



12 December 2018

FREEDOM OF INFORMATION REQUEST – 1540/18

Dear Sir/Madam

Your request for information has now been considered and the information requested is provided below.

Request / Response:

In April 2017 Government introduced new rules into the public sector called the off-payroll reforms, commonly referred to as “IR35”:

<https://emea01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fguidance%2Foff-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation&data=02%7C01%7C%7C072df2f8f5fd48f63fba08d65f38dc94%7C60a080bbbc0f4d9399c183748e10674d%7C1%7C0%7C636801095147433394&sd=9hpN0xcVx7GsJJALVC3ZYyLiC7O8k%2F%2BPaHHcqLS78U%3D&reserved=0>

We understand you may (or may not) have planned for this and developed a set of internal guidelines to be used when on boarding flexible workers, or contractors.

Please can you:

1. Tell us if you are familiar with these reforms – yes or no?

Answer:

Yes

2. Send us a copy of your internal guidelines used for any internal guidance,

Answer:

Please refer to attached document.

3. Send us any policies you use surrounding the reforms.

Answer:

Not Applicable

4. Send us any documents you use to explain your policies to agencies who supply workers to you.

Answer:

Please refer to attached document.

5. Send us your internal guidance explaining how you assess the status for each contractor.

Answer:

Please refer to attached document.

If you are dissatisfied with the handling of your request please contact the Head of Corporate Governance, Rutland County Council, Catmose, Oakham, Rutland LE15 6HP

You can also complain to the Information Commissioner at:

The Information Commissioner's Office
Wycliffe House, Water lane
Wilmslow, Cheshire
SK9 5AF
Tel: 01625 545700

Yours faithfully

FOI Administrator
Business Support Team
Rutland County Council

Briefing Note



Rutland
County Council

IR35 - Off Payroll Workers

Change in Legislation for Off Payroll Workers

From 6 April 2017, the government has reformed the intermediaries legislation in Chapter 8 Part 2 Income Taxes (Earnings and Pensions) Act 2003 (ITEPA 2003) often known as IR35.

The new rules apply where the services of a worker are provided through an 'intermediary' to a '*public sector body*'. From April 2017, it will therefore apply in the following situations:

- Where RCC engages a worker through their own limited company/partnership (sometimes called a personal service company "PSC"); and
- Where RCC engages a worker through an agency or other 3rd party.

The purpose of the rules is to ensure that workers who without using an intermediary, would otherwise have been employed directly by RCC or officer holders of RCC, are required to pay broadly the same tax and NICs as other employees.

For these purposes, a worker will include contractors, sole traders, freelancers and/or consultants and a 3rd party will include any organisation supplying workers to RCC on an ongoing basis.

This new measure, "Off-payroll working in the public sector" moves responsibility for deciding if the off-payroll rules for engagements in the public sector apply from an individual's intermediary to the public authority, agency, or third party paying the intermediary.

The new rules will come into effect from 6th April 2017 and will apply to contracts either before or after that date. It is of note that this will be the case even if the work has been completed before 6th April 2017 but the payment is made after. The rules will apply to government departments and their executive agencies, many companies owned or controlled by the public sector, universities, local authorities, parish councils and the NHS.

Obligations

From April 2017, Rutland County Council obligations will therefore be as follows:

- Where it engages a worker directly via a PSC, the employing officer (Head of Service) will need to determine whether the rules should apply and, as appropriate, tell Payroll to deduct the correct tax and NICs as if RCC is the employer for these purposes; and
- Where it engages a worker through an agency or other 3rd party, the employing officer (Head of Service) will need to determine whether the rules should apply and notify the supplier (e.g. agency) of that decision. The agency or 3rd party will then, as appropriate, deduct the correct tax and NICs as if it was the employer for these purposes.
- Work as an office holder of Rutland County Council is always caught within the intermediaries' rules. An office holder is generally The Chief Executive, Director and anyone holding a statutory position. If you are unsure if the post you are recruiting to is an office holder or not please speak to Finance for advice.

If the Council have to deduct the tax/NI from the individual then the Council will also be liable to pay employers NI.

What Does This Mean for You

For **existing contracts** Finance/HR will complete the analysis as to whether or not the role falls within the IR35 boundary and will notify the affected agencies/contractors. Any that fall within the boundaries of IR35 the Council will instruct the agency to deduct NI/Tax or will make arrangements for NI/Tax to be deducted from the invoices of PSC's.

For **new requests** you will need to complete the employment status checker and submit with your Checklist and Request to Engage/Extend an Agency or Interim Worker' to HR. A procedure note will be completed to help you through this process which will be made available shortly, you can also contact Finance/Payroll for assistance in completing the employment checker. The link to the checker is <https://www.gov.uk/guidance/check-employment-status-for-tax>.

Potential impact on the budget

As mentioned above this could have an impact on the budget:

1. The invoice we pay may have tax deducted so the amount charged to your budget would reduce;
2. If the Council have to deduct the tax/NI from the individual then the Council will also be liable to pay employers NI, as with any employee this will be paid for from your budget.