

## TAXING TIMES

Get prepared for turbulent changes  
in IR35 legislation

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## POSITIVE OUTLOOK

The emerging areas where  
consultants can add value for clients

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## EXPERTS INSIDE

Comprehensive listings and profiles  
of consultants and contractors

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# *The* Chemical Engineer



# Consultants & Contractors Guide 2020



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# Turbulent Times

ADAM DUCKETT welcomes you to this year's Consultants & Contractors Guide

**IN this year's guide we asked experts to discuss the risks and opportunities coming down the road.**

A key point of conjecture is the UK's imminent change to tax legislation. Given it will affect employers and individual contractors, we asked experts Dave Chaplin and Mike Innes to outline what the changes mean and how employers and individuals should prepare. If you

haven't already started, it is time to take action.

There are positive shifts too. Andrew Campbell of IChemE's Consultancy SIG reviews the emerging areas where consultants can make a positive difference for clients.

As always, many thanks to the consultants and contractors who support this guide. Their listings and profiles are detailed throughout. Please call them.

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# The Changing Face of Consulting



## New technologies bring a brave new world for consultants, says ANDREW CAMPBELL

**OVER recent years in IChemE's Consultancy SIG we have looked to providing our members a view into a range of tools that are on the market in terms of collaboration, project management, and communication. We are seeing some significant transitions and disruption within industry – through energy and digital/data transformations. This drives the high-end consulting and strategy development that has a significant impact on the work that process engineers encounter.**

### ENERGY TRANSFORMATION

In terms of the energy transformation, the shift away from more conventional power sources to a mix of gas and renewables has seen an increased uptake in these alternative sources of energy. Due to the generation profile of these sources, batteries have become a serious component of our power supply systems. These new technologies have an impact on the way we operate not only our homes, but also the industrial plants and complexes we help design, operate and optimise. In many cases, it is more efficient to power our plants from the sun and wind – whilst gas is more valuable to operators as an end product.

As a profession, the use of digital tools is nothing new – process simulation software has been available to us for many years but we are seeing these

tools develop at speed. The development of mobile devices from phones, tablets, watches to Internet of Things (IoT) devices are all making the task of designing and managing assets more efficient. As we see the development of technology, we are in a position to do more with the information and analysis that is presented to us in our everyday roles and our time away from work.

Some of this brave new world is not so new. When I started out as a young engineer in the mid 1990s on an operating plant, the use of trending and basic statistical process control concepts covered a lot of the areas that still need to be covered today. The use of machine learning techniques does bring the ability to train these models with more complex patterns and allow poor operating conditions to be navigated away from. This in turn should lead to a more controlled and safe operating condition.

### MANAGING RISK

With these new transitions there are risks to be managed. With new technologies there is risk in ensuring they deliver to what is expected. One example is with hydrogen arriving as an energy store, as new safety risks are present. Additionally, the development and implementation of these new technologies and approaches generally come with costs that are not always well known at the start – and these



“ THE DEVELOPMENT AND IMPLEMENTATION OF THESE NEW TECHNOLOGIES AND APPROACHES GENERALLY COME WITH COSTS THAT ARE NOT ALWAYS WELL KNOWN AT THE START ”



commercial aspects are important as part of the overall success of projects in this space.

### DATA: THE NEW OIL

The risks for data are two-fold. Data is a valuable asset and should be considered as the saying goes: “data is the new oil”. The cyber security risks are also something that needs to be considered in a systematic way as do all other risks you may consider. How will you be able to perform your job if your computer and/or control systems stops operating, or operates at a reduced speed?

As chemical engineers we are in a place to manage the

risks, but also take advantage of this technology. When applied appropriately, technology is able to offer benefits. Remote operation, automation, video analysis are all examples of how we can manage and reduce the risk for people who work in the facilities that we manage. As consultants there is a significant

part to play in these new and exciting areas – in identifying, justifying and implementing these new technologies in robust and sound ways.

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**Andrew Campbell** CEng  
FIChemE is Chair of IChemE's  
**Consultancy SIG**

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## Taxing Times

Contractors must prepare for new off-payroll tax changes, says DAVE CHAPLIN

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**NEW** tax legislation that will be introduced in the UK in April 2020 is set to have a huge impact on contractors working in the private sector. The new legislation will force private sector companies to be responsible for determining a freelancer or contractor's

employment status for tax purposes, or "IR35 status", and then tax the contractor's rate as employment income if applicable. This is already in place in the public sector and has led to a big reduction on the hiring of limited company contractors.

### WHAT YOUR CLIENT NEEDS TO KNOW ABOUT THE OFF-PAYROLL RULES

If clients ignore or delay dealing with the legislation, they will place substantial risk on their projects. Your first job is to explain the impact of such actions to your

client. These include:

- IR35 status disputes resulting in contractor walkouts.
- Contractor abandonment of projects, resulting in delays and cancellations.
- Greater cost of retaining contractors "inside IR35" due to increased rate demands.
- Employment rights challenges from workers deemed "employed for tax purposes".

The potential impact of the tax liability that many clients are seeking to avoid can be effectively mitigated, providing they adopt the correct compliance solution.

“ IF CLIENTS IGNORE OR DELAY DEALING WITH THE LEGISLATION, THEY WILL PLACE SUBSTANTIAL RISK ON THEIR PROJECTS ”



## THE IMPORTANCE OF ACTING EARLY

Having talked to your client, you should have established their approach to the off-payroll rules and whether they intend to carry out full and proper IR35 assessments, or if they plan to move all their contractors into payroll arrangements.

If your client doesn't appear to be taking their compliance requirements seriously, you might want to explore opportunities elsewhere.

## SECURING AN 'OUTSIDE IR35' CONTRACT AND CONTINUED COMPLIANCE

Opportunities outside of IR35 will be available but these positions

won't be vacant for long.

Once you have secured work on an "outside IR35" basis, the key is to sustain your IR35 status and engage in working practices that reaffirm this. Brush up on your understanding of IR35 and the key employment status factors.

Control, personal service, and mutuality of obligation (MOO) are the three fundamental factors which generally determine IR35 status, and contractors should have a solid grasp of them.

Remember that there will now be two versions of IR35 in play – the original intermediaries legislation (Chapter 8 of ITEPA 2003), which will still be applicable where the client meets the small company's exemption (<https://bit.ly/2Oxlr9V>), and the new off-payroll legislation (Chapter 10 of ITEPA 2003). Whilst both are based on the concept of "deemed employment", the tax treatment is different, and you'll need to understand why.

## CALCULATING RATE RENEGOTIATIONS FOR 'INSIDE IR35' CONTRACTS

If you're considering an "inside IR35" engagement under the new legislation, you need to understand the financial impact that the off-payroll rules have on your income. Working "inside IR35" under the new regime not only imposes an employment tax liability on your client and/or agency, it also subjects you to a tax hike.

If the "inside IR35" status determination has come about as a result of a risk-averse client refusing to conduct a considered assessment, you should try to renegotiate your rate to counter your tax hit.

Calculating the increased rate

“CONTROL, PERSONAL SERVICE, AND MUTUALITY OF OBLIGATION (MOO) ARE THE THREE FUNDAMENTAL FACTORS WHICH GENERALLY DETERMINE IR35 STATUS, AND CONTRACTORS SHOULD HAVE A SOLID GRASP OF THEM”

can prove complicated. Our calculations show that, for a contractor entering an "inside IR35" contract to maintain the same level of take-home pay as before, the cost of hiring for the client could increase by as much as 43%.

ContractorCalculator's off-payroll (IR35) calculator (<https://bit.ly/2OtmCbB>) provides a detailed breakdown on the impact of the off-payroll rules on your earnings, including how much you would need to increase your rate by, having factored in your current rate and annual expenses.

April 2020 is only a matter of months away so my advice to contractors is to act now to plan for your contracting futures.

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**Dave Chaplin** is CEO and founder of contracting authority **ContractorCalculator**, which provides free online expert advice and information to contractors and freelancers.



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## IR35 for End Clients

With IR35 legislation changing in 2020, MIKE INNES reviews how end clients should prepare

**THE use of limited company contractors (personal services companies or PSCs) in the UK chemical, biochemical and process engineering industry has been extremely common since the early 1970s and it is rare to see any major projects executed in the sector without a significant percentage of contract labour.**

There is no doubt the IR35 reforms that are expected to become law on 6 April 2020 will disrupt the use of PSCs while end clients adapt to the fact they will

decide whether IR35 applies to a specific assignment or not.

### TABLES HAVE TURNED

IR35 is not a new concept. Nor is the law changing, it is only the party responsible for making the decision that has changed. This means end clients now need to understand the complexities of IR35 and what constitutes disguised employment and what is genuinely an “outside IR35 engagement”. The risk to end clients is significant. If HMRC disagrees with the “outside IR35

Status Determination Statement (SDS)” decision an end client has arrived at, it will be the end client who will be held liable for unpaid PAYE and NICs. For many end clients this could mean potential

“ IR35 IS NOT A NEW CONCEPT. NOR IS THE LAW CHANGING, IT IS ONLY THE PARTY RESPONSIBLE FOR MAKING THE DECISION THAT HAS CHANGED ”



“ IF END CLIENTS WISH TO CONTINUE TO ENJOY THE FLEXIBILITY OF HIRING PSC WORKERS THEY NEED TO HAVE THE APPETITE TO REVIEW ALL INTERNAL POLICIES REGARDING THE HIRING, ENGAGEMENT AND RELEASE OF CONTRACTORS ”

liabilities of several million pounds. PSC workers have been grappling with IR35 compliance for 20 years but the key indicators remain the same. Right of Substitution; Supervision, Direction & Control; and Mutuality of Obligation are the three critical fundamentals that will prove if IR35 applies or not.

## PRACTICES AND PROCEDURES

The challenge for most end clients is being able to understand how these IR35 indicators can be identified within their own hiring practices and procedures. If end clients wish to continue to enjoy the flexibility of hiring PSC workers, they need to have the appetite to review all internal policies regarding the hiring, engagement and release of contractors. If PSC workers are used simply as an extension to full-time employee (FTE) workers and there is little difference to how PSC workers are deployed, a high percentage of “inside IR35” determinations are likely. Conversely, end clients that are

willing to make wholesale changes to how they engage and use PSC workers are likely to find a much higher percentage of “outside IR35” determinations.

There are many tools available on the market that will help end clients meet and manage their SDS review obligations, but without a really detailed root and branch review of how PSC workers are used within the end client organisation it is unlikely that the “outside IR35” decisions will be optimised.

## BEYOND PAPER

One final word of caution for end clients. Do not be tempted to see this as a paper exercise. Any changes to policies and procedures for the use of PSC workers must be reflective of the actual day-to-day situation. Similarly, any changes in contracts must accurately reflect the changes in policies and procedures. Do not underestimate how large a job this is, along with the education required

for line managers and other internal stakeholders. Also, give consideration for a communication strategy for the contractors themselves. This is an unsettling time for PSC workers; in many cases an IR35 SDS decision may mean up to 30% difference in net pay. Be sensitive and communicate expected timelines and outcomes as early as possible to allow them time to prepare. Remember, the draft legislation allows all SDS decisions to be appealed by the PSC worker so make sure you have a published process prepared in plenty of time.

If you haven't already got expert help in to help you plot your path through the reforms, now is the time to act.

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**Mike Innes** is a Director at TRS Staffing Solutions; he led the BCECA response to the IR35 private sector reforms, and subsequently helped its member companies to reduce impact and disruption

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# When is a Construction Operation not a Construction Operation?



JOHN CHALLENGER reviews the exclusion of the chemicals sector from construction legislation

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**THE answer to the above question is apparently simple: it is when it is specifically excluded under the Housing Grants, Construction and Regeneration Act 1996 and its various amendments (“the Act”).**

As is well known to participants in the chemical and related sectors, Section 105(c) of the Act excludes the “assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or

providing access to plant or machinery, on a site where the **primary activity** is:

- nuclear processing, power generation, or water or effluent treatment; or
- the production, transmission, processing or bulk storage (other than warehousing) of chemicals, pharmaceuticals, oil, gas, steel or food and drink.

The next question might be: why were those construction operations excluded? The answer

now is perhaps less clear than it was at the time that the Act was being drafted. The legislation was proposed as a means of correcting some of the extremely poor practices, ranging from non-payment to contractual and operational inadequacies, that had existed in the general building and construction industry. These had led to a high level of disputes between purchasers, contractors and subcontractors. Unfortunately, IChemE’s Contracts Committee and several other bodies from



the power and nuclear industries were not consulted until late in the drafting process. We raised concerns that we might be drawn into unnecessary legislation because the chemical industry, in particular, had well-established contracts dating back to the late 1960s, when the first Lump Sum Contract (*The Red Book*) was published and we had an extremely low incidence of disputes.

In addition, there were concerns about the Act's introduction of adjudication to resolve disputes more quickly, which we believed would not suit the chemicals industry because of the complexity of our projects with their far-higher levels of technology integration. Experience showed IChemE that the appointment of an expert resolved simple or technical disputes in a cost effective and timely manner. This led IChemE and other similar bodies to seek and secure the exclusion of defined activities from the Act.

The IChemE's Contracts Committee took a reasonably pragmatic view of the legislation in general. As a result, we felt that major changes to our well-established contracts were not required, with the exception of some editing of the payment terms which were brought in line with the Act. It is pleasing to note that in a recent case brought before Mrs Justice O'Farrell in the High Court (*C Spencer Ltd v MW High Tech Projects UK Ltd*) the terms relating to payment in the *Brown Book* were considered to be compliant with the Act. There are similar terms contained in other IChemE forms of contract.

In spite of the above, the issue of "hybrid" contracts has been raised and will no doubt continue to be raised in the future. Such contracts contain construction activities that have now been defined by case law as containing parts that are both within and are excluded from the Act.

### EXAMPLES

Deciding whether a given activity falls inside or outside is not always straightforward as shown in the following examples:

- In *North Midland Construction plc v AEE Lentjes UK* [2009] EWHC 1371 (TCC) the Court found that a sub-contractor's enabling and civil works at a site where a flue gas desulfurisation plant was going to be installed did not fall within the exclusion under s105(2). North Midland had been contracted to provide temporary fencing, roads, offices and drainage at the site, as well as demolition and foundations works. The Court held such works were preparatory in nature and could not be regarded as works under section 105(2) (c), even though the primary activity of the site would be power generation.
- In *Cleveland Bridge (UK) Ltd v Whessoe-Volker* [2010] EWHC 1076 (TCC) the Court had to split the operations performed by Cleveland Bridge into those excluded and those within the 1996 Act's remit. Cleveland had been carrying out works at a liquefied natural gas terminal. The Court found that Cleveland's prior fabrication drawings, off-site

“ THERE WERE CONCERNS ABOUT THE ACT'S INTRODUCTION OF ADJUDICATION TO RESOLVE DISPUTES MORE QUICKLY, WHICH WE BELIEVED WOULD NOT SUIT THE CHEMICALS INDUSTRY BECAUSE OF THE COMPLEXITY OF OUR PROJECTS WITH THEIR FAR-HIGHER LEVELS OF TECHNOLOGY INTEGRATION ”

fabrication and delivery were not excluded works but that the erection of steelwork to pipe racks and pipe bridges at the gas terminal fell within the exclusion.

- In *Severfield (UK) Ltd v Duro Felguera UK Ltd* [2015] EWHC 3352 (TCC) the Court suggested that where contracts included elements that could be considered both inside and excluded from the Act, it would be sensible for the parties to the contract to agree contract terms that were Act compliant.

In this regard, the IChemE Contracts Committee considers that the IChemE *Forms of Contract* including the latest publications (*Professional*

*Services Contract (Silver Book – 2017)*) and the (*Minor Works Contract (Orange Book – 2018)*) all fully comply with the Act.

Looking ahead, users of IChemE's *Forms of Contracts* will be pleased to hear that based on the changes introduced to the recently-published Professional Services (*Silver Book*) and Minor Works (*Orange Book*) Contracts, IChemE's Contracts Committee is planning to revise the existing suite of main contracts and to introduce some new forms in the reasonably near future. We shall keep readers informed as progress develops.

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**John Challenger** CEng  
FIChemE is Chairman of the  
**IChemE Contracts Committee**

“ IChEME'S CONTRACTS COMMITTEE IS TO REVISE THE EXISTING SUITE OF MAIN CONTRACTS AND TO INTRODUCE SOME NEW FORMS IN THE REASONABLY NEAR FUTURE ”

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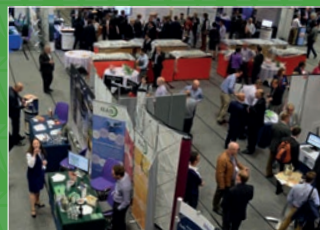
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# Consultants listings

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Company name & location	Telephone	Email & web address	Contact name	No. of staff
<b>BakerRisk Europe</b> Cheshire, UK	+44 (0)1244 405960	rmagraw@bakerrisk.com www.bakerrisk.com	Rob Magraw	3
<b>Booth Welsh</b> Scotland, UK	+44 (0)3450 344 344	laura.maley@boothwelsh.co.uk www.boothwelsh.co.uk	Laura Maley	250+
<b>BPE Design and Support</b> Winchester, Daresbury, UK	+44 (0)1962 717070	enquiries@bpe-ds.com www.bpe-ds.com	Simon Wheeler	30
<b>Costain</b> Aberdeen, Manchester, Maidenhead, Solihull, UK	+44 (0)161 910 3444	oilandgas@costain.com www.costain.com	Robert Pitman	3,700
<b>DEKRA Process Safety</b> Southampton, UK	+44 (0)2380 760722	adam.bell@dekra.com www.dekra-process-safety.co.uk	Adam Bell	500
<b>Engenda Group</b> (t/a Clark Eriksson) Falkirk, UK	+44 (0)1324 611294	info@clark-eriksson.co.uk www.clark-eriksson.co.uk	Scott McMartin	62
<b>Genesis Oil and Gas Consultants</b> London, UK	+44 (0)2075 855643	enquiries@genesisoilandgas.com www.genesisoilandgas.com		858
<b>HFL Consulting</b> Manchester, UK	+44 (0)161 304 5902	info@hficonsulting.uk www.hficonsulting.uk	Chris Greenhalgh	25
<b>HSD Safety</b> UK	+44 (0)7540 186628	paul.dewhirst@hsd-safety.co.uk www.hsd-safety.co.uk	Paul Dewhirst	3
<b>Manderstam International Group</b> London, UK	+44 (0)207 730 9224	migl@manderstam.com www.manderstam.com	Peter Lumley	15
<b>OSL Consulting</b> Hull, UK	+44 (0)1482 626400	simon.hudson@oslconsulting.com www.oslconsulting.com	Simon Hudson	67
<b>Otto Simon</b> Cheshire, UK	+44 (0)161 491 7440	jking@ottosimon.co.uk www.ottosimon.co.uk	Jennifer King	130
<b>RAS</b> Cheshire, UK	+44 (0)1244 674612	enquiries@ras.ltd.uk www.ras.ltd.uk	Jo Condon	25
<b>RB Plant Construction</b> Kent, UK	+44 (0)1622 858387	genghis-p@rb-plant.co.uk www.rbplant.com	Genghis Perriman	50
<b>Risktec Solutions</b> UK, Europe, Middle East, SE Asia, North America	+44 (0)1925 611200	enquiries@risktec.tuv.com www.risktec.tuv.com	Steve Lewis	270
<b>Rowan House</b> Gloucester, UK	+44 (0)1452 341947	office@rowanhouse.co.uk www.rowanhouse.co.uk	Zaffer Khan	6
<b>Sigma-HSE (UK)</b> Winchester, UK	+44 (0)1962 840570	info@sigma-hse.com www.sigma-hse.com	John Stead	11





# Contractors listings

From independents to major contractors, these companies help bring your projects to life

Company name & location	Telephone	Email & web address	Contact name	No. of staff
<b>BPE Design and Support</b> Winchester, Daresbury, UK	+44 (0)1962 717070	enquiries@bpe-ds.com www.bpe-ds.com	Simon Wheeler	30
<b>Costain</b> Aberdeen, Manchester, Maidenhead, Solihull, UK	+44 (0)161 910 3444	oilandgas@costain.com www.costain.com	Robert Pitman	3,700
<b>DEKRA Process Safety</b> Southampton, UK	+44 (0)2380 760722	adam.bell@dekra.com www.dekra-process-safety.co.uk	Adam Bell	500
<b>Engenda Group (t/a Clark Eriksson)</b> Falkirk, UK	+44 (0)1324 611294	info@clark-eriksson.co.uk www.clark-eriksson.co.uk	Scott McMartin	62
<b>HFL Consulting</b> Manchester, UK	+44 (0)161 304 5902	info@hflconsulting.uk www.hflconsulting.uk	Chris Greenhalgh	25
<b>HSD Safety</b> UK	+44 (0)7540 186628	paul.dewhirst@hsd-safety.co.uk www.hsd-safety.co.uk	Paul Dewhirst	3
<b>Otto Simon</b> Cheshire, UK	+44 (0)161 491 7440	jking@ottosimon.co.uk www.ottosimon.co.uk	Jennifer King	130
<b>RB Plant Construction</b> Kent, UK	+44 (0)1622 858387	genghis-p@rb-plant.co.uk www.rbplant.com	Genghis Perriman	50

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# IChemE Global Awards 2020



## Save the dates

Open for entries: **6 March**

Entry deadline: **26 June**

Global Awards: **12 November**

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