with them for adhering to the IR35 rules post April 2020, and 23% admitting that they don't fully understand what is being proposed.

"This illustrates the need for businesses to take a lead with regards to IR35" says Matt Fryer. "When we surveyed UK medium and large-sized businesses earlier this year, our research found that, on average, businesses think it will take them about six months to get ready for IR35. That deadline is here," he warns, "But there is still time to prepare if you get ready now."

"41% of respondents to our survey would avoid taking a blanket approach to assessing their contractors, as they don't want to wrongly assess them and risk losing them," continues Matt Fryer. "These businesses recognise the value that contractors bring and are taking steps to ensure they don't lose this vital talent. Our contractor survey now indicates that they will be well placed to attract contractor talent in the future too."

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TAKING ACTION

- 55% of businesses have already started to take steps to prepare for IR35 to ensure they are compliant and to understand their level of risk
- 21% of businesses that have taken action now have done so to steal a march on their competitors
- 42% have done so to avoid any last-minute panic or blanket ban assessments
- 29% said it was so they don't lose any contractors

CONCLUSION

“The businesses and contractors we surveyed recognise the challenge of the new rules but the research findings also greatly underline the need that businesses have right now to mitigate the risks of IR35 so they can continue to attract and retain contractors,” Matt Fryer concludes.

“The new rules can be an opportunity as much as a challenging headache – encouraging businesses to revisit how they engage with their flexible workers, at a time when technology and legislation mean that many of the old rules no longer apply. The future of work is increasingly flexible. The key to retaining contractor talent is taking the right action at the right time, and that time is now.”



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www.twitter.com/BrooksonLegal 

0345 058 1227 

contact@brooksonlegalservices.co.uk 