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To: All Headteachers and Chairs of Governors
maintained Schools and PRU's

**LMS Document
No. 2019/07**

Dear Colleague,

IMPORTANT: Use of Consultants and compliance with HMRC rules. (IR35)

In October 2015 Gavin Bultitude, Assistant Director Resources and Support, wrote to all maintained schools to highlight a serious issue which had been raised by HMRC (Tax), where payments made by some schools to individuals had not complied with HMRC requirements ([LMS Document 2015/04](#)). The original LMS letter can be found at:

<https://www.suffolklearning.co.uk/leadership-staff-development/schools-accountancy/lms/lms-documents/lms-docs--2015>

Some irregularities arose where individuals were being paid directly via invoices, and in some cases petty cash, when they should have been treated as employees for Tax and National Insurance purposes.

We have recently reviewed the original guidance issued and updated it and the purpose of this letter is to share with you the up dated guidance which can be found on Suffolk Learning at:

https://www.suffolklearning.co.uk/do_download.asp?did=18267

We wanted to alert you that the council's Audit Service periodically reviews compliance with HMRC rules and that the school and the council can be fined if HMRC rules are not complied with.

I thought it would be helpful to draw your attention to the following actions which must be undertaken by school leaders, in order to be compliant:

- All relevant staff within the school must be made aware of the HMRC requirements for IR35,
- Check that the school's local procedures include the requirement set out in LMS Doc 2015/04 (and repeated below), update the procedures where appropriate,
- Carry out a review of all individuals currently working at the school but not paid through payroll (including individuals deemed to be "self-employed") to ensure that

the requirements set out in the updated guidance as well as those set out in LMS Doc 2015/04 (and repeated below) are being met in each case.

In the event of a school being found non-compliant with the HMRC rules, any fines and penalties arising from non-compliance at a maintained school will be charged to the school's budget, in addition to any unpaid Tax and National Insurance.

In a circumstance of non-compliance with the HMRC rules being identified in a maintained school, the Local Authority (LA) will consider either: whether a Notice of Financial Concern should be issued to individual schools or financial delegation be withdrawn.

As mentioned above, the document that set out the main requirements regarding payment for work done was: LMS Document 2015/04 and the key elements of that document state:

Section 7.3 of the Scheme for the Financing of Schools clearly sets out the requirements regarding payment for work done:

All payments for work done by employees must be made through the payroll to ensure PAYE is applied correctly.

Schools cannot make payments to individuals (non- employees) without considering their employment and income tax status. An Employment Status Indicator Check (ESI) on the job being undertaken by these individuals is required and should be completed using the on-line HMRC tool for all individuals.

The school has a statutory duty to ensure PAYE is operated where applicable and schools should obtain professional advice before authorising work to be done where appropriate.

Non-compliance will result in the school being liable to pay both individuals and the employers' tax and National Insurance and any penalties imposed by HM revenue and Customs.

In order to ensure future compliance please check the school's local procedures include the following requirements (and update where appropriate);

- *An Employment Status Indicator Check (ESI) on the job (not the individual) being undertaken by these individuals is required, (see guidance on Suffolk learning for IR35). The on-line HMRC tool is available and should be completed for all individuals: HM Revenue & Customs Employment Status Indicator*
- *Once completed the results supplied by the HMRC tool must be implemented.*
 - *If the results state that the job being undertaken is an employee rather than the individual, then the individual must be paid via payroll.*

- *If the results state that the job role can be paid by invoice, then a contract of service should be implemented and guidance should be sought from either Schools' choice HR or your HR service provider.*
- *If the results are inconclusive then HMRC will need to be contract for further advice: HMRC helpline 01522 884206*
- *The results supplied by the ESI check MUST be retained.*
- *The school will need to carry out a review of all individuals currently working at the school but not through payroll (individuals deemed "self-employment") to ensure that these requirements are being met in each case.*

Payments should only be made to individuals engaged by the school to undertake one-off services, for example visiting author, consultants etc. If you have any queries, please contact you HR adviser or HR service provider in the first instance.

The correct treatment of taxation and national insurance is critical to avoid penalties, more onerous audit from HMRC and reputational damage to the County Council and individual schools. Any penalties arising from non-compliance at a school will be charged to the school's budget, in addition to any unpaid Tax and National Insurance.

I would be grateful if you could draw this letter to the attention of your Bursar and Business Managers and the other relevant staff to ensure that they comply with the requirements set out in this letter.

LMS Letter 2015/04

We hope this information and the linked SCC IR35 Guidance is helpful to you. If you have any queries, please contact Janice Lee who will be happy to signpost assistance on IR35 and HMRC rule related issues.

Yours sincerely



Janice Lee
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Children and Young People's Services