

HM Revenue  
& Customs

# BE PREPARED FOR IR35 WITH OUR 7 STEP ACTION PLAN

With the rollout of IR35 to the Private Sector looming, it is likely you will need to take immediate action to ensure you're properly prepared for the changes in legislation in April 2021 – this Action Plan is designed to help you understand the steps required.

Our hope is that this process will create greater transparency across the sector, bringing hauliers and agencies towards closer partnerships.

# 1

You must firstly determine if you are a “Small Company”. If so, you will be exempt from the IR35 legislation, but you will still need to determine Parity Pay Rates:



We recommend you work with your company accountants to formally determine your company size.



You are obliged under the IR35 Regulations to formally communicate your Company Size status to us, your agency, so that we are officially made aware of whether you fall within or outside of the scope of the IR35 Regulations.

# 2

If you are a larger company, i.e. not a “Small Company”, you will be subject to the IR35 legislation. In this case you must:



Work with your HR team and employment law advisers to determine the employment status of each category of agency temporary worker you engage.



For each category of agency worker, you must produce a Status Determination Statement “SDS”. The SDS is a formal and legally enforceable declaration.

# 3

## IMPORTANT:

While the IR35 legislation remains under “review” we strongly recommend that you continue as though the legislation will still be implemented in April 2021, **BUT** that you do not publicise or formally communicate your SDS decisions pending final implementation of the legislation. This way you will be ready to act should the implementation of IR35 go ahead, while maintaining flexibility should it be delayed or changed.

# 4

Meanwhile, regardless of whether you are a "Small Company" or not, you should already have Parity Pay Rates in place\* for all PAYE agency workers after 12 weeks on assignment. The process for determining Parity Pay Rates is as follows:

- ✓ At our request, you must complete an "AWR Comparator Information Request Form" for each Comparator Role. A Comparator Role is a distinct agency worker role that is substantially different from other agency worker roles for the same customer in terms of work performed and remuneration received. For example, it is easy to separate agency LGV drivers into class of vehicle driven, i.e. C+E, C, C1 and van, but comparator roles may be determined at a more granular level, e.g. for C+E Night Trunking, as distinct from C+E Day Delivery Work or C+E Multi-Drop etc.
- ✓ For each Comparator Role you need to provide full remuneration and benefits information such as: basic pay, night, weekend and overtime rates, shift premiums, bonuses, holiday entitlement and other tangible benefits.
- ✓ We then need to work together to agree the Parity Pay Rates for parity agency workers. There is no clear-cut way of doing this, as most agencies use pay rate schemes that differ from those used by their customers. The objective is to ensure that, for a typical bundle of shifts in a given week, the agency worker will earn approximately the same income, inclusive of holiday pay, as a permanent worker for the same shifts.

# 5

Now we can establish the cost of employment for our temporary workers. The governing principles are that, for each of the categories below, we must pay:

- ✓ Ltd Company workers (Small Companies ONLY): Ltd Company worker market rates.
- ✓ PAYE workers up to 12 weeks on assignment: PAYE worker market rates.
- ✓ PAYE Parity Workers (over 12 weeks on assignment): The greater of the PAYE worker market rates or the agreed Parity Pay Rates.

This means that if you are a Small Company you may have up to three sets of pay rates, one for each of the above agency worker categories, while larger companies can only have the two PAYE variants.

# 6

We now need to negotiate charge rates. These will be a compromise between our need to generate enough margin over the total cost of employment of our temporary workers and the amount you are willing to pay. There are two approaches:

- ✓ Closed book, where we do not disclose our pay rates and margins, but simply propose charge rates with no breakdown or other explanation.
- ✓ Open book, where our pay rates and agency commission are completely transparent to you. In this case it is very important that we can justify our margin by demonstrating value for money and by being able to provide a clear breakdown of our costs and value-added services.

# 7

If the result is increased charge rates, it is reasonable to expect you to review and optimise your agency requirements, possibly looking to reduce the size of your agency worker pool. A likely outcome is that you may decide to request a transfer of agency drivers to permanent roles; either via direct transfer for a fee or via a Temp2Perm arrangement. We should be prepared for this eventuality and have relevant terms agreed.