

Author: Andrew Craig 15/05/2018
Reviewer: Craig Robertson 28/09/2021
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Guidance for Employment Status (Self Employment and IR35)

Introduction

From April 2017 engaging with individual workers as sole traders (self-employed) and engaging individual workers through a limited company, partnership, Personal Service Company or Agency (IR35) are treated in much the same manner.

Self Employed: an individual engaged by the Council to do a piece of work where they are contracted under their own name.

IR35: an individual engaged by the Council to do a piece of work where they are contracted through a Personal Service Company, Limited Company or Agency.

In all cases the employment status of the individual's employment should be assessed by the engaging Service before the "work" is awarded. Employment Status is confirmed using the [HMRC Employment Status Indicator Tool](#) (ESIT) as explained in this document.

Terms used

There are a number of terms used by HMRC that the Engager may encounter when discussing the contractors employment status, so in broad terms we have two parties in this process, the Council and the Contractor:

Perth & Kinross Council, which may be referred to as the "Engager", or the "Authorised Signatory", or the "End Client" or the "Fee payer" or the "Public sector client".

Contractor, which may be referred to as a "Contractor", or "Worker", or "Off payroll worker", or "Service provider", or "Personal Service Company (PSC)

For the purposes of consistency, this guidance will use the terms "Engager" and "Contractor" throughout.

Examples of Contractors who may fall into this category:

Consultants
Trainers
Instructors
Entertainers
Surveyors
Architects
Lawyers
Counsellors
Psychologists
Engineers
Managers

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Who needs to know about this?

It is important that all Engagers understand this process and consider its implications as part of the procurement process. The Engager will issue Purchase Orders and instructions to many Contractors that will not be affected by this legislation, however some Contractors will. Some Contractors may be trading as partnerships or sole traders or even limited companies. Even if a Contractor is VAT registered this does not exempt them from an assessment. HMRC has already issued guidance on how VAT should be paid if a VAT invoice has to be paid through payroll.

Why are we doing this?

This is an additional legislative and we are required by the law to enforce it. Failure to comply with this statutory duty will result in the Council becoming liable for the lost income tax, employees and employers NIC's and the Apprenticeship Levy. This could result in an additional cost of 46% of the invoice value. In addition HMRC will apply interest on the outstanding monies and penalties for failure to comply. We must however follow the HMRC process and accept each outcome, despite the potential reaction from Contractors. This is why it is important that the assessment is carried out before any work is undertaken by the Contractor.

The legislation places a direct responsibility to ensure that the employment status of all Contractors is correctly assessed. IR35 specifically refers to Contractors who set up Personal Service Companies in order to avoid or minimise paying income tax and class 1 National Insurance Contributions (NIC's), but as mentioned above, equally applies to partnerships or sole traders or some limited companies.

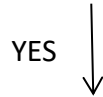
Please note that although the assessment outcome may lead to an invoice being paid through the Councils payroll and the contract is viewed as paid employment by HMRC, this does not mean that the Contractor is classed by the Council as an employee nor will it provide the Contractor with any employment rights, such as paid holidays or sick leave, for example.

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The assessment process in PKC

Stage 1 (Employee)

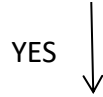
Will the work or service be provided by an employee? ———> NO Go to stage 2



The Engager needs to complete a Vacancy Justification form and submit through the EAP (Establishment Approval Process). If an employee is appointed, then they will be started by the Engager on the Council payroll. Income tax and National Insurance contributions (NIC's) for employee and employer will be deducted and dependent upon eligibility and the employee's personal choice, pension contributions from both the employee and the employer may be due.

Stage 2 (Agency)

Will the work or service be provided by an agency? ———>NO Go to Stage 3



Will the agency pay the contractor? —————> NO Go to Stage 3



The Engager must obtain an assurance from the agency that they have assessed the Contractor and determined whether the Contractor has been classed as self-employed or payments have been made through the agency payroll. If this cannot be produced then the agency must provide PKC with a copy of the HMRC ESIT outcome, before any payment can be made to the agency. PKC will still pay the Agency but the liability is on PKC to assess the employment status of the contractor

Stage 3 (Contractor)

The Engager determines best procurement route to securing a Contractor and once this process has been completed the Engager will appoint a Contractor. The next question is:

Does the work fall within the scope of HMRC's Construction Industry Scheme (CIS)? YES



NO

Follow the CIS guidelines on ERIC

Go to Stage 4 (Assessing Employment Status).

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Stage 4 (Assessing Employment Status)

Before any work is undertaken by the Contractor, the Engager must contact the Contractor and agree when they will assess the Contractor’s employment status, using HMRC’s Employment Status Indicator Tool (ESIT).

During this discussion, both parties must work through and agree on the answers to the questions posed by ESIT . The tool leads both parties through the assessment and it will produce an outcome at the end. Most Engagers will be familiar with assessing Contractors using the old Council “Self Employed Status” guidance. This HMRC controlled process asks very similar questions on-line. Detailed guidance for Engagers on using the ESIT is provided below.

What will I need before I start on the ESIT?

Before you start you will need to know:

- ✓ the Contractor’s/ worker’s responsibilities
- ✓ If there is any substitution – does the person have to fulfil the contract themselves
- ✓ who decides what work needs doing
- ✓ who decides when, where and how the work’s done
- ✓ how the Contractor/worker will be paid
- ✓ Financial Risk
- ✓ if the engagement includes any benefits or reimbursement for expenses

You should choose answers that best match the usual working practices of the engagement.

The assessment process in the HMRC ESIT
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You now need to complete a [“Check employment status for tax”](#) form on the HMRC website.

Question 1 “What do you want to find out?”

Answer 1 Your answer is **“Off-payroll working rule (IR35)”** if payee is paid as a company or **“if work is classed as employment or self-employed”** if payee is paid to an individual.

Question 2 “Who are you? “

Answer 2 “Hirer”

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Question 3 “Is the worker trading through a Ltd Company, Partnership or unincorporated body”

Answer 3 “Yes” if payment is to a company or “No” if it is to an individual. This is HMRC confirming your answer for question 1

From this point the ESIT will lead the Engager through a series of questions that will vary, dependent the answers provided. Once all the questions are answered, the ESIT will produce an outcome.

What documentation must I keep?

Engagers are required to create and keep two documents:

1. A copy of the HMRC ESIT outcome

It is important to record your results on the HMRC ESIT. These will be used to evidence the checks that took place should there be a need for HMRC to review this assessment. If you scroll down, you will see an option to record your name and that of the contractor, **please insert those before** saving and downloading the page.

2. A **Contractors Declaration** form

The Engager must complete this form which has two functions: informs the contractor of the outcome of the assessment and transfers any liability from the Council to the Contractor should HMRC determine that the Contractor should have been put on the payroll.

Informing the Contractor and the Head of Finance

The Engager should scan the printed copy of the HMRC ESIT outcome and send this by email along with the completed Contractors Declaration to the Contractor. This email should inform the contractor that no payment for work carried out can be made until this declaration has been signed and returned to the Engager. This email should be copied to FSPurchaseledger@pkc.gov.uk in order that a record of the Contractor can be created on either the purchase ledger or the payroll systems.

When the contractor returns the signed declaration, the Engager must check this document for accuracy and then send it to the FSPurchaseledger@pkc.gov.uk. The financial systems team will retain these declarations centrally for HMRC audit purposes.

What outcomes can the ESIT produce?

There are only five known outcomes available from the ESIT: Employed, Self-employed; the Intermediaries legislation does not apply to this engagement, more information is required and these will be displayed by the ESIT at the end of the assessment process as follows:

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1. This engagement should be classed as self-employed for tax purposes, or
2. The intermediaries legislation does not apply to this engagement, or
3. This engagement should be classed as employed for tax purposes, or
4. The intermediaries legislation applies to this engagement, or
5. *More information is required to determine the employment status of the engagement.*

What happens with each outcome?

Self-employed (1) or the Intermediaries legislation does not apply (2)

- The Engager sends the Contractor
 - a) a copy of the ESIT outcome, and
 - b) a copy of the [Contractors Declaration](#) to the Contractor.
- The Contractor returns the signed Contractors declaration to the Engager, who confirms the content.
- The Engager sends the signed Contractors declaration to the FSPurchaseLedger@pkc.gov.uk email account.
- When the Contractor presents an invoice for payment, the Engager authorises the invoice in accordance with the normal supplier procedures in order to make payment.
- The Contractor will be paid Gross i.e., with no tax or NIC's deducted, and in line with standard terms, usually 30 days.
- The Contractor is responsible for the declaration of income/ earnings from that business to HMRC.

Employed (3) or this engagement should be classed as employed for tax purposes (4)

- The Engager sends the Contractor
 - a. a copy of the ESIT outcome, and
 - b. a copy of the [Contractors Declaration](#) to the Contractor.
- The Contractor returns the signed Contractors declaration to the Engager, who confirms the content.
- The Engager sends the signed Contractors declaration to the FSPurchaseLedger@pkc.gov.uk email
- The Financial Systems Purchase Ledger Team retain a record for HMRC audit purposes and then send this information to the Payroll team
- The Payroll team creates an “employee” record on ResourceLink and send an email to the Engager with the Contractor’s “employee” number.
- When the Contractor presents an invoice for payment, the Engager authorises the invoice in accordance with normal supplier procedures, but does not register this

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invoice on Integra. Instead, the Engager passes the invoice to Payroll for payment along with completed “Creditor As Employee” found on the finance information zone

Inconclusive, i.e. more information is required (5)

If this outcome is produced, then the Engager should contact Financial Systems Purchase Ledger Team at fspurchaseledger@pkc.gov.uk to discuss the next stage.

Agency

If PKC employs the worker through an agency or third party, the Engager must confirm the employment status with this organisation.

This can be done by confirming with the Agency or Third party that they payroll the worker and deal with tax and national insurance. If the Agency do not payroll the worker then the Engager must complete an employment status assessment and advise the Agency of the outcome.

The Agency or third party should then pay the worker accordingly. PKC will still pay the invoice in full submitted from the Agency or Third Party.

Office Holders for Taxation

Where an individual is deemed to be an office holder, they must be paid under deduction of PAYE/NI through the payroll (including employer’s NI) whether this is under the intermediaries (IR35) rules or as a ‘sole trader’. This applies regardless of the terms under which they are engaged. Indeed, the HMRC online tool ‘Check Employment Status for Tax’ (CEST) requires the question of whether the worker is an office holder to be answered before any of the other questions and, if the individual is an office holder, then they are treated in the same way as an employee for tax and NI purposes.

For the purposes of PKC the following should be classed as an office holder and paid through payroll:

- Any Executive Director
- Elected Members
- Safeguarding Children’s Board Chair
- Safeguarding Adults Board Chair
- Adoption and Foster panel Chair and Vice-Chairs
- Returning Officers