



Guidance on the IR35 intermediaries legislation (“off payroll” working)

Scope

This guidance note will be of assistance to Heads of School/Services and others involved in appointing workers, as well as individual workers undertaking work for the University via a contract for services. The note also sets out the actions required by Finance, HR and Payroll personnel. A process flow chart and a contractor checklist form accompanies this note.

Introduction

Changes were made to IR35 intermediaries legislation in April 2017, such that special rules now apply to certain individuals who work on a self-employed basis for a public sector body (known as “off-payroll workers”).

The new rules apply to individual contractors who provide their services personally via their own limited company (“personal service company” (PSC)), or through another intermediary business such as a partnership or agency.

Under the new requirements, the individual must pay broadly the same tax and National Insurance contributions (NICs) as an employee and the public sector body must account for this directly to HMRC in ‘real time’.

If all of the following apply, then IR35 legislation applies:

- The individual works for the University on a self-employed basis (e.g. contractor, sole trader, freelancer, or consultant)
- The individual pays themselves through their own limited company or partnership (sometimes called an ‘intermediary’ or ‘personal service company’ (PSC))
- The individual could be considered an employee of the University if the intermediary didn’t exist.

If the individual is contracted via an agency, separate requirements apply, please see the relevant paragraph on page 2 of this guidance.

What do we have to do?

The University is required to assess whether IR35 applies to all contract for service arrangement. Therefore, the Head of School/Service (or their delegate) must seek the advice of an HR Partner BEFORE the individual commences any work. The appropriate steps are as follows:

	Action required	By whom?
1	Assess whether the off-payroll rules for engagements apply to a new contract.	The Head of School/Service, with assistance from HR
2	Conduct the HMRC ESS assessment - see below	The Head of School/Service, with assistance from HR
3	Write to the individual to notify them of the outcome	HR will arrange this on receipt of the completed ESS form from the Head of School/Service/recruiting manager.
If the assessment outcome is such that the individual is not in scope of IR35, then the contractor will remain liable for paying his/her own tax and National Insurance.		
If the assessment deems the individual to be "in scope" of IR35 the University must:		
4	Deduct income tax and National Insurance Contributions (NICs) from "deemed pay"	Finance Department issues the contractor with an IR35 Checklist to complete
5	Make the tax and NICs deductions to HMRC in real time	Payroll team
6	Issue a statement to the individual setting out the deductions made	Payroll/Finance department

How do we assess whether IR35 applies?

HMRC has created an Employment Status Service tool (ESS) which determines whether the rules apply:

<https://Employment Status Service tool>

5 applies, do "off payroll" workers become employees?

No. Whilst the University becomes responsible for deducting tax and NICs from the agreed fee, it does not change the status of the worker to that of an employee. As such self-employed individuals subject to IR35 are not eligible for all employee benefits, nor will they be able to claim statutory payments, such as Statutory Sick Pay and Statutory Paternity Pay through the University's payroll. Instead, entitlement to any statutory pay would be claimed, as now, via their PSC arrangement.

What if the individual is engaged with us via an agency or other third party?

If the University engages a contractor through an agency or other third party, it is the Head of School/Service's (or their delegate's) responsibility to assess the status using the ESS (as above) and to communicate the outcome to the HR Partner. The HR team will then notify the agency of the outcome within the required 31 day timescale. In these circumstances, instead of the University, it is the responsibility of the agency/third party to deduct the appropriate tax and NI from the contractor's fee.

Note that if the University fails to inform the agency of the status of the engagement within 31 days of a request from the agency to do so, the University automatically becomes liable for paying the income tax and NICs instead of the agency and if it fails to do so HMRC may levy penalties.

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