

# IR35: CHANGES TO THE OFF-PAYROLL WORKING RULES

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**OPEN FOR CHANGE**  
**VIRTUAL TRAINING DAY**



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# AN INTRODUCTION TO IR35

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# IR35 IS NOT NEW

- IR35 has been in place since 2000.
- Designed to tackle perceived avoidance of PAYE and NICs via the use of “personal service companies” (PSCs).
- Currently, tax risk falls on the PSC (save for public sector):
  - compliance is not great;
  - difficult for HMRC to enforce against many PSCs.

# WHAT'S CHANGING?

- From April 2021, basic idea is to push the liability risk onto the party which pays the PSC.
- Where it applies PAYE and NICs will arise. Employer NIC may represent real additional cost to hiring labour.
- These rules will apply to medium and large enterprises (2 of 3):
  - Turnover at least £10.2m;
  - Balance sheet at least £5.1m;
  - More than 50 employees.

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# WHEN WILL IR35 APPLY?

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# IR35 ENTRY THRESHOLD REQUIREMENTS

IR35 only arises if these two conditions are met:

- There is an “intermediary”, which is:
  - a company in which the worker has a material interest or rights which entitle the worker to receive payments referable to their work;
  - a partnership in which the worker is a partner or their pay is referable to the profit of the partnership.
- There is personal service.

# WHO FALLS OUTSIDE THE RULES

- Small companies – by reference to the “end client”.
- Fully outsourced service arrangements – but be careful to ensure this is genuinely the case.
- No PSC in the chain, but beware:
  - ensure you understand the supply chain;
  - can you insist on no PSCs?

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# HOW THE NEW RULES OPERATE

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# UNDERSTAND THE LINGO!

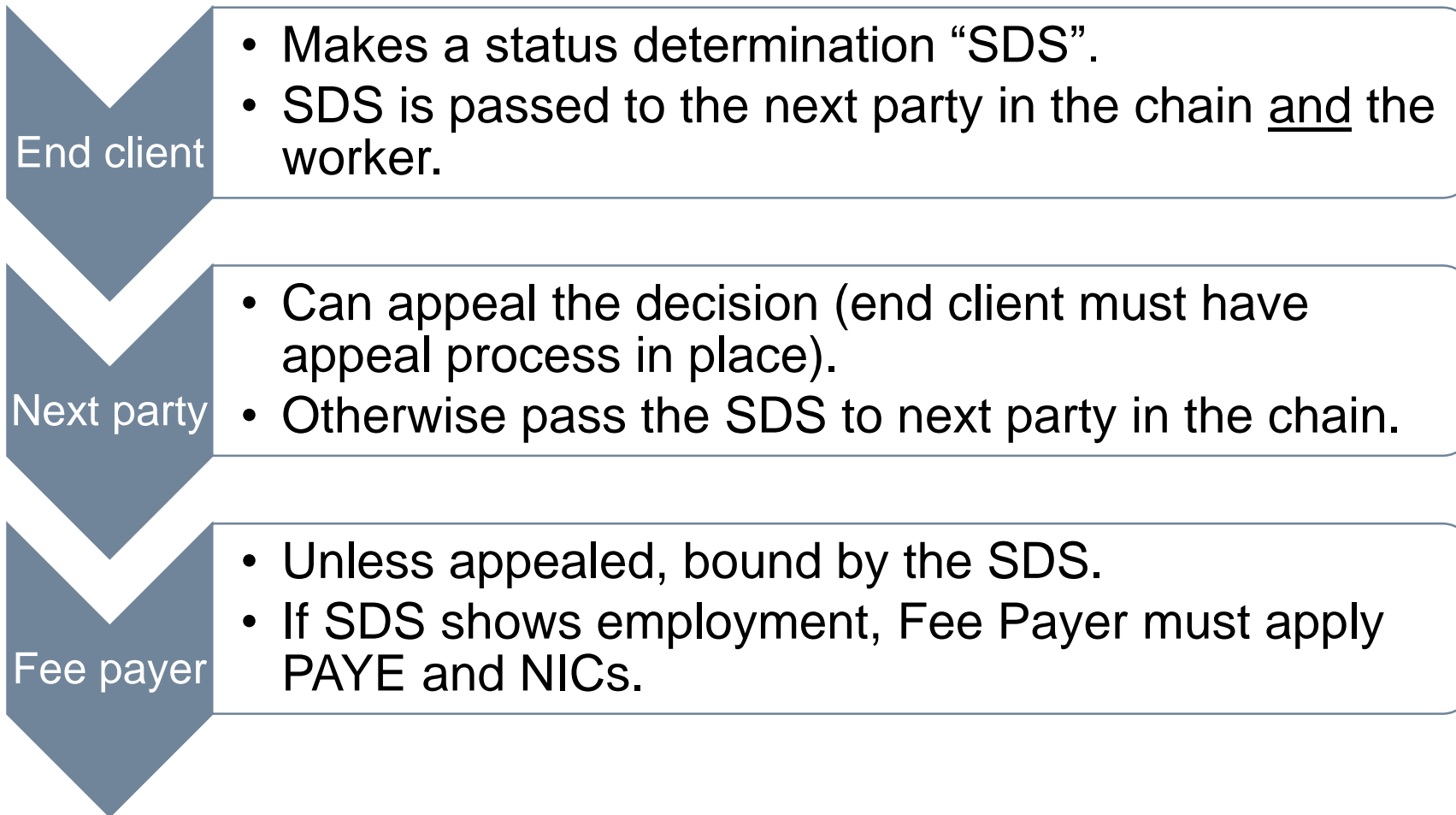
**End Client:** The person who enjoys the labour.

**Fee Payer:** The person who pays the intermediary.

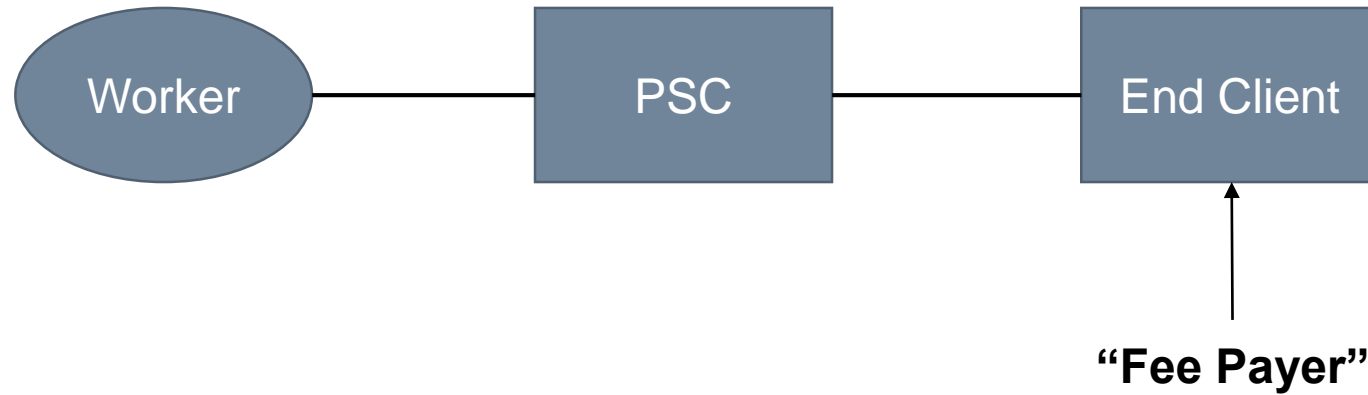
**PSC:** A personal service company

**Agent:** A party introducing the worker (and their PSC) to the End Client.

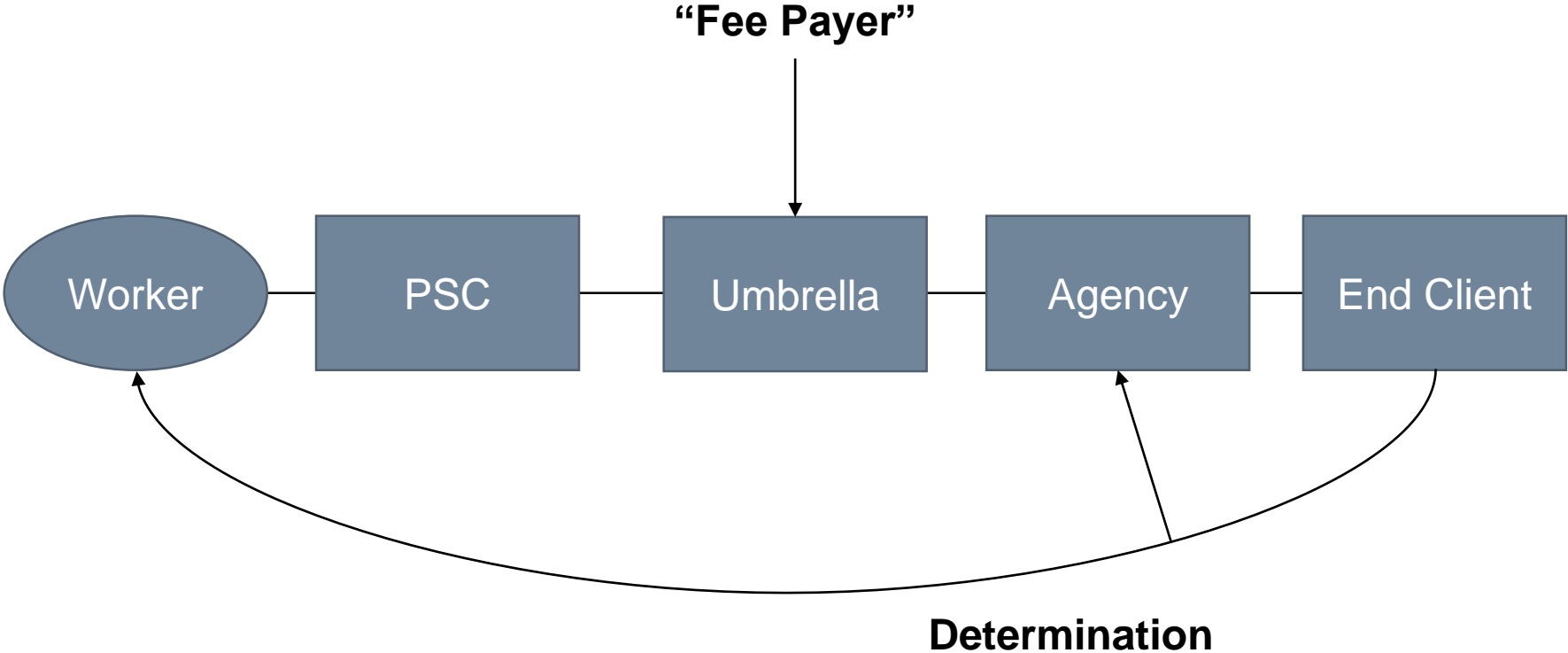
# PROCESS UNDER THE NEW RULES



# A SIMPLE SUPPLY CHAIN



# A MORE COMPLICATED SUPPLY CHAIN



# MAKING A STATUS DETERMINATION

The “irreducible minimum”:

- Personal service
- Mutuality of obligation
- Control

But also many more: financial risk, working for other clients, receipt of benefits, part and parcel of the organisation.

- HMRC CEST tool.

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# RISK AREAS

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# RELIANCE ON CEST

- May assist an end client in showing they have taken reasonable care
- But will it protect a fee payer/end client from HMRC challenge?
- Has the CEST questionnaire been completed accurately?
- Does the contract reflect reality?
- Grey areas (e.g. financial risk)

# OUTSOURCED SERVICES

- HMRC have confirmed that the rules do not apply to an end client that fully contracts out services
- Not always clear when there is a fully contracted out service
- Both user and supplier of services could be considered an end client – but potentially a different determination depending on who makes the determination
- Supplier of services may not be within scope of IR35 (if small)
- May be preferable for user of services to make a determination just in case



# TRANSFER OF LIABILITIES

- If HMRC is unable to collect liability from relevant party (e.g. because it ceased to exist)
  - Liability may transfer back to the first party or agency in the chain
  - If HMRC could not collect from the first party or agency, the liability could ultimately rest with the end client
- Error in SDS or failure to take reasonable care may mean the buck is not passed to the next party in the chain
- Additional employer NIC costs could significantly add to the cost of labour

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# PRACTICAL TIPS

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# CHANGE THE WAY LABOUR IS SOURCED?

- Engage all workers as employees
  - Additional tax costs and employment rights
- Use agencies or umbrella companies
  - May still result in additional costs
  - Are they getting it right?
- Refuse to engage personal service companies
  - Potential competitive disadvantage
  - How can this be effectively monitored

# CONTRACTS

- Ensure there is a right to withhold income tax and NICs
- Ensure tax indemnities in place
  - Employer NICs and apprenticeship levy liability cannot usually be passed on
- Include right to make SDS and obligation to provide information
- Contractual obligation on agencies to include equivalent provisions in their contracts

# ACTION PLAN

- Agree what approach you will be taking
- Identify all arrangements potentially affected
- Open dialogue with existing contractors
- Establish internal protocols/policies for assessing and documenting status and cascading information
- Contract reviews
- Training of internal staff (e.g. on CEST)
- Payroll review if necessary

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Please send any follow up questions to [Laura.Klair@addleshawgoddard.com](mailto:Laura.Klair@addleshawgoddard.com)

