

IR35 Forum

ADMINISTRATION REVIEW

Final Report – December 2014

IR35 Forum Administration Review

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Foreword

In 2010 the Government asked the Office of Tax Simplification (OTS) to review IR35 (the Intermediaries legislation). The OTS concluded that IR35 should either be suspended with a view to abolishing the legislation or retained but with much improved administration.

Following the OTS report and in line with the Government's commitment at Budget 2011 to make clear improvements to the way IR35 is administered, the IR35 Forum was established. The Forum includes internal HMRC policy, technical and operational officials, external representatives from the contracting sector and professional advisers with expert knowledge and experience of how the legislation operates in practice and how it affects HMRC's customers.

The Forum meets quarterly and has already overseen a number of changes including updated guidance and a strengthening of HMRC's specialist compliance teams. We agreed that now was a good time to look at progress against our objectives to improve the practical operation of IR35.

External Forum Members have worked with HMRC Forum Members to produce detailed reviews of five specific areas with recommendations attached to each. This report brings together those reviews, and sets out HMRC's response to the recommendations.

I would like to thank the Forum Members for their contributions to the IR35 review process. HMRC greatly value their engagement throughout the reporting stages and their collaborative approach to this work. Their contributions continue to be essential to the overall work of the IR35 Forum to improve the way IR35 is administered.

Rowena Fletcher

Deputy Director, HMRC

Chair, IR35 Forum

December 2014

1. HMRC's Response to the Recommendations

1.1 Introduction

Since 2012 HMRC has implemented a new approach to administering IR35 in partnership with the IR35 forum. This report looks at how effective the new approach has been and identifies areas for further improvement.

HMRC and external forum members worked jointly on five areas of IR35 administration as set out in the process review framework attached at Annex C. Each chapter sets out detailed recommendations which we have grouped into three broad headings:

- Guidance
- Improving customer awareness and understanding and;
- Approach to compliance

Many of the recommendations follow the same theme and in those cases we have made a single broader response to the theme. We will agree next steps to implement agreed recommendations at the next forum meeting.

1.2 Guidance

The review looked at three areas of HMRC guidance:

- Updates to GOV.UK and other webpages (includes recommendations from chapter 2)
- Business Entity Tests (includes recommendations from chapter 4)
- Improving the contract review service (includes recommendations from chapter 5)

1.3 Guidance: updates to GOV.UK and other webpages

Contact Companies House with a view to including information about IR35 in any company start-up/registration guidance or arrange clear signposting to the relevant Gov.uk IR35 introductory guide. (Recommendation 1, Chapter 2)

Continue to develop IR35 information as specialist guidance in the dedicated Gov.uk Guides. This will include:

- a. clarifying how news items are to be published in future, and**
- b. taking account of any recommendations from the IR35 Administration Review, such as revisiting information relating to the IR35 Helpline/Contract Review Service, ensuring that this is clearly publicised and stresses the confidentiality of the service. (Recommendation 2, Chapter 2)**

Consider whether the IR35 Contract Review Service should be publicised on HMRC web pages relating to non-statutory clearances. (Recommendation 3, Chapter 2)

Explore the creation of links to IR35 User Guides from other selected HMRC/Gov.uk web pages, such as pages related to the start-up of employer PAYE schemes or starting up companies/partnerships. (Recommendation 4, Chapter 2)

Recommendations 1 to 4 share a common theme in recommending that HMRC continue to update the IR35 guidance pages on GOV.uk and update or create links to it from other pages. HMRC supports this approach and will adopt these recommendations.

1.4 Guidance: Business Entity Tests

HMRC should abolish the Business Entity Tests (Recommendation 18, Chapter 4)

HMRC should notify HMT/Cabinet Office of this outcome (Recommendation 19, Chapter 4)

HMRC, representative organisations and other stakeholders should raise awareness of IR35 and the application of IR35 legislation in other ways. This could be by better publicity or possibly in the longer term by developing dedicated IR35 tools. (Recommendation 20, Chapter 4,)

However, the team thought withdrawal of the BETs was still better overall than the current situation. In addition, there was also a concern that some would continue to use the BETs or make up their own versions, particularly in the public sector. It was agreed measures should be taken to ensure this did not happen that HMRC/ HMT need to specifically warn against this as far as possible. (Recommendation 21, Chapter 4)

Recommendations 18 to 21 all concern the business entity tests. HMRC agree these tests are no longer fulfilling their original purpose and accept the recommendations. HMRC will make sure that abolition of the BETS is widely publicised.

1.5 Guidance: improving the Contract Review Service

HMRC could consider giving a qualified opinion which is not guaranteed (or a view) even if:

- **they have not received the upper level agreement;**
- **the contract has not been signed;**
- **the contract is not written down, but this will be a verbal view based on the information available to HMRC.** (Recommendation 22, Chapter 5)

It is recommended that HMRC provide customers with an opinion based on the information they currently have and that a caveat is placed on this opinion. This will provide the customer with an idea that the way they are working is in an IR35 compliant manner provided they implement any guidance provided. (Recommendation 25, Chapter 5)

None of these items are necessarily barriers against providing information. They only become barriers to HMRC *guaranteeing* the outcome of an enquiry. In particular, if HMRC has not seen the upper level contract it would need to be satisfied that the upper level contract accurately reflects the lower level contract in order to provide a guaranteed

opinion. However, this would not be a barrier to HMRC providing a qualified opinion or view. Opinions with qualifications or caveats (and therefore not “guaranteed” opinions) will provide customers using the service with a positive experience, as well as educate them as to what is required in order to secure a more conclusive opinion from HMRC.

Some Forum members continue to be concerned about the scope for customers to perceive that discussions with the contract review service might not remain confidential. We recognise these concerns and that they are unlikely to be addressed effectively by further assurances. So we will look again at how best we provide guidance and help for customers, in line with the support we provide through other helplines and non-statutory clearances.

1.6 Improving awareness and understanding of IR35

The review considered two areas of improvement;

- Using guidance and written material (includes recommendations from Chapters 2 to 4)
- Using seminars, meetings and expertise of HMRC (includes recommendations from Chapters 3 and 5)

1.7 Guidance and written material

HMRC to write letters to people who they have identified as potentially being affected by the IR35 legislation. This should help to raise their awareness, explain how the legislation works and highlight where people can go for help and what they need to do if they think they are inside the legislation but haven’t been operating it. (Recommendation 6, Chapter 3) A large scale letter writing exercise to all PSCs would be difficult to properly target and would not be in line with our digital strategy. We will look for other ways of interacting with our customers rather than writing to them unprompted. Our compliance strategy, promote, prevent, respond, is aimed at doing all we can to support customers to get their tax right first time so that we can focus communications to those customers who need help and our direct interventions on the wilfully non-compliant.

Continue to take relevant opportunities to use guidance to publicise IR35 and raise its profile. (Recommendation 5, Chapter 2)

HMRC to put articles in the Agent update. This is an HMRC publication that goes to a number of agents. This could be used to remind agents about the IR35 legislation and provide them with links to the new guidance. (Recommendation 8, Chapter 3)

HMRC should segment the potential IR35 population to help to target communications. It may be that this could be split into different behavioural groups such as vulnerable workers, deliberate abusers, unaware etc. (Recommendation 15, Chapter 3)

Recommendations 5, 8 and 15, share a common theme in publicising IR35 through the use of targeted written material or guidance. Our approach has been to look at how we can build on our existing channels to better raise awareness of IR35, to identify where we can have most impact in a cost efficient way. HMRC will continue to review its guidance and ensure that it is presented in a format fit for the wide range of customers who currently rely on it.

Recommendation 15 focuses on the need for HMRC to try and segment its potential IR35 population to produce targeted communications. HMRC continues to understand its customer base better with the aim of proving a more bespoke product for them.

A targeted communications campaign should be run with specific industries, where there has been a rapid growth in personal service companies to raise IR35 awareness e.g. oil and gas. (Recommendation 17, Chapter 3)

HMRC accepts the recommendation and will look for opportunities to raise awareness.

HMRC should add notes to the SA and CT returns, which link to the new IR35 guidance. (Recommendation 16, Chapter 3)

HMRC is currently reviewing the SA notes with a view to making reference to the guidance. CT returns are now online and guidance notes are not used by all customers. HMRC will look to link the gov.uk guidance to other company guidance on gov.uk. See also Response to Recommendations 1 to 4.

1.8 Seminars, meetings and expertise of HMRC

HMRC and/or other IR35 experts to talk at events such as those held by various representative bodies/trade organisation providing their members with a seminar on IR35 and how to work out if you are within it and where you can go to for help.

(Recommendation 7, Chapter 3)

Accountancy bodies to send out material or hold seminars to help to educate their members about the legislation. This should be supported by HMRC speakers. This has been highlighted by the Forum as an area of particular concern. Almost all of the accountancy bodies are represented on the Forum so agreement from them to take this action forward would help raise awareness with smaller accountancy firms who often represent small businesses. The larger accountancy bodies should also approach the smaller accountancy bodies to ensure that the widest range of accountants receive the information. (Recommendation 9, Chapter 3)

Other representative bodies to hold seminars with their members to help to raise the awareness of IR35 amongst agencies and end clients. HMRC speakers should support these seminars. (Recommendation 10, Chapter 3)

Trades Unions should be approached, as part of a guest invitation to attend a meeting of the IR35 Forum as they have a large membership and this will help to raise awareness more widely. (Recommendation 11, Chapter 3)

HMRC to run free of charge seminars – these would need to be at venues in the Government estate that would be free of charge to use. This could also help to raise awareness across the public sector and be linked to the changes made as a result of the CST’s review of public sector. (Recommendation 12, Chapter 3)

HMRC to use their CRM’s (Customer Relationship Managers) to educate large businesses about IR35 and help them to understand the issues for them as end clients.
(Recommendation 13, Chapter 3)

HMRC’s should use their internal teams e.g. Corporate communications, Life Events, Customer service etc. to ensure that when people first incorporate they are aware of the IR35 legislation and their responsibilities. (Recommendation 14, Chapter 3)

Support for external advisors may unlock more open discussion and compliance. Working with those advisors to support the advice they provide to their customers will create a more open dialogue. (Recommendation 23, Chapter 5)

This specialist team support for external advisors may extend to offering workshops on the subject of IR35 and enquiries. To increase the likelihood of external advisers attending such workshops, HMRC may consider providing CPD accredited training.
(Recommendation 24, Chapter 5)

Recommendations, 7, 9, 10, 11, 12, 13, 14, 23 and 24 share a common theme in recommending the use of meetings, seminars and expertise of HMRC internal teams to raise awareness and raise the profile of IR35. HMRC agrees that if external advisors are more prepared to talk to HMRC, customers will do the same as confidence grows.

HMRC also agree that using the expertise of its people in the ways suggested will have a beneficial effect and is committed to doing so where resources permit them and where it represents good value for customers.

We recognise the importance of continually improving our guidance and are committed to doing so as we say in response to other recommendations in this report.

We will continue to support external seminars where this is an effective use of our resources and we will continue to look for innovative and cost effective ways to raise awareness and understanding of IR35.

1.9 Approach to compliance

The review recommended a more customer focused approach and improvements to procedural issues. (Includes recommendations from Chapter 6)

1.10 Customer focused approach

HMRC should do more to ensure that enquiries remain consistent with regards to the scope of the enquiry, the information requested and the timescales taken to respond to correspondence. (Recommendation 26, Chapter 6)

The amount of information requested and the period covered will be influenced by the individual facts of each case. Any delays on the part of HMRC in dealing with customer correspondence is a matter which is taken seriously and HMRC will continue to seek ways of improving this going forward.

An allowance for the time taken for the initial letter of enquiry to arrive should be incorporated into the overall timescale given to clients to respond to requests. Extra time should be given during holiday and busy tax return periods so unnecessary pressure and burden is not placed on the client. (Recommendation 27, Chapter 6)

The enquiry framework applied to PSCs is not different to that applied to other customers. All requests for information invite the customer or their agent to contact HMRC immediately if the timescale cannot be met. Information powers are applied only where necessary. The issue of a formal notice in itself allows further time to comply with the request before any financial penalty is considered.

HMRC should provide explanations for the requests for additional information, the requirements for meetings with clients, the reasons for delays and the outcome of enquiries so the whole process is transparent and the client is kept sufficiently informed. (Recommendation 28, Chapter 6)

HMRC will always aim to provide explanations during the course of its enquiries. In certain circumstances where additional data is required the explanation may be that there is insufficient information to reach a conclusion and other relevant data is required to assist. See also response to Recommendation 26.

Where meetings with clients are requested, HMRC should provide an agenda so the client can evaluate the value of the meeting as many would lose income if they attended. (Recommendation 31, Chapter 6)

HMRC agrees providing clients with an agenda for meetings would be helpful and will look to amend its guidance to embed as best practice.

1.11 Procedural issues

HMRC should consider providing an email address for clients to submit information and documentation to speed up the process. (Recommendation 29, Chapter 6)

HMRC accepts this recommendation and aims to implement it later in 2014.

HMRC should consider providing clients with a reminder or warning before proceeding to use information powers to enable clients to comply with the request for information as required. (Recommendation 30, Chapter 6)

The use of information powers is intended to combat delay and progress cases more swiftly, a key HMRC objective following the OTS review. As best practice agents are contacted by telephone before notices are issued and HMRC will look to make this more consistent in its work. See also response to recommendation 27.

HMRC should inform the client if the end user is to be approached as a matter of courtesy.

(Recommendation 32, Chapter 6)

HMRC agrees that it is right to inform the customer before approaching the end client. HMRC will work to ensure this is done consistently.

2. IR35 External Guidance

2.1 Background

The New Process Review Framework asks a series of questions:

- how user friendly is the HMRC guidance, i.e. is it easy to find and navigate?
- is the guidance comprehensive? Do we require any additional guidance?
- is there any guidance that is no longer required and could be removed?
- are there any quick wins that could be undertaken in the short term to improve the site for external customers?

These questions were initially raised during 2013 when work was begun to address them. However IR35 guidance was subsequently identified as one of the first HMRC subjects to transfer to the Gov.uk website. The issues above were therefore addressed during the transition process as explained below.

IR35 customer guidance is currently published in a dedicated area of the HMRC website. This is structured around eight major subject areas which are further sub-divided at lower levels into various topics. IR35 is a complex subject and the guidance is both detailed and comprehensive, having been built up incrementally over a number of years. However, customer feedback indicates that the information is confusing and difficult to navigate because it is badly-structured.

A 2011 paper to the Forum exposed particular difficulties faced by new users and highlighted problems with the search facilities and the links to related information. In particular, there was a feeling that the existing structure requires users to possess an awareness of the information they require before they are able to successfully navigate to and access the relevant detailed guidance.

As a result, in 2013 HMRC committed to improving IR35 guidance and initiated a review inviting comment from the IR35 Forum and other stakeholders. In autumn 2013, additional resources were secured with the aim of delivering a restructured and enhanced product. This enabled HMRC to immediately improve the search facilities and start to canvass user opinion with a view to completely revising the format of the current site.

During 2013 HMRC was aware that their website was due to transfer to Gov.uk but specialist material such as IR35 was not originally due to transition until late 2014. However, in December 2013 Gov.uk released their timetable and IR35 was included in the first tranche of content to be moved. A new customer-centric approach had therefore to be adopted to the provision of IR35 guidance. The transitional process was supported by HMRC's Digital Services team, who are the Department's liaison point with Gov.uk.

2.2 User Research

During Autumn/Winter 2013 HMRC undertook research and user engagement including:

- examining previous research/comments;
- meeting individual representatives of the IR35 Forum to canvass opinion;
- recruiting 10 “new-to-tax” individuals to answer questions on example scenarios;
- running 2 workshops with HMRC teams to evaluate current guidance against stakeholder needs. This involved segmenting IR35 customers (i.e. experienced contractors/advisors/clients etc.) and mind-mapping each customer group’s key needs and questions.

Statistical data was also obtained regarding “hits” on HMRC website pages, the average time users spent on particular pages and how often “IR35” was searched on the HMRC website.

2.3 GOV.UK

The Gov.uk format requires all new content to be customer-focused and based around “user need stories” (rather than being topic-based as is currently the case). An example of a “user need story” is:

“As an inexperienced contractor, I need to develop an understanding of IR35 and decide whether it affects me so that I can ensure I am meeting my legal obligations”.

Information from the user research was evaluated to determine the top IR35 user requirements. By analysing the evidence and data, seventeen key “user need stories” were developed. The initial research and “user need stories” were presented to the IR35 Forum in November 2013. Members of the Forum were invited to comment on the draft templates and these were subsequently adjusted following feedback

The user need stories were then grouped into seven digital products (known as User Guides) which each focused on a distinct aspect of IR35. A draft outline of each guide was created and shared with a limited number of HMRC specialists and the external guidance lead. After receiving comments from this group the process of developing each Guide began, including writing new content for some elements of the guidance. First drafts were circulated in February 2014 and observations invited from HMRC specialists and IR35 Forum members. Feedback was incorporated into the final drafts and seven Guides were passed to HMRC Digital Services for stylistic editing to reflect web content standards.

Final versions of the Guides were delivered to Gov.uk by the end of February 2014 ready to be built onto the digital platform and published in March 2014. However, full publication on the Gov.uk website has been temporarily delayed. This is because IR35 guidance is classed as “specialist” content. HMRC and Gov.uk are currently in the process of agreeing

conventions for specialist content, such as a standard way for News items to be delivered. In the meantime the new IR35 Gov.uk User Guides were published on the HMRC website on 5th June 2014 and the original FAQs were placed in the National Archives on the same date.

However, information about the IR35 Forum has already been transferred to Gov.UK and is now only available via the Gov.uk platform. Arrangements have been put in place to automatically transfer users accessing the Forum pages via the original HMRC site onto the new Gov.uk pages.

HMRC manuals and the new IR35 User Guides will be published on Gov.uk later this year. Gov.uk can be searched using Search Engine Optimization (SEO) tags which use the visible contents of a page to return searches. Under this system, some words or phrases (such as titles) are given higher weightings and are more likely to be included in a search response.

Approximately two months after material is transferred and published on Gov.uk, the current guidance on the HMRC website will be transferred to the National Archive. The original pages will still therefore be accessible to the public but will not be updated.

2.4 Recommendations

Although the original guidance review was overtaken to some extent by the transition to Gov.uk, the original principles have been largely upheld. For example:

- quick wins, such as improved search facilities and updates, have been implemented;
- user needs were canvassed and researched;
- the format of IR35 guidance has been refocused around customer needs;
- out-of-date content is to be archived.

However, there are still some areas for improvement which we recommend could be usefully explored as follows:

Contact Companies House with a view to including information about IR35 in any company start-up/registration guidance or arrange clear signposting to the relevant Gov.uk IR35 introductory guide. **(Recommendation 1)**

Continue to develop IR35 information as specialist guidance in the dedicated Gov.uk Guides. This will include:

- a. clarifying how News Items are to be published in future, and
- b. taking account of any recommendations from the IR35 Administration Review, such as revisiting information relating to the IR35 Helpline/Contract Review Service, ensuring that this is clearly publicised and stresses the confidentiality of the service. **(Recommendation 2)**

Consider whether the IR35 Contract Review Service should be publicised on HMRC web pages relating to non-statutory clearances. **(Recommendation 3)**

Explore the creation of links to IR35 User Guides from other selected HMRC/Gov.uk web pages, such as pages related to the start-up of employer PAYE schemes or starting up companies/partnerships. (**Recommendation 4**)

Continue to take relevant opportunities to use guidance to publicise IR35 and raise its profile. (**Recommendation 5**)

3. Promotion and Communication of IR35

3.1 Background

The recent House of Lords report into the use of Personal Service Companies along with anecdotal evidence suggests that many people, who could potentially be within IR35, are unaware of it. This is also reflected in the agent community where some smaller firms may not be aware of the legislation and how it works.

Some members of the Forum have also suggested the IR35 legislation is not well known about or understood. This strand of work has two objectives:

- to raise the awareness of the agent community and the general public;
- to increase understanding of the legislation, how it operates and who it affects.

This chapter also considers ways to raise awareness of services that HMRC offers including the IR35 contract review service.

We asked:

- How could we better alert people to IR35 and what they need to do?
- How do we ensure that people better understand the legislation so that they are able to make an informed decision about whether it applies to them?
- How can we raise awareness of the rules in the agent community to ensure that people are getting the right advice?

While considering responses to these challenges any decision taken by HMRC has to ensure that any funds allocated for raising awareness represent good value for customers and therefore any of the following recommendations set out below will also need to be weighed against this requirement.

3.2 Where are we now?

When IR35 was introduced in 2000, although it had a high profile because of the level of controversy it caused, many people were aware of its existence. However, it was, even then, debateable about how many people understood how it works. High profile cases such as Dragonfly also helped to raise the profile of IR35 especially in certain business sectors such as IT.

It is still the case that some business sectors are far more aware of the legislation than others. There is though in some sectors a belief that the legislation only applies to certain sectors. When asked what is IR35 it is the case that some people would reply that 'it is something to do with IT contractors.'

The creation of the IR35 Forum in 2012 and new processes including increased HMRC IR35 compliance activity has helped to raise awareness of IR35 generally.

The new legislation for Offshore and Onshore Intermediaries together with the introduction of assurance processes in the Public sector have all brought IR35 back into focus. The 2014 House of Lords Select Committee enquiry and report on the use of Personal Service Companies has also assisted in the awareness issue. However, it is recognised that more needs to be done to ensure that those potentially affected by IR35 have access to the right advice at the right time.

3.3 Recommendations

The IR35 Forum have considered a number of ideas to actively promote awareness of IR35, some of these have been discounted at the inception stage as they do not represent good value on their return for tax payers. The remaining ideas focus on using current available channels across HMRC and other Government departments together with promotion via external Forum members and the organisations they represent.

HMRC to write letters to customers who they have identified as potentially being affected by the IR35 legislation. This should help to raise their awareness, explain how the legislation works and highlight where people can go for help and what they need to do if they think they are inside the legislation but haven't been operating it. **(Recommendation 6)**

HMRC and/or other IR35 experts to talk at events such as those held by various representative bodies/trade organisation providing their members with a seminar on IR35 and how to work out if you are within it and where you can go to for help. **(Recommendation 7)**

HMRC to put articles in the Agent update. This is an HMRC publication that goes to a number of agents. This could be used to remind agents about the IR35 legislation and provide them with links to the new guidance. **(Recommendation 8)**

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Other representative bodies to hold seminars with their members to help to raise the awareness of IR35 amongst agencies and end clients. HMRC speakers could support these seminars. **(Recommendation 10)**

Trades Unions should be approached, as part of a guest invitation to attend a meeting of the IR35 Forum as they have a large membership and this will help to raise awareness more widely. **(Recommendation 11)**

HMRC to run free of charge seminars – these would need to be at venues in the Government estate that would be free of charge to use. This could also help to raise awareness across the public sector and be linked to the changes made as a result of the CST’s review of public sector. **(Recommendation 12)**

HMRC to use their CRM’s (Customer Relationship Managers) to educate large businesses about IR35 and help them to understand the issues for them as end clients. **(Recommendation 13)**

HMRC’s should use their internal teams e.g. Corporate communications, Life Events, Customer service etc. to ensure that when people first incorporate they are aware of the IR35 legislation and their responsibilities. **(Recommendation 14)**

HMRC should segment the potential IR35 population to help to target communications. It may be that this could be split into different behavioural groups such as vulnerable workers, deliberate abusers, unaware etc. **(Recommendation 15)**

HMRC should add notes to the SA and CT returns, which link to the new IR35 guidance. **(Recommendation 16)**

A targeted communications campaign should be run with specific industries, where there has been a rapid growth in personal service companies to raise IR35 awareness e.g. oil and gas. **(Recommendation 17)**

Summary

Both HMRC and External members can do much to help to raise the awareness of IR35 and it will be those that provide the best return for cost that should be taken forward, which in turn will have a big impact in terms of raising awareness.

4. Business Entity Tests (BETs)

4.1 Background

The BETs were published in May 2012 and are a self-assessment tool which can be used to assess the overall risk of being subject to an HMRC enquiry. There are 12 tests each of which addresses a separate topic including: business premises, professional indemnity insurance, advertising costs, previous PAYE, repair at own risk, client risk, billing, right of substitution and actual substitution.

Within each topic there are one or more questions which should be answered according to knowledge of the business in question. Points are scored for each “Yes” answer and the tests/questions are weighted so different tests give different scores. The resultant points are totalled and then distributed along a spectrum of risk clustered around three bands – high, medium and low. The higher the score, the lower the risk of being subject to IR35.

The guidance accompanying the BETs outlines HMRC’s risk-based approach to IR35 compliance, advises how to use the BETs and explains what to do for each risk band. It makes it clear that the BETs only address the overall risk of a business being subject to an HMRC enquiry and signposts further guidance (including example scenarios) to help illustrate how IR35 applies to individual engagements.

The guidance recommends that businesses falling into the “low risk” band gather and retain relevant and reliable evidence to support the outcome of the BETs. If HMRC subsequently open an IR35 enquiry but it is proved to HMRC’s satisfaction that a business is outside IR35 or “low risk”, then HMRC will close their IR35 review. In these circumstances, HMRC undertake not to check again for the next three years (provided certain conditions are met). If circumstances change, the BETs should be retaken and, if necessary new evidence should be gathered and retained.

A major issue is that although the BETs and risk bands help work out the likelihood of an HMRC IR35 enquiry, they cannot determine whether IR35 actually applies to any specific engagement as IR35 legislation requires. This is because the BETs look at the way a business works in general – in contrast IR35 is to be applied on a contract by contract basis.

In addition, they do not address the position for individual contracts; neither can it be assumed that because a business falls into a particular risk band overall that each specific arrangement will also fall within the same risk band. So a business classed as “low risk” according to the BETs must still apply IR35 rules to each particular engagement and could enter an arrangement which is within IR35.

4.2 Purpose and Background to the BETs

The tests were developed to meet a perceived need for businesses to have certainty about their IR35 risk and it was originally envisaged that HMRC could use the tests as a filter, enabling better targeting of high risk cases.

The Professional Contractors Group (PCG) supported by Ernst & Young, first developed a set of tests at the request of the Office of Tax Simplification (OTS). The OTS had been tasked by the Government to review small business taxation, including IR35. It asked PCG to deliver an alternative to IR35 which could be included amongst the recommendations of its report. The other recommendations were abolishing IR35 completely or keeping IR35 but improving its administration.

The Government adopted the final option – to improve the administration of IR35 – and set up the IR35 Forum to implement the improvements. The idea of providing a set of tests resurfaced, though now they were to be used as a filtering process only. The tests would reduce the population of people at risk of investigation, providing clarity to businesses and directing HMRC's compliance activity towards high risk cases. The IR35 legislation itself would remain unchanged.

Some members of IR35 Forum were not able to support the introduction of the tests. They felt they were too far removed from the legislation and so would not help businesses understand their IR35 status. The majority, though, felt that a simple, binary test, that could be easily applied, would be a helpful tool and would provide at least some indication of status.

The IR35 Forum worked to develop and agree the individual tests. The twelve tests that are in place now were largely agreed by both HMRC and external members of the Forum, though some externals proposed additional tests which were rejected by HMRC. There was, though, a fundamental disagreement on the scoring. Almost all of the external IR35 Forum members disagreed with HMRC's proposed scoring. They felt it placed a disproportionate number of businesses in the 'high' or 'medium' risk categories, thus rendering the tests as a whole ineffective.

Despite these misgivings, the BETs were introduced in May 2012. Because the published tests were not fully agreed by the IR35 Forum, either in terms of the tests themselves, or the weighting attached to them, some members of the Forum feel unable to support them in their present format.

4.3 Review of the BETs

The review team were asked to consider:

- are the business entity tests working/used?
- are the tests fit for purpose/adding value?
- are there any areas where the BETs could be improved?
- are there any areas where the BETs are being manipulated?

One of the challenges facing the review team was the lack of definitive quantitative information about the use of the tests. To try and combat this we invited stakeholder comments and also held a Focus Group meeting with user representatives.

4.4 Are the BETs being used and in what circumstances?

The limited evidence available indicates that the BETs are not well-known or widely used. The BETs are available as a voluntary self-assessment tool. As such, users do not have to tell HMRC they have taken the tests nor reveal the outcome.

HMRC therefore does not hold specific quantitative data or evidence about how often or by whom the BETs are used. In addition, HMRC do not rely on them to target compliance activity so do not maintain any internal statistics nor do they count instances when they have honoured the undertaking to close a review where the BETs and supporting evidence show to HMRC's satisfaction that a business is "low risk".

The BETs can be found in a standalone document accessed via the dedicated IR35 area of the HMRC website. There is minimal feedback about this guidance but what there is indicates it is well-written and the BETs are easy to use. So the format and presentation of the guidance itself does not appear to be acting as a barrier to using the BETs.

However, although user-friendly and not particularly difficult to find, users still need to be aware that the guidance/BETs are available before they will search for them. Stakeholders report that clients are more likely to ask them for guidance than look for information themselves on the HMRC website. This is borne out by HMRC statistics on the number of times the relevant webpages have been accessed since the BETs were originally published in 2012¹.

This information shows the number of downloads is low compared to the estimated size of the target population (There are estimated to be around 200,000 personal service companies). The IR35 Helpline also holds some data on the type of enquiry they receive. The number of queries they have received about the BETs is also similarly low².

Stakeholders representing small businesses report that small one man companies do not use the BETS. Either they are unaware of them or believe there is no point as they will always be classed as "medium" or "high" risk. There is also a feeling that customers are worried about IR35 in general and thus have a specific fear about taking the BETs. This also fuels perceptions that the BETs link in to HMRC systems, that HMRC will be able to access any information provided and that taking the tests will initiate HMRC compliance activity.

A recent PCG survey³ of both PCG members and non-members shows:

- 60% of the non-members are not aware of the BETs.
- Even amongst PCG members, 28% had never heard of them.
- 39% of PCG members had taken the BETs
- Just 17 % of non-members had taken them

¹ See Annexes, Annex A HMRC Statistics of this report, p38

² See Annexes, Annex A HMRC Statistics of this report, p38

³ See Annexes, Annex B PCG Survey Results of this report, p39

- 6% of PCG members and 2% of non-members think the scoring of the BETs is fair

Stakeholders confirm that the only context in which the BETs are regularly used is in the public sector. This is because Government Departments are generally following the Treasury guidelines issued in Action Note 7/12 (Tax Arrangements of Public Appointees). These were introduced in August 2012 following the Chief Secretary to the Treasury's review of off-payroll workers.

The guidelines recommend that Departments seek assurances regarding the tax and National Insurance arrangements of their appointees. For higher earners (those earning over £220 per day for over 6 months) they recommend that workers should be able to show their company is "low" risk for IR35 according to HMRC's BETs.

Where the outcome is "medium" or "high" risk they are required to provide further assurances by, for example, a contract review showing they are outside the scope of IR35. Where contracts are within IR35 evidence of operating IR35 legislation is sought.

HMT are actively monitoring compliance with these arrangements and fining Departments who do not comply. So agencies which regularly supply to the public sector and relevant representative groups will guide contractors to take the BETs in these circumstances.

As an aside, it is reported that the HMRC contract review service is seen as too slow and cumbersome to meet the 28 day deadline required by public Departments and many private organisations are providing their own bespoke contract review services with faster turnaround but at a cost to contractors.

4.5 Are the tests fit for purpose/adding value?

The original purpose of the BETs was to provide more clarity to contractors about their IR35 risk and also to provide a filtering mechanism to help HMRC target "high" risk cases.

HMRC believe the BETs are fit for purpose in so far as they are fair reflection of its own view of IR35 risk. However, they do not routinely make reference to the BETs during compliance activity although will take them into account if customers present their outcomes. HMRC has noted this rarely happens and that use of the tests appears to be very sparse. Customers scoring "high" risk are unlikely to spontaneously volunteer this information.

The tests might be useful for very clear cut cases which are obviously "low" risk. For example, the BETs may provide assurance to a "traditional business" such as a small shop if the owner is aware of them and feels confident enough to use them.

However, there is broad agreement amongst stakeholders that the scoring system generally results in the majority of businesses falling into the "medium" or "high" risk category and point out that contractors are not generally interested in the distinction between "high" and "medium" risk brackets.

The population of contractors at risk of an HMRC enquiry is therefore not significantly reduced as was originally envisaged. Some of this population will genuinely be at the higher

risk end of the spectrum so the tests would work but for the majority of contractors who typically do not have the “traditional” badges of business, the tests may be somewhat meaningless.

There is broad agreement amongst stakeholders that the BETs in their current form are not fit for purpose. The review team noted that some stakeholders were unhappy with the concept of the BETs from the very beginning arguing that they did not reflect the legislation and/or case law. For example, there is no reference to “control” or “mutuality of obligation” (both important factors) in the tests. Others felt that the specific questions and/or weighting of the individual tests were incorrect or produced a skewed outcome.

As a result, most representative groups now feel unable to provide supporting publicity or recommend use of the BETs to their members. In fact, some agents and organisations have published unfavourable publicity in the past and some actively insist their customers/clients do not use the BETs.

Agents also reported that they felt some of the tests discriminated against small businesses who may not have the capacity to reorganise their affairs and also that the BETs do not reflect modern business practices. This appears out of step with the Government drive to incentivise enterprise within the economy.

4.6 Are there any areas where the BETs are being manipulated?

Because the BETs are a voluntary tool based around a scoring system, there is some evidence that either contractors are attempting to maximise their scores or their advisors are misusing the tests when it suits their case. There are also some indications that the BETs maybe encouraging contractors to act in ways they would not normally behave if the BETs did not exist. For example, it has been suggested some may consider maintaining a form of business premises for no other reason than to satisfy the “premises” test within the BETs.

A worrying and more recent development is the growth of websites advocating bespoke tools and guaranteeing to improve scores, so that a low risk result is obtained by entirely contrived means, leading to contractors undertaking unnecessary activity and incurring significant additional costs. It is a matter of serious concern that some contractors may be relying upon results from such sites.

In the public sector, there is general agreement amongst stakeholders that most Departments do not understand the overarching view of risk the tests provide and consequently they are not applying the results correctly. Despite the guidance, in practice the BETs are generally being wrongly used in the public sector as an absolute test and the results are being applied to individual contracts.

In addition, there is a lack of consistency and the BETs seem to be adding to the general confusion with Departments using the tests in a variety of ways, making up their own versions or requiring various degrees of evidence (much unsubstantiated). It is noted that the developments in the procurement process including the appointment of Capita as the preferred supplier and the transition to the Contingent Labour One (CLOne) Framework

across the public sector appears to have exacerbated the situation so that the BETs are being given an almost quasi-legal status.

In this respect, Capita are using IR35 declarations and assurances based on the BETs to assure compliance with tax obligations, with those unable to secure a low risk score in danger of being forced to operate IR35 or risk losing an engagement. Stakeholders feel it is wholly inappropriate to force contractors to use what is meant to be a voluntary self-assessment tool, which cannot provide confirmation of someone's IR35 status.

Whilst it was noted that there was no consistency across government it was accepted that there were some instances of good practice amongst Government Departments, for example the Ministry of Justice and the Home office had developed a questionnaire to gauge the level of assurance required for off-payroll arrangements. This was based on a joint assessment between contractor and client of the proposed contractual relationship under which the parties reach an agreed understanding of whether the engagement was likely to be within IR35. Depending on the outcome, further assurances or agreements about working practices could be sought.

4.7 Are there any areas where the BETs could be improved?

HMRC believe that the BETs are a fair reflection of their current view of IR35 risk but accept that there may be areas that could be reviewed. However, whilst HMRC accept that some tests may benefit from being revised, substantially changing the tests could lead to outcomes that would not reflect HMRC's view of risk and would therefore not be valid.

On the other hand, there is general agreement amongst other stakeholders that to be of any use the BETs would need to be thoroughly overhauled. As a result, revising the BETs is likely to be a time-consuming and difficult process and it is anticipated it would be difficult to reach agreement on the specifics including which tests to include/exclude and the weighting to be attached to each test

Agreement could perhaps more easily be achieved on general overall concepts, for example:

- perhaps the BETs could be revised to provide assurance on a contract-by-contract basis rather than simply giving an overall idea of risk;
- perhaps more/better publicity could be given to individual's voluntary use of the BETs.

4.8 Conclusions

Overall it is agreed the tests:

- define only a holistic level of risk so cannot be used to determine whether an individual contract is subject to IR35 legislation regardless of the outcome;
- are generally not widely known or used;
- lack support amongst stakeholders and representative groups;

- add an unnecessary layer of complexity;
- do not act as an effective targeting mechanism for HMRC compliance teams;
- are not always being used for the purpose for which they were intended;
- are being deliberately misused and/or abused in some circumstances.

The review team therefore considered five options:

- **Do nothing**
The review team feel this is not a viable option given that the BETs are not achieving their stated aims, are open to manipulation and are being misused.
- **Re-publicise and re-launch**
It was not felt simply re-launching the existing tests would solve any of the inherent problems. In any event, there is no HMRC budget for publicity.
- **Revise the existing BETs**
This would involve reviewing each individual test, the questions within each test and the scoring system (including the weighting). It may be possible to alter the outcomes so that more genuine businesses achieved a “low” risk score but in any event, this may only affect a minority and still would not guarantee a particular engagement was outside IR35. It was also considered a simple pass-fail outcome would be a better option.

However, the review team felt it would be difficult to achieve any agreement on these aspects given the divergent views about the development and format of the current tests.
- **Replace the BETs with another test**
An alternative test could be devised and possibly applied in different circumstances e.g. on a contract-by-contract basis. However, the team felt it would be difficult to identify a viable alternative and any proposal would face the same development difficulties as option 3.
- **Abolish the BETs**
This was the preferred option. It was felt that the current tests are not fulfilling their intended purpose and that the situation is not likely to improve significantly, even if the tests are revised, replaced and/or given more publicity. Stakeholders in general feel the current outcomes are of little use as they appear skewed towards the higher end of the risk spectrum for the majority of cases. There is also genuine concern about misuse of the tests and the impact on many contractors’ businesses.

4.9 Recommendations

The BETs were intended as a self-assessment tool to distinguish a personal service company (PSC) at “low” risk of an IR35 enquiry; the purpose being to provide a level of assurance to

PSCs genuinely in business and to assist HMRC's risk assessment. However the evidence is clear that they are little used and neither provide assurance to customers nor help with HMRC risk assessment. They run contrary to legislation which requires consideration on a contract by contract basis regardless of the overall business arrangement. Having considered the options the review team therefore recommend:

- HMRC should abolish the Business Entity Tests. **(Recommendation 18)**
- HMRC should notify HMT/Cabinet Office of this outcome; **(Recommendation 19)**
- HMRC, representative organisations and other stakeholders should raise awareness of IR35 and the application of IR35 legislation in other ways. This could be by better publicity or possibly in the longer term by developing dedicated IR35 tools. **(Recommendation 20)**

In making these recommendations the review team have kept in mind the sensitivities around IR35 in both the public and private sectors. It was also noted that the recent 2014 House of Lords Select Committee report on Personal Service Companies addressed some of the difficulties with the BETs and recommended HMRC undertake a consultation on how the BETs could work better to provide greater certainty for taxpayers (Recommendation 9, paragraph 34, House of Lords Select Committee on PSCs).

The review team accept there are some risks associated with these recommendations. For example, there would be no immediate replacement for the BETs although the original need for business assurance remains.

However, the team thought abolition was still better overall than the current situation. In addition, there was also a concern that some would continue to use the BETs or make up their own versions, particularly in the public sector. It was agreed measures should be taken to ensure this did not happen and that HMRC/ HMT need to specifically warn against this as far as possible. **(Recommendation 21)**

5 HMRC IR35 Helpline and Contract Review Service

5.1 Background

HMRC introduced the IR35 help line in 2000 to provide assistance to customers with IR35 queries. Shortly afterwards, HMRC also launched a contract review service to enable customers to receive HMRC's opinion on contract terms for specific engagements.

By offering these services to customers, HMRC is clearly demonstrating a move towards preventing avoidance through education and support. This may be perceived by some as a change of image for HMRC away from reactive policing of avoidance/evasion. This move is to be supported by the IR35 Forum and more publicity of this move is essential to opening channels of communication. As was noted in the recent report by the House of Lords Select Committee looking at the use of Personal Service Companies ("PSC") there is a need for HMRC to publicise the help line and contract review service to greater effect.

5.2 Resource

The help line is at present operated by three specialist IR35 advisers who can provide advice (free of charge) on any type of IR35 query. The contract review service is also conducted by the same three specialist IR35 advisers.

5.3 Confidentiality

HMRC's intention when introducing the help line was to enable customers to talk freely and independently about their query without the worry that the information will be used to prompt an enquiry into their tax affairs. For this reason the caller is at liberty to remain anonymous but in any event the information provided will not be passed to the employer compliance team despite there being an apparently widespread misconception that this is not so.

5.4 IR35 Helpline

Volume of calls

The help line receives on average between 900 and 1200 calls per annum. During the year 2012/2013 the number of queries received was 1192. For the year 2013/2014 the number of calls received by the helpline was 942.

Length of calls

Calls to the help line can take up to 45 minutes but many only take a few minutes depending on the type of query involved. The advisers are not subject to any time constraints and customers should be assured that the adviser may speak with them for as long as the query takes.

Types of query received

Whilst the types of query received by the helpline can be anything relating to IR35, HMRC categorise the queries for 2013/14 as follows:

Basic query/understanding IR35	361
Opinion process	208
Deemed payment	110
Q6 on P35	46
Business entity tests	29
Redirected (not IR35 related)	188

Responses to calls

Responses to queries are generally provided verbally unless the customer requires an opinion or further guidance in writing. The help line team can and do provide a verbal “view” (as opposed to a written Opinion) if the request is a verbal one.

99% of enquiries are dealt with on the same day, even where further research is required by the HMRC adviser. 85% are dealt with over the phone with the other 15% being dealt with via email.

Who calls the help line?

Callers to the helpline mainly consist of personal service company directors, or partners in partnerships (in certain circumstances, a partnership can be an intermediary potentially subject to IR35), but can also come from any small business owner and occasional advisers.

5.5 Contract review service

The contract review service is also a confidential service provided by HMRC and information discussed with customers will not be passed on to the employer compliance team for review unless the customer specifically asks the adviser to do so. As with the helpline the perception is to the contrary, but this is not the case.

HMRC review the terms of the contract supplied, together with any relevant facts. The essential question to be answered is whether the relationship between a worker and a client would have been one of employment, if there had been no company or partnership intervening. Issues to be resolved in determining this include:

- Whether the contract is subject to any other documentation (including another contract – perhaps an upper level contract – the contract between the client and an agency in the contractual chain);

- Whether the contracts have been signed by all parties;
- Whether the contracts are complete.

When reviewing the contract, HMRC will also talk to the customer and, very often, to the client in order to establish whether the contract reflects the reality of the working practices referencing all status criteria – the key ones considered by HMRC being control, personal service, substitution and financial risk. Importantly, it is up to the customer to provide all of the information.

5.6 Contract Review Service Statistics

For the year ending 31/03/2013 HMRC received 80 contract review requests of which they were able to give an opinion on 12. For 2013/14, HMRC received 64 contract review requests of which they have been able to give an opinion on 16. The requests and the reason for not being able to give an opinion consist of the following:

Reason	12/13	13/14
Still working	7	8
Phone requests (no contract)	26	0
Draft or generic contract	12	11
No written contract	13	0
No sight of upper level contract	5	8
Handed off - (passed to specialist team with customer's agreement – e.g. media sector)	1	0
Request withdrawn	1	6
Not an intermediary	3	6
No response (further info sought)	0	9

Of the opinions provided in 2012/2013 10 were considered “not caught” by IR35 and 2 were considered to be “caught” and in 2013/2014, 14 of the opinions are considered to be “not caught” and 2 were considered to be “caught.” Clearly the evidence shows that the majority of opinions provided are “not caught” by the legislation, even though there is a general perception that if you seek IR35 advice from HMRC you will be “caught”.

HMRC currently provide customers with a verbal “view” based on information which is not full enough to give rise to a written “opinion”. Where a written “opinion” is provided, HMRC will honour that opinion for a period of 3 years so long as the facts remain the same

Having reviewed the current position of the IR35 Helpline and Contract Review Service, this review is tasked with considering improvements, recommendations and challenges which are considered below.

5.7 Challenges

As acknowledged in the report by the House of Lords Select Committee report, the IR35 help line and contract review service is not used as much as HMRC and advisers would want. That said recent comments from external advisers are that the help line is one of the best services and most helpful that HMRC provide. It is hoped that HMRC guidance on the Gov.uk website will provide much wider publicity about the help line and contract review service which will lead to an increase in calls.

Customers’ perceptions of the help line and contract review service already alluded to is the most likely reason for the helpline not being used as much as other help lines. Many websites and professional advisors appear to dissuade customers from using the help line and contract review service through fear of the information provided prompting an enquiry; although this is a misconception and it removes the opportunity for a customer to gain valuable information about their circumstances from an IR35 expert in confidence. Added barriers include customers with insurance; most, if not all, insurance policies will include a provision that the insurance will be invalid if the customer seeks advice from HMRC.

In terms of providing an opinion on contracts, the biggest challenge for HMRC is that they are unable to obtain information around the terms of engagement as seen from the end client’s point of view (which may include the upper-level contract (agreement between the client and any agency involved) – or other details of the arrangements between the client and the agency) - thus preventing HMRC from providing an outcome which would give a customer with a guarantee upon which it/s/he can rely.

Other challenges include the following:

- HMRC are unable to provide an opinion if the contract is not signed, and it is unable to obtain written confirmation that the terms of the contract are being acted upon. Whilst this may prevent HMRC from providing an outcome which would give a customer a guarantee upon which it/s/he could rely, this would not prevent HMRC from providing a view on the contract;
- There is no written contract – in which case it is likely that a “view” as opposed to an Opinion will be given.
- An opinion is neither relevant nor required if the review is requested by someone who cannot possibly be caught by IR35 (not an “intermediary” so does not fall within the scope of the legislation);

- Despite HMRC’s efforts to obtain further information, there may not be enough for it to provide a “opinion”.

Customers contact the helpline and contract review service in an effort to work compliantly. Most advisors are also keen to ensure customers work compliantly, but similar to customers, may not have the necessary expertise to ensure compliance is achieved in all areas of tax and NICs compliance. IR35 is a specialist, ever-developing area which is often overlooked by some advisors.

5.8 Recommendations

To help customers to become better informed about IR35 as a result of their engagement with HMRC and so give customers greater confidence in the service, we recommend that:

HMRC could consider giving a qualified opinion which is not guaranteed (or a view) even if:

- they have not received the upper level agreement;
- the contract has not been signed;
- the contract is not written down, but this will be a verbal view based on the information available to HMRC. **(Recommendation 22)**

Support for external advisors may unlock more open discussion and compliance. Working with those advisors to support the advice they provide to their customers will create a more open dialogue. If external advisors are more prepared to talk to HMRC, customers will do the same as confidence grows. **(Recommendation 23)**

This specialist team support for external advisors may extend to offering workshops on the subject of IR35 and enquiries. To increase the likelihood of external advisers attending such workshops, HMRC may consider providing CPD accredited training. However, the resource cost of implementing and maintaining such accreditations is likely to be prohibitive.

(Recommendation 24)

It is recommended that HMRC provide customers with an opinion based on the information they currently have and that a caveat is placed on this opinion. This will provide the customer with an idea that the way they are working is in an IR35 compliant manner provided they implement any guidance provided. **(Recommendation 25)**

6 New Compliance Approach

6.1 Background

It was agreed that this strand should be progressed by way of a consultation exercise with both tax agents representing PSCs that had been subject to enquiry since 1 April 2012 and HMRC caseworkers engaged in carrying out those enquiries for the Department.

This was carried out in three stages:

- A meeting was held between tax professionals from both agent/accountancy bodies and HMRC to discuss issues and set out the agreed focal areas for consultation.
- Every agent that had represented a PSC that had been the subject of enquiry since 1 April 2012 was approached with a questionnaire.
- Questionnaire responses were considered and responded to by HMRC compliance caseworkers and their managers.

The breadth of responses received was a little disappointing but given the reach of some specialist agents who did respond it still represented opinion gathered from a wide range of customer enquiries (estimated at somewhere between one third and one half of enquiries opened). A summary of the agent and HMRC comments are attached. This concludes with a number of proposed recommendations synthesised by the PCG from the external feedback received and provided to the Forum for wider discussion.

6.2 Summary of findings

In general terms there was recognition that some progress has been made. PSC enquiries are more focussed and more consistent, at least in their initial stages, given that the work is coordinated within a small number of teams. Enquiries where the agent/PSC was able to illustrate their low risk status are being settled more quickly than in the past.

Lengthier enquiries where HMRC is unable to come to a low risk conclusion are more problematic with continued concern regarding enquiry length, consistency of the HMRC approach and the extent of the information requested.

The responses raised a number of repeated issues that are worthy of wider comment within this cover.

6.3 Consistency

Agents called for HMRC to do more to ensure that enquiries remain consistent with regards to the scope of the enquiry, the information requested and the timescales taken to respond to correspondence.

6.4 Information powers and time to respond

Given the complexity and contractual detail of PSC enquiries there have been repeated calls for allowances to be made for the time it takes HMRC's letters to reach the customer or their agent, or the time that should be given to respond when agents and their clients are busy or unavailable because of work and holiday schedules. One suggestion was that this could be overcome by the use of reminder letters.

6.5 Clarity of progress and conclusions

Some respondents felt that enquiries could be pursued along more transparent lines with clearer explanations when requesting information or meetings with clients; explanations for HMRC delay; approaches to third party end users of PSC services; and the reasoning behind enquiry conclusions so that the customer/client is kept sufficiently informed.

6.5 F2F Meetings

This has always been an area of some debate and it is unsurprising that it came up during the course of this review. Agents want an agenda so they can assess the value of the meeting and the cost to their client. HMRC cite the apparent blanket policy of some agents not to allow F2F meetings as unnecessarily lengthening the enquiry. This results in questions needing to be asked by correspondence and cannot be immediately clarified - as would occur in a well-structured meeting.

6.6 Provision of email facilities for correspondence

A number of external correspondents saw some benefit in being able to provide lengthy information and documents by way of email – which would speed up the enquiry process.

6.7 Conclusion

The review has been a welcome opportunity to air opinion. It is hoped that observations made by agents and by compliance caseworkers will in themselves lead to greater transparency and dialogue.

The event between tax professional colleagues from both HMRC and the agent bodies to consider the compliance process was viewed as a positive experience. There may be merit in periodically repeating this discussion to monitor progress and discuss issues of difficulty away from the focus of individual enquiry activity.

6.8 Compliance enquiries questionnaire- sample and approach:

The questionnaire was completed by 6 consultants working at a total of 4 companies between 26th March and 10th April 2014.

The consultants have represented anywhere between 2 and 50 clients that have been subject of an IR35 compliance enquiry since April 2012. Despite the limited number of individual respondents their responses provide commentary on a significant proportion of HMRC's IR35 enquiries given.

Feedback was then considered by HMRC's compliance caseworker teams for comment.

6.9 Results: Consistency between enquiries

Consultants reported that there was consistency between enquiries when the new approach was introduced with cases being concluded very quickly.

However, it is felt that the process has become less consistent with time – inconsistencies include the time period covered by the enquiry and the depth of the enquiry.

6.10 Opening of the enquiry

Consultants felt the initial letters are consistent and they are seen as a vast improvement on the previous approach - it was felt that as part of the old approach, the IR35 compliance enquiry was disguised as an employer compliance review.

In the majority of cases the enquiry was clear in its focus, however two consultants felt that the opening of the enquiry was not focused and the scope of it widened greatly as the enquiry progressed.

In several cases enquiries were opened in August when many clients are away – in such cases additional time should be given, or the inquiry delayed.

6.11 Requests for information and documentation: scope and scale

Requests for information and documentation were mainly seen as being reasonable in scope in the initial stages of the enquiry.

However in a number of cases as the enquiry progressed, the scope of information requested widened and was no longer seen as reasonable. For example documentation relating to expenses or to earlier periods pertaining to a different company rather than the company under enquiry at the time have been requested.

Two consultants reported that the client received over 100 questions, many of which had no bearing on IR35 status. This was followed by an additional 25 questions and requests for copies of email exchanges covering the same issues.

It was felt that this is standard practice in certain HMRC offices and that cases often aren't looked at properly prior to further information being requested.

It is also felt that HMRC demonstrate a fundamental lack of understanding of contracting.

In general consultants did not feel here was any information HMRC does not routinely ask for that it should. However one consultant suggested that HMRC should ask the client for a copy of their contract review and their score on the BETs (where applicable) to identify whether they are within IR35 to save time and resource.

6.12 Requests for information and documentation: provision of an explanation

Although on the whole, sufficient explanations for additional requests for information were provided by HMRC, there are a number of cases where clients are not given an explanation even when requested, simply being told by HMRC that they do not have enough information to make a decision.

6.13 Timescales given to respond to requests during the enquiry

In general, it was reported that timescales to respond to requests were reasonable.

However there remained a significant number of cases consultants reported that time limits for the provision of the information are wholly unreasonable and cause distress for their clients as often a large volume of information is requested.

This is exacerbated by postal delays in receiving correspondence from HMRC and requests arriving during busy tax return or holiday periods. It was suggested that an allowance for these issues should be incorporated into the overall timescale given for clients to respond to requests.

Due to the above issue with timescales, extensions have to be requested in the majority of cases. It was felt that HMRC are inconsistent when dealing with requests for extensions and that often the use of formal powers is unnecessary.

It was suggested that an alternative approach would be to include the option of submitting documentation via email – although some recent letters have provide an email contact, it would be helpful for this to be a consistent offering.

6.14 The use of information powers by HMRC

Information powers were used in almost all enquiries.

It was felt that HMRC could provide clients with a reminder or warning before proceeding to use information powers.

It was also noted that HMRC issue schedule 36 notices a day before the client's deadline and often the information had already been sent to HMRC. It was suggested that a courtesy call could easily establish this.

In two cases it was reported that the use of information powers were wholly unnecessary – HMRC had already been informed that deadlines could not be adhered to for valid reasons (delay in HMRC letter reaching client and holiday), but still issued formal notices.

6.15 Timescales for HMRC dealing with correspondence from the client

Although in some cases, HMRC did deal with correspondence from the client within a reasonable timescale in many others there were delays, even when HMRC used information powers.

The time taken for HMRC to deal with correspondence was seen as being inconsistent. In some cases there are delays of 6 weeks, and in others this could be as long as 4 months.

Explanations for delays are not always given by HMRC. Where they are, delays have been due to holiday, retirement, the consideration of new information from the end client.

Delays particularly seem to be an issue when HMRC is contacting the end client to set up a meeting, especially if the end client is a large business or in the public sector.

It was noted that time limits for responding to correspondence by HMRC are one sided and that clients are often told HMRC requires more time.

6.16 Meetings between HMRC and the client

Meetings with the client were requested in the majority of cases and often reasons for requesting a meeting were not given.

In most cases meetings were not held. The main reason for this is because clients are in fee paying roles and do not want to lose income to meet with HMRC.

Another reason provided was that the consultant and client could not see any potential benefit of meeting with HMRC as they had submitted a comprehensive response to the enquiry and could not provide HMRC with any further information. In addition, meetings are not seen as beneficial as they do not result in cases being closed and a decision on the case is not made at the time.

Where meetings did occur it was felt that many statements made by the client were ignored or given little emphasis in HMRC conclusions and that the whole enquiry was biased to a conclusion that HMRC had already formed.

Suggestions to improve meetings include:

- Have email and telephone contact rather than a meeting as this is more cost effective.
- HMRC to provide an agenda for the meeting so the client can evaluate the value of the meeting when deciding whether to attend.
- A record of what was asked and the responses given to be provided by HMRC so the meeting is documented.

6.17 HMRC access to the end user of the client's services

Most consultants felt that access to the end user of the client's services is a good approach (unless there is a risk to the client losing a contract) as IR35 is decided on day to day working practices. Enquiries can be completed more quickly if the end user confirms the working practices of the client.

However, some consultants felt that no contact should be made with the end user where existing information on the client's working practices support the written contract.

Suggestions to improve the process of HMRC accessing the end user include:

- HMRC clarifying the results of their initial review of information and why they cannot reach a decision as it is felt that it is too easy for HMRC to request more information without explanation.
- HMRC clarifying the circumstances they would use their information powers with regard to end user information (e.g. would they wait until the case got to Tribunal?)
- Informing the client that the end user will be approached as a matter of courtesy

It was also noted by one consultant that if statements by the client were not able to be confirmed by the end user, they were incorrectly taken as being false. There are also situations where the end user may not understand the nuances of IR35, leading to a mismatch between the client and end users' statements HMRC places greater emphasis on the end users commentary.

6.18 The conclusion of enquiries

One consultant reported that some cases were concluded quickly and efficiently.

However, the general consensus is that cases are not concluded quickly and efficiently and that cases are not being resolved any more quickly than under the old approach. Some cases have been ongoing for 6 months.

Explanations for the delay in concluding enquiries are not provided by HMRC but as mentioned, delays were often due to approaching the end user of the client's services.

Where the enquiry has been concluded without further additional liability, sufficient explanation is not provided by HMRC. The client is simply informed that IR35 does not apply to their contract.

There have also been cases where HMRC do not come to a conclusion but say they will not pursue the matter. This is disillusioning for clients because if HMRC cannot decide on IR35 status, then how can they be expected to do so.

6.19 Summary

The new approach began consistently with regards to the opening of enquiries and the scope of information requested.

The initial letter of enquiry is seen as focused and an improvement which is encouraging.

However, as time has passed and enquiries have progressed, it seems that enquires have become less consistent and are taking longer to conclude.

6.20 Recommendations

HMRC should do more to ensure that enquiries remain consistent with regards to the scope of the enquiry, the information requested and the timescales taken to respond to correspondence. **(Recommendation 26)**

An allowance for the time taken for the initial letter of enquiry to arrive should be incorporated into the overall timescale given to clients to respond to requests. Extra time should be given during holiday and busy tax return periods so unnecessary pressure and burden is not placed on the client. **(Recommendation 27)**

HMRC should provide explanations for the requests for additional information, the requirements for meetings with clients, the reasons for delays and the outcome of enquiries so the whole process is transparent and the client is kept sufficiently informed. **(Recommendation 28)**

HMRC should consider providing an email address for clients to submit information and documentation to speed up the process. **(Recommendation 29)**

HMRC should consider providing clients with a reminder or warning before proceeding to use information powers to enable clients to comply with the request for information as required. **(Recommendation 30)**

Where meetings with clients are requested, HMRC should provide an agenda so the client can evaluate the value of the meeting as many would lose income if they attended. **(Recommendation 31)**

HMRC should inform the client if the end user is to be approached as a matter of courtesy. **(Recommendation 32)**

Annex A: BET's: HMRC Statistics

BET tests and guidance – Number of downloads from HMRC website

2012 (May – Dec)	6640
2013	4760
2014 (to 23 April)	1564 (<i>projection 2014 = 6256</i>)

BET related queries to IR35 Helpline

2012/13	92
2013/14	38
2014/15 (to 8/5/14)	6

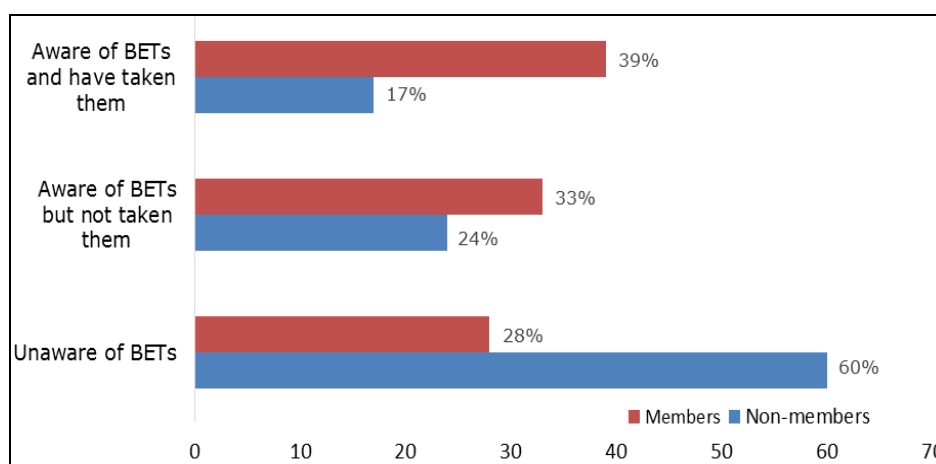
Annex B: BET's:PCG Survey Results

IR35 Review Survey: Comparison of Results on the Business Entity Tests

- The IR35 review survey was completed by:
 - 1, 488 PCG members from 28th November - 16th December 2013
 - 253 non-members from 30th Jan - 23rd March 2014

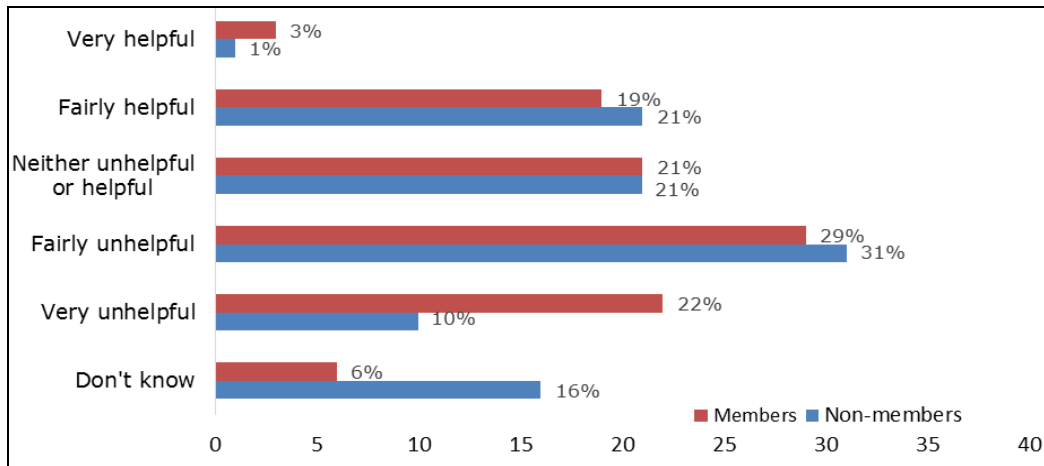
Awareness

- Non-members are much more likely to be unaware of the BETs:
 - Nearly two thirds of non-members (60%) are not aware of the BETs, compared to only 28% of PCG members
- 17% of non-members have taken the BETs compared to 39% of members



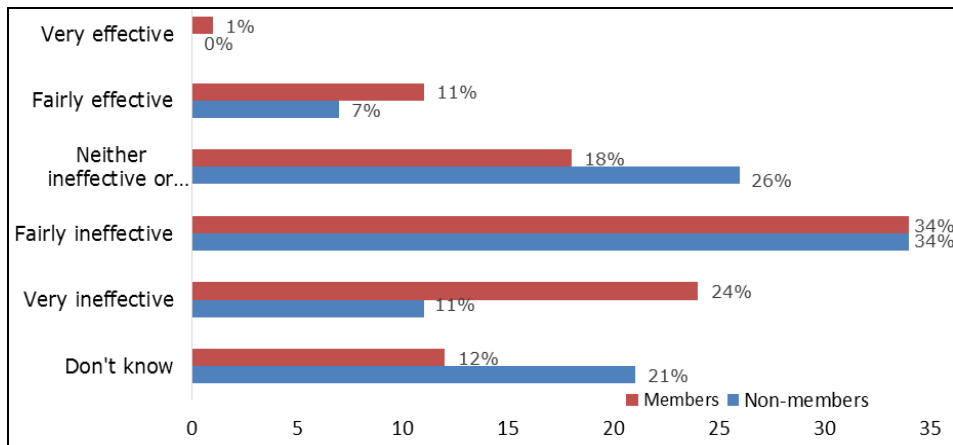
Usefulness

- Of those who have taken the BETs, the same proportion of both members and non-members (22%) found them helpful in understanding whether IR35 applies to their engagement.
 - This is less than a quarter of both members and non-members.



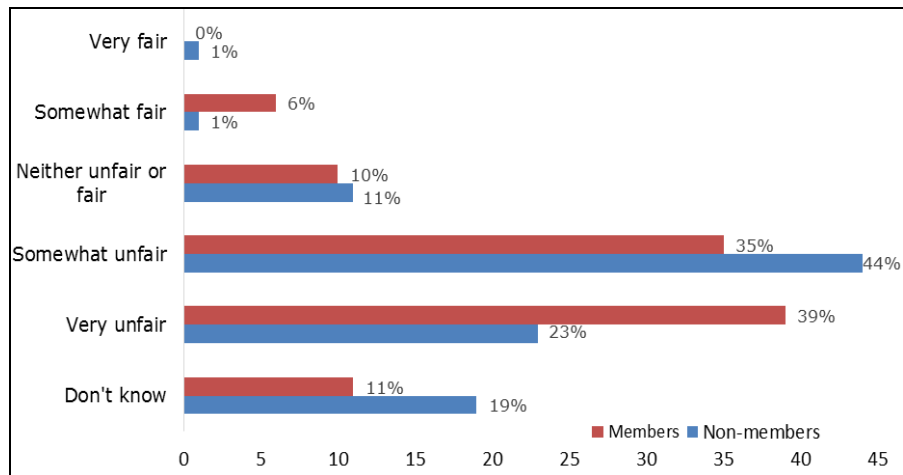
Effectiveness

- Only a small minority of non-members (7%) think the questions in the BETs are effective in determining the risk of being investigated for IR35 compared to 12% of members:



Fairness of scoring system

- A mere 2% of non-members and 6% of members think the scoring system in the BETs is fair:



Annex C

IR35 New Process Review Framework		
IR35 Strand	Issue	How could we test?
HMRC Internet Guidance on IR35	How user friendly is the HMRC guidance? i.e. is it easy to find and navigate?	External comment
		Internal Review
		Usability testing
	Is the guidance comprehensive?/ Do we require any additional guidance?	User testing
		External comment
	Is there any guidance that is no longer required and could be removed?	Internal review of the guidance
		External comment
Quick wins	Following analysis is there any work that we could undertake in the short term to improve the site for external customers?	
Promotion and Communication of IR35	How many people are aware of IR35?	Survey of general public to understand how many people know about IR35
	How could we better alert people to IR35 and what they need to do beyond the website?	Potential to advertise in trade sector magazines. Success could be measured through more people phoning the helpline or accessing online guidance

IR35 Forum Terms of Reference and Membership	Do we have the correct membership of the Forum or should it be extended?	Analysis of membership - are there any additional stakeholders who should be represented? Especially if the ToR are revised
	Are the ToR still relevant for the Forum? What is the long term remit for the Forum?	Consideration of the initial remit of the Forum - has this now moved on? Should there be a slightly different role?
	How regularly should the Forum meet? Should there be a final date beyond which the Forum should not be cancelled?	Survey of all Forum members
	What is working well/not so well for the Forum?	Survey of all Forum members
Business Entity Tests	Are the business entity tests working/used?	Analysis of data on how often the tests are downloaded
		Analysis of how often are they used as part of an enquiry
		Possibly a wider survey of the public
	Are the test fit for purposes/adding value?	Analysis of available data
		Possibly included as part of a survey
	Are there any areas where the BETs could be improved?	External feedback
Potential to include as part of a survey		

	Are there any areas where the BETs are being manipulated so not working	Feedback from external stakeholders
		Feedback from compliance officers
New Compliance Approach to IR35	Is the new compliance approach of specialist teams working better	Average length of cases settled for nil between opening and closing
		Length of elapsed time between receiving responses from HMRC
		Analysis of reasons why cases are not reaching conclusion quickly
		Qualitative data about the success of the new approach
	Is starting an enquiry with asking why someone is outside IR35 helping to establish the facts faster	Number of cases where this question is answered that resulted in a conclusion
		Analysis of cases where this has failed to be answered
		Feedback from stakeholders on the enquiries
	HMRC IR35 Contract Review Service/ Helpline	Is the contract review service providing opinions for those who want certainty of their position
Analysis of the reasons why a		

		response is not received
		Blind customer testing
		External analysis/survey of the reasons why more contractors don't use the HMRC review service
Statistics	Review of statistics that are published and how frequently	Review of information that is available
		Discussion with external stakeholders about what information would be useful and the frequency of publication

Annex D: Recommendations

IR35 External Guidance Review

1. Contact Companies House with a view to including information about IR35 in any company start-up/registration guidance or arrange clear signposting to the relevant Gov.uk IR35 introductory guide.
2. Continue to develop IR35 information as specialist guidance in the dedicated Gov.uk Guides. This will include:
 - a. clarifying how News Items are to be published in future, and
 - b. taking account of any recommendations from the IR35 Administration Review, such as revisiting information relating to the IR35 Helpline/Contract Review Service, ensuring that this is clearly publicised and stresses the confidentiality of the service.
3. Consider whether the IR35 Contract Review Service should be publicised on HMRC web pages relating to non-statutory clearances.
4. Explore the creation of links to IR35 User Guides from other selected HMRC/Gov.uk web pages, such as pages related to the start-up of employer PAYE schemes or starting up companies/partnerships.
5. Continue to take relevant opportunities to use guidance to publicise IR35 and raise its profile.

Promotion and Communication of IR35

6. HMRC to write letters to customers who they have identified as potentially being affected by the IR35 legislation. This should help to raise their awareness, explain how the legislation works and highlight where people can go for help and what they need to do if they think they are inside the legislation but haven't been operating it.
7. HMRC and/or other IR35 experts to talk at events such as those held by various representative bodies/trade organisation providing their members with a seminar on IR35 and how to work out if you are within it and where you can go to for help.
8. HMRC to put articles in the Agent update. This is an HMRC publication that goes to a number of agents. This could be used to remind agents about the IR35 legislation and provide them with links to the new guidance.
9. Accountancy bodies to send out material or hold seminars to help to educate their members about the legislation. This should be supported by HMRC speakers. This has been highlighted by the Forum as an area of particular concern. Almost all of the accountancy bodies are represented on the Forum so agreement from them to take this action forward would help raise awareness with smaller accountancy firms who often represent small businesses. The larger accountancy bodies should also

approach the smaller accountancy bodies to ensure that the widest range of accountants receive the information.

10. Other representative bodies to hold seminars with their members to help to raise the awareness of IR35 amongst agencies and end clients. HMRC speakers could support these seminars.
11. Trades Unions should be approached, as part of a guest invitation to attend a meeting of the IR35 Forum as they have a large membership and this will help to raise awareness more widely.
12. HMRC to run free of charge seminars – these would need to be at venues in the Government estate that would be free of charge to use. This could also help to raise awareness across the public sector and be linked to the changes made as a result of the CST's review of public sector.
13. HMRC to use their CRM's (Customer Relationship Managers) to educate large businesses about IR35 and help them to understand the issues for them as end clients.
14. HMRC's should use their internal teams e.g. Corporate communications, Life Events, Customer service etc. to ensure that when people first incorporate they are aware of the IR35 legislation and their responsibilities.
15. HMRC should segment the potential IR35 population to help to target communications. It may be that this could be split into different behavioural groups such as vulnerable workers, deliberate abusers, unaware etc.
16. HMRC should add notes to the SA and CT returns, which link to the new IR35 guidance.
17. A targeted communications campaign should be run with specific industries, where there has been a rapid growth in personal service companies to raise IR35 awareness e.g. oil and gas.

Business Entity Tests

18. HMRC should abolish the Business Entity Tests.
19. HMRC should notify HMT/Cabinet Office of this outcome.
20. HMRC, representative organisations and other stakeholders should raise awareness of IR35 and the application of IR35 legislation in other ways. This could be by better publicity or possibly in the longer term by developing dedicated IR35 tools.
21. However, the team thought abolition was still better overall than the current situation. In addition, there was also a concern that some would continue to use the BETs or make up their own versions, particularly in the public sector. It was agreed measures should be taken to ensure this did not happen that HMRC/ HMT need to specifically warn against this as far as possible.

HMRC IR35 Helpline and Contract Review Service

22. HMRC could consider giving a qualified opinion which is not guaranteed (or a view) even if:
- they have not received the upper level agreement;
 - the contract has not been signed;
 - the contract is not written down, but this will be a verbal view based on the information available to HMRC.
23. Support for external advisors may unlock more open discussion and compliance. Working with those advisors to support the advice they provide to their customers will create a more open dialogue. If external advisors are more prepared to talk to HMRC, customers will do the same as confidence grows.
24. This specialist team support for external advisors may extend to offering workshops on the subject of IR35 and enquiries. To increase the likelihood of external advisers attending such workshops, HMRC may consider providing CPD accredited training. However, the resource cost of implementing and maintaining such accreditations is likely to be prohibitive.
25. It is recommended that HMRC provide customers with an opinion based on the information they currently have and that a caveat is placed on this opinion. This will provide the customer with an idea that the way they are working is in an IR35 compliant manner provided they implement any guidance provided.

New Compliance Approach

26. HMRC should do more to ensure that enquiries remain consistent with regards to the scope of the enquiry, the information requested and the timescales taken to respond to correspondence.
27. An allowance for the time taken for the initial letter of enquiry to arrive should be incorporated into the overall timescale given to clients to respond to requests. Extra time should be given during holiday and busy tax return periods so unnecessary pressure and burden is not placed on the client.
28. HMRC should provide explanations for the requests for additional information, the requirements for meetings with clients, the reasons for delays and the outcome of enquiries so the whole process is transparent and the client is kept sufficiently informed.
29. HMRC should consider providing an email address for clients to submit information and documentation to speed up the process.
30. HMRC should consider providing clients with a reminder or warning before proceeding to use information powers to enable clients to comply with the request for information as required.

31. Where meetings with clients are requested, HMRC should provide an agenda so the client can evaluate the value of the meeting as many would lose income if they attended.
32. HMRC should inform the client if the end user is to be approached as a matter of courtesy.