

## IR35 MIS-STATUS

*Reviewed by Matthew Bartlett, Director · Last reviewed 2026-06-22*

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The off-payroll working rules — commonly called IR35 — sit in chapter 10 of part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). Since 6 April 2017 for the public sector and 6 April 2021 for the private sector, the obligation to determine the employment status of a worker engaged through an intermediary has rested with the end client (where the client is medium or large). The fee-payer in the contractual chain is then responsible for operating PAYE on the deemed direct payment.

## WHERE THE PI CLAIMS ARISE

IR35 claims fall into two principal categories. The first is mis-status: the end client (or its advisers) issues a Status Determination Statement (SDS) that HMRC later disagrees with on enquiry. The PAYE and NIC liability falls on the fee-payer under section 61T of ITEPA 2003. The fee-payer (often a recruitment business) may then look to its advisers for indemnity if the advice supporting the SDS was negligent.

The second category is supply-chain failure. Section 61U of ITEPA 2003 transfers the deemed employer liability up the chain where any party in the chain fails to comply. A recruitment agency that does not pass the SDS down, or an umbrella company that misreports, can find the liability transferred. Advisers — including IT consultancies acting in a status-determination role, employment-law advisers and recruitment consultants — can be drawn into the claim where their advice or process contributed to the failure.

## THE CEST TOOL AND BEYOND

HMRC's Check Employment Status for Tax (CEST) tool produces an outcome that HMRC commits to stand behind, provided the inputs are accurate and the answers are reasonable. CEST is not legally binding and case law has repeatedly disagreed with CEST outcomes. The relevant tests in *Ready Mixed Concrete v Minister of Pensions* [1968] 2 QB 497, refined through cases up to *HMRC v Atholl House Productions* [2022] EWCA Civ 501, continue to govern the status question. A status assessment relying on CEST alone, without the practitioner applying the case-law test, may be vulnerable.

## THE IT CONTRACTOR EXPOSURE

Independent IT contractors operating through a personal service company are typically not the determining party under the post-2021 rules — that obligation sits with the end client where the client is medium or large. However, the contractor's own historic returns under the original IR35 regime (1999 onwards) remain open to HMRC enquiry. PI claims against IT contractors typically arise where the contractor has advised another business on a separate engagement and that advice has not addressed status correctly.

Our [IT professionals PI insurance guide](#) covers the cover scope for IT consultancies and the wording extensions that may apply to status-determination work. Recruitment businesses sitting in the contractual chain — as agencies, master-vendor arrangers or umbrella facilitators — face the parallel exposure covered in our [recruitment consultants PI insurance guide](#).

#### UMBRELLA REGULATION

The umbrella company market is in the process of being brought into statutory regulation through the Joint and Several Liability proposals being consulted on by HMRC and DBT. Once in force, the liability for unpaid PAYE in umbrella supply chains will be capable of transfer to the recruitment business or end client. Advisers who do not advise on the new regime as it comes in may face claims where their clients are caught out.

#### HMRC ENQUIRY TIMELINES

HMRC's enquiry window under section 9A of the Taxes Management Act 1970 is one year from the return filing date for an individual's self-assessment; longer windows apply under the discovery provisions in section 29 of the same Act where conditions are met. For employer compliance reviews of PAYE operation, HMRC has six years (or four for careless conduct) to assess. PI policies respond to negligence-based claims; the long discovery window means the claim may emerge years after the advice was given.

#### REASONABLE CARE

Section 61T(6) of ITEPA 2003 requires the end client to take reasonable care in reaching the SDS. Advisers supporting the SDS process are part of the reasonable-care chain. A documented methodology, contemporaneous evidence of the case-law application, and clear instructions to the client form part of the contemporaneous record that supports the defence of any subsequent claim.

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#### RELATED PROFESSIONAL INDEMNITY GUIDES

- [It Professionals PI](#)
- [Recruitment Consultants PI](#)