

**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**

**ADVICE FOR SCHOOLS**

**PERSONAL SERVICE COMPANIES**

**Covers:**

* **Explanation of IR35 and intermediaries regulations.**
* **April 2017 and 2021 changes.**
* **Action required.**

1. **Introduction**
   1. Since April 2017 regulations have applied to ‘off payroll workers’ in the public sector, who supply their services through an intermediary such as a personal services company (PSC). Failure to apply these regulations may result in the Council/school accruing significant financial penalties.
   2. In April 2021, the regulations were extended to the private sector and some additional requirements for all organisations were added:

* All ‘off payroll’ workers must be issued with a Status Determination Statement (SDS) including existing workers.
* The SDS must also be supplied to the intermediary.
* The SDS must be regularly reviewed.
* There must be an internal disputes process for the worker to challenge the outcome of their assessment.
  1. From April 2021, all workers and the intermediary must be issued with an SDS regardless of whether they are assessed as being ‘inside’ or ‘outside’ the IR35 rules.
  2. In reality, it will be rare that the Council/school will use a worker who supplies themselves via a PSC.

In line with changes to company size thresholds from 6th April 2025, if a school has been re-defined as a ‘small business’, it would no longer bear responsibility for determining employment status under IR35. Instead, the responsibility for IR35 determination would shift to the individual workers who would need to self-assess their IR35 status. **2. IR35 – what is it?**

* 1. IR35 or the ‘intermediary legislation’ is designed to apply to those workers who do not meet the HMRC’s self-employed criteria, but who supply their services to an organisation through an intermediary. This can be:
* The workers own limited company.
* A service or personal service company.
* A partnership.
* An agency.
  1. The legislation aims to ensure that the intermediary applies the PAYE rules and deducts tax and national insurance from the payment due to the worker on the same basis as if they had been directly employed. If an agency worker is inside IR35, they are considered an employee for tax purposes meaning tax and National Insurance contributions (NICs) are deducted at source. If an agency worker is outside IR35, they are considered genuinely self-employed for tax purposes and are responsible for handling their own tax and NIC payments.
  2. In introducing these regulations the Government took the view that intermediaries were not applying these rules and therefore the Treasury was missing out on hundreds of millions of pounds of income tax and national insurance. In April 2017 the responsibility for ensuring that these deductions are made transferred from the intermediary to the end user, which means the Council/school. Therefore, the Council/school is responsible for ensuring that where applicable tax and national insurance deductions are made from payments due to this type of worker.
  3. In addition, for any workers used via an agency, and paid via an intermediary, the Council/school is responsible for determining if the rules apply to that worker and informing them and the intermediary.
  4. It is essential that the Council/school applies the regulations in the correct way as it will be liable for any unpaid tax and national insurance and possibly further financial penalties.

**3. Council policy**

* 1. The Council’s policy is:
* A worker covering a post/vacancy will automatically be considered as ‘inside’ IR35 because but for the existence of the intermediary, they would have been regarded as an employee and therefore must have tax and national insurance deducted from their pay.
* No additional costs e.g. increased day rates, as a result of the change in the regulations will be accepted by the Council.
* Other workers will be assessed, using the SDS assessment form, see Appendix A, and the online HMRC tool (CEST) to determine their IR35 status.
* All relevant workers will have an SDS issued prior to them commencing their assignment.
* The SDS will be reviewed if the arrangements for the assignment change or at least annually.

1. **Workers**

**Agency workers**

* 1. The majority of agency workers will be covering a post/vacancy, although some may be working on special projects. Any agency workers supplied via a PSC will be assessed and issued with an SDS. The recruiting manager will be responsible for the assessment, refer to Appendix A for an example. The form can be found on the intranet. Where the worker is covering a post, they will be deemed to be automatically covered by the requirement to deduct tax and national insurance from their payments. If there is any doubt or the worker is not covering a post, then the assessment will include the application of the [HMRC's online check employment status tool](https://www.gov.uk/guidance/check-employment-status-for-tax). Managers are advised to discuss the assessment with the worker and gather as much information about them in order to inform the assessment. If the outcome is ‘Off-payroll working rules (IR35) apply’ the worker is considered inside IR35. If the outcome is ‘Off-payroll working rules (IR35) does not apply, the worker is considered outside IR35.
  2. Support with the completion of the assessment is available from (HR representative’s name and email)
  3. The HMRC will stand by the status result [provided by their check employment status tool](https://www.gov.uk/guidance/check-employment-status-for-tax) providing the information entered is accurate. There is a section at the end of the process to record who undertook the assessment and the name of the worker. Once the check is completed, the result will be shown on the screen. The page must be printed and a copy of the assessment must be kept with the SDS, as it is the only evidence of the result of the online check.
  4. The manager is responsible for ensuring that a copy of the SDS is issued to the worker and the agency/intermediary.
  5. If the working relationship changes at any point, then another assessment must be completed. In any event, the SDS should be regularly reviewed and it is recommended this is at least annually. This is particularly important, as any change that impacts on the status of the worker, may result in the Council/school becoming liable for unpaid tax and national insurance.

**Workers paid via Financial system**

* 1. The Council/school uses some workers directly e.g. engaged via a consultancy agreement and pays them on receipt of an invoice via the financial system. Managers must consider the potential impact of IR35 as part of their procurement/appointment process.
  2. Where the worker is supplied via a PSC intermediary, then an assessment needs to be done to create an SDS, see Appendix A. The process is the same as for agency workers. Generally, if the worker is able to send someone else to do the work and they would be responsible for paying the substitute, then they will be ‘outside’ IR35 and can be paid via the financial system. However, this must be confirmed by a full assessment including [an assessment using the HMRC Check Employment Status tool](https://www.gov.uk/guidance/check-employment-status-for-tax). Managers are advised to discuss the assessment with the worker and gather as much information about them in order to inform the assessment.
  3. Support with the completion of the assessment is available from HR.
  4. The manager is responsible for issuing a copy of the SDS to the worker and their intermediary. A copy of the assessment including the HMRC check must be kept by the manager.
  5. In the event that tax and national insurance deductions are required, payment will need to be made via Payroll, and the manager must complete the IR35 worker payroll form to set them up on the payroll system. See Appendix B for an example. The form is available on the intranet.
  6. If the working relationship changes at any point, then another assessment must be done. In any event, the SDS should be regularly reviewed and it is recommended this is at least annually. This is particularly important, as any change that impacts on the status of the worker, may result in the Council/school becoming liable for unpaid tax and national insurance.
  7. Once the worker is set up on payroll, then their invoices can be processed. Invoices can be approved locally in the normal way, then they should be scanned and sent to [payroll.manager@rbwm.gov.uk](mailto:payroll.manager@rbwm.gov.uk) .The deadline for the monthly payroll processing is the 4th working day of the month. If the intermediary charges VAT, this will continue and will be paid via the payroll, along with any expenses and the net payment for the work done.
  8. Payments processed via the payroll will attract employers’ national insurance contributions and the Apprenticeship levy.

1. **Other implications**
   1. (if applicable) The financial system’s process set up incorporates the IR35 requirements, which the manager must ensure they apply to workers being paid via an intermediary.
   2. Under current legislation, the worker will have no entitlement to any statutory payments such as statutory sick pay etc. or any pension liability or any other terms associated with being an employee.
   3. The worker is able to submit an appeal against their status determination. The Council/school must respond to any appeal within 45 days, either confirming the outcome of the original SDS or issuing a new one. Appendix A provides two examples of a completed SDS. A copy of the SDS form is available on the intranet. See Appendix C for the appeal form, a copy of which is on the intranet.
   4. The appeal will be reviewed by the (Head of HR)
   5. If the organisation responsible for paying the worker, e.g. an agency, fails to deduct tax and national insurance in accordance with the worker’s SDS, then the HMRC are able to claim payments from other organisations up the chain, including the end user, i.e. the Council/school.
   6. For further advice, please contact (HR representative’s name and email).

**Appendix A – Two example of an assessment**

**Royal Borough of Windsor and Maidenhead**

**Status Determination Statement (SDS)**

**Example 1**

|  |  |
| --- | --- |
| Name of worker and their role | Mary Smith, Senior Housing Officer |
| Name of intermediary | MS Services via GRI, the Council’s temp worker agency |
| Name and email address of manager completing assessment and date | John Brown, Housing Manager  6 April 2020 |
| Service area | Housing, Place directorate |
| Start and end date of assignment | 20 April 2020 – 31 December 2020 |
| Describe the assignment including a description of the role, how the worker will deliver the work, how the assignment will be managed and the arrangements for working hours. | |
| Mary is covering the vacant post of Senior Housing Officer and will undertake all the responsibilities of the role during her assignment. She will work RBWM office hours and be managed by the Housing Manager. | |
| The HMRC CEST assessment was completed on (insert date) and a copy is attached. (If required – see Advice – Personal Service Companies)  Not required in this case as covering a post. | |
| The outcome of the assessment is: (select the appropriate statement) | |
| If the assignment were provided under a contract directly between the Council and the worker (ignoring the intermediary), then **the worker would be regarded as an employee for tax purposes.** Therefore IR35 applies and tax and NI must be deducted.  YES/~~NO~~ (delete as appropriate) | If the assignment were provided under a contract directly between the Council and the worker (ignoring the intermediary), then **the worker would NOT be regarded as an employee for tax purposes**  ~~YES~~/NO (delete as appropriate) |
| The reasons for this determination are:   * The assignment is covering a vacant post. * They will undertake all the responsibilities of the role including management of a team. * They will work normal RBWM office hours and be managed by the Housing Manager. | The reasons for this determination are: |
| This assessment will be reviewed if there is a change to the terms of the assignment or at least annually, if the assignment is still in place. | |
| Dispute process  If you disagree with this assessment, you are entitled to submit a request for a review. Please submit your request, stating the reasons why you disagree with the determination as set out above, to the Manager named above.  The Council will respond to your request within 45 days of receipt. | |
| Copies of SDS issued: | |
| Insert workers name and date | Insert intermediary’s name(s) and date |
| Mary Smith – 7 April 2020  m.smith@aol.com | Jane Doe, Account Manager GRI – 7 April 2020  j.doe@GRI.org.uk |
| IR35 Payroll form required ~~Yes~~/No (delete as applicable) Paid via GRI | |
| Completed by insert managers name and date  John Brown, 7 April 2020 | Signed  J Brown |

**Appendix A – Two examples of an assessment**

**Royal Borough of Windsor and Maidenhead**

**Status Determination Statement (SDS)**

**Example 1**

|  |  |
| --- | --- |
| Name of worker and their role | Mary Smith, Housing Researcher |
| Name of intermediary | MS Services, via consultancy agreement |
| Name and email address of manager completing assessment and date | John Brown, Housing Manager  6 April 2020 |
| Service area | Housing, Place directorate |
| Start and end date of assignment | Up to 3 months from 6 April 2020 |
| Describe the assignment including a description of the role, how the worker will deliver the work, how the assignment will be managed and the arrangements for working hours. | |
| Using an agreed questionnaire format and list of residents from the electoral register supplied by the Council undertake 200 interviews and prepare a report on the evidence collected. Mary will manage her own time, make her own arrangements for the interviews. She is required to deliver her completed report by 6 July at the latest. | |
| The HMRC CEST assessment was completed on 6 April 2020 and a copy is attached. | |
| The outcome of the assessment is: (select the appropriate statement) | |
| If the assignment were provided under a contract directly between the Council and the worker (ignoring the intermediary), then **the worker would be regarded as an employee for tax purposes.** Therefore IR35 applies and tax and NI must be deducted.  ~~YES~~/NO (delete as appropriate) | If the assignment were provided under a contract directly between the Council and the worker (ignoring the intermediary), then **the worker would NOT be regarded as an employee for tax purposes**  YES/~~NO~~ (delete as appropriate) |
| The reasons for this determination are: | The reasons for this determination are:   * Mary manages her own time and is responsible for delivering by the agreed deadline. * She can employ others to undertake the interviews, subject to the terms of the consultancy agreement.. * She is able to undertake other work for other organisations. * She will be responsible for correcting any errors in her own time and without claiming additional charges from the Council. * She is paid a fixed fee for the project. |
| This assessment will be reviewed if there is a change to the terms of the assignment or at least annually, if the assignment is still in place.  N/A | |
| Dispute process  If you disagree with this assessment, you are entitled to submit a request for a review. Please submit your request, stating the reasons why you disagree with the determination as set out above, to the Manager named above.  The Council will respond to your request within 45 days of receipt. | |
| Copies of SDS issued: | |
| Insert workers name and date | Insert intermediary’s name(s) and date |
| Mary Smith, 7 April 2020  m.smith@aol.com | N/A |
| IR35 Payroll form required ~~Yes~~/No (delete as applicable) | |
| Agreed by insert managers name and date  John Brown, 7 April 2020 | Signed  J Brown |

**APPENDIX B**

**IR35 – PAYROLL FORM - example**

|  |  |  |
| --- | --- | --- |
| **Title** | **First Name** | **Last Name** |
| Mr | John | Smith |
| Date of birth | NI number | Address |
| 01/01/1960 | AA123456B | 1 The House,  The Street,  The Town  SL1 1SL |
| Directorate | Service | Cost centre |
|  | HR | AB12 |
| Reporting Manager |  |  |
| Mary Brown |  |  |
| Name of payee | Bank account sort code | Bank Account number |
| ABC Ltd | 01-01-01 | 12345678 |
| VAT number | P45 attached | Assignment start date |
| N/a | ~~Yes~~/No | 01/04/2020 |
| HMRC assessment date | Assessment undertaken by: | Copy attached |
| 25/03/2020 | Mary Brown | Yes/~~No~~ |
| Other checks: |  | |
| A&I check completed | DBS required | DBS certificate number |
| Yes/~~No~~ | ~~Yes~~/No |  |
| Miscellaneous |  | |
| IT security policy issued - date | Confidentiality clause issued - date | Local procedures issued – date |
| 01/04/2020 | 01/04/2020 | 01/04/2020 |
| Authorised signature | Name | Date |
| Mary Brown | Mary Brown | 01/04/2020 |

The worker completes the section below:

If you have a P45, attach it to this form, retaining part 1A.

Read the statements A, B & C carefully and enter X against the **ONE** that applies to you.

|  |  |  |
| --- | --- | --- |
| **A** | This is my first employment since last 6 April and I have not been receiving taxable Jobseeker’s Allowance, Employment & Support Allowance, taxable Incapacity Benefit, State or Occupational Pension |  |
| **B** | This is now my only job but since last 6 April I have had another job, or have received taxable Jobseeker’s Allowance, Employment & Support Allowance or taxable Incapacity Benefit. I do not receive a State or Occupational Pension | x |
| **C** | As well as my new job, I have another job or receive a State or Occupational Pension |  |

Signed John Smith Date 10/04/2020

Please note: the deadline for the submission of invoices to payroll for processing is the 4th working day of the month. Payment will be made on 25th of the month.

Please email to [hr.operations@rbwm.gov.uk](mailto:hr.operations@rbwm.gov.uk) and payroll.manager@rbwm.gov.uk

**Appendix C – Appeal form**

**Royal Borough of Windsor and Maidenhead**

**Appeal against Status Determination (IR35)**

|  |  |
| --- | --- |
| Name of worker and their role |  |
| Name of intermediary |  |
| I wish to appeal against the determination set out in the attached Status Determination Statement (SDS) dated (insert date)  The reasons for my appeal are: | |
| I am aware that the Council has 45 days in which to respond to this appeal. I have attached a copy of the SDS issued to me. | |
| Signed | Date |
| Send this form and a copy of the original SDS form to (HR representative’s name and email) | |