

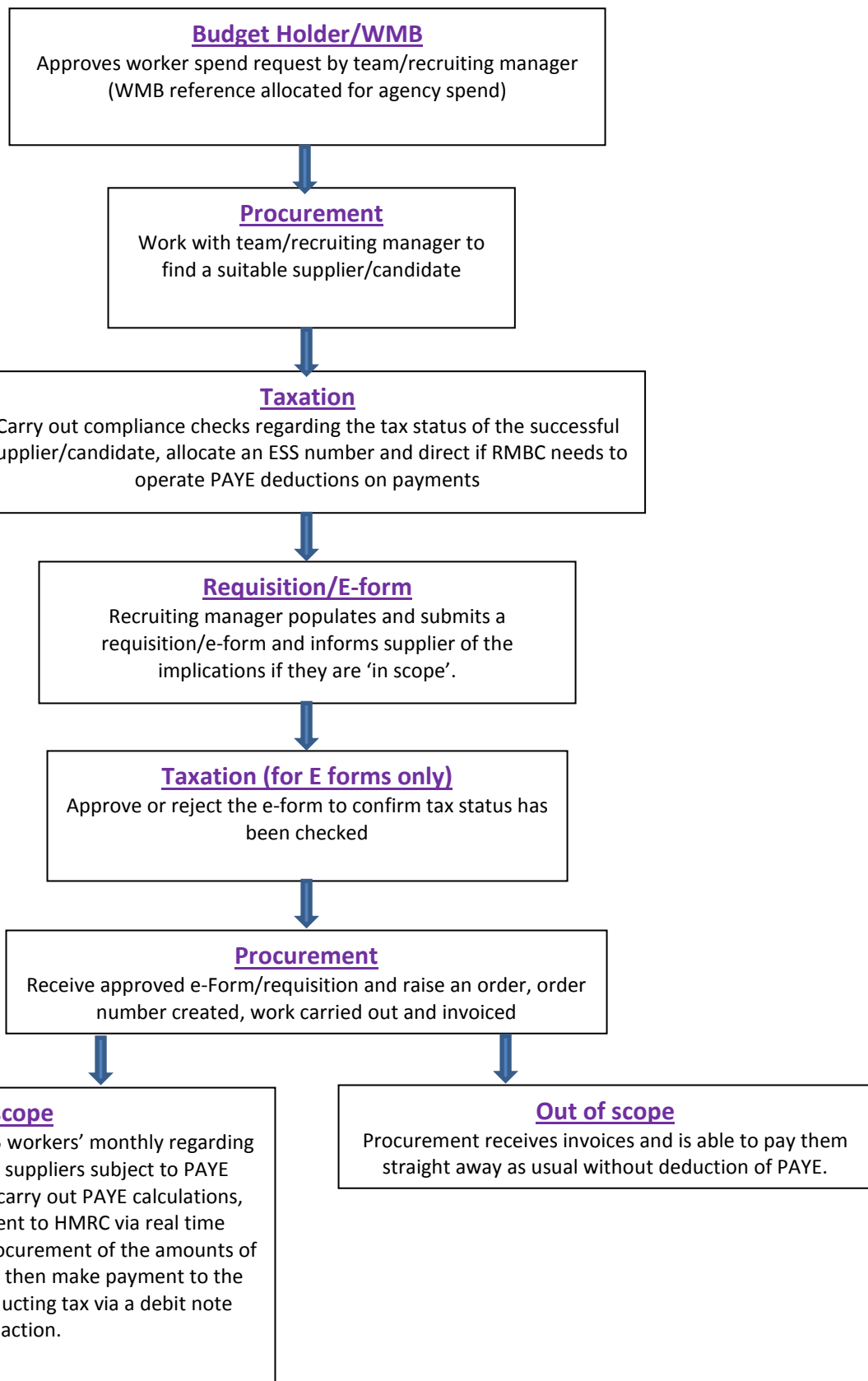
One stop shop for Employment status

1. Council Process
2. Taxation Process
3. Agency Process

Appendices

- a) ESS Questionnaire
- b) Agency Pro Forma
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- d) Information for Contractors
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Council Process



Taxation Process

Is an employment status assessment required?

If the order is for;

- goods,
- a service provided by a supplier with more than one Director, or,
- a business with a workforce

it will not be necessary to carry out an employment status assessment for the work.

If an assessment *is* needed, a request will be sent to the engager to fill out the Employment Status questionnaire.



Questionnaire returned

Upon receipt of a completed questionnaire, the Taxation Section will carry out an employment status assessment.

Once the assessment has been carried out, Taxation will contact the engager for clarity on any answers as required re running the CEST tool to reflect any changes.

In the case that an assessment can't be determined, all answers received will be re-confirmed. After which a view will be taken on balance as to what would be most acceptable to HMRC given the evidence available.



Finalise assessment

Once a fair and reasonable assessment result is reached; ProcurementTeamA, IR35Workers (HR) and the engager will be contacted to confirm if PAYE needs to be operated on the engagement by the Council.

Agency Process

Once an Agency worker is approved via the Workforce Management Board, and a worker is selected via Procurement, the recruiting manager should request an assessment of the workers' tax status from the TaxationSection@rotherham.gov.uk. Taxation will need to know the name of the Agency who will be paid by the Council and the name of the worker being placed at Rotherham.



Taxation will contact the agency asking them to populate a Pro Forma regarding the tax status of the worker.



Once a Pro forma is received, the next step depends upon the information on it.

Individual

If it states that the worker is an individual, that the agency or an umbrella company are operating PAYE on payments to the worker, there are no other parties other than the worker, the agency and umbrella company involved, and, an assessment has not been requested, this is enough evidence to protect the Council from any PAYE liability should one arise.



Personal Service Company (PSC)

If however, the returned pro forma states that the work being carried out is via a PSC, and/or, that they require the Council to complete an employment status assessment, in order to satisfy HMRC requirements the Council must also carry out its own assessment of the status of the work, and, notify the agency within 30 days of request (receipt of pro forma).

Taxation will issue a request to the engager to fill out the Employment Status questionnaire. Upon receipt of a completed questionnaire, Taxation will carry out an employment status assessment via the CEST Tool, answers will be reconfirmed as necessary.



Taxation must contact the agency again (within 30 days) attaching the pro forma they provided, and, the assessment carried out, requesting their confirmation of tax treatment. Once a response is received, it will be forwarded to ProcurementTeamA, IR35 workers and the engager with instructions as to whether the Council should operate PAYE or not.

Appendices

Appendix A - ESS questionnaire

This can be found on the intranet – Directorates – Finance and Customer Services – Financial Services – Taxation Guidance Documents, under Employee Taxation

Appendix B - Agency Pro Forma

| | |
|----------------|--|
| Agency name | |
| Contact name | |
| Contact email | |
| Contact number | |

| | |
|---|-----------------------|
| Worker name | |
| Work description | |
| Work title | |
| Name of engager | |
| Individual | Y/N |
| Limited Company | Y/N |
| Is PAYE being operated on payments to this worker by your agency? | Y/N |
| Is PAYE being operated on payments to this worker via an Umbrella Company? | Y/N |
| What is the Umbrella Company's name? | |
| Are there any other parties involved i.e. are there any further intermediaries between the worker and umbrella company, or the umbrella company and the agency? If so, please explain arrangements and tax implications in the notes box below. | Y/N |
| Do you require the Council to carry out an IR35 assessment? | Y/N |
| IR35 outcome (to be completed by RMBC) | In Scope/Out of Scope |
| Tax deductible by | RMBC/Agency/Umbrella |

| |
|--|
| Further notes regarding this engagement: |
|--|

Agency agreement (please add name/signature)

Date agreed

Appendix C - Frequently Asked Questions (FAQ's)

Who needs an assessment?

H. M. Revenue and Customs' (HMRC) employment status rules apply to anyone who is receiving money in return for work but is not an employee or an organisation with employees, for example, an agency worker, a sole trader, a company with only one director. They would not apply to a business that has two or more employees, partners and/or directors, nor payments made from Direct Funds (as these are not Council funds) or Foster/Shared Lives Carers.

Why is an assessment needed?

HMRC believe a lot of tax revenue is lost due to individuals carrying out what would ordinarily be employed work on a self-employed basis. The tax regimes differ, Self-employment offering a more beneficial route for the worker. Therefore, the individuals may be registered as self-employed but if they meet certain criteria, HMRC's view is that the work is still that of employment regardless of the capacity in which it is delivered.

HMRC's criteria is based upon how the supplier carries out their work, the level of control over the work by the Council and the likelihood of that worker being able to ask someone else to carry out the work if they were unwilling or unable to do so.

The Council is obligated to carry out assessments for any worker which they engage as above. If the work is deemed to be that of employment - in HMRC's view – then deductions of tax and national insurance must be made from payments, reported and paid over to HMRC. To not do so would have serious reputational and financial implications for the Council. Firstly, to not follow Public Policy would be frowned upon, but also, the Council could be found liable for any taxes which should have been due, plus penalties and interest, whereby an assessment was not carried out or reasonable care was not taken to do so.

What is the difference between an employment status assessment and an IR35 assessment?

Essentially the assessments are the same however, employment status relates to an assessment carried out on an individual and IR35 is the legislation which applies to assessments on Companies.

Mutuality of obligation

Before an assessment is carried out, thought should be given to the above term. This refers to the existence of obligation of one party or the other to offer or accept work. If no obligation exists between the Council, to offer work to a supplier, or, a supplier to accept that work, then no assessment is necessary.

What is an Office Holder?

An Office Holder position is a role which exists regardless of;

- who fills it,
- the Council's structure, or,
- service set up,

because it has to provide that role on a mandatory basis. For example, by law the Council has to have a Safeguarding Board which has to have a chairperson. Here the Safeguarding Board function is mandatory but the roles on the board are not, the chairperson however is subject to law and therefore that role is an office holder. The role exists independently of the Council's structure, the person who carries it out, how the service is set up, additionally, there is permanence to that role beyond the tenure of one person.

Case law definition states: *'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.'*

HMRC's view is that any Office Holder is automatically within scope of employment status. Please refer to the following list for a guide to current Office Holder positions within Local Authorities.

The HMRC CEST states:

Being an office holder isn't about the physical place where the work is done, it's about the worker's responsibilities within the organisation. Office holders can be appointed on a permanent or temporary basis.

This engagement will include performing office holder duties for the end client, if:

- the worker has a position of responsibility for the end client, including board membership or statutory board membership, or being appointed as a treasurer, trustee, company director, company secretary, or other similar statutory roles
- the role is created by statute, articles of association, trust deed or from documents that establish an organisation (a director or company secretary, for example)
- the role exists even if someone isn't engaged to fill it (a club treasurer, for example)

What is substitution?

This stage of the assessment is in order to determine what would happen if the worker were unable or unwilling to continue with the work. If this has never happened the question is rhetorical; is there someone else – a substitute worker – who could continue it on their behalf? If so, would this be permitted by the Council under the terms of engagement? As long as it was someone appropriate as follows;

The HMRC CEST states that this means someone who:

- was equally skilled, qualified, security cleared and able to perform the worker's duties
- wasn't interviewed by the end client before they started (except for any verification checks)
- wasn't from a pool or bank of workers regularly engaged by the end client
- did all of the worker's tasks for that period of time
- was substituted because the worker was unwilling but not unable to do the work

To answer 'No – the end client would always accept a substitute who met these criteria' means the Council would accept any substitute worker provided by the supplier without vetting or interviewing them.

The answer must be reflective in terms of contracts and the arrangements and expectations of both the Council and the supplier. Acceptance of a substitute would indicate self-employment as it is not generally acceptable for an employee to provide a substitute worker should they not be able to continue work.

Additionally the assessment asks who would pay the substitute worker. If the Council would do so then this doesn't indicate either way whether the relationship is that of employment. However, if the answer is the supplier/worker pays the substitute then this would indicate self-employment as the substitute would be provided at the expense of the supplier.

Once the worker starts the engagement can the end client decide how the work needs to be done?

The HMRC CEST states:

This doesn't include general induction, or the need to follow statutory requirements like health and safety.

'Yes - the end client decides how the work needs to be done without input from the worker' states that the worker has no control over how the work is carried out indicating employment.

'No – the worker decides how the work needs to be done without input from the end client' states that the Council does not have any control over how the work should be carried out indicating self-employment.

'No – the end client can't decide how the work needs to be done as it is a highly skilled role' states that the Council has no input into how the work is carried out. This is due to the skills of the worker not being able to be instructed but being a learned skill from experience e.g. a plasterer is considered highly skilled as no one would instruct them how to plaster a wall, however a pilot is not considered highly skilled because they follow instruction to carry out their job from a control room. If the worker is following instruction over and above the CEST note above then this is not considered to be highly skilled.

‘Partly – the worker and other people employed or engaged by the end client agree how the work needs to be carried out’ states that the Council has some input into how the work is carried out, indicating employment.

Can the end client decide the schedule of working hours?

‘Yes – the end client decides the workers’ schedule’ states that the worker has no control over when the work is carried out indicating employment.

‘No – the worker decides their own schedule’ states that the Council has no control over when the work is carried out indicating self-employment.

‘Partly – the worker and the end client agree a schedule’ states that the Council has some control over when the work is carried out, for example a series of meetings, which indicates employment.

‘Not applicable – no schedule is needed as long as the worker meets any agreed deadlines’ states that the work can be carried out anytime as long as targets are met does not indicate employment or self-employment.

Can the worker choose where they work?

‘Yes - the worker decides’ states that the Council has no control over where the work is carried out indicating self-employment.

‘No – the end client decides’ states that the worker has no control over where the work is carried out indicating employment.

‘No – the task determines the work location’ states that the work can only be carried out in one place e.g. if painting a building the work can only be undertaken at the buildings location, does not indicate employment or self-employment.

‘Partly – some work has to be done in an agreed location and some can be done wherever the worker chooses’ states that the Council has some control over where the work is carried out, for example a series of meetings, which indicates employment.

What are ‘significant expenses’?

Businesses usually incur expenses against provision of their work, although, some areas of work will not incur major costs. To answer this question as anything but ‘Not relevant’ the supplier would need to incur costs over and above normal living costs; for example a car for general commuting would not be considered as expenses for business use, neither would a laptop, phone line or internet access as these are usually incurred for personal reasons even if they are then used for business.

A 'not relevant' answer would not indicate employment, but a business which does incur significant business costs would indicate self-employment.

The assessment result

There are five different outcomes of the CEST.

IR35 does not apply this engagement - this is where we have assessed a Limited Company with only one director and HMRC have deemed based on the answers given, that this engagement is out of scope of the IR35 legislation.

Out of scope for employment status – this is where a Sole Trader has been assessed and the indicators show that on balance this engagement has self-employment status.

IR35 applies to this engagement - this is where we have assessed a Limited Company with only one director and HMRC have deemed, based on the answers given, that this engagement is in scope of the IR35 legislation.

In scope for employment status – this is where a Sole Trader has been assessed and the indicators show that on balance this engagement has employment status.

Unable to determine – this is where the indicators are mixed and neither employment status nor self-employment is evident. In this case reconfirm all of the answers given in line with the interpretations enclosed. If they can be interpreted differently reassess the case and see what the outcome is. Take a view on balance as to which is most acceptable to HMRC, or, approach other sources for confirmation of treatment e.g PS Tax, or the Council's PAYE Officer.

Contrived arrangements

HMRC state that they will stand by results achieved using their Check Employment Status Tool (CEST); however, answers must be supported by evidence. If the results have been achieved through contrived answers which are not applicable to the engagement relationship then they will not stand by the results achieved by the CEST.

The HMRC CEST states:

HMRC won't stand by results achieved through contrived arrangements designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance with associated higher penalties.

E-form and agency staff

The E form was created in order to keep a control over agency spend. It is a separate way of raising a requisition specifically for agency staff. It asks for information such as Workforce Management Board (WMB) and Employment Status (ES) references. As a requisitioning officer submits a request for an agency worker, this comes through to the Taxation Section, before Procurement, to ensure that the necessary evidence is in place regarding that agency workers' tax status.

Often we will already have this in place and can 'Approve' the requisition straight away but if any of the Taxation details do not agree then it should be declined with a reason and resubmitted.

On receipt of an E-form for approval the approver must check that the following agree to the Off Payroll workers spreadsheet;

- The agency workers name
- The Agency
- The ES number
- The Tax status 'No' = no need for RMBC to operate PAYE, 'Yes' = RMBC should operate PAYE.

For agency workers, the Council needs confirmation from the agency that they or an umbrella company are directly employing the worker and are operating PAYE on payments for work carried out at the Council. On occasion, if the worker is operating through their own Company, an assessment may also need to be carried out.

Substantive posts

There is a misconception that employment status would only apply where a substantive post within the Council is being covered but this is not the case. Employment status compares expected terms of engagement of an arms-length supplier with that of employment via the amount of control exercised by the Council over how, when and where the work is carried out, or how the work is paid for, if any benefits are received and if the workers is responsible for particular activities involving other officers. It is not as simple as the existence of a substantive post, even a supplier can have engagement conditions which HMRC view on balance are reflective of employment and therefore be in scope.

Who is the engager?

The Council/Council Officer who requests the work.

Who is the end user?

The Council/Council Officer who requests the work.

Who is the worker?

The person or company who carries out work for the Council as a supplier.

Can the supplier fill in the questionnaire?

The engager can request that the supplier fills in the information needed but the engager will need to confirm that the answers are a true reflection of the engagement.

Other payment methods

Any payment from Council funds made for off payroll work is subject to these rules including those through Petty Cash, Agencies or Grant money, from schools or localities. It does not apply to Direct Payments or Foster Carer allowances.

Will an 'in scope' supplier receive a P60 and/or P45?

Yes, they will receive a P60 at the end of the tax year and a P45 when their engagement ends, however, IR35 Workers need to be informed of that in order to process a leavers P45.

What happens if a supplier is wrongly assessed and taxed?

A supplier can be reassessed at any time if the circumstances of the engagement change, or, with developing understanding of the rules and/or terms of engagement. If the result is different to the original assessment future payments should be made according to the most recent result.

If the supplier has had taxes deducted from their payments but shouldn't have they are able to reclaim this back from HMRC by signing up for a Personal Tax Account on HMRC's website.

Will the supplier need another assessment each time a new order is raised?

Not unless the circumstances of the engagement has changed. For each order with the same circumstances the same ES assessment reference can apply. However, from time to time Taxation may carry out a review of assessments and engagers may be asked to reconfirm that all of the original circumstances apply.

Where can I find out more?

More information on employment status can be found in HMRC's employment status manual on the link below;

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0522>

Corporate Criminal Offence and associated risks

Although the Taxation team are reliant upon answers received in respect of an engagement often we will ask further questions to verify the answers given. The Taxation Section is here to help but also to ensure that the Council can show reasonable care has been taken when undertaking assessments of this nature. Often definitions change and answers are subjective, at times we may interpret the engagement differently due to our experience of assessments and knowledge of HMRC's expectations so it is important that the details are considered and evidenced.

The Council must ensure it complies with HMRC's guidance on employment status but additionally since September 2017 there are obligations under the Corporate Criminal Offence to demonstrate that steps have been taken to prevent any associates of the Council facilitating tax evasion.

Construction Industry Scheme (CIS)

While a completely different tax scheme to employment status, the CIS also concerns payments made to suppliers so it only seems right that it should get a mention too. The CIS is the way HMRC ensures construction workers pay income tax.

Legislation deems that the Council are 'contractors' for the purpose of the scheme, and any sub-contractors they use may carry out construction related work on their behalf. All sub-contractors must be registered with HMRC and their payment status verified by the Council before being paid for CIS related work carried out.

Misreporting of CIS payment details carries the same risks as employment status above, so it is essential that as a Council the correct procedures are adopted throughout and from engagement of that supplier. Late verification could cause unnecessary delay in payments to suppliers.

Employment status takes precedence over the CIS so, where employment status applies CIS becomes irrelevant.

Appendix D - Information for Contractors

Employment Status, IR35 and the Intermediaries Legislation - Information for Contractors

H. M. Revenue and Customs (HMRC) monitor the tax affairs of the Council and uphold tax schemes in law in respect of Employment Status, IR 35 and engagements with Intermediaries. As a contractor to the Council it is important to understand the taxation obligations of the Authority and these schemes as they may impact upon the way you are paid for the work you carry out.

From 6th April 2017 the Council will be obligated to carry out Employment status assessments on work carried out by any individual, Personal Service Company (PSC) or Agency worker undertaking work. Please note that this will not affect Managed Service Companies (MSC) which are outside the scope of the regulations.

The assessments seek to clarify what the conditions of the work would be regardless of the engagement relationship. Several factors are considered such as;

- the ability to provide a substitute to continue the work if the worker could not attend, and, if this would be acceptable to both parties,
- if there is a real risk of financial loss to the worker as a result of the work being undertaken, for example if it takes longer than originally planned, if costs run over, provision of a substitute at the workers' expense etc.,
- how the work is carried out e.g. with supervision from the Council, by a Brief from the Council, allocation of tasks on a day to day basis,
- who provides the equipment to carry out the work.

If the work is deemed to be that of employment the Council are obligated to make deductions of tax and employees national insurance from payments for the work as it is their view that some work, although sought through the marketplace, does not necessarily carry the relationship of a contractor and at times actually reflects the relationship between employer and employee.

An assessment should be carried out at the beginning of a piece of work that is in scope so that all parties are aware of the tax implications of payment for it. Not undertaking an assessment could delay payment being processed in a timely manner.

If you have any questions please do not hesitate to contact Taxationsection@rotherham.gov.uk

Appendix E - 'Office Holder' and 'Employed' roles

Below is a list of known 'Office Holder' roles within Local Authorities

- **Local Children Safeguarding Children's Board Chair** (Children's Act 2004, Section 13/The Local Safeguarding Children Boards Regulations 2006 Section 4)
- **Safeguarding Adults Board Chair** (Care Act 2014, Schedule 2, Section 3)
- **Adult Placement Panel members** (Care Standards Act 2004) Care Quality Commission Registration Regulations 2009. National Health and Social Care Act (2008)
- **Elected members**
- **Adoption and Foster panel Chair and Vice-chairs** (Fostering Services (England) Regulations 2011) Section 23 refers. For Adoption - The Adoption Agencies Regulations 2005 Section 3.
- **Independent Reviewing Officers** (Adoption and Children Act 2002, Section 118) Children and Young Persons Act 2008, Section 10
- **School Governors** (School Governance (Constitution) (England) Regulations 2007 Part 2 of the School Governance (Constitution) (England) Regulations 2012 or Part 3 of the School Governance (Federations) (England) Regulations 2012
- **Clerks to Governors** – (School Governance (Procedures) (England) Regs 2003, Part 2, Regulation 8)7. The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 Regulation 6 (3)
- **Coroners** – Coroners & Justice Act 2009, Schedule 3, Sections 1-2
- **Complaints officers** - (Elected local policing bodies (Complaints and misconduct) Regulations 2012)
- **Returning officers** – (Representation of the People (England and Wales) Regulations 2001)
- **Magistrates**
- **Independent Persons (Standards)** – (Localism Act 2011, Section 28 (7))
- **Clerks to Parents' Councils (Scotland)** – Scottish Schools (Parental Involvement) Act 2006, Section 8
- **Interim Executive Board Members** - (Education and Inspection Act, 2006, Section 65)
- **Directors of Public Health** – Health & Social Care Act 2012, Section 30
- **Directors of Children's Services** – (Children Act 2004, Section 18)

Below is a list of known 'Employed' roles within the Council

- **Deprivation of Liberty Assessors/Best Interest assessors (DOLS)**
- **Social workers**
- **Freelance solicitors**
- **Complaints Investigators**

Managers' Briefing

Date issued: Friday 7th April
Issued by: Donna Gray
Directorate: Finance and Customer Services
Department: Finance
Contact: Taxation
Subject: Employment status, Intermediaries Legislation and IR35
Number of Pages: 3

General instructions for use

The contents of the briefing note should be shared with your team members at your next planned team meeting.

Note: If the contents of this document relate to events prior to your next meeting please share the information with your team members using your alternative channels of communication.

If you require further clarification on the contents of the document please contact the Taxation Section.

Special instructions

It is important that these new practices are followed as there are financial implications of non-compliance.

Clarification regarding contracted Agencies is to follow.

Title: Employment status, Intermediaries Legislation and IR35

For some years, H. M. Revenue and Customs (HMRC) have sought to reduce tax loss on off payroll work they believe to be employment, insisting that the Council carry out employment status assessments for any off payroll work carried out by individuals.

From 6th April 2017 HMRC are extending these obligations to work also carried out by intermediaries. Payments for work carried out by Managed Service Companies (MSC) will remain the same as these are outside the scope of employment status. However, work carried out by an individual, Personal Service Company (PSC) and/or Agency will require an assessment for tax.

Although many assessments will result in existing procedures applying, where the conditions of work are deemed to be that of 'employment' or an 'office holder', regardless of the engagement relationship, the Council is obligated to;

- calculate and deduct tax and employee's national insurance from payments to the supplier,
- calculate employer's national insurance on the work carried out,
- pay over the tax, employee's and employer's national insurance amounts over to HMRC.

For these workers only, new procedures are needed regarding approval, requisition, invoicing and payment.

New procedures

At the beginning of an engagement all parties need to understand the implications of the above changes in terms of payments to the worker and additional costs to budgets.

Workers will have mixed understanding of what is a very complex area of tax but in essence it means; that the Council is obligated to collect tax and NI deductions from invoice payments and pay this across to HMRC. The worker will receive less than they have invoiced so need to be aware of the Council's responsibilities as quickly as possible in the procurement process. Their supplier statement will reflect the invoices received and tax deductions made. The enclosed Information for Contractors may be useful.

The new procedures impact upon both new engagements and continuing engagements.

Managers obtaining work will be required to obtain Taxation clearance before an order can be placed and any contract entered into. The assessment will request information regarding the worker, how the work will be carried out, and the circumstances surrounding that engagement and reach a conclusion as to how HMRC would view that particular contract. Once

an assessment has been made the Taxation Team will ensure that the Supplier/Agency, Manager, HR and Payroll, Purchase to pay are aware of the Tax assessment and the implications this has.

The following are possible outcomes of the assessment;

1. Engagement does not fall within 'Employment status' – normal order processing takes place.
2. 'Employment status' applies but Tax and NI is being deducted at source (usually by an Agency) therefore process invoices as normal via P2P.
3. 'Employment status' applies and Tax and NI is not being deducted at source - Managers (as well as Taxation) should inform their client that they will have NI and Tax deducted from their invoices.

Budget holders also need to consider that off payroll work falling within scope will attract Employer's NI contributions at 13.8% of the work invoiced. This will be an on cost of the work and will be charged to the order's cost centre as it is paid across to HMRC.

There is no mechanism to provide for this cost within an order or budget so needs to be taken into account during the budget monitoring process, and also when seeking cost approval.

If you have any questions regarding the process or to request an Employment Status assessment please contact the Taxationsection@rotherham.gov.uk

Please note that non-compliance with the new legislation could result in HMRC sanctioning penalties upon the Council.

Managers' Briefing

Date issued: 13/10/2017

Issued by: Graham Saxton

Directorate: Finance and Customer Services

Department: Procurement and Finance

Contact: Joanne Kirk

Subject: Temporary Worker/Agency Process

Number of Pages: 4

The contents of the briefing note should be shared with your team members at your next planned team meeting.

Note: If the contents of this document relate to events prior to your next meeting please share the information with your team members using your alternative channels of communication.

If you require further clarification on the contents of the document please contact the HR Service Centre.

The supply of temporary staff must comply with a number of internal and external policies and regulations, summarised as follows:

☐ RMBC Financial Regulations and Contract Standing Orders

☐ Public Contract Regulations 2015

☐ HMRC Tax Legislation - Off payroll working, employment status and IR35

☐ HR Temporary Agency Worker Policy

In order to streamline the currently complicated procedure involving various Council services a new process and e-form has been developed. This new process and form will incorporate all mandatory requirements from the relevant services and ensure all agency engagements are fully compliant with the policies and regulations referred to above.

Title: Temporary Worker/Agency New E-Form Process

The updated process is detailed below and managers must ensure that these procedures are discussed with all officers within your service who may have a requirement to engage with temporary workers.

Temporary Worker/Agency Procedure

Step 1

Approval must be obtained from the Workforce Management Board (in line with the HR briefing dated October 2017)

Step 2

The Council has contractual arrangements with specific agency providers who have been selected following comprehensive procurement procedures completed in line with Contract Standing Orders. Therefore, RMBC officers must not approach agency providers directly. Once approval has been received from the Workforce Management Board any officer with an identified need for a temporary worker must contact the Procurement Team as follows:

Tel. Internal: 78894

Tel. External: 01709 255468

Email: procurementteamA@rotherham.gov.uk

The Procurement Team will need job profiles or details of required skills and experience and expected salary bands in order to liaise with the Council's contracted agency providers on your behalf to obtain a choice of applicants. (Please note, for CYPS social workers only your direct contact is Laura Cusack in the first instance).

Step 3

Once a suitable applicant is identified the recruiting manager should request an assessment of the workers' tax status from the TaxationSection@rotherham.gov.uk. Taxation will need to know the name of the Agency provider who will be paid by the Council and the name of the worker being placed at Rotherham.

On receipt of the request, Taxation will contact the provider for information regarding the tax status of payments to that worker. The recruiting manager will receive an email confirmation once the information received satisfies H.M. Revenue and Customs' guidelines on employment status and IR35. The response will contain details on whether PAYE needs to be operated by the Council, and, an ES (employment Status Service) reference number.

It is likely that the Agency (or an Umbrella Company) will already operate PAYE on payments to the worker meaning the Council can make payments to the Agency as usual. However, it is possible RMBC may need to do so itself by calculating tax and national insurance due on payments for that work and making these deductions from payments, additionally, in these circumstances the budget will also be charged with employers' national insurance contributions at approximately 13.8%. This can be discussed with the Taxation Section in more detail should the situation arise.

Step 4

Once the taxation assessment is completed the recruiting manager should complete the e-form. (The officer completing the e-form will need to be an e-procurement requisitioner with

an active user ID). Both the workforce management board reference and the taxation ES reference will be required along with all the usual details required to raise a requisition. The e-form can be found on the Council's intranet pages ([click here](#)).

The e-form will be submitted for verification by taxation before feeding directly into the e5 procurement system and creating a purchase requisition for authorisation by the relevant M3 budget holder. If taxation do not hold satisfactory records for the worker, the e-form will be rejected and returned to the recruiting manager.

Once a purchase order has been created by the Procurement Team the agency worker can commence employment

It is not acceptable under any circumstances for any RMBC officer to engage a temporary worker (be that via an agency or directly) without first obtaining prior approval from HR, Procurement and Taxation Services.

It is also imperative that no recruiting managers or support officers within the Council sign any agency provider terms and conditions. All contract documentation must be approved by the Procurement Service only.

An illustration of the process is shown below.

For further advice please contact:

HR/Workforce Management Board: Ian Henderson – 01709 822467

Procurement: Yvonne Dutton – 01709 334165 or Joanne Kirk – 01709 334196

Taxation: Donna Gray – 01709 822020

Managers' Briefing

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Subject: IR35: One year on

If you engage off payroll workers, or Public Service Companies (Companies with only 1 Director) then you need to understand IR35 and its requirements on you as the engaging manager.

Number of Pages: 3

The contents of the briefing note should be shared with your team members at your next planned team meeting.

Note: If the contents of this document relate to events prior to your next meeting please share the information with your team members using your alternative channels of communication.

If you require further clarification on the contents of the document please contact the Taxation Section at TaxationSection@rotherham.gov.uk

IR35: One year on

It has been over a year since the new IR35 rules were introduced and so a good time to remind officers of the obligations that the Council has in this area. On 6th April 2017 public bodies were made accountable for not only employment status of individuals carrying out off payroll work but also Personal Service Companies (Companies with only 1 Director).

Since then, new procedures within HR, Procurement and Taxation have been developed to capture and assess the 'employed/self-employed' tax status of off payroll and agency workers. Nearly 400 taxation assessments have been carried out to ensure the Council can demonstrate reasonable care has been taken to determine employment status. Further developments also saw the introduction of an E-form for the requisition of agency workers which enabled the right information to be recorded at the beginning of the procurement process and correctly reported throughout.

Assessments, other than for agency workers, take the shape of the engager (officer requesting the work) filling out a questionnaire. The questionnaire is based upon indicators which HM Revenue and Customs (HMRC) view as either employment or self-employment and often require a best fit approach to reflect the relationship between the supplier and the Council. It is important however, that **the engager populates the questionnaire rather than the supplier themselves as it is the Council who is liable for any unpaid taxes and the Council who knows what is expected of those arrangements.**

Although the questions may feel like they do not apply in some circumstances they are an aid to confirm one way or another if the supplier undertaking off payroll work has control over;

- how, when and where the work is carried out, and who has control over this.
- if they incur real business expenses in order to deliver the work,
- if they could feasibly provide someone else to carry out the work if they were unable or unwilling to themselves
- that they do not hold a mandatory role within the Council, and,
- are not integrated within the Council, such as having an RMBC email, phone, and based in Riverside House.

These are all indicators of self-employment. It is important to ensure that the answers are a true reflection of the engagement as otherwise the outcome may lead to incorrect taxes, supplier payments and statutory returns.

Once the questionnaire is received the Taxation Section will apply the answers on HMRC's Check Employment Status Tool (CEST) where an outcome will be received confirming their view of the engagement. If the result is 'Out of scope of employment status', or, 'The IR35 legislation does not apply to this engagement', then invoices for the work can be paid as usual. If the result is 'In scope of employment status', or, 'The IR35 legislation applies to this engagement', then the Council **must** operate PAYE on payments to the supplier, meaning that the supplier will receive payments net of tax and national insurances which the Council are obligated to deduct, report and pay across to HMRC.

HMRC will stand by any results achieved from their CEST which protects the Council from wrong assessments, providing that the answers used are a true and fair reflection of the engagement with the worker. However, we must ensure evidence is available to back up the answers given so from time to time you may be asked to elaborate on answers for additional information. Often answers can be interpreted in different ways too so it is vital that the correct understanding is obtained. Taxation have updated accompanying notes to the questionnaire which now outline our experience of what HMRC are looking for under some questions.

If HMRC were to review the Council's Employment Status assessments and believe that the CEST answers were contrived in order to achieve a specific outcome then they will not stand by the result. This would be viewed **as a deliberate non-compliance which would attract higher financial penalties and considerable reputational damage to the Council.**

Understanding of HMRC's intentions, expectations and limitations on employment status is continually developing and it was worthwhile reiterating the above messages. If you have any questions regarding an off payroll engagement you are involved with, for the latest advice you can email the Taxation Section on TaxationSection@rotherham.gov.uk. Also please refer to the attached updated questionnaire and accompanying notes of interpretation.