

OFF PAYROLL WORKERS, IR35 POLICY



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1 Purpose of the Policy

1.1 To ensure the Trust and its Academies comply with HMRC legislation (IR35) which came into effect in April 2017. Failure to comply could lead to reputational damage and the possibility of significant fines imposed by HMRC.

2 Background

2.1 IR35 is UK Tax legislation that defines the rules for operating PAYE Tax and NI for workers who directly provide a service through an intermediary that in normal circumstances would otherwise be directly performed by an employee.

2.2 An intermediary may be a limited company, partnership or sole trader engaged to complete a piece of work or cover a job role. In most cases the intermediary will be the worker's own personal service company.

2.2 IR35 does not apply when the worker is being paid as an employee by the Trust's Payroll Service, or as an agency employee on the agency's payroll (ie where all payments made to the worker are already subject to the deduction of PAYE Tax and NI).

2.3 The decision on whether IR35 applies rests with the Academy. The responsibility lies with the hiring manager who is supported by the School Business Manager. Appeals and disputes will be dealt with by the Strategic Finance Officer (SFO).

2.4 Where IR35 applies for a worker engaged by an intermediary, the liability for operating the deduction of PAYE Tax and NI from payments to the worker's company no longer rests with the company, but with the Academy or Agency (whichever is closer to paying the worker's company).

2.5 IR35 does not infer any employment rights to workers and they will not be entitled to any employment related benefits such as sick pay, pensions, leave, or redundancy.

2.6 HMRC has developed an on-line tool (Employment Status Service) to check the status of off-payroll workers. <https://www.gov.uk/guidance/check-employment-status-for-tax>

3 Types of Worker

3.1 Workers engaged via an agency

This covers any worker who is providing a service via an agency:-

- paid as an employee of the agency
- the service is provided by the worker's limited company through an agency
- the service is provided by an umbrella company through an agency
- the service is provided as a self-employed worker (sole trader) through an agency

3.2 Workers engaged directly by the Academy

This covers any worker who has been directly engaged by one of the following means:-

- the service is directly provided by the worker via their limited company
- the service is directly provided by the worker via an umbrella company
- the service directly provided by a sole trader (self-employed person)

3.3 Workers engaged through a commercial company

- workers whose services are provided by a third party (commercial company) under a proper commercial services contract for the supply of services

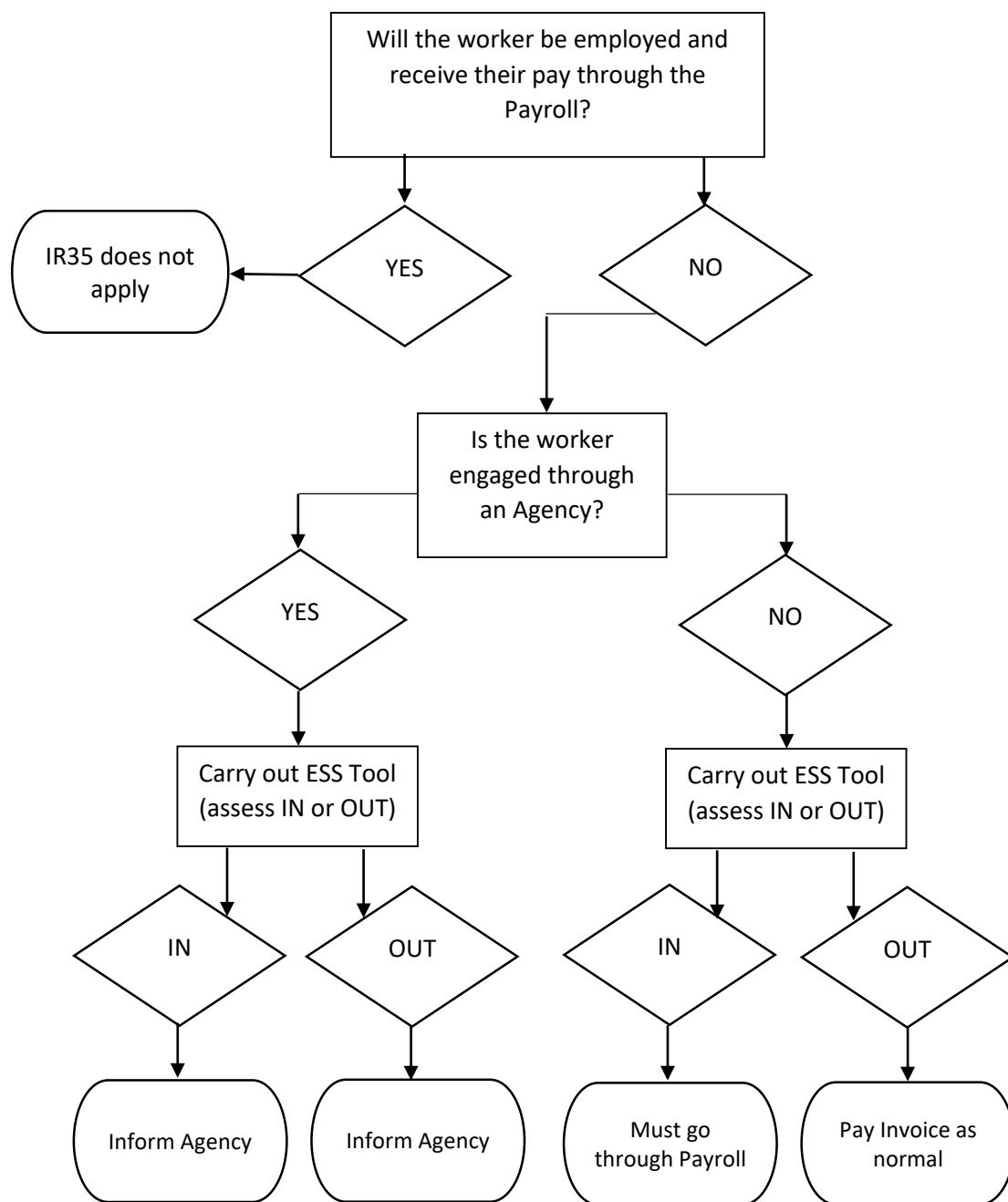
3.4 To determine which category, the hiring manager will need to find out from the supplier:-

- the type of worker being engaged
- the contractual conditions of engagement
- the body that pays them

4 The Trust's Procedures

4.1 The Hiring Manager is responsible for reviewing existing and future off-payroll workers to see if an IR35 assessment is required, with support from the School Business Manager.

4.2 The framework on page 8 provides details of the IR35 required actions. These can be summarised in the following flow chart:



5 The Employment Status Service (ESS)

5.1 The ESS online toolkit asks a series of questions to determine:-

- (a) Inside the scope of the intermediaries legislation. This means the assignment is considered to be 'employment' and PAYE Tax and NI needs to be deducted and Employer's National Insurance and Apprenticeship Levy paid).
- (b) Outside the scope of the intermediaries legislation (meaning self-employment) and the provider's invoices can be paid as normal.
- (c) Undecided (not enough information can be provided for the assignment to make a definite decision). If the toolkit cannot make a decision, then the advice of the SFO should be sought.

5.2 The key lines of enquiry for the ESS to help determine 'self-employed' or 'employee' status are:-

5.2.1 Direction, control and supervision

Workers outside IR35 will have a high degree of freedom in determining how the work will be performed to deliver the outcomes of the contract. They will not supervise any other of the Trust's staff.

5.2.2 Substitution

Workers outside IR35 will have the right to provide (and pay for) a substitute to deliver the service if they are unable to themselves

5.2.3 Payment

Workers outside IR35 will be paid by their company. The Trust will pay the company if the contract specification is met.

5.2.4 Deliverables

Workers outside IR35 will have clearly defined deliverables to an agreed timescale linked to their method of payment. The contract should confirm what deliverables/outcomes are associated with the payment.

5.3 Typical Examples of workers inside IR35

Typical examples of workers automatically inside IR35 are:-

- a) supply teachers covering the duties of an absent, permanent teacher
- b) office workers engaged on administrative duties (eg to invigilate exams or cover other employees' periods of absence)
- c) workers engaged to cover the duties of the caretaker
- d) all types of cover for a permanent employee or for a fixed-term employee

6 Conducting an IR35 Assessment

6.1 IR35 assessments are conducted on-line using the link:

<https://www.gov.uk/guidance/check-employment-status-for-tax>. It is the hiring manager's responsibility to ensure this is completed for any existing applicable worker who has not yet been assessed or any new engagement. In practice, this may be performed by the School Business Manager or HR adviser on their behalf.

6.2 The Trust's own assessment form (Appendix 1) should also be completed, signed and filed for inspection; and be consistent with the information submitted on-line

7 Communicating the results of an IR35 Assessment

7.1 To inform the worker (in scope)

Dear <worker>

Further to your upcoming engagement with <Academy>, part of Corpus Christi Catholic Academy Trust, I can confirm that, as a result of the HMRC Employment Status Service, the assignment is considered to be inside IR35 (that is, it is deemed to be employment).

As Corpus Christi Catholic Academy Trust is subject to Intermediaries Legislation, its preferred method is to engage temporary workers via an Employment Agency, and therefore the engagement may only continue on that basis.

If you have any queries, or would like to challenge this outcome please contact me using the contact details provided.

Yours sincerely

School Business Manager

7.2 To inform the worker (Direct, Out of scope)

Dear <worker>

Further to your upcoming engagement with <Academy>, part of Corpus Christi Catholic Academy Trust, I can confirm that, as a result of the HMRC Employment Status Service, the assignment is considered to be outside IR35 (that is, it is deemed to be self-employment).

Although Corpus Christi Catholic Academy Trust is subject to Intermediaries Legislation, I can confirm that there will be no change in the payments terms of your assignment.

If you have any queries please contact me using the contact details provided.

Yours sincerely

School Business Manager

Type of Worker	How is the Service provided?	Who invoices the Academy?	Current treatment of PAYE & NI	Worker's IR35 status	Actions that must be taken under IR35
Agency workers hired as an employee of the Agency	Worker is a direct employee of the Agency	The Agency invoices the Academy	The Agency processes PAYE and NI through their payroll	No IR35 assessment is needed because Tax and NI has already been deducted	<p>No IR35 assessment</p> <p>1.(a) Obtain written confirmation from the Agency that the worker is their employee and Tax and NI has been deducted through their payroll</p>
Limited Company workers hired via and Agency	Worker is provided through the Agency by their limited company	Worker's company invoices the Agency and the Agency invoices the Academy	Worker's company decides what is paid to the worker and how it treats Tax and NI	An IR35 assessment is required to determine if the worker falls inside or outside IR35	<p>An IR35 assessment is required</p> <p>2. If inside IR35</p> <p>(a) Write to the Agency to inform them that all future pay for this worker for this contract must be paid by the Agency through the Agency's payroll and be subject to Tax and NI.</p> <p>(b) Instruct the Agency to confirm in writing to the Academy and the worker that they will do this. Invoices can then still be paid to the Agency for the gross amount. If the Agency fails to comply the engagement must be terminated immediately</p> <p>3. If outside IR35 - No TAX and NI needs to be deducted. (a) send a copy of the IR35 to the Agency. The Agency will continue to invoice the gross amount</p>
Umbrella company workers	Worker is provided through the Agency by	Umbrella company invoices the Agency and then the	Umbrella company pays the worker through its	IR35 assessment is required to determine if the worker	<p>An IR35 assessment is required</p> <p>3. If the worker's pay is already subject to Tax and NI by the umbrella company</p>

Type of Worker	How is the Service provided?	Who invoices the Academy?	Current treatment of PAYE & NI	Worker's IR35 status	Actions that must be taken under IR35
hired via an Agency	an umbrella company	Agency invoices the Academy	payroll, deducting Tax and NI	is inside or outside IR35	<p>(a) Obtain written confirmation from the Agency that the worker is an employee of theirs and that their pay will always be processed through their payroll with Tax and NI deducted. If they cannot do this, the engagement must be terminated immediately.</p> <p>4. If inside IR35 and pay is not already subject to Tax and NI</p> <p>(a) Instruct the Agency to inform the umbrella company that the worker is inside IR35 and that all future pay for the worker for this contract must be paid through the umbrella company's payroll with Tax and NI deducted.</p> <p>(b) Obtain written confirmation this is the case. The Agency invoices can then be paid gross. Failure to comply means the engagement must be terminated immediately.</p> <p>5. If outside IR35 and pay is not already subject to Tax and NI</p> <p>(a) Send a copy of the IR35 assessment result to the Agency for onward forwarding to the umbrella company. The Agency's invoices can continue to be paid.</p>
Sole traders (self-employed) or partnerships hired via an Agency	Worker is provided through the Agency as self-employed or partnership	Sole trader or partnership invoices the Agency and then the Agency invoices the Academy	Pay is treated as self-employed income by the sole trader and declared for Tax and NI purposes by them	IR35 assessment is required to determine if the worker is inside or outside IR35	<p>An IR35 assessment is required</p> <p>6. If inside IR35</p> <p>(a) Write to the Agency informing them that all future pay for this worker, for this contract, must be paid by the Agency through the Agency's payroll and subject to Tax and NI</p> <p>(b) Obtain written confirmation from the Agency that this has happened and that they have informed the worker. Failure to comply means the engagement must be terminated immediately.</p> <p>7. If outside IR35</p>

Type of Worker	How is the Service provided?	Who invoices the Academy?	Current treatment of PAYE & NI	Worker's IR35 status	Actions that must be taken under IR35
					(a) Send a copy of the IR35 assessment result to the Agency. No Tax or NI needs to be deducted from the payment.
Limited Company workers hired directly by the Academy with no Agency involvement	Worker is provided directly to the Academy with no involvement from a 3 rd party.	Worker's Limited Company invoices the Academy	Worker's company decides what is paid and how it treats Tax and NI	IR35 assessment is required to determine if the worker is inside or outside IR35	<p>An IR35 assessment is required</p> <p>8. If inside IR35</p> <p>(a) the worker's company will invoice the Academy. The invoice must not include VAT and be processed through the Payroll Service and subject to Tax and NI deductions. The Payroll net amount must be paid to the account of the limited company. VAT will be paid separately outside of the Payroll to the limited company's bank account. If the worker's limited company refuses to accept these conditions the engagement must be terminated immediately.</p> <p>9. If outside IR35</p> <p>(a) Send a copy of the IR35 assessment result to the worker's company. No Tax and NI needs to be deducted from the payment and the invoice (including VAT) can continue to be paid</p>
Umbrella company workers hired directly by the Academy with no 3 rd party involvement	Worker is provided directly to Academy by the umbrella company	Umbrella company invoices the Academy	Umbrella company pays the worker through its payroll, deducting Tax and NI	IR35 assessment is required to determine if the worker is inside or outside IR35	<p>An IR35 assessment is required</p> <p>10. If pay is already subject to Tax and NI by the umbrella company</p> <p>(a) Obtain written confirmation from the umbrella company that the worker is classed as an employee of the company and that their pay for this contract will be processed in their payroll with Tax and NI deducted. Failure to provide this will lead to the engagement being terminated.</p> <p>11. If inside IR35 scope and pay is not already subject to Tax and NI</p>

Type of Worker	How is the Service provided?	Who invoices the Academy?	Current treatment of PAYE & NI	Worker's IR35 status	Actions that must be taken under IR35
					<p>(a) the umbrella company will invoice the Academy. The invoice must not include VAT and be processed through the Payroll Service and subject to Tax and NI deductions. VAT will be paid separately outside of the Payroll. If the company refuses to accept these conditions the engagement must be terminated immediately.</p> <p>12. If outside IR35 scope and pay is not already subject to Tax and NI and the</p> <p>No tax or NI needs to be deducted from the payment.</p> <p>(a) send a copy of the IR35 assessment result to the umbrella company</p>
Sole traders or partnerships hired directly by the Academy with no 3 rd party involvement	Worker is provided directly by sole trader or partnership	Sole trader or partnership invoices the Academy	Pay is treated as self-employed income by the sole trader and declared for Tax and NI purposes by them	IR35 assessment is required to determine if the worker is inside or outside IR35	<p>An IR35 assessment is required</p> <p>13. If inside IR35</p> <p>(a) the sole trader or partnership will invoice the Academy. The invoice must not include VAT and be processed through the Payroll Service and subject to Tax and NI deductions. VAT will be paid separately outside of the Payroll. If the sole trader or partnership refuses to accept these conditions the engagement must be terminated immediately.</p> <p>14. If outside IR35</p> <p>No Tax and NI needs to be deducted</p> <p>(a) Send a copy of the IR35 assessment results to the worker</p>

IR35 Frequently asked Questions

Q1 *Is any action required under IR35 for employees*

Answer No, IR35 only affects workers engaged 'off-payroll'

Q2 *Can I assume someone who tells me they are self-employed is outside IR35?*

Answer No, The Trust must still conduct its own IR35 employment status check

Q3 *Is there a difference for self-employed assessed as being inside IR35?*

Answer Yes, Sole traders generally do not pay Employer's NI, so the payment must go through the Payroll.

Q4 *Do all supply teachers come under IR35?*

Answer Yes, the Agency must provide written assurance that they deduct Tax and NI from the workers they supply to the Trust.

Q5 *Can I directly engage a supply teacher to cover for staff absence?*

Answer Yes, but they must be paid via the Payroll

Q6 *What about specialist part-time tutors engaged to provide specialist ad-hoc teaching and not covering for an employee?*

Answer You should pay them through the payroll, unless they are engaged on work the Academy would not normally pay someone to do which is very unlikely.

Q7 *What happens if there is a disagreement about the outcome of an IR35 assessment?*

Answer Refer the matter to the SFO for review, whose decision on the matter will be final.

Q8 *Does working part-time affect a worker's IR35 status?*

Answer No.

Q9 *Should I have a contract for each off-payroll worker I engage?*

Answer Yes.

Q10 *Who pays over the PAYE Tax and NI to HMRC?*

Answer For workers assessed as inside IR35 they are either paid by the Trust's Payroll provider or their employment agency who will then pay over the Tax and NI to HMRC.

Q11 *What*

Answer Refer the on the matter will be final.

Q12 *Do workers assessed as inside IR35 have any employment rights?*

Answer Workers assessed as inside IR35 and engaged by an intermediary will have employment rights with the Trust (ie no rights to sick pay, redundancy or eligibility to join the pension schemes).

IR35 Assessment Form

No.	Question	Manager Response
Part 1 - The Hiring Body		
1.2	Academy	
1.2	Department	
1.3	Hiring Manager	
Part 2 – The Worker		
2.1	Worker's name	
2.2	Worker's NI Number (if known)	
2.3	Worker's contact details	
2.4	Is the worker engaged via an agency or directly by the Academy?	
2.5	Name of Agency	
2.6	How is the worker providing the service? (a) as an employee of the agency (b) through a limited company (c) through an umbrella company (d) as a sole trader (e) other (specify)	
2.7	If not (a) name of the 3 rd party	
2.8	How is the worker being paid? (a) by an agency (b) by invoice to the Academy (c) other (specify)	
2.9	How does the Academy pay the worker? (a) an hourly/daily/weekly rate (b) fixed price (c) piece work (d) other (specify)	
Part 3 – The Worker's role		
3.1	Worker's contract start date	

No.	Question	Manager Response
3.2	Worker's contract end-date	
3.3	Is the worker covering the duties of an established post in the Academy?	
3.4	If 'yes', what is the post title and grade?	
3.5	If 'no', is the worker undertaking duties which would normally be performed by an employee of the Academy?	
3.6	Give details of the duties being performed and justify why they would not be performed by an employee	
3.7	Does the worker have any line management responsibilities?	
3.8	Does the worker come into contact with students?	
3.9	Does the worker act as if they were a member of staff?	
Part 4 – Workers direction and control		
4.1	Is the worker directed by the Academy of what to do, when and how?	
4.2	When does the worker have to carry out the work of this contract? (a) when the Academy says to (b) when the worker chooses to (c) to meet final agreed deadlines (d) a pattern of regular hours	
4.3	Can the worker choose where to perform the work for this contract? (yes/no)	
4.4	Has the worker the right to provide a substitute who will perform the duties in their place? (yes/no)	
4.5	If so, who will pay the substitute worker?	
Part 5 - Equipment		
5.1	Apart from getting to/from works, does the worker have to use their own vehicle for this contract? (yes/no)	

No.	Question	Manager Response
5.2	Does the worker provide their own equipment without which they could not perform the contract? (yes/no)	
5.3	Does the worker provide their own materials? (yes/no)	
5.4	Does the worker have to pay for any other expenses out of their own pocket?	
5.5	If so, do they get the money back from their company?	
Part 6 – Academy rights when work is unsatisfactory		
6.1	If the work isn't performed to contract standard, is the worker required to put it right? (yes/no)	
6.2	If so, in their own time?	
6.3	If so, is the Academy allowed to pay the worker late or not at all?	
6.4	To your knowledge, has the worker had similar contracts with other clients in the past 12 months?	
Part 7 – Further details about the worker's company		
7.1	Is the worker's company registered for VAT? (yes/no)	
7.2	If so, what is their VAT Number	
7.3	Does the worker promote their business?	
7.4	Does the worker have a business website? (provide link)	
7.5	Does the worker pay for their work-related training? (yes/no)	
7.6	Does the worker pay for their own business premises?	
7.7	Is the worker required by the Academy to have public liability, professional indemnity and Employers liability insurance?	
7.8	Does the worker get benefits as part of the contract? (specify)	

No.	Question	Manager Response
7.9	Can the worker control more than 5% of the share capital? (yes/no)	
7.10	Can the worker take more than 5% of any dividends? (yes/no)	
7.11	Is the company controlled by 5 or fewer people? (yes/no)	
7.12	Are the people controlling the company the directors? (yes/no)	
7.13	If the company was wound up would the worker get more than 5% of the assets? (yes/no)	
7.14	If it is a partnership can the worker take 60% or more of the profits? (yes/no)	
7.15	If it is a partnership do more than 50% of the profits come from a single client? (yes/no)	

SIGN OFF

The signature of the Hiring Manager (or their appointed person conducting the assessment) and the worker are required to confirm that the data contained in this IR35 Assessment is accurate:

Manager's signature Dated

Worker's signature Dated

Managers Further Instructions

- (1) Ensure the on-line IR35 assessment is consistent with the answers given on this form
- (2) Attach this signed and completed assessment form to the results of the IR35 on-line assessment.
- (3) Retain both documents for future reference purposes.