**For the attention of all Headteachers and Business Managers**

# **IR35 Off-Payroll working guidance update**

HMRC introduced off-payroll working rules (IR35) in April 2017 which the council as a public authority must comply with. As a Headteacher/Business manager, it is your responsibility to decide whether the off payroll working rules apply. Failure to apply these rules may result in HMRC fines and penalties which will have a financial impact on your budget.

HMRC have written to DCC (along with all local authorities) to help us get the employment status of our workers right and given us the opportunity to correct any errors. This is a good opportunity for you to re-assess status to ensure that you are complying with tax legislation and do not incur any fines, penalties and back payments from HMRC.

These rules ensure that a worker pays roughly the same contributions of tax and national insurance as an equivalent employee if they provide services through an intermediary.

The worker can provide their services through an intermediary via:

* a limited company (personal service company). For a personal service company (PSC) the worker is usually the director or has more than 5% of the ordinary share capital of the company).
* a partnership
* an individual who is not the worker

As a Headteacher/Business manager you must also complete a Status Determination Statement (SDS) and issue to the worker and the person or organisation the contract is with. If a disagreement arises with your determination then a response must be provided within 45 days. In addition, HR Services will maintain a central record of all determinations.

Please follow the process below:

1. **Check employment status**

Please complete the HMRC online tool [check employment status for tax](https://www.gov.uk/guidance/check-employment-status-for-tax)  (CEST) accurately and with reasonable care in **all** cases and print a copy.

You will need the following information before starting the check:

* the contract details
* what the worker’s responsibilities are
* who decides on the work required
* who decides when, how and where the work will be done
* how the worker will be paid
* does the engagement include any corporate benefits or refund of costs incurred
* can a contractor send a substitute

1. **Status Determination Statements (SDS)**

As a Headteacher/Business manager you **must** complete the [Status Determination Statement](https://staff.derbyshire.gov.uk/secure-area/secure-site-elements/secure-documents/pay-and-benefits/status-determination-statement.pdf) (SDS), accurately attached at appendix 1, recording whether the off payroll working rules apply or not for any non-PAYE worker engaged by the school (the End-Client in the supply chain) via an intermediary (Limited Company or Personal Service Company) and provide the reasons for the determination.

Blanket decisions for roles must be avoided as it should focus on the assessment of an individual’s work.

The Status Determination Statement must be issued by you, the manager by letter or email including the CEST outcome to the worker and the agency, or other organisation that you contract with prior to the contract and work starts.

This is a legal requirement which should be completed correctly and with reasonable care to ensure the deemed employment status is valid.

You will need to reconsider your decision if the circumstances relating to the engagement with the worker changes or the engagement is extended.

1. **Central record**

In **all** cases, whether the off payroll rules apply or not, a copy of the Status Determination Statement and the CEST outcome should be sent to HR Services via email to [IR35@derbyshire.gov.uk](mailto:IR35@derbyshire.gov.uk) to be logged on a central record.

Please also email any existing CEST results to [IR35@derbyshire.gov.uk](mailto:IR35@derbyshire.gov.uk) whether the off-payroll rules apply or not for any engagements that are still current so that they can also be logged on the central record.

1. **If off-payroll working rules apply**

Any payments made to the worker should be made through the council’s payroll in order to deduct the appropriate tax and national insurance. As a Headteacher/Business manager you will need to complete the External contractors request form [Human Resources (HR) Services forms (derbyshire.gov.uk)](https://schoolsnet.derbyshire.gov.uk/administration-services-and-support/human-resources/human-resources-hr-services-forms.aspx) and return to HR Services at [IR35@derbyshire.gov.uk](mailto:IR35@derbyshire.gov.uk) together with a copy of the CEST results and the Status Determination Statement.

1. **If off-payroll working rules do not apply**

Please send a copy of the CEST result along with the Status Determination Statement to [SAP.finance@derbyshire.gov.uk](mailto:SAP.finance@derbyshire.gov.uk) at the point when you are requesting the creation of a vendor.

1. **Disagreement of employment Status Determination**

The worker and or the agency/intermediary has the right to disagree with the council’s employment status determination (which can be made up until the last payment is made for their services). As the Headteacher/Business manager, you will need to:

* contact [IR35@derbyshire.gov.uk](mailto:IR35@derbyshire.gov.uk) for advice and support with this process in the first instance and provide details of the final outcome
* consider the reasons for the disagreement and keep a record of them
* decide if the original decision was correct and provide the reasons why to all relevant parties
* decide if the original decision was incorrect and provide the reasons why to all relevant parties
* complete a new CEST and Status Determination Statement and issue to the worker and the agency, or other organisation that you contract with if the original decision was incorrect, confirming the date it is effective from and that the previous statement is no longer valid
* keep a record of your determinations and the reasons for them

You must provide a response to the worker and agency/intermediary **within 45 days** of receiving notification whether the determination has/has not changed, otherwise the worker’s tax, national insurance contributions and apprenticeship levy will become the responsibility of Derbyshire County Council. Whilst you are considering your response, the original determination will apply.

1. **Record keeping**

Please retain the following for 6 full financial years after the contract has ended for audit purposes and HMRC inspection:

* Status Determination Statement
* copy of the CEST
* any supporting documentation
* any contracts
* any service agreements

As the End-Client, the Council will need to be able to justify the assessments for all non-PAYE workers and may receive HMRC penalties should the council not exercise the required level of due diligence.

1. **Further support/training**

Support is available at HR Services should you require assistance and for support with dealing with a disagreement to your Status Determination Statement via email at [IR35@derbyshire.gov.uk](mailto:IR35@derbyshire.gov.uk).

Further guidance is available on the [HMRC website](https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation) or alternatively you can telephone HMRC on 0300 123 2326.

 Appendix 1

**Status Determination Statement**

|  |  |
| --- | --- |
| **Name of Client** | Derbyshire County Council |
| **Hiring Manager** |  |
| **Department** |  |
| **Base** |  |
| **Name of Worker** |  |
| **Job Title** |  |
| **Intermediary/Agency Name** |  |
| **Assignment start date** |  |
| **Assignment forecasted end date** |  |
| **Do off-payroll working rules apply?** *If yes, please follow the guidance to ensure that the appropriate tax and*  *employee national insurance deductions are made at source.*  *If yes and via an agency/intermediary, please ensure that the payroll service provider/agency/umbrella deduct appropriate tax and national insurance contributions from gross earnings.*  *If there are any changes to the engagement or the manner in which the services are provided by the worker under the engagement the council reserves the right to reassess.* | **YES/NO** |

|  |  |
| --- | --- |
| **Reasons**  *(also attach a copy of the Check Employment Status for Tax (CEST) results and any supporting documentation)* |  |
| **Form completed by name and signature** |  |
| **Contact details** |  |
| **Job title** |  |
| **Department** |  |
| **Date completed** |  |

***Privacy Notice***

For information on how we use the information we collect from you, please see our privacy notice at [www.derbyshire.gov.uk/council/gdpr/privacy-notices](http://www.derbyshire.gov.uk/council/gdpr/privacy-notices)

**Client Status Disagreement**

Complete **only** if you disagree with the decision of whether off-payroll working rules apply and return including the Status Determination Statement above to the contact email address provided within this document, as soon as possible. A response will be provided within 45 days of receiving notification of your disagreement. Whilst a response is being considered the original determination will continue to apply.

|  |  |
| --- | --- |
| **Reasons for disagreement** |  |
| **Signed** |  |
| **Name** |  |
| **Date** |  |