



Everything you need to know about IR35



With
RE HR Solution & Orange Genie

Introduction



HR Director, Head of RE HR Solutions

RachelH@rehrsolutions.com

01242 505434



HR Solutions

Expect more from your people.
And help your organisation
perform at its best

Total HR

Solutions for businesses
with no internal or
outsourced HR support

- Handbook/policy review
- Contract review
- Onboarding management
- Grievance management
- Disciplinary management
- Investigations
- Capability management
- Redundancy process

Strategic HR

Extra support for
businesses with some HR
support already on site

- Employee Engagement Assessment
- Employee Value proposition
- Performance Review Strategy
- Organisational Review
- Succession planning
- Training Needs Analysis
- Reward & Recognition
- Equality & Diversity
- Talent Management

Who are we?

Helen Christopher FCA
Operations Director



James Davis
Business Improvement Manager



Today's agenda

- The background to IR35 and Off Payroll
- What is IR35 and when does it apply?
- What is the effect of IR35?
- How is IR35 assessed?
- The Development of IR35 - Public and Private Sector
- What does this mean for you – your obligations and responsibilities
- What should you be doing now?
- Reasonable care
- Your assessment options
- Beyond April 2021
- Engagement options if Inside IR35

The background to IR35

The late 1990's saw favourable tax rates for small businesses

There were advantages to being a business for tax purposes. This made running a Limited company an attractive option

Individuals started to work as businesses, known as personal service companies or “PSC”

When this began to happen en masse, HMRC felt they needed a way to collect the tax they thought they were “losing” from those that were really “disguised employees”

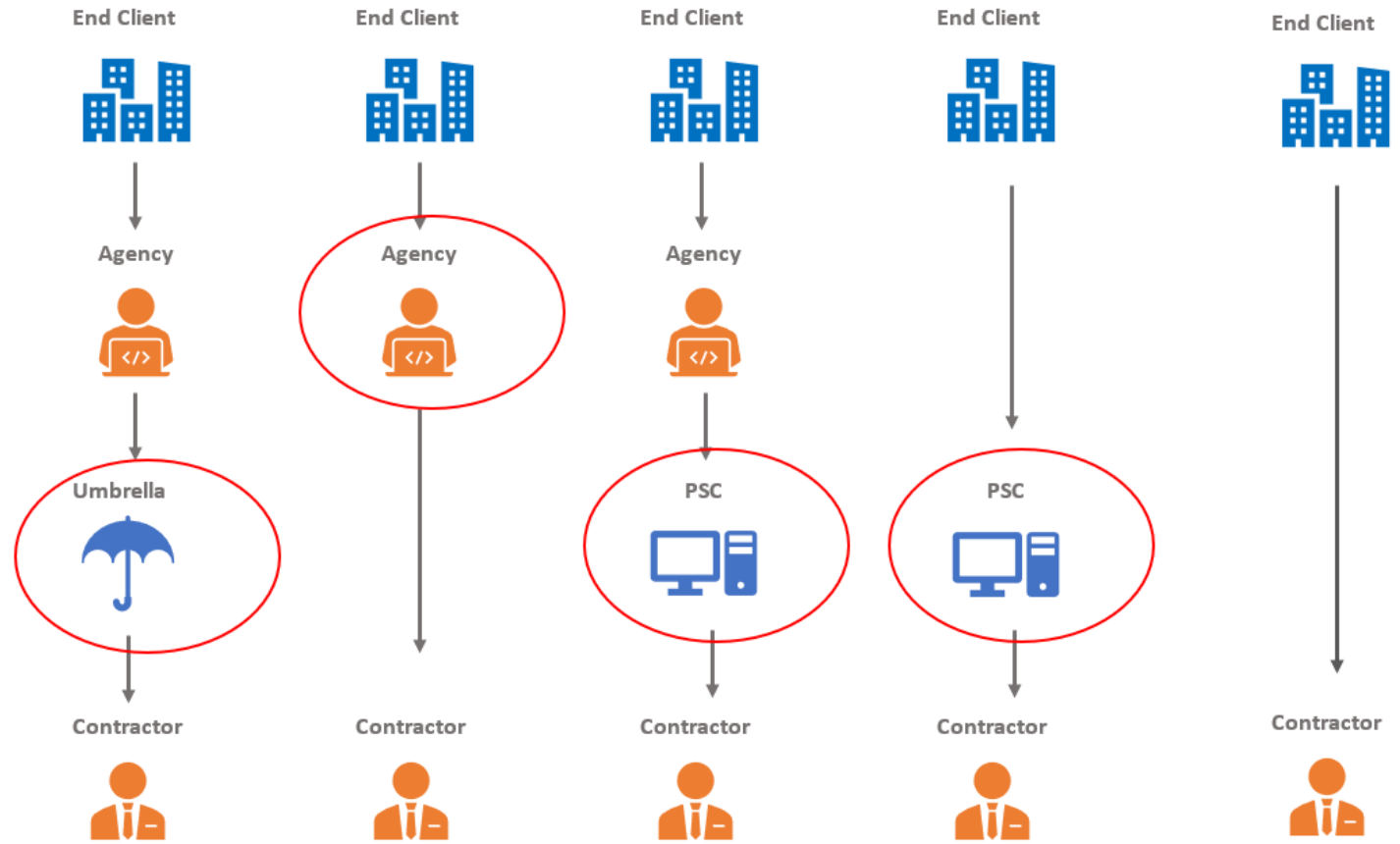
IR35 was born

What is IR35?

Legislation designed to combat tax avoidance where a temporary worker claims to be running a business in their own right when in fact they are in reality an employee of the end client.

IR35 seeks to look at the “hypothetical contract” between the end client and worker and asks, is this person really acting like an employee of the end client or are they genuinely in business on their own account?

When does IR35 apply?



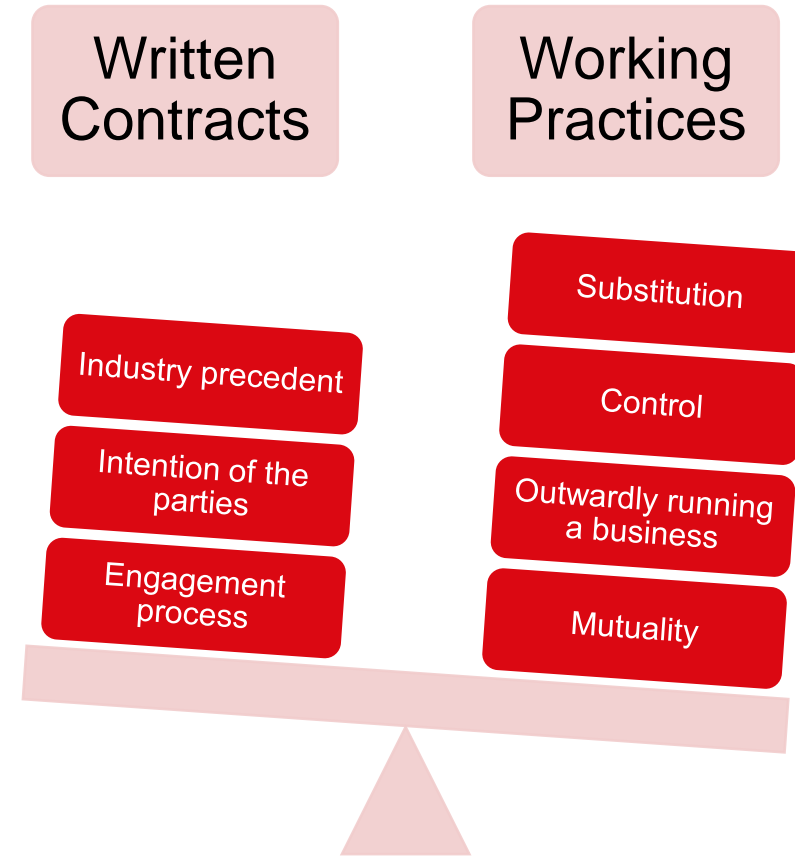
The effect of IR35?

“Outside” IR35 - the most tax efficient method by which to remove funds from the company e.g. salary and dividends

“Inside” IR35 - all income will need to be treated as a salary. PAYE and NIC paid as if an employee

The cost of getting the assessment wrong can be costly as HMRC will seek to charge for under paid tax and may impose penalties

Assessing IR35



Employment status indicators



Personal Service

“Genuine Right, not a sham

Unfettered

Unwilling or unable

Contractor remains responsible



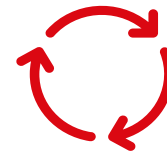
Control

What

Where

When

How



Mutuality of
Obligation

Offer and acceptance
of work

Immediate
termination

No tasks outside of
contract

Multiple end clients



Business on their own
account

Reason for hire

Financial risk

Part & Parcel

The development of IR35



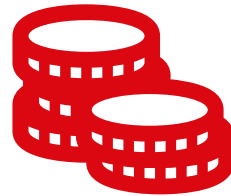
Off Payroll in the Private Sector



New rules apply for all payments made from **6th April 2021**



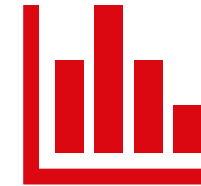
End Clients are responsible for determining a contractor's IR35 status on each assignment – **unless the end client is "small"**



Whoever pays the PSC (the fee payer) is liable if the correct taxes are not deducted for an "inside" assignment



If "caught" by IR35 the contractor will be taxed as if PAYE, but gain no employment rights



The contractor loses the 5% allowance for business expenses

Small private end client

An end client is small where it meets two or more of the following:-

Turnover less than £10.2million

Balance sheet total is less than £5.1 million

There are less than 51 employees

What does this mean for you?

End clients must assess the IR35 status of any contractors providing services to them

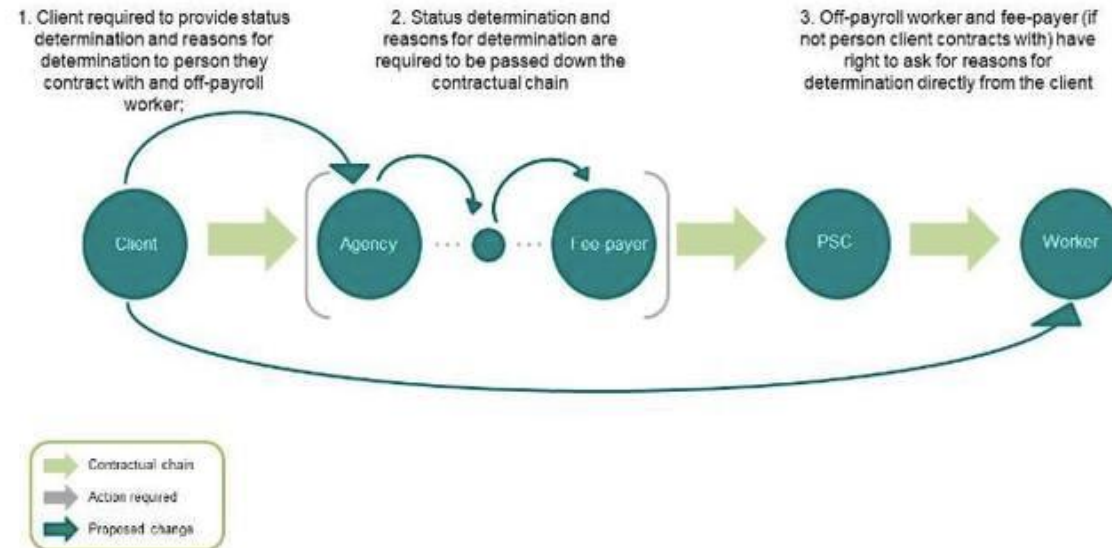
You must issue and share **Status Determination Statements** through the supply chain

You must demonstrate you have applied **reasonable care** in making your assessments

You must not make **blanket status determinations**

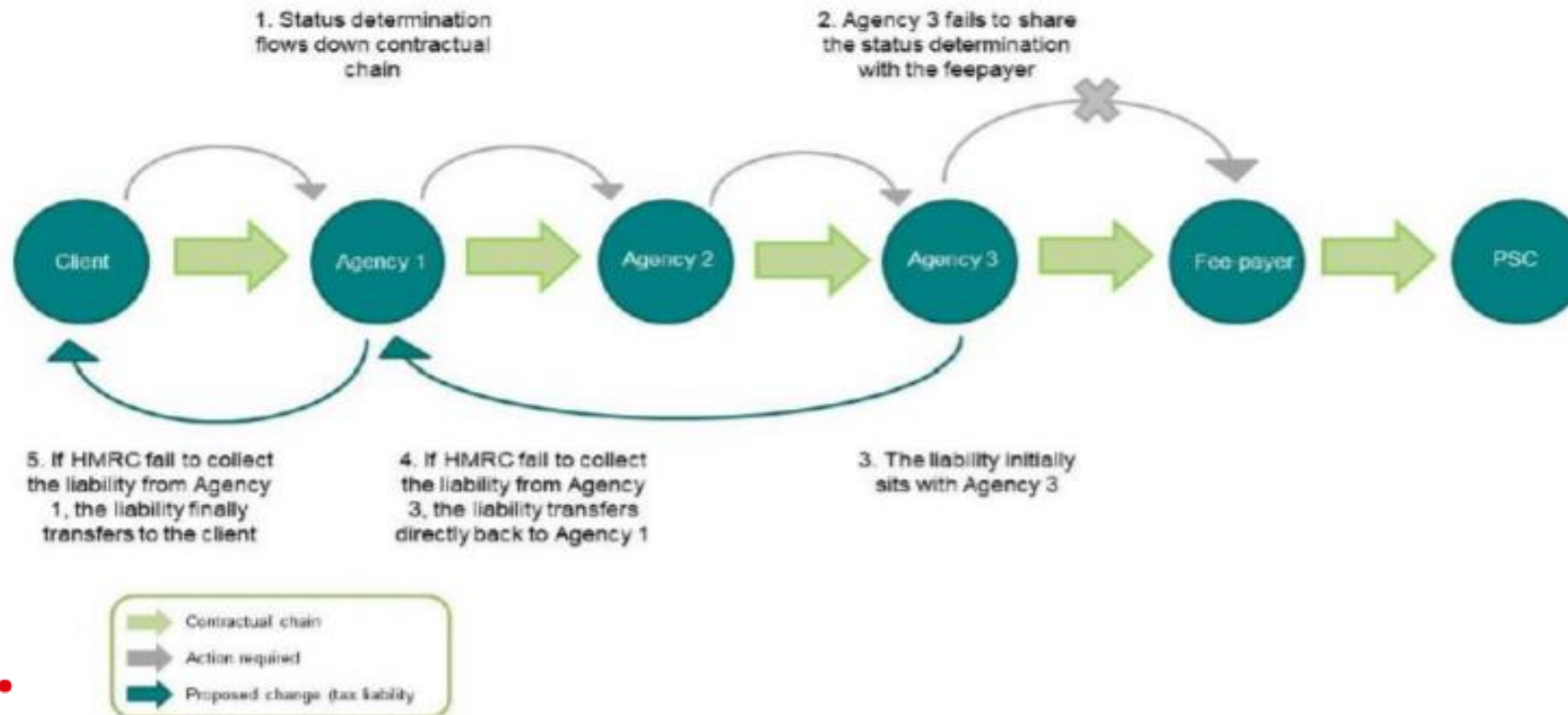
You must establish an **appeals process**

Illustration A: Determination and reasons for determination cascaded down the labour supply chain



April 2021 – what to expect

Illustration B: Liability flows down the labour supply chain as each party fulfils its obligations. Liability initially rests with party that has failed to fulfil its obligations, then transfers to Agency 1 and ultimately transfers to the client where HMRC cannot collect from Agency 1.



Lessons from the Public Sector

Public sector had much less guidance and much shorter timeframes in which to implement reform

It found it hard to assess statuses and wasn't resourced

Blanket assessments were widespread

Many end users announced that they would stop engaging PSCS's, only to have to change their minds

Organisations suffered a loss of vital workforce as a result

Risks and opportunities

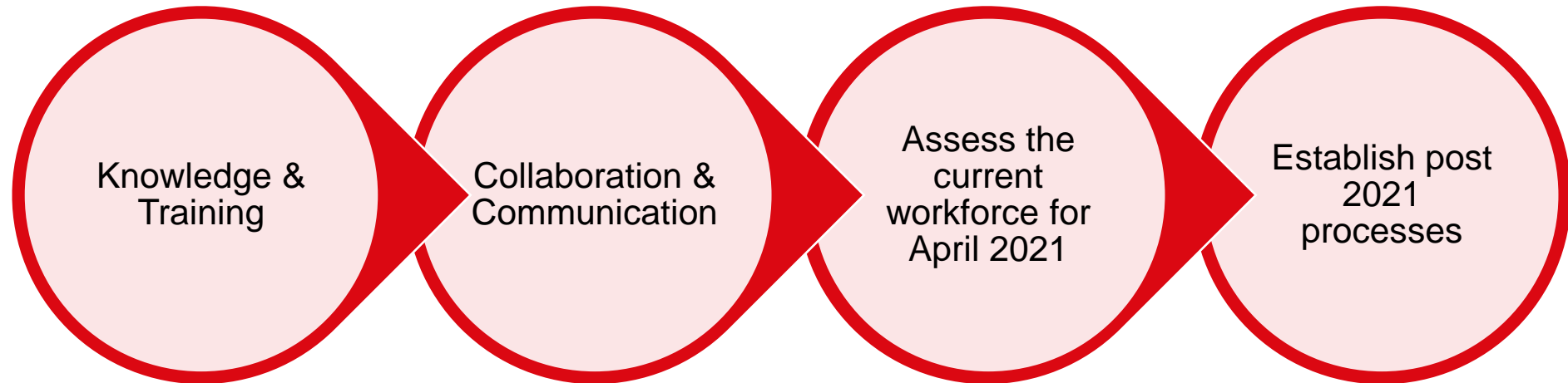
Potential risks

Increased cost to the business
Upward pressure on rates
Loss of Resource
Reputation

Opportunities

To retain and attract new talent
Reputation as an end client of choice

What should you be doing now?



What is reasonable care?

Examples of behaviours that would indicate a client has taken reasonable care include, but are not limited to:

- accurately applying and keeping a record of the employment status principles ([ESM0500](#))
- accurately completing HMRC's [Check Employment Status for Tax \(CEST\) tool](#)
- applying [HMRC guidance](#) on determining status
- seeking the advice of a qualified, professional advisor
- having someone with a good understanding of the work to be undertaken involved in the determination process
- checking existing individual determinations to ensure they remain valid / accurate
- reviewing the processes being applied and amending for future determinations where necessary
- if there are any material changes to a worker's terms and conditions, or working practices, making a new status determination
- ensuring it checks and reviews processes of other parties where it subcontracts the determination process to another party. The client remains responsible for the accuracy of the SDS even if it subcontracts that responsibility to another party.

Your options for assessing IR35

Experts

- Manual review of contract and working practices against case law
- Expensive, but individualised and expert opinion applied

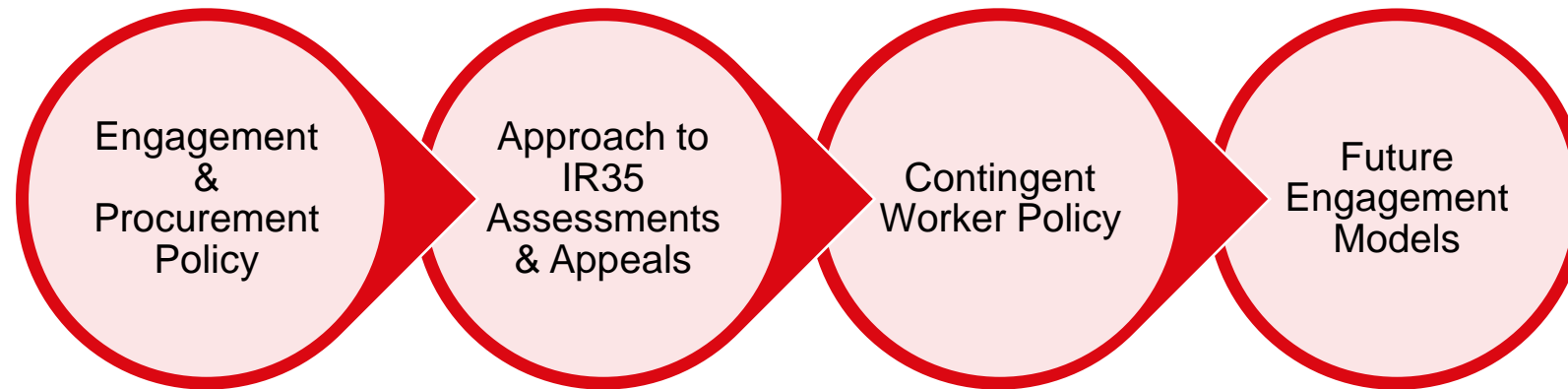
CEST

- HMRC's online tool
- Any party in the supply chain use it
- Perceived issues
 - Lack of MOO
 - 16 questions for a complex area

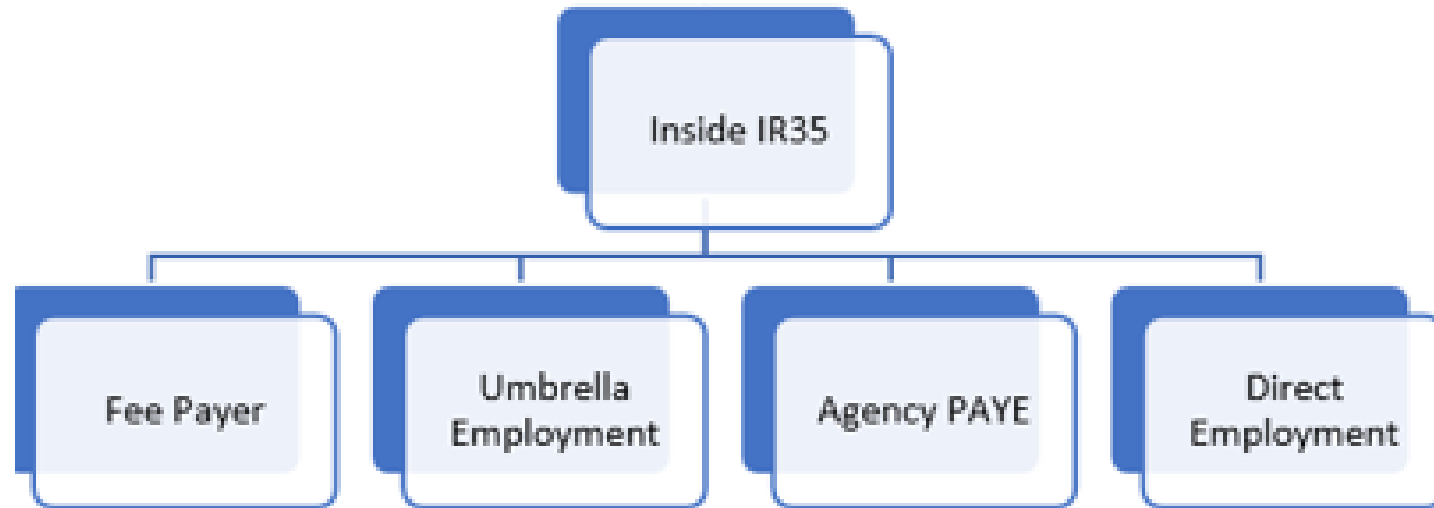
Commercial Tools

- Ask more questions than CEST
- Apply algorithms to the results and uses case law to determine
- Some only take account of the end client views

Post April 2021



Engagement Options



Agency PAYE

Each assignment is a separate engagement, the worker has a new employment each time they work for a new agency or end client.

The worker has limited employment rights. As there is no engagement between assignments, when they are not working the worker has no rights at all.

The rate paid to the contractor should be uplifted to an assignment rate paid by the end client.

The uplift should cover the costs of employment and the agency margin.

Umbrella Employment

An umbrella company employs contractors. Contractors have continuity of employment

Umbrella Companies have statutory duties as an employer, they will

Collect and manage personal data

Process 100% gross wages through PAYE

Deduct PAYE and employee's NIC from Gross pay

Report payroll via RTI

Pay PAYE and NIC over to HMRC

Issue P45's, P60's and P11d's

Employ the worker

Provide all statutory rights

Pay Apprenticeship Levy

Pay Auto Enrolment Contributions

Consolidate pay from multiple agencies

Apply AWR, NMW, holiday pay rules

Fee Payer Model Inside IR35

Contractor retains their PSC and issues invoices

VAT amount is paid via accounts payable and net amount has PAYE applied by the fee payer

Fee payer has to factor in Employers NIC costs

Contractors income reduces if they were previously outside IR35

Contractor effectively has to fund the running of his PSC from taxed income

Contractor receives no employment rights nor statutory payments

Our contact details

Helen.Christopher@orangeenie.co.uk

James.Davis@orangeenie.co.uk

Thank you



HR SOLUTIONS

Thank you

