



FOI Disclosure NBC6121-1469

IR35



Prepared on the 3 January 2019



NORTHAMPTON
BOROUGH COUNCIL

Temporary staff / Contractor Authorisation Form
(To be completed by hiring manager in the first instance)

| Reason for resource request | Y/N | IR35 Test (if answer is mostly yes (true) work is likely to be inside IR35) | Y/N |
|--|-----|--|-----|
| Temporary short term additional resource (comparable internal job) | | Fixed start finish times and lunch breaks | |
| Temporary replacement (i.e. sick or maternity leave) | | Worker uses Councils equipment e.g. PC, phone is on email and is not distinguished as a contractor | |
| Specific skills required for project \ no similar job internally) | | Council has supervision or control over contractor | |
| Extension of existing project personnel | | Contractor / Temp has no flexibility to change hours worked. | |
| | | Contractor/Temp can't work for another company while engaged on a project work assignment | |
| | | Contractor / Temp can't supply a replacement worker | |
| | | The intention of the parties to the contract is that the position covers an established post. | |
| | | Link to Government IR35 status checker | |

HR/Finance – does role fall within IR35?..... Y/N

Role Description:

| | |
|--|--|
| Directorate | |
| Team | |
| Manager responsible during assignment | |

| | | | |
|-------------------------------|--|-----------|--|
| Duration of Assignment | | | |
| From | | To | |

| | |
|---------------------------------|--|
| Supplying Company/Agency | |
|---------------------------------|--|

| | |
|---------------------------------|----------|
| Agency Hourly/Daily Rate | £ |
|---------------------------------|----------|

| | |
|------------------------|--|
| Number required | |
|------------------------|--|

| Authroisation | |
|--------------------------|--|
| Director | |
| Borough Secretary | |
| HR | |



NORTHAMPTON
BOROUGH COUNCIL

Temporary Worker Procedures

Equality Impact Assessment

The Council strives to ensure equality of opportunity for all both as a major employer and as a service provider.

The Temporary Worker Procedures has been equality impact assessed to ensure fairness and consistency for all.

Version Control Schedule for Temporary Worker Procedures

| | |
|--|-----------------------------|
| Author (Post Holder Title) | HR Manager |
| Type of Document | Procedure |
| Version Number | V0.4 |
| Document File Name | Temporary Worker Procedures |
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| Document Held by (name section) | Human Resources |
| For internal publication only or external also | Internal |
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| Approved by | CMB/MTUCM |

| Change History | Date | Comments |
|----------------|------------|-----------------------------|
| Version 0.1 | 14/06/18 | Draft |
| Version 2 | 09/08/2018 | For CMB review |
| Version 3 | 24/09/2018 | MTUCM |
| Version 4 | 12/10/2018 | Insertion of IR35 Statement |
| | | |

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1. Introduction

1.1. Establishing the employment status of individuals defines the rights and responsibilities people have at work. Additionally it clarifies the responsibilities of the employer and the employee, worker or contractor in relation to their tax and National Insurance Contribution (NIC) liabilities. There are various types of Employment Status, including Employee, Worker, or Agency staff. Alternatively, if none of these apply, it might be appropriate for the work to be offered via a Contract for Services.

1.2. It is important that the correct processes are worked through and the appropriate checks made to ensure that NBC follow HMRC rules for engaging staff and contractors.

Where HMRC successfully challenge a worker's status, the engager will be liable for all unpaid Income Tax, NIC (both employee and employer) penalties and related interest payments.

2. What do I need to consider?

2.1. The default position should be that wherever possible the requirement should be fulfilled by either a direct employment (on payroll) or a temporary off payroll engagement through the Guidant arrangement.

2.2. There are some key questions to consider prior to engaging a person or company to do work for NBC:

- Does this require a job description or a Schedule of Work?
- How long is the duration of the work expected to be?
- What are the people resources that are required?
- How much flexibility is required around work periods?
- Could the work be covered by internal resources (e.g. secondment/acting-up) or are additional resources and/or expertise required?
- Should I engage employees, workers, agency staff or a contractor?
- Should I consider an Apprenticeship or Placement?
- What are the costs of the people resources and are these covered within budget?
- What are the tax and NIC implications (HMRC regulations/IR35) and how do I make sure NBC is compliant
- What is my contingency plan around compliance if the work continues beyond the original plan?
- Is IR35 applicable – see attached information sheet

To establish whether you are engaging an Office Holder for the role please see Section 10 for further guidance.

2.3. As a general guide, if the answer is 'Yes' to all of the following questions, then they are an employee:

- Do they have to do the work themselves?

- Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- Do they work a set amount of hours?
- Can someone move them from task to task?
- Are they paid by the hour, week or month?
- Can they get overtime payments?

2.4. If the answer is 'Yes' to all of the following questions, it will usually mean that this is a contract for services:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

ROUTES WHERE WORK IS VIA A JOB DESCRIPTION

3. Employees

3.1. In NBC the default position should be that people are engaged for work as employees wherever possible. However NBC also recognises that there are circumstances when it is appropriate to offer work to workers, agency staff or contractors.

3.2. When a need to engage staff resources is identified, managers should first consider whether it is appropriate to recruit on an employee contract – this could be on a permanent, fixed term or temporary basis.

3.3. The definition of an employee is set out in s.230 of the Employment Rights Act 1996 as “an individual who has entered into or works under....a contract of employment”. Normally this would mean that:

- There is an obligation on the employee to provide a personal service
- There is a mutuality of obligation
- The employer controls the way in which work is done

A contract need not be in writing as it exists when an employer and an employee agree terms and conditions of employment (including pay). A contract can also be implied from employer or employee actions.

4. Fixed Term Contracts:

An employee may also be engaged on a fixed-term contract, which is for a period of no longer than 4 years (when they will be deemed to hold a substantive post). However the contract should be reviewed before the end of the second year and the employee given appropriate notice, as employees gain full employment rights after two years and therefore would be entitled to redundancy payments.

5. Secondments & Acting-Up

Secondments

5.1. Secondments into an internal post will be via the NBC's recruitment and selection policy and procedure and the employee will be paid at the correct grade for the post. The post will be advertised internally and further information is available from the HR Manager on the methods of advertising that will be used.

5.2 Generally, a secondment should be for a period of no longer than two years. If the secondment lasts longer than this, due consideration should be given to whether the employee should be transferred into the role on a permanent basis. If the secondment becomes a permanent opportunity, the employee can be confirmed in post, as the recruitment and selection procedures will have already taken place. Secondments can also include when:

- An internal employee is seconded to an external organisation
- An employee from an external organisation is seconded into NBC

For payroll purposes the employee will be transferred into the role they are seconded to on the system and their substantive position will in effect remain held, this can be temporarily backfilled in line with the timespan of the secondment.

Acting-Up

5.3. There are two types of Acting-Up arrangements that can be utilised for short-term periods of up to 6 months' duration:

- To cover a post in its entirety for a short-term period
- To cover some of the responsibilities of a higher grade post

Informal interview arrangements within the team or section should take place if more than one employee expresses an interest in the acting-up opportunity.

If the Acting-Up lasts longer than 6 months, unless in relation to maternity cover, due consideration should be given to whether the role should be advertised, either on a permanent basis or via a secondment. At this point NBC's full recruitment and selection procedures should take place. In exceptional circumstances the acting-up can continue for longer than 6 months e.g. when the person who is away is expected back within a very short period of time and requires Head of Service and HR Manager approval.

Acting Up into the full duties of a post

For payroll purposes the employee will be transferred into the role they are acting up to, on the system they will be allocated to the pay grade for the position and have an occupancy type of Acting Up and an expected end date. Their substantive position will remain available when the acting up period comes to an end.

Acting up into some of the duties of a higher graded post

The employee will be paid a percentage formula honorarium to reflect the additional responsibilities of the higher graded post. For payroll purposes the employee will remain in their current post on the system.

6. Bank or casual staff

Casual staff are generally used by elections and facilities management. Positions available are advertised on the intranet and staff from NBC and LGSS are able to apply on a casual zero hour's contract basis.

7. Apprenticeships

Apprenticeships are recruited through agencies or provided by Qube Learning. The government website GOV.UK have a recruitment portal for apprenticeships [Click here](#). Apprenticeship training can be sought via HR.

8. Office Holders

8.1. All engagements related to an Office Holder role whether an individual partnership or a company must be processed via payroll for assessment / deduction of tax and NIC. An Office Holder cannot be treated as a self-employed individual. Where an individual routing through their own Personal Service Company is engaged to cover an Office, payments to the Personal Service Company must be routed through Payroll in order that the necessary PAYE deductions can be made.

8.2. HMRC define an 'office-holder' as someone who has a 'permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders'. An office holder, such as a company director, does not necessarily, hold office, under a contract of service.

8.3 The change in the legislation applies when a worker's personal services are supplied via an intermediary to perform the duties of an office, including when:

- A worker is personally appointed to perform the duties of an office.
- An intermediary is appointed as a corporate office-holder, provides the worker to perform the duties of that office and the worker's personal services are required.
- A worker is engaged both as an office-holder and is obliged to perform other duties in circumstances when they would be regarded as an employee if they were employed directly by the client. (For example, a director also engaged as a CEO who has some duties arising from their office but in addition has managerial duties whereby they are mainly responsible for the client company's day to day activities).

- A worker has earnings from an employment that have already been subject to PAYE/NICs by a client but they are also engaged by that client as an office-holder.

8.4. The holder of an Office is chargeable to tax under Schedule E (PAYE) as employment income on the emoluments from it and generally there will also be liability for NICs. It is not necessary to show, as for an employee, that an Office Holder works under a contract of service.

8.5. Any payment or reimbursement of expenses to an individual partnership or a limited company acting in the capacity of an Office Holder should be processed by NBC Payroll Services in order that the correct tax and NIC's assessment and deductions are made.

8.6. Please note - It is possible for an individual to be both an Office Holder and an employee with NBC if they have an existing employment contract and, in addition, carry out an Office Holder role.

ROUTES WHERE A CONTRACT IS VIA A WORK SPECIFICATION

9. Off Payroll Engagements – General Information

9.1. Once a work specification rather than a direct employment has been determined as the appropriate route, it is essential that the HMRC ESS tool <https://www.gov.uk/guidance/check-employment-status-for-tax> is used to determine the status of the work before the engagement process has begun. IR35 fact sheet can be found in appendix 1.

9.2. It is NBC's responsibility, as the engager; to determine the correct status of the engagement and NBC will be held responsible for any underpaid tax and NICs (both employees and employers), penalties and interest should HMRC subsequently successfully challenge the engagement status.

The 'Off-Payroll Worker Engagement Form' should be completed at least 5 working days prior to the start of the engagement, following approval by the Head of Service. The form should be fully completed, printed, signed and sent to HRQueries@northampton.gov.uk for approval.

On no account should a contract (verbal or written) be agreed or work undertaken by the individual before the correct status of the proposed engagement has been determined.

Record Retention

9.3. In all cases the completed information to support the Supply of Services must be retained for a period of a minimum of 7 years after the conclusion of the last invoiced payment.

9.4 Exemptions - There may be times where the usual route for engaging interims/temporary staff cannot be followed. However the 'Off-Payroll Worker Engagement Form' must still be used and approved prior to the exemption process

being activated. The exemption report will be approved by HR and attached to the engagement as backup documentation. Please contact HR in the first instance if it is identified that the exemption report process should be used.

10. Corporate Agency Supply Arrangement

10.1. An agency worker is engaged by NBC to cover temporary requirements, and is supplied by a recruitment agency, via either the ESPO or Crown Commercial Services frameworks or through our managed service provider, Guidant (using the agency supply operational system, e-volution). An agency worker is not an employee of NBC.

10.2. Once the requirement for agency staff has been identified, the Off-Payroll Worker Engagement Form and work specification should be forwarded to HR who will contact either the framework providers or Guidant to float the job specification with agencies included in their network.

10.3. The Agency Worker Regulations mean that after a 12 week qualifying period an agency worker employed by their supplying agency, is entitled to the same basic working and employment conditions, including pay, as an NBC employee in the same or similar role. The hourly pay rate for the worker will also increase after the 12 week period.

If you are unsure of the action you must take please contact HR on ext. 8968.

Further information relating to HR policies/procedures/forms can be accessed [here](#)

- 1 – Casual Workers and Temporary Staff Policy
- 2 – Off Payroll Worker Engagement Form
- 3 – IR35 Statement
- 4 – Code of Conduct

Further information relating to the procurement of temporary workers can be accessed [here](#)

- 5 – Contract Procedure Rules
- 6 – Exemption Report Form



IR35 Statement

Equality Impact Assessment

The Council strives to ensure equality of opportunity for all both as a major employer and as a service provider.

The IR35 Statement does not require an equality impact statement.

Version Control Schedule for the IR35 Statement

| | |
|--|-----------------|
| Author (Post Holder Title) | HR Manager |
| Type of Document | Statement |
| Version Number | V0.1 |
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| Version 0.1 | 15/10/18 | CMB/MTUCM |
| Version 2 | | |
| Version 3 | | |
| Version 4 | | |
| | | |

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1. Introduction

1.1. The Intermediaries Legislation was introduced in 2000 and requires individuals working through an intermediary to pay broadly the same tax and National Insurance contributions (NICs) as employees, where they would have been an employee if they had provided their services directly. An intermediary in this context is typically someone working as a sub-contractor, a sole trader/partnership or has their own limited company, often known as a personal service company (PSC).

1.2. The government announced at its Autumn Statement (AS) 2015 that it would restrict tax relief on T&S expenses (the cost of providing for employee travel, accommodation, meals and other 'subsistence') to workers who supply their services through an employment intermediary and carry out their work under supervision, direction or control. For individuals working through personal service companies, relief would be restricted where the intermediaries legislation (IR35) applies, or where the worker would be considered an employee if engaged directly with the client.

1.3. Due to a technical point in the legislation, the restriction that came into force on 6 April 2016 does not reflect the restriction that was announced at AS 2015. So, rather than consider whether a worker is under supervision, direction or control, employment intermediaries (including umbrella companies) need to consider whether the worker would be an employee if engaged directly by the client. The only exception to this rule is workers who are engaged through managed service companies. The restrictions apply to these workers where they are under supervision, direction or control. Where a worker's circumstances are such that they would be properly considered as self-employed if engaged directly, the new legislation will not apply.

1.4. From April 2017, individuals working through their own company ("off-payroll workers") in the public sector are no longer responsible for deciding whether the IR35 regulation applies, this responsibility will instead move to the public sector employer (so the Council), agency, or third party that pays the worker.

2. What do I need to consider?

2.1. Where the Council engages directly with the intermediary, the Council will be responsible for operating the new rules and then collecting and paying the relevant tax and NICs through the payroll system.

2.2. Where the Council engages the worker indirectly through an agency, then that agency is responsible for operating the new rules and collecting and paying the relevant tax and NICs. However the responsibility of assessing the employment status

of the “off-payroll worker” will still lie with the Council who will need to inform the agency that they are contracting with a public sector body.

2.3. The above rules will not apply to workers provided through an agency where the workers are employees of the agency.

2.4. To assist with determining the tax status of an “off-payroll worker”, HMRC have a new online tool, the “Employment Status Service” (ESS) which can be accessed via the following link: <https://www.gov.uk/guidance/check-employment-status-for-tax>.

2.5. All recruiting managers must use the above tool to determine the tax status of an “off-payroll worker” prior to agreeing their employment. They must then inform the PSC or agency with whom they have a contract whether the engagement falls within the new rules. **All documentation supporting the outcome of the assessment should be retained and sent through to HR.**

If you are unsure of the action you must take please contact HR on ext. 8968.

Further information can be accessed [here](#)

1 – Casual Workers and Temporary Staff Policy

2 – Temporary Worker Procedures

3 – Off-Payroll Worker Engagement Form

Guidance published by HMRC can be accessed [here](#)