



**Tudhoe Learning Trust**

# **IR35 OFF PAYROLL WORKERS PROCEDURE**

**Approved by:** Trust Chief Executive Officer **Date:** February 2021

**Last reviewed on:** February 2021

**Next review due** February 2022  
**by:**

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## 1. Introduction

To meet business requirements, it may sometimes be necessary for the Trust to cover substantive or temporary (project) posts without directly employing the individuals.

HMRC have enforced rules under IR35 off Payroll Worker rules to ensure correct accounting for any tax and national insurance implications are in place.

Any requests for payment, for a person who is not currently on our payroll, who has done work for the Trust, must be assessed under the off-payroll worker rules.

These rules assess whether the payment should be paid on invoice or through payroll.

The off-payroll worker rules are in place to make sure that where an individual is effectively acting as an employee, they pay broadly the same tax and National Insurance contributions (NICs) as if they were an employee on payroll.

Non-compliance places the Trust at risk of substantial fines and penalties.

This policy outlines the procedures to ensure compliance with the HMRC legislation.

## 2. Scope and Aims

This policy applies to all employees of the Trust that are not being paid through the payroll system, any staff who are seconded to the Trust, contracted and agency staff and any other individual working on Trust premises.

This policy aims to identify and correctly account for all off-payroll workers to avoid non-compliance with HMRC rules.

In applying this policy, Trust schools will not unlawfully discriminate in respect of any of the protected characteristics as defined under the Equality Act and specified below:

- Age
- Disability
- Gender reassignment
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation
- Marriage and civil partnership

## 3. Roles / responsibilities / duties

### Manager

The manager responsible for recruiting to a post where it is intended that payment is via an invoice rather than through the payroll is responsible for checking compliance with IR35 liaising with the HR team and informing the worker providing the services of the assessment.

### Finance Team

The finance team will support the IR35 process, identifying where IR35 may apply and advising the HR Team. Where IR35 applies, the invoices received will be sent on to payroll for processing.

## Human Resources

The HR Team will support the manager with the IR35 on-line checking process to ensure the correct action is taken to comply with IR35. Where IR35 applies, the HR Team will support the manager in notifying the worker.

## Payroll

The Trusts' payroll provider must compute the payments through payroll, deducting tax and NIC contributions for those that IR35 applies. The employer's contribution must be paid and all payments must be notified and paid to HMRC.

## 4. Implementation

### IR35 off Payroll Worker Rules

An off-payroll worker as defined by HMRC is a person who

- Provides a service to the Trust through their own intermediary.

The intermediary can be:

- a worker's own limited company - known as a personal service company (PSC);
- a partnership;
- another individual.

The Trust is responsible for deciding if off-payroll working rules apply.

The person providing services through their own intermediary will need to provide information to the Trust to help them make their decision.

When deciding if the off-payroll working rules apply to an engagement, the Trust needs to assess the employment status, and the relationship if there wasn't an intermediary involved.

If the rules apply, the Trust, agency or other third party who is responsible for paying the worker's intermediary must deduct tax and Class 1 NICs. They must also pay employers contributions and report taxes to HMRC.

Other employment rights and statutory rights (e.g. sick pay, maternity pay) are unaffected by IR35 rules.

## Process

When a temporary/project worker is recruited the manager should liaise with the HR Team to assess the IR35 rules using the HMRC online checker to establish whether the rules apply for this contract.

HMRC online checker <https://www.gov.uk/guidance/check-employment-status-fortax>

To assess the IR35 rules below are some of the things that will be required to know as listed on the HMRC online tool to help with the assessment? This list includes:

- the worker's responsibilities;
- who decides what work needs doing;
- who decides when, where and how the work's done;
- how the worker will be paid;
- if the engagement includes any benefits or reimbursement for expenses.

A log of all IR35 assessments will be recorded and kept in the Trust Office.

Dependent upon the decision made, a letter should be sent to the intermediary by the Trust informing of the decision and actions to be taken.

#### **If IR35 rule applies and the Trust is responsible for payment to intermediary**

A letter including off payroll worker starter form (appendix 1) should be sent to the intermediary by the manager responsible for the worker.

New employee forms should be completed and returned to the manager who will authorise and send to the Finance Team. Finance will then code and authorise before sending onto the Trust's Payroll provider.

The HR Team will process and notify payroll of new IR35 starter.

All Invoices should be sent to Finance Team. No invoices will be paid via the Trust's invoicing system.

A log (Appendix 4) will be kept and sent to payroll before the payroll cut-off date, 10<sup>th</sup> of the month) to enable payment on the last working day. Where submission is after cut-off date, these will be paid in the following month's payroll.

Employee's tax and NIC will be deducted from the invoice amount and the difference paid to intermediary. The difference paid will include consideration of employee costs for materials they have, or will be, used in providing their services and any expenses met by the employee that would have been deductible from taxable earnings if the worker was employed. Employers NICs will also be paid. This will be reported by payroll to HMRC.

#### **If IR35 rule apply and agency responsible**

A Letter (appendix 2) will be sent to agency by the manager informing that it is the agencies responsibility to apply the IR35 rules and deduct tax and NICs before paying the worker.

Invoices from the agency are to be sent to the Trust Finance Team, for approval by budget holder to allow payment of the full invoice amount.

#### **If IR35 rule does not apply**

A letter (appendix 3) is sent to the intermediary informing that IR35 has been assessed but does not apply.

Invoices from the intermediary are to be sent to the Trusts Finance Team, for approval by budget holder to allow payment of the full invoice amount.

#### **Review of decision**

The decision should be reconsidered every time a new contract starts, contract extended, or changed.

#### **Compliance with IR35 checks**

The following conditions must be met. If they are not met, the tax and NIC liability automatically transfers to the Trust.

#### **Contracts after April 2021**

The Trust must inform intermediary on IR35 status before the contract is valid or services started.

#### **Contracts before April 2021**

The Trust must inform intermediary on status before first payment is made after April 2021.

## 5. Managing Disagreements

If the person you have a contract with asks for the reasons behind the Trusts decision in writing, the Trust must respond within 45 days. If the Trust fails to do this becomes responsible for paying the tax and NICs due.

The Trust will consider the reasons for disagreement that have been provided by the contractor or agency and decide whether to:-

- Maintain the current determination if it is felt correct and give reasons why;
- Provide a new determination because it felt incorrect.

The Trust will provide a response explaining the decision within 45 days of receiving the notification of disagreement.

All records of the disagreement will be stored securely in accordance with Data Protection Rules and the Trusts Document Retention Policy.

## 6. Further Information

If you have any enquires in relation to this policy, please contact the Director of Business Finance and Development at [TLTfinance@tudhoelearningtrust.co.uk](mailto:TLTfinance@tudhoelearningtrust.co.uk) or Tel: 01388 811765.

Name  
Address

Date

Dear NAME,

**Compliance with HMRC IR35**

Post:  
Contract Start Date:  
Contract End Date:

Tudhoe Learning Trust is required to assess the contracts of all individuals providing a service to the Trust under the IR35 'Off Payroll Worker' rules required by HMRC.

The above post has been assessed, and it has been decided that the IR35 rules do apply,

The reasons for this are:

xxx

The Trust is therefore required to process all invoices through payroll, which will deduct tax and NICs from the amount invoiced.

The following steps are required:

1. Complete the attached IR35 Worker Payroll Starter Form (Sections 1-3), and the HMRC Starter checklist (<https://www.gov.uk/government/publications/payee-starter-checklist>) and return to xx
2. Send all invoices for the attention of the Trust Director of Business Finance and Development at the above address or email [TLTFinance@tudhoelearningtrust.co.uk](mailto:TLTFinance@tudhoelearningtrust.co.uk)

More information can be found at <https://www.gov.uk/guidance/off-payroll-working-in-the-publicsector-reform-of-intermediaries-legislation>

If you require further information, please contact me.

Yours sincerely,

## IR35 Worker Payroll Starter Form

**Sections 1 - 3 to be completed by the Claimant**

**This form must be completed before any invoices can be processed through Payroll  
(NB - You must supply date of birth and NI number to secure payment)**

### Section 1: Personal Details

Forename (s):

Surname:

Title:

Date of birth:

NI number:

Address:

Post Code:

### Section 2: Bank Account Details

Bank Sort Code:

Bank Account Number:

Bank Name:

### Section 3: Certification

**I certify that the above details are correct and any changes will be notified to my  
authorising officer.**

**I understand that payments made to me will be subject to statutory deductions.**

Signed:

Date:

Manager signature:

Date:

Manager name:

### Section 4: Financial Authorisation

Cost Centre:

Payments Authorised by:

Signature:

Date:

Once complete please return this form to [TLTfinance@tudhoelearningtrust.co.uk](mailto:TLTfinance@tudhoelearningtrust.co.uk)

Name  
Address

Date

Dear NAME,

**Compliance with HMRC IR35**

Post:  
Contract Start Date:  
Contract End Date:

Tudhoe Learning Trust are required to assess the contracts of all individuals providing a service through their intermediary to the Trust under the IR35 'Off Payroll Worker' rules required by HMRC.

The above post has been assessed, and it has been decided that the IR35 rules do apply.

As the work being provided is through NAME agency it will be NAME agency responsibility to ensure tax/NIC is deducted from XXX pay.

The reasons for this are:

xx

The Trust will pay the agency/supplier invoices through the normal invoicing process.

Agency/supplier invoices should be sent to the above address:

More information can be found at <https://www.gov.uk/guidance/off-payroll-working-in-the-publicsector-reform-of-intermediaries-legislation>

If you require further information, please contact xx

Yours sincerely,

Name  
Address

Date

Dear NAME

**Compliance with HMRC IR35**

Post:  
Contract Start Date:  
Contract End Date:

Tudhoe Learning Trust are required to assess the contracts of all individuals providing a service to the Trust under the IR35 'Off Payroll Worker' rules required by HMRC.

The above post has been assessed, and it has been decided that the IR35 rules do not apply.

The reasons for this are:

xx

It is your responsibility to ensure tax and NIC contributions are made.

The Trust will pay the invoices through the normal invoicing process.  
Invoices should be sent to the above address.

More information can be found at <https://www.gov.uk/guidance/off-payroll-working-in-the-publicsector-reform-of-intermediaries-legislation>

If you require further information, please contact me.

Yours sincerely,

## Appendix 4

### Payment Log for Payroll

Name	Assignment Number	Invoice Number	Invoice Date	Payment Value (Subject to Tax/NICs)	Allowance (e.g. Expenses)	Claimable VAT	Non Reclaim VAT