

IR35 Portal – Full Question List and Guidance

This document shows all questions that appear in the Kingsbridge IR35 portal, in the order you will see them, together with explanatory notes and commentary.

Pre role assessment questions and commentary:

1. Is the consultant an office holder of the end client (i.e. CEO, CTO etc.)

Additional note: If the contract involves being a board member, treasurer, trustee, company director, company secretary etc. then IR35 will apply.

Kingsbridge's Commentary: Not looking for consultants with a 'director' position in name only, we are concerned here with consultants holding positions of authority in the client's staff who have been appointed to the board of directors, or who are performing 'director-level' responsibilities.

2. Has the contract (including extensions) already started?

Kingsbridge's Commentary: In short, has the consultant's engagement with the client already started?

IF you answer yes, it will ask the following additional question/s:

- **2.1 Has the limited company been working for the client for more than 6 months?**

3. Is the consultant named specifically on the contract?

Additional note: It's important to establish who the contract is between. If it's simply the end client and the limited company, then that's different to having the consultant themselves named.

Kingsbridge's Commentary: Is the individual providing the services named anywhere in the contractual terms, or are all references aimed at the consultant's company? Additional notes here would be helpful as to where an individual is named and for what purposes.

IF you answer yes, it will ask the following additional question/s:

- **3.1 Does the named consultant specifically have to carry out the work?**
- **Kingsbridge's Commentary:** Does the individual specifically have to carry out the services, or can the individual nominate someone else to do so?

IR35 Portal – Full Question List and Guidance

4. Does the limited company have the ability to sub-contract part or all of the work to a third party?

Kingsbridge's Commentary: Can the consultant engage the services of a third party to perform a portion of the services on behalf of their selves – do note this is different to substitution in that for subcontracting, generally the contractor either works alongside of, or is working on another aspect of the engagement whilst the subcontractor performs their services.

5. In the event of incompetence, unsuitability, or unprofessional conduct, would the limited company be expected to provide a replacement/alternate consultant?

Additional note: This is the difference between the whole contract being terminated because the consultant is unsuitable, or the ability of the end client to ask for an alternative to be provided but the contract remains in place.

6. If a right of substitution exists, is it likely the client would accept the limited company sending a substitute if the consultant were unable to work?

Additional note: This means the contract has a clause which means the client must accept a replacement worker if they are suitably skilled.

IF you answer yes, it will ask the following additional question/s:

- **6.1 Would the client accept the limited company sending a substitute for any reason?**

Kingsbridge's Commentary: For example – in the event of illness or injury, would the client accept the consultant substituting their services, or would the engagement simply be terminated?

IF you answer no, it will ask the following additional question/s:

- **6.2 Does the substitute have to be approved by the client?**

Additional note: It's OK for the client to verify the replacement has the correct skills and capability, but beyond that they should have to accept them if this is a true example of substitution.

- **6.3 Would any substitute be sourced and paid for by the limited company?**

Kingsbridge's Commentary: Put another way – would the client/agency be expected to pay for any part of the act of substitution, or would the expectation be that the consultant foots the entire bill?

IR35 Portal – Full Question List and Guidance

- **6.4 Has the right of substitution ever been exercised with the client historically?**

Kingsbridge's Commentary: Has the client ever accepted a substitute from a consultant (not necessarily this consultant) at any point previously, and if so, please could you provide details in the notes section?

- 7. Does the contract state that the limited company consultant, or a replacement worker, must work a minimum number of hours per week?**

Kingsbridge's Commentary: For example; 40 hours a week, or 8 hours a day?

IF you answer yes, it will ask the following additional question/s:

- **7.1 In practice, does this vary according to how much work the consultant needs to carry out?**
- **Kingsbridge's Commentary:** Could the consultant work 15 hours on a Monday, 6 hours on a Tuesday, 12 on a Wednesday etc or, as another question, in reality does the consultant work their contractually stipulated hours only, or do they frequently do more/less in a given week?

- 8. If the consultant is to be absent, does this have to be approved?**

Additional note: It's important to establish whether the client has control over the consultant's working patterns.

- 9. Is the work managed by anyone inside the client's business?**

Additional note: A business providing significant oversight and direction of the work indicates the assignment is being managed directly by the client.

- 10. Does the limited company specify the work to be done within the project?**

Additional note: Was any work carried out on the assignment before the contract commencement date, such as an estimation or specification of the work to be performed?

- 11. Does the limited company provide a specific expertise that does not exist within end clients organisation?**

IR35 Portal – Full Question List and Guidance

Additional note: This question is seeking to establish whether the client requires a unique set of skills or just looking to increase their capacity and / or capability.

12. Can the consultant be required to work on anything outside of the named project without the limited company's specific agreement?

Additional note: If new work is offered by the client, is this agreed by both parties and a new set of terms / an updated schedule provided?

Kingsbridge's Commentary: Is the new work offered/accepted by both parties with new terms being drawn up, or can you simply assign more work to the consultant without amendment to terms?

13. Is the limited company paid when the consultant is unable to work due to sickness or holiday?

Kingsbridge's Commentary: We are interested here in whether or not the client/agency pays the consultant's company for time spent unable to work – not whether the consultant's company pays the individual performing the services.

14. Is the limited company able to terminate the contract without a notice period?

Additional Note: If the contract contains a zero day notice period, the answer to this question should be 'No'. Notice periods suggest that those parties to the contract have a level of protection that would be more similar to an employment relationship.

15. Can the limited company terminate the contract without penalty?

Additional note: If the only penalty is the loss of potential earnings had the contract continued, this should be a "yes"

16. Does the contract relate to a particular project?

Kingsbridge's Commentary: Is it expected that the consultant would pick up whatever work is put in front of them, or is there a narrowly defined set of services/projects the consultant is operating on?

If you answer yes, it will ask the following additional question/s:

- **16.1 Does the contract terminate immediately if the project ends?**
- **Kingsbridge's Commentary:** If the project ran out of funds, or was deemed no longer necessary, would you seek to move the consultant onto another project, or would you terminate the engagement? To be clear, if you would offer the new work to the consultant but it is up to them to accept nor not, your answer here should be 'Yes'.

IR35 Portal – Full Question List and Guidance

17. If there was no work to do, would the client be obligated to pay the limited company?

Kingsbridge's Commentary: For example, a Christmas suspension of services. Would you expect to pay a consultant during a period of no services, or would you expect to only pay them during time spent providing services?

18. Can the limited company refuse to carry out any task not specifically named in the contract?

Kingsbridge's Commentary: If you would offer work to the consultant but it is up to them if they wish to accept it, the answer here should be 'Yes'.

19. Is the limited company's fee based on an hourly or daily rate?

Kingsbridge's Commentary: If the consultant receives a singular lump-sum payment upon completion of the services, or if they get paid per milestone completion, the answer here should be 'no'.

If you answer no, it will ask the following additional question/s:

19.1 Is the limited company paid a single fixed fee for the project from which the contractor could either profit or loss?

Kingsbridge's Commentary: If milestone payments are based on an accumulation of days/ hours worked then answer 'no'.

20. Does the limited company incur any out-of-pocket expenses which are not reimbursed by the client?

Kingsbridge's Commentary: This could be anything that the consultant does not bill back to the client via expenses – travel, equipment, accommodation etc.

21. Is the limited company responsible for the success or failure of the deliverables they are working on?

Additional note: A good (but not the only) indicator of responsibility for the success or failure of the deliverables is whether, contractually, there is an entitlement to a bonus payment for successful delivery or a liability to pay a penalty if the contractor's deliverables are not delivered.

22. Is the limited company responsible for correcting faulty work at their own cost?

IR35 Portal – Full Question List and Guidance

23. Does the consultant manage any of the client's employees?

Additional note: This means undertaking performance reviews, setting objectives or managing the client's employees as part of day to day responsibilities.

Contractor questions:

1. Is this the limited company's first contract?

Kingsbridge's Commentary: Is the consultant brand-new to contracting, or have they been engaged in other works via their limited company prior to this engagement? (Irrespective of if it is with yourselves, or another entity).

2. Other than the named consultant, has the limited company hired additional employees to help complete the work?

Kingsbridge's Commentary: If the consultant has other employees in their company, have they been engaged to help complete the services? If the consultant is a one-man-band, then this answer will most likely be 'no'.

3. Will most of the limited company's work on the assignment be completed at the client's premises?

Kingsbridge's Commentary: If the consultant spends part of their time working off-site, consider the rough percentage of on-site vs off-site.

IF the consultant answers yes to question 3, it will ask the following additional question/s:

- **3.1 Is work carried out on the client's site due to security or data sensitivity issues?**
- **Kingsbridge's Commentary:** For example, computer equipment needing to be on a secure network. Similarly, if the services absolutely cannot be provided elsewhere (such as servicing a server block that cannot be disconnected/moved) your answer here should be 'yes'.

IF the consultant answers no to question 3, it will ask the following additional question/s:

- **3.1 Does your limited company carry out some or all of the work at premises of their choice and which is not a client site, e.g a home office?**

IR35 Portal – Full Question List and Guidance

4. Did the client interview the consultant who will be undertaking the work?

Kingsbridge's Commentary: Was it a traditional interview, or a business-to-business meeting? Consider the format of the interview – was it similar to one conducted when seeking employees, or were there differences? If the consultant was expected to sell themselves as an individual, the answer here should be 'yes'. If they were selling the company that they were engaged by (for example, they had a business profile, or case studies for previous work the company conducted), the answer would be 'no'.

5. Will this contract be the limited company's main source of trading income?

6. Does the limited company hold business insurance such as professional indemnity?

Kingsbridge commentary: Any business insurance here will suffice to prove this point – for example, Professional Indemnity, Public Liability, Employers' Liability.

7. Does the consultant use equipment (such as a laptop) supplied by the limited company?

Kingsbridge's Commentary: This is at any point in the engagement – for example; should the consultant work from home on non-sensitive data, does the consultant use client equipment, or their own?

8. Is the limited company restricted from working with other clients at the same time?

Kingsbridge's Commentary: If the consultant is restricted for working for direct competitors only (subject to reasonable agreement) the answer here should be 'no'.

If the consultant answers no to question 8, it will ask the following additional question/s:

- **8.1 Does the limited company carry out work for any other client at the same time?**

- **Kingsbridge's Commentary:** We are interested here in knowing if the consultant works elsewhere during the term of this engagement, irrespective of how long/short the engagement is.

9. Does the limited company promote itself via its own website or other marketing material?

Kingsbridge's Commentary: Other marketing material could be pens, leaflets, letterheaded paper, business cards etc.

IR35 Portal – Full Question List and Guidance

10. Does the consultant have an ID pass for access to the client's building that is the same as that of permanent employees?

Kingsbridge's Commentary: If there are no ID passes for the building, consider whether there is a different 'sign-in' procedure for consultants. If there is no difference in employee's vs consultants, your answer should be 'yes'.

11. Is the consultant presented to customers of the client as being a part of the client's business?

Kingsbridge's Commentary: Is it easy to tell the consultant is an external resource, or are they packaged and branded as an employee to help 'sell' the client's image to external clients? For example; does the consultant's email signature state their company name/that they are a consultant, or does it simply have a job title? Are they included in structure charts or not?

12. Is the consultant integrated into the structure of the client such that they attend meetings, briefings and other gatherings not related directly to the project they're working on?

Additional note: Attending internal meetings with other team members that normally would only be attended by employees (for example morning progress updates or company-wide briefings) suggests integration into the clients structure.