

Off Payroll Working Guidance Note

Originating Department:	Finance and Management Information
Enquiries to:	
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Target Audience:	FMI, Procurement, Payroll, Human Resources
Brief Summary of Purpose:	To provide guidance on the changes to IR35 – Intermediaries Legislation and how to recognise off payroll workers caught by the change.

From **6th April 2017** there are changes to the way the current intermediaries legislation (known as IR35) is applied to off-payroll working in the public sector. Organisations covered by the new rules, including Universities, will be required to determine whether such workers are “doing a similar job, in a similar manner” to an employee, deducting tax accordingly if this is found to be the case.

Who are off payroll workers?

An individual that supplies their services personally via their own limited company (known as a personal service company or PSC), or other intermediary such as a partnership. This model is often used by IT consultants, project managers and consultants. Within HE, it may also be used to engage specialist lecturers on an occasional basis.

The generally accepted definition of a PSC is a limited company which typically has a sole director – the contractor – who owns most, or all of the shares.

The old legislation

IR 35 is in place to ensure that individuals who work through their own company pay employment taxes in a similar way to employees, where they would be an employee were it not for the intermediary they work through. Under the old rules **the intermediary** was responsible for considering IR35 and for calculating and paying any PAYE and NIC due on deemed employment income.

The new legislation

From **6th April** LSBU will need to determine whether any off-payroll workers will be working in a manner akin to an employee, and deduct any pay to HMRC any PAYE and NIC due.

Where an individual is employed through an Agency, LSBU is responsible for telling the Agency whether the individual is deemed an employee, but the Agency pays the relevant taxes. If LSBU does not notify the agency they can be required to do so by written request. *If LSBU does not respond within 31 days of the request then LSBU becomes responsible for payment of any applicable taxes*

The change applies to all **payments** made **on or after 6 April 2017** regardless of when the service took place, so will affect contracts entered into **before 6 April 2017** and operating after that date.

Determining the tax status of an off-payroll worker

HMRC has launched an online tool, the “Employment Status Service” <https://www.gov.uk/guidance/check-employment-status-for-tax>. This contains similar questions to our current Checklist for Self Employed Contractors **and will be used instead of it**. The form should be completed and attached as part of the HR1 and New Supplier request forms. It is possible to add the details of the staff that have completed the form and the name of the worker/company before printing it.

In some instances the tool may be unable to identify the status of the worker, in which case contact Financial Accounting for help identifying the status.

Where a worker is identified as an employee, they **must** be paid via the payroll.

If a worker has unexpectedly been identified as an employee, please contact Financial Accounting.

LSBU's Responsibilities:

- Must decide if IR35 applies (is the individual in effect an employee)
- Must inform the intermediary, agency, or third party whether or not the contract falls within the rules.
- The reason for the conclusion must be recorded, in the contract or separately.
- Deduct tax and primary NICs from payment
- Pay employer NICs
- Include deemed earnings for calculating Apprenticeship Levy
- Account for through Real Time Information (RTI)

LSBU is at risk of penalties for getting tax and NIC payments wrong.

Workers Responsibilities:

- Provide NINO, tax code and identity details

Employee/self- employed indicators include:

Employee	Self employed
Have contracted hours of work. Must have time off/holiday approved	Chooses time of work
Specified place of work	Chooses place of work
Uses LSBU Equipment	Uses own money to supply equipment
Reports to an LSBU manager	No direct supervision
Entrenched in team/listed on org chart/phonebook	Can hire someone else to do the work
Disciplinary and grievance procedures apply	Fixed price work. Unsatisfactory work fixed in own time at own cost
Paid via payroll	Submit invoices once work is completed
Undertake limited or no work for other clients when at LSBU	Can work for more than one client

Worked Examples:

For full example see <https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note#rebecca-is-an-information-technology-it-contractor-engaged-by-a-central-government-department-the-ministry---off-payroll-working-rules-apply>

1. LSBU employs an IT Contractor, Rebecca, through Rebecca IT Ltd.

- Rebecca will work at LSBU
- LSBU will provide all equipment
- Rebecca will work under the direction of a manager
- Rebecca will need to agree time off with her manager
- Rebecca owns more than 5% of her PSC and is the sole director and employee

LSBU advises that they consider the contract to be subject to the new rules. They update their systems to enable PAYE and NIC to be deducted, and note that it will not be subject to pension enrolment or pay-rolled benefits.

Rebecca provides the information LSBU needs for RTI:

- NI number
- Date of birth and personal address

- P45 from previous employment in the tax year (if available)
- Bank account details

LSBU does not need student loan information as this is dealt with by Rebecca through self-assessment

Rebecca IT Ltd invoices £6,000 + £1,200 VAT each month

LSBU treats £6,000 as earnings

£1,400 tax and £400 ee' NIC are deducted and paid to HMRC via RTI

LSBU pays £700 er' NIC to HMRC

LSBU pays Rebecca IT Ltd £4,200 for services plus £1,200 VAT.

At the end of the contract LSBU provides a P45.

2. Janice is employed by Uni Construction Ltd to build new accommodation at LSBU

Janice is a project manager who provides her services through her own company, Janice PPM Ltd. The company has been contracted by Uni Construction Ltd to project manage the building of new accommodation at LSBU.

LSBU has agreed to pay Uni Construction Ltd an amount of £500m in payment for the construction project. Uni Construction Ltd is expected to pay their own staff and contractor costs for the project.

Janice's role will be to work closely with the LSBU to deliver the project and with the construction company and other partners to make that happen. She meets with LSBU managers as part of the recruitment process, but the recruitment decision is for Uni Construction Ltd as they are the vacancy holders. LSBU is not responsible for paying Janice's PSC and will not be responsible for determining whether or not off-payroll rules should be applied.

3. LSBU contract Jasmine to design and build a new website

Jasmine is a website designer who provides her services through her own company, Jasmine WWW Ltd.

The PSC has been contracted by LSBU to design and build a new website,

LSBU has agreed to pay Jasmine WWW Ltd £200,000 for Jasmine's services.

Jasmine's task is to design and build the new website. To do so, she will need to work closely with LSBU to understand their requirements, including technical specifications and timelines. Jasmine will have a large amount of control for how she delivers her work and other than regular checkpoint meetings and progress appraisals with the LSBU's Head of IT Services, her work will be largely unsupervised.

Jasmine will be expected to:

- deliver the website to an agreed standard by the agreed date
- visit LSBU for meetings, but will mainly work from her own office
- provide her own equipment needed to do the job in hand
- employ her own staff to help deliver the contract if she needs to
- cover her own costs and expenses

LSBU uses the online Employment Status Service to help determine whether the off-payroll rules should apply to the contract with Jasmine WWW Ltd. Given the nature of Jasmine's work and the contract with the PSC, the service indicates that the rules do not apply in this instance.

Jasmine WWW Ltd has been contracted to provide a distinct product to LSBU and will bear the costs associated in delivering that. Although her work is for the public sector, Jasmine will not be performing a role which would be considered to be that of an employee.

LSBU will pay Jasmine WWW Ltd for the contract for £200,000, plus £40,000 VAT for the supply of the company's services and expertise. Payments will be made directly to Jasmine WWW Ltd without any deductions for tax or national insurance.