

### **Managers' How to Guide.....**

## **IR35 – Impact on off-payroll workers engaged through a personal service company (PSC)**

<b>Policy statement</b>	<p>Under IR35 legislation, Hampshire County Council aims to make sure that any off-payroll worker engaged through their own intermediary, often referred to as a personal service company (PSC), is subject to appropriate Tax and National Insurance Contributions where IR35 applies.</p> <p>It is Hampshire County Council's policy that any off-payroll worker who is engaged through a PSC must be procured through the Council's temporary recruitment contract, Matrix, either through one of their third party recruitment agencies or through their payroll service, Client Directs Limited (CDL), or other procured contract if Matrix is unable to fulfil the recruitment need. No off-payroll worker who is engaged through a PSC should be directly engaged.</p>
<b>Scope</b>	<p>This how to guide applies to any off-payroll worker who is or is intended to be engaged by Hampshire County Council through a PSC.</p> <p>Off-payroll workers who are engaged through a PSC by non Hampshire County Council bodies are excluded from this how to guide and should refer to their own employer's policies and procedures.</p>
<b>How to use this document</b>	<p>This document provides procedural information on applying IR35 to off-payroll workers who are engaged through a PSC. The document has been written in the second person to address the line manager, referred to throughout the document as 'you'.</p> <p>Throughout this guide, a 'requirement' is indicated by the word 'must'. The word 'should' is used to indicate actions or processes that are considered to be best practice.</p>

All individuals must adhere to the above policy statement when using this how to guide.

This document uses the term personal service company (PSC) throughout to cover all relevant types of intermediary.

## Content

<b>1. Introduction .....</b>	<b>4</b>
<b>What is IR35? .....</b>	<b>4</b>
<b>Who does IR35 apply to? .....</b>	<b>4</b>
<b>2. Implications for the Council .....</b>	<b>5</b>
<b>What are the implications of IR35 for the Council? .....</b>	<b>5</b>
<b>What is the Council's policy on engaging workers through a PSC?.....</b>	<b>5</b>
<b>3. How to determine if IR35 applies .....</b>	<b>5</b>
<b>How do I know if IR35 will apply when seeking to fill an off-payroll vacancy? ....</b>	<b>5</b>
<b>How do I know if an engagement is for a worker? .....</b>	<b>6</b>
<b>How does a worker differ from a supplier? .....</b>	<b>6</b>
<b>What should I do if the engagement is for a worker? .....</b>	<b>6</b>
<b>What can I do if I believe IR35 does not apply to this engagement?.....</b>	<b>6</b>
<b>How do I contact Matrix?.....</b>	<b>7</b>
<b>What will happen next? .....</b>	<b>7</b>
<b>What will happen if the worker I want to engage is engaged through a PSC? .....</b>	<b>7</b>
<b>What are the consequences if it is incorrectly determined that IR35 does not apply to a worker engaged through a PSC? .....</b>	<b>7</b>
<b>What will happen if a worker engaged through a PSC disputes the IR35 determination? .....</b>	<b>7</b>
<b>What will happen if the worker I want to engage is a sole trader? .....</b>	<b>8</b>
<b>What will happen if the worker I want to engage is an agency worker? .....</b>	<b>8</b>
<b>What should I do if I want to engage a worker who is engaged through a PSC through one of the Council's other procured frameworks?.....</b>	<b>8</b>
<b>What should I do if the engagement is for an office holder? .....</b>	<b>8</b>
<b>How do I manage the provision of a worker engaged through a PSC outside Matrix, or other procured contract? .....</b>	<b>9</b>
<b>What should I do if the engagement is for a supplier?.....</b>	<b>9</b>
<b>If a company is set up as a vendor on the Council's vendor system can I continue to pay them via Purchase Order and Invoice? .....</b>	<b>10</b>
<b>What should I do if I believe I am directly engaging a worker through a PSC? .</b>	<b>10</b>
<b>Roles and responsibilities.....</b>	<b>11</b>
<b>Key definitions .....</b>	<b>12</b>
<b>Toolkit .....</b>	<b>14</b>
<b>Support .....</b>	<b>14</b>

## 1. Introduction

### What is IR35?

IR35, also known as 'intermediary legislation', is a set of tax rules to stop contractors who work off-payroll as 'disguised employees' benefiting from the tax advantages of being self employed.

Its aim is to make sure that any off-payroll workers engaged through their own company - known as an 'intermediary' - who would have been an employee if they were providing their services directly, pay broadly similar amounts of tax and National Insurance Contributions (NICs) to employees.

An 'intermediary' can be a worker's own limited company, often referred to as a personal service company (PSC), a partnership, or another individual.

For workers engaged through a PSC in the public sector, the responsibility to determine if IR35 applies lies with the public authority. The liability for making a wrong assessment also lies with the public authority. Before, the responsibility and liability lay with the PSC.

### Who does IR35 apply to?

IR35 applies to any off-payroll worker who:

- is engaged through a PSC and would be an employee if there was no intermediary
- is an 'office holder'

Anyone such as a consultant, social worker, IT staff, supply teacher, sports coach or repair person may be engaged through a PSC and therefore covered by IR35.

IR35 does not apply to PSCs that are suppliers (and who can show that they are out of scope of IR35). It also doesn't apply to sole traders or PAYE agency workers.

The new rules will take precedence over the Construction Industry Scheme (CIS). A person, such as a plumber or handy person, who is engaged through a PSC to do construction work falls within the new rules rather than CIS. Further information can be found in section 3 of the IBC [tax manual](#).

## 2. Implications for the Council

### **What are the implications of IR35 for the Council?**

It is the responsibility of Hampshire County Council (the Council) to determine if IR35 applies to any off-payroll worker engaged through a PSC. The liability for making a wrong assessment also lies with the Council. Before, the responsibility and liability lay with the PSC.

Where IR35 applies, the Council, agency or third party paying the individual must make sure that the appropriate deductions for tax and National Insurance are being made. Employer NICs will also apply.

### **What is the Council's policy on engaging workers through a PSC?**

It is the Council's policy that no individual who is a worker and engaged through a PSC should be directly engaged. Any off-payroll worker who is engaged through a PSC must be procured through the Council's temporary recruitment contract, Matrix, either through one of their third party recruitment agencies or through their payroll service, Client Directs Limited (CDL), or other procured contract if Matrix is unable to fulfil the recruitment need.

## 3. How to determine if IR35 applies

### **How do I know if IR35 will apply when seeking to fill an off-payroll vacancy?**

It will depend on the answers to the following questions, as shown in the [IR35: impact on 'off-payroll' workers engaged through a personal service company \(PSC\)](#) process flow.

1. Is the engagement for a worker or a supplier? - IR35 applies to workers but not suppliers.

2. If the engagement is for a worker, will the worker be engaged through a PSC, as a PAYE agency worker or sole trader? - IR35 applies to PSC's. It does not apply to PAYE agency workers or sole traders.

If the engagement is for a worker engaged through a PSC, IR35 will apply.

**How do I know if an engagement is for a worker?**

A person is generally classed as a 'worker' if:

- they have a contract or other arrangement to do work or services personally for a reward
- the contract is typically based on time with a chargeable day rate or equivalent
- they have to turn up for work even if they don't want to
- their employer has to have work for them to do as long as the contract or engagement lasts
- they have limited or no right to send someone else to do the work (subcontract)

**How does a worker differ from a supplier?**

A supplier can be distinguished from a worker as:

- they are procured to provide specified goods or services
- their employer agrees a fixed price for their goods or service – it doesn't depend on how long the job takes to finish – and payment is subject to completion or delivery of the contracted services
- they can, and typically do, work for more than one client
- they can decide what work they do and when, where or how to do it and can hire someone else to do the work - they are responsible for fixing any unsatisfactory work in their own time
- they use their own money to buy assets, cover running costs and provide tools and equipment for their work.

**What should I do if the engagement is for a worker?**

If an engagement is for a worker, you must set the engagement up via Matrix, or other procured framework where Matrix is unable to fulfil the recruitment need.

When an engagement is set up via Matrix, it is presumed that IR35 will apply where the worker is engaged through a PSC. The system will automatically populate to show that IR35 applies and this will be stated in any advert for the role.

Where a worker engaged through a PSC is procured through one of the Council's other procured frameworks, such as the Technical Resources Framework (TRF) a determination of whether IR35 applies will be made centrally by Engineering Consultancy using the HMRC Employment Status for Tax Tool.

**What can I do if I believe IR35 does not apply to this engagement?**

If you believe IR35 does not apply, you can change the status of the engagement when setting it up on Matrix to indicate that IR35 does not apply, provided the role is not one to which the Council has [pre-determined](#) IR35 will always apply. Any advert for the role will state that IR35 does not apply.

Your assessment that IR35 does not apply to an engagement is

provisional at this stage. Where an engagement is filled by a worker who is engaged through a PSC, Matrix will run the HMRC Employment Status for Tax Tool to determine whether IR35 applies to the engagement or not. This determination is final.

Departments may be charged up to a maximum of £80 plus VAT by Matrix to run the HMRC Employment Status for Tax Tool, subject to Corporate contractual arrangements.

**How do I contact Matrix?**

You can contact Matrix at [HampshireCC@matrix-scm.com](mailto:HampshireCC@matrix-scm.com) or on 0844 453 3172.

**What will happen next?**

That will depend on whether the worker who fills the engagement is engaged through a PSC, is a PAYE agency worker or sole trader.

**What will happen if the worker I want to engage is engaged through a PSC?**

If it is determined that IR35 applies, Matrix will set the worker up to deduct tax and NICs at source. Employer NICs of 13.8% will also be due. If IR35 does not apply, no further action will be taken. The worker will not be set up to deduct tax and NICs.

**What are the consequences if it is incorrectly determined that IR35 does not apply to a worker engaged through a PSC?**

There could be significant consequences for the worker, the PSC and the Council if IR35 legislation is not correctly applied. In addition to any extra tax and NICs owed, interest and penalties can be charged. Penalties can be more severe if it can be proved that IR35 rules or legislation have been deliberately ignored.

**What will happen if a worker engaged through a PSC disputes the IR35 determination?**

The responsibility and liability for determining if IR35 applies to an engagement lies with the Council.

If you believe that IR35 does not apply to a role, you can request Matrix run the HMRC Employment Status for tax tool. You will be asked to provide Matrix with answers to a set of questions about the role and the working practices to enable Matrix to run the HMRC tool. Once it is determined if IR35 applies or not, the determination must stand.

Matrix will email you a copy of the determination and the answers you provided to the questions in the tool. You will be asked to confirm that the information provided is accurate. You must notify Matrix immediately if any of the information is incorrect.

Matrix will keep a copy of this information for audit purposes should HMRC challenge a determination. You must also keep a copy for your records, in accordance with the [Council's Retention Schedule](#).

Departments will be charged up to a maximum of £80 plus VAT by Matrix to run the HMRC Employment Status for Tax Tool, subject to Corporate contractual arrangements.

**What will happen if the worker I want to engage is a sole trader?**

Sole traders are exempt from IR35. As a result, there will be no deductions made for tax and NIC.

It is important you make sure that sole traders are self-employed and not in fact employees. If you are unsure you should complete [HMRC Employment Status for tax tool](#). If it is determined that they are an employee you must notify Matrix, who will set the individual up as an employee with the appropriate deductions for tax and NIC being made. If they are determined as self employed no deductions will be made.

You must keep a copy of the determination, in accordance with the [Council's Retention Schedule](#), for audit purposes should HMRC challenge a determination.

**What will happen if the worker I want to engage is an agency worker?**

IR35 does not apply to PAYE Agency workers. PAYE Agency workers will automatically be set up with Tax and NI deductions and no further action is required.

**What should I do if I want to engage a worker who is engaged through a PSC through one of the Council's other procured frameworks?**

Where a worker engaged through a PSC is procured through one of the Council's other procured frameworks, such as the TRF, a determination of whether IR35 applies will be made centrally by Engineering Consultancy using HMRC Employment Status for Tax Tool.

If IR35 applies, the relevant agency will be notified and the worker will be set up with the appropriate deductions for tax and NIC being made by the agency.

**What should I do if the engagement is for an office holder?**

IR35 applies to any worker who is engaged as an office holder. Office holders should be set up through Matrix' payroll service, Client Directs Limited (CDL). If you are unsure if a role is an office holder you should speak to your HR Business Partner in the first instance.



**How do I manage the provision of a worker engaged through a PSC outside Matrix, or other procured contract?**

In exceptional circumstances, where Matrix, or other procured contract, is unable to fulfil the Council's requirements you must consult the [Corporate Procurement Services](#) team. Where they are in agreement, you can seek to fulfil the assignment through an alternative agency outside the Matrix contract.

If the worker you wish to engage is set up as a PSC, it is your responsibility to make sure a determination is made on whether or not IR35 applies. You must agree this with the agency. If the agency will not run the [HMRC Employment Status for tax tool](#), you must run the tool and notify the agency of the outcome. [Guidance](#) on the types of questions you will be asked is available.

You must keep a copy of the IR35 determination and the answers you provided to the question for audit purposes, should HMRC challenge a determination.

If IR35 applies to an engagement, the agency will be required to set the worker up to deduct tax and NICs at source. Employer NICs of 13.8% will also be due.

**What should I do if the engagement is for a supplier?**

If the engagement is for the supply of goods, you must set them up as a vendor on the Council's vendor system. This must be done in accordance with the Council's [Contract Standing Orders](#) and [procurement process and best practice guide](#).

If the engagement is for the supply of services, and the supplier is engaged through a PSC, you must complete [Her Majesty's Revenue and Customs \(HMRC\) Employment Status for tax tool](#) to make sure that IR35 does not apply. If it is determined that IR35 does not apply to this engagement you must set the individual up as a vendor on the Council's vendor system. If IR35 does apply the individual must be set up as a worker via the Council's temporary recruitment contract, Matrix. This will make sure the appropriate tax and NIC deductions are made. If the test is unable to determine whether IR35 applies you must review your answers to the questions and do the test again to make sure that an outcome is determined.

If the test continues to be unable to determine whether IR35 applies you must set up the individual as if they were a worker, via the Council's temporary recruitment contract, Matrix.

For suppliers of services who are engaged as sole traders, it is important that you make sure that the sole trader is self-

employed and not in fact an employee. If you are unsure you should complete [HMRC Employment Status for tax tool](#). If it is determined that the sole trader is an employee you must either employ them directly or set them up via the Council's temporary recruitment contract, Matrix.

You must keep a copy of the IR35 determination, in accordance with the [Council's Retention Schedule](#), for audit purposes should HMRC challenge a determination.

**If a company is set up as a vendor on the Council's vendor system can I continue to pay them via Purchase Order and Invoice?**

It is important that you review the situation every time you engage an individual off-payroll and make that a determination of their employment status has taken place and whether or not IR35 applies. You must do this even if you have engaged with them before. The nature of each engagement could be different. Simply because the company is on the Council's vendor system or it was determined that they were a supplier before they could be engaged as a worker in a later engagement.

**What should I do if I believe I am directly engaging a worker through a PSC?**

If you are aware that you may engage directly with a worker through a PSC, you must take action immediately as the relationship must change.

There are three options:

1. Set the person up through the temporary recruitment contract, Matrix, either through one of their third party recruitment agencies or through their payroll service, CDL or other procured contract if Matrix is unable to fulfil the recruitment need.
  - The presumption is that IR35 will apply to all roles where the worker is engaged through a PSC, unless it is shown otherwise.
  - Matrix will deduct Tax and NICs from the PSC. You should be aware that any changes will impact on cost, because Employer's NICs of 13.8% will have to be paid, and where applicable, fees to Matrix may apply. It may also be an outcome that the worker seeks to add any employee tax and NIC costs to their fees which could further increase the costs to your budget. This will need to be factored into any fees negotiation.
  - If you believe that IR35 does not apply, and it is not one of the roles to which the Council has [pre-determined](#) IR35

will always apply, you can request Matrix run the HMRC Employment Status for tax tool, to determine whether it applies or not. You will be asked to provide Matrix with answers to a set of questions about the role and the working practices to enable Matrix to make the determination. Departments will be charge up to a maximum of £80 plus VAT by Matrix to run the tool.

1. Employ the person and pay them through payroll. You need to start the [recruitment](#) process – directly hiring the existing individual into a position in SAP; or
2. Cease to engage the person, ensuring appropriate contractual notice is provided.

## **Roles and responsibilities**

As the manager you are responsible for:

- Ensuring that any off-payroll workers who are engaged through a PSC are engaged through the temporary recruitment contract, Matrix, either through one of their third party recruitment agencies or through their payroll service, CDL or other procured framework if Matrix is unable to fulfil the recruitment need
- providing information to Matrix, as required, about the role and the working practices to enable Matrix to complete the HMRC Employment Status for tax tool to determine if IR35 applies or not.
- notifying Matrix immediately if any of the information provided to complete the HMRC employment Status tool is incorrect.
- keeping a copy of the IR35 determination and the answers to the questions in accordance with the [Council's Retention Schedule](#).

Matrix are responsible for:

- completing HMRC's Employment Status for tax tool to determine if IR35 applies.
- contacting the manager if any further information is required to complete HMRC's Employment Status for tax tool.
- keeping a copy of the IR35 determination and the answers to the questions for their records.

**Key definitions**  
(shown in  
alphabetical order)

**Agency worker** – an individual who is assigned to do work for an organisation, through a temporary work agency. The worker will have a contract with an agency but will work temporarily under the supervision and direction of the employer.

**Client Directs Limited (CDL)** – Matrix's payroll company. Where a worker is already known to the hiring manager CDL will payroll that worker at a reduced cost.

**Construction Industry Scheme (CIS)** - a scheme created by HMRC for tax from contractors and subcontractors. CIS rules apply to all payments made by a contractor to a subcontractor under a construction contract, but does not apply to employees.

**Contract Standing Orders (CSO's)** – the regulatory framework to follow when purchasing goods, services and works, regardless of value. They invoke the relevant aspects of EU and UK procurement law. CSO's make sure procurement processes are followed in a regulated manner.

**Engaged** – an individual involved in activity in the workplace.

**Engagement** – a specific, often limited, period of employment.

**Goods** – are physical items that are produced, bought or sold.

**HMRC Employment status for tax tool** - provides clarity on IR35 status and assists public sector organisations and agencies in making IR35 determinations.

**Intermediary** – can be a limited company or a partnership, and is often referred to as a personal service company (PSC).

**IR35 (also known as intermediary legislation)** – is a set of rules to make sure that any 'off-payroll' worker engaged through their own company (an 'intermediary') pays similar amounts of tax and NICs to employees, if they would have been taxed as an employee were they engaged directly.

**Limited (Ltd) Company** – an organisation set up to run a business. It will be incorporated at Companies House as a legal entity. It is completely separate from its owners; it can enter into contracts in its own name and is responsible for its own actions, finances and liabilities. Any profits are owned by the company, after it pays Corporation Tax. The company can then share its profits.

**Matrix** – the Council’s vendor neutral supplier of temporary agency workers. Matrix fulfils requests through the panel of vendors linked to this contract.

**Off-payroll** – those instances where an individual is not paid via the Council’s payroll system.

**Office holder** - person appointed to a position by a company or organisation but doesn’t have a contract or receive regular payment.

**Partnership** - two or more people ‘trading in common with a view to profit’. It is the format normally chosen for a business that is owned by two or more sole traders. This kind of partnership does not have to be registered with Companies House.

**Pay as you earn (PAYE)** - HMRC’s system to collect Income Tax and NICs from employment.

**Personal service company (PSC)** - While there is no legal definition of a PSC, notionally, it is a limited company or in some rare circumstances a partnership with no employees, where the owner/director(s) of the company is the person(s) carrying out the work. The limited company is set up to run as a business and will be incorporated at Companies House as a legal entity.

**Public authority** - is defined by the [Freedom of Information Act 2000](#) and the [Freedom of Information \(Scotland\) Act 2002](#) for the purposes of the off-payroll rules. This definition includes:

- government departments and their executive agencies
- many companies owned or controlled by the public sector
- schools and universities
- local authorities
- the National Health Service (NHS)

**Services** – activities that other people or businesses do for you.

**Sole trader** - any business that is owned and controlled by one person, although they may employ other workers. The sole trader keeps all the business’s profits after they have paid tax on them and are responsible for any losses the business makes. A sole trader is not a limited company or a partnership and therefore is not a PSC.

**Supplier** – in this context, a supplier refers to a third party who is providing goods, works or services. These goods, works or services will have been procured in accordance with the relevant organisation’s standing orders.

**Third party agency** - recruit candidates for temporary, part-time, or full-time employment opportunities other than for their own needs.

**Worker** - a person who works for an employer and is engaged to perform work under a contract. The worker will work to the terms within their contract and generally have to do the work personally.

## Toolkit

To help with the application of this How to guide you may find the following documents/links useful:

- Process flow – [IR35: impact on off-payroll workers engaged through a personal service company \(PSC\)](#)
- [HMRC Employment Status for tax tool](#)
- [Guidance](#) on questions asked in the HMRC Employment Status for tax tool
- [Pre-determined roles](#), to which IR35 always applies
- [Retention Schedule](#)
- [Contract Standing Orders](#)
- [Procurement process and best practice guide](#)
- IBC [tax manual](#)

## Support

Managers:

Any queries you have can be directed to:

- **Matrix** - [HampshireCC@matrix-scm.com](mailto:HampshireCC@matrix-scm.com) or 0844 453 3172 – for queries relating to the Matrix system and outcomes from the IR35 test.
- **[Recruitment](#)** - for enquiries about setting an individual up on a permanent, fixed term or casual contract.
- **Procurement** - [Corporate.Procurement.Services@hants.gov.uk](mailto:Corporate.Procurement.Services@hants.gov.uk) - for queries about Contract Standing Orders and procurement processes.
- **HR Operations** - [hradvice@hants.gov.uk](mailto:hradvice@hants.gov.uk) or 01962 813915 - for any other queries relating to IR35.

## How to guide Governance

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