

## IR35 Guidance

### 1. Purpose of the guidance

- 1.1 In April 2017 the intermediaries legislation known as IR35 was revised by HM Revenue and Customs (HMRC) to include specific rules for off-payroll working in the public sector. Under the legislation duties are placed on Public Sector organisations for determining whether or not IR35 rules apply to engagements of third parties operating as their own intermediary.
- 1.2 IR35 is tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used.

### 2. Who is covered

- 2.1 This guidance applies to all individuals responsible for hiring and managing agency workers whilst they are on assignment or permanently employed with LBB.
- 2.2 Definition of who is covered by this guidance:
  - *Recruiting Manager* – LBB manager responsible for engaging a temporary agency worker.
  - *Agency worker* – any individual supplied by the agency to work temporarily for and under the supervision of the Recruiting Manager who operate on a self-employed basis and has a contract of employment or services with the agency (see Agency Workers Guidance).
- 2.3 Individuals undertaking work on a short-term or one off basis may be working for themselves by:
  - Being registered as self employed (sole trader with a Unique taxpayer reference)
  - Supplying services through their own limited company, or partnership
  - Engaged as an agency worker or through a consultancy company but supplying services through their own limited company. or partnership
- 2.4 **This guidance does not apply where:**
  - It is proposed from the outset that an individual should be engaged as a casual worker or an employee on a fixed term contract
  - The contract for services is with an organisation who have the flexibility to select which of their employees they send to undertake the work and pay tax and NI on their behalf
  - An individual is supplying goods rather than services

### **3. Responsibilities**

- 3.1 It is the responsibility of the Recruiting Manager to ensure the appropriate employment status is established prior to engaging individual to work for LBB.
- 3.2 The Council's policy is all workers are normally inside IR35 (and therefore subject to PAYE) except in exceptional cases. In exceptional cases such as highly specialist or project roles, when recruiting an individual, the recruiting manager will need to detail if the worker is outside IR35.
- 3.3 The recruiting manager must complete the HMRC Employment Status Service Tool, to establish under tax law whether the individual should be treated as employed or self-employed, or the intermediaries off-payroll working rules apply
- 3.4 If a manager believes a worker is outside IR35 they need to evidence this by using the HMRC's online CEST tool (<https://www.gov.uk/guidance/check-employment-status-for-tax>) and by preparing a work package which sets out the requirements and timeframes for the piece of work (details available from your HR Business Partner or email [hadmin@barnet.gov.uk](mailto:hadmin@barnet.gov.uk)).
- 3.5 The outcome of the assessment must be printed off and submitted to matrix for them to record any outside IR35 appointments. Managers must retain all CEST assessments and work packages as these will be audited.
- 3.6 If the HMRC Employment Status Service tool is unable to provide a definitive outcome the manager should contact the HMRC helpline for further advice either by phone on 0300 123 2326 or by email [ir35@hmrc.gov.uk](mailto:ir35@hmrc.gov.uk). Until such time as an outcome is determined if any payments are made it would be subject to PAYE and NIC deductions
- 3.7 If there is a dispute regarding determination the recruiting manager will refer this to an appropriate senior manager for a final decision with advice from the Assistant Director of Human Resources within 10 days.
- 3.8 Recruiting Managers need to be aware that falsely claiming a worker is outside IR35 has severe financial and reputational consequences for the Council and the Council will take appropriate action against the manager.
- 3.9 For most assignments the use of substitutes will not be a consideration. In exceptional cases for certain specialist roles the use of substitutes may be considered. The use of

substitutes must be agreed at the outset. LBB would reserve the right to reject substitutes if they do not have the skills and experience required for the role.

#### **4. General**

- 4.1 This guidance supersedes any arrangements previously set out in the Employee Handbook.

#### **Document Control**

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