

IR35: Guidance for schools

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IR35: Guidance for schools

What is IR35?

IR35 is the name given to the intermediaries legislation, from the Finance Act 2000, aimed at identifying workers who are avoiding paying the tax and national insurance (NI) contributions that they should. IR35 specifically challenges workers who supply their services to end-clients via an "intermediary" but who should be classed as 'disguised employees'.

A "disguised employee" is someone who would be an employee if an "intermediary" was not used and therefore would be subject to tax and NI contributions as if they were an employee contributing through Pay-As-You-Earn (PAYE).

An "intermediary" will usually be the worker's own company, often known as a 'personal service company' but could also be a limited company, umbrella company, sole trader / self-employment or partnership.

Until 06 April 2017, workers were able to self-certify that they do not fall within the scope of IR35 and / or were responsible for deducting tax and NI on any invoiced amounts paid by the end-client as necessary.

What IR35 changes apply from 06 April 2017?

From 06 April 2017 the end-client is responsible for; 1) determining the employment status of the worker and whether they are in scope of the intermediaries legislation (IR35) or not and 2) where they are in scope of the intermediaries legislation, ensure any invoiced amounts have the appropriate tax and NI deductions made either directly or indirectly by whoever is closer to paying the worker's company.

How do I determine whether a worker is in scope of the intermediaries legislation (IR35) or not?

In order to determine whether a worker is in scope of the intermediaries legislation (IR35) or not, you must complete a check for employment status for tax, using the Employment Status Service (ESS) tool, on the HMRC website.

You can access the ESS tool using the link below:

<https://www.gov.uk/guidance/check-employment-status-for-tax>

The ESS tool will ask a series of questions around the assignment / engagement before providing an outcome as to whether intermediaries legislation (IR35) applies or not. You will be asked different questions depending upon how you answer each question.

Before undertaking the check, you'll need to know:

- 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?

When completing the check, you should choose answers that best match the usual working practices of the assignment / engagement.

Depending upon how you answer the questions you will receive one of five potential outcomes:

In each case you will need to undertake some specific actions:

<p>The intermediaries legislation does not apply to this engagement</p>	<p>If the ESS tool says “The intermediaries legislation does not apply to this engagement”, it sits “outside” of IR35 and you can therefore pay any invoices as you usually would, without needing to take any further action.</p> <p>Please note: SCC procurement rules will still apply and you must ensure you follow the necessary process depending upon the Total Aggregate Value of the works / engagement.</p>
<p>This engagement should be classed as self-employed for tax purposes</p>	<p>If the ESS tool says “This engagement should be classed as self-employed for tax purposes” you can therefore pay any invoices as you usually would, without needing to take any further action.</p> <p>Please note: SCC procurement rules will still apply and you must ensure you follow the necessary process depending upon the Total Aggregate Value of the works / engagement.</p>
<p>This engagement should be classed as employed for tax purposes</p>	<p>If the ESS tool says “This engagement should be classed as employed for tax purposes” you should advise the worker and must ensure that any invoice amounts have the necessary PAYE deductions of tax and NI made, as if the worker was an employee.</p> <p>Do not pay any invoices for this engagement without ensuring that the invoice will have the necessary deductions for tax and NI are made.</p> <p>If the worker is working directly for you, you should ensure they are set-up on your payroll and the invoice value is processed for tax and NI.</p> <p>If the worker is provided through an agency, you should advise them of the outcome and request they ensure the invoice value is processed for tax and NI.</p>
<p>The intermediaries legislation applies to this engagement</p>	<p>If the ESS tool says “The intermediaries legislation applies to this engagement” you should advise the worker and must ensure that any invoice amounts have the necessary PAYE deductions of tax and NI made, as if the worker was an employee.</p> <p>Do not pay any invoices for this engagement without ensuring that the invoice will have the necessary deductions for tax and NI are made.</p> <p>If the worker is working directly for you, you should ensure they are set-up on your payroll and the invoice value is processed for tax and NI.</p>

	If the worker is provided through an agency, you should advise them of the outcome and request they ensure the invoice value is processed for tax and NI.
	If the ESS tool says “We are unable to determine the tax status of this engagement” you should contact HR or Procurement for advice in relation to this engagement. You must not pay any invoices for this engagement before seeking advice.

In all cases you should keep a record of the outcome by completing the “Customise this result record” section.

Customise this result record

You can add some information to this page before you print it. This is for your reference only and will not be stored by HMRC. All fields are optional

Name of the person that completed this check

End client's name

Engagement job title

Reference (for example, worker's name or contract number)

[Continue](#)

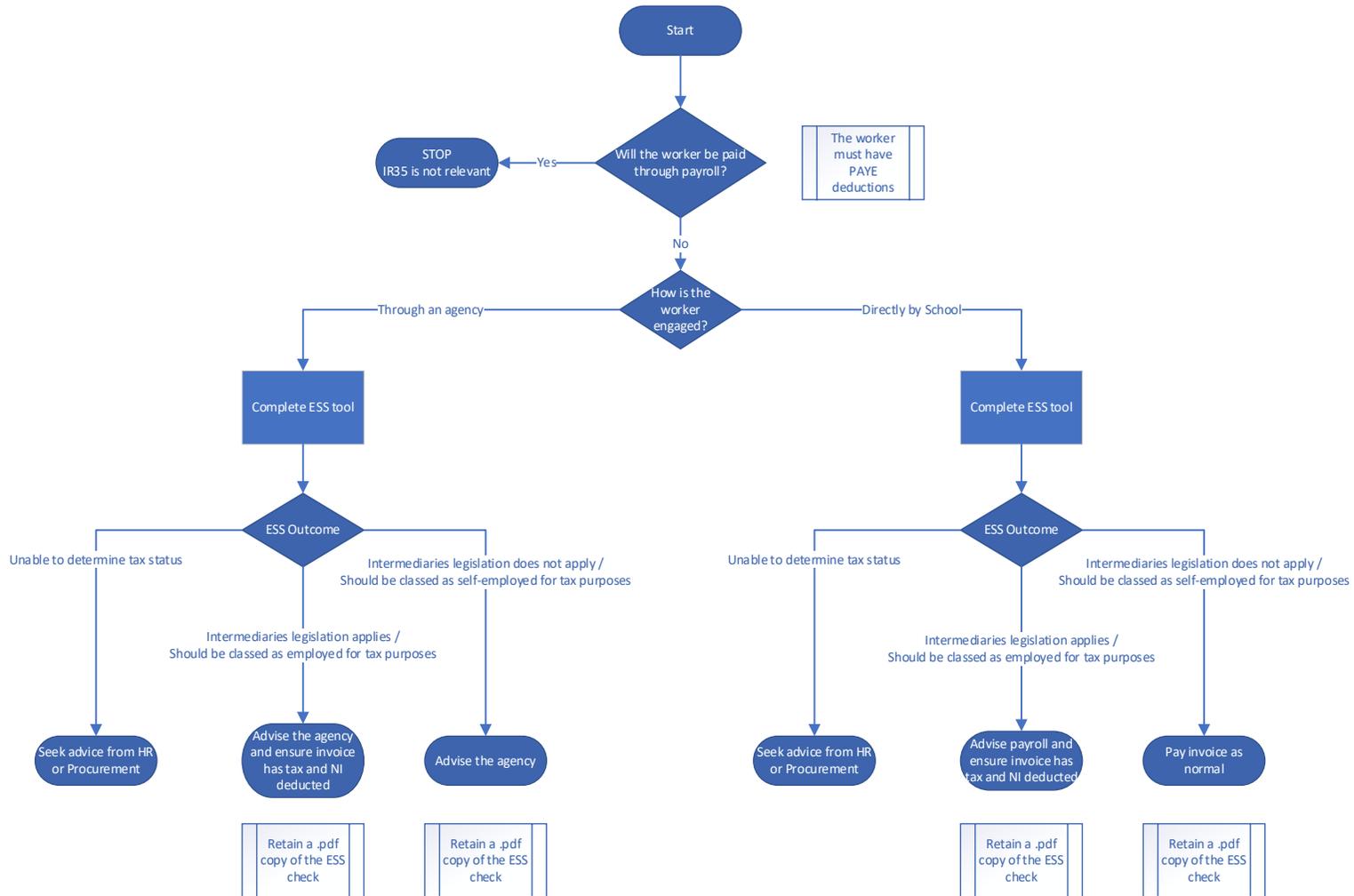
Once completed you will be provided with a .pdf copy of the result, including how you answered all the questions which led to this result. This .pdf copy must be kept along with your other Finance records for auditing purposes and / or to provide to HMRC should they request it as part of any investigation.

What are the potential penalties if I don't complete the check or am unable to provide it to HMRC if requested?

The Schools could face penalties from HMRC if they are not compliant with the legislation, as well as being liable for the worker's tax and NI contributions, as well as the employer's NI contributions, which would could be over 50% of the invoice value. HMRC would also issue a penalty and interest charges.

For example, on a £25,000 invoice, the unpaid tax and NI would be £13,750, plus a penalty and interest charges of between £4,000 and £8,000.

Flowchart



Appendix A: Key Questions in ESS tool**Which of these described you best?**

You should select "The end client". You should not accept a check completed by either "The worker" or "The agency paying the worker", as the check should be completed by the Schools, as the Schools is responsible for determining the employment status of the worker.

Will the worker (or their business) perform office holder duties for you as part of this engagement?

An office holder is a statutory appointment, such as a company director, company secretary, board member or trustee.

An office holder **is not** someone covering a permanent role in your organization, unless this is a statutory role too.

If the worker's business sent someone else to do the work (a substitute) and they met all the necessary criteria, would you ever reject them?

Consider whether you would be happy if someone else completed the engagement who was not the worker you originally engaged, without you having the opportunity to meet or interview them. If the engagement was to carry out a specific task e.g. a plumber repairing a toilet, you might well accept a substitute. If this was a Teacher, you would likely not accept the substitute.

What does the worker have to provide for this engagement that they cannot claim as an expense from your organization or an agency?

The options are Materials, Equipment, Vehicle and Other expenses, you can select more than one or Not relevant.

The expenditure incurred under the heading materials and equipment must be significant and not reclaimed as part of the hourly rate / invoice.

The use of a vehicle and other travel related expenditure must relate to work tasks, not commuting.

What is the main way the worker is paid for this engagement?

An hourly, daily or weekly rate is likely to result in the Intermediaries legislation apply or that the engagement should be classed as employed for tax purposes.

The Intermediaries legislation is less likely to apply if a fixed price for a piece of work is the main way the worker will be paid.

If you are not satisfied with the work, does the worker need to put it right at their own cost?

If the worker would have to rectify any issues, it's important to note the distinction between two of the options:

"In their usual working hours at the usual rate of pay" is a strong indication of employment, as there is no financial risk to the worker.

"Outside of their usual working hours at addition cost to the worker" is a strong indication of self-employment, as the worker takes on the risk if the work is unsatisfactory.

Appendix B: Glossary

IR35	The name given the intermediaries legislation, from the Finance Act 2000, aimed at identifying workers who are avoiding paying the tax and NI at the appropriate rate.
Intermediary	This will usually be the worker's own company, often known as a 'personal service company' but could also be a limited company, umbrella company, sole trader / self-employment or partnership.
Office holder	A permanent, substantive position that exists independently from the person who fills it. An officer holder includes, but is not limited to; board membership, statutory board membership, treasurer, trustee, company director, company secretary or other similar statutory roles.
Personal Service Company (PSC)	A limited company that typically has a sole director, the worker, who owns most or all of the shares. The PSC will generally supply professional services personally either directly or via an agency or umbrella company.
PAYE	Pay As You Earn – the method of collecting tax and NI from employees
NI	National Insurance