

Our Ref: GB/EC  
Date: 21 October 2015  
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To: All Headteachers and Chairs of Governors  
of maintained Schools and PRUs.

<b>LMS Document No. 2015/27</b>
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Dear Colleague

**IMPORTANT: Use of Consultants and compliance with HMRC rules**

I wrote to you in February to highlight a serious issue which had been raised by HMRC (Tax) where payments made by schools to individuals had not complied with HMRC requirements ([LMS Document 2015/04](#)). The 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.

HMRC had identified a number of failings to properly account for tax in schools, and made it clear that Audit Services should periodically review this area. They were also clear that Suffolk County Council would be fined if their rules were not followed in the future.

Audit Services has undertaken further inspections of schools during this year; unfortunately the audits have highlighted continued non-compliance by schools and a general lack of awareness of the requirement to undertake ESI checks prior to making local payments to individuals. **This is not acceptable.**

I would like to draw your attention to the following actions which must be undertaken promptly if not already completed:

- all relevant staff within the school must be made aware of the requirements
- check that the school's local procedures include the requirements 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 'self-employed') to ensure that the requirements set out in LMS Doc 2015/04 (and repeated below) are being met in each case

**Any fines and 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.**

Audit Services will be undertaking further audits of schools where payments to individuals will feature. If non-compliance continues to be an issue then the local authority will consider whether a Notice of Financial Concern should be issued to individual schools.

#### LMS Document 2015/04: main requirements regarding payment for work done

The main points from LMS Doc 2015/04 are repeated below:

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 the individuals and the employers tax and National Insurance and also any penalties imposed by HM Revenue and Customs.*

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

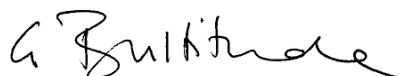
- An Employment Status Indicator Check (ESI) on the job (not the individual) being undertaken by these individuals is required. The on-line HMRC tool is available and should be completed for all individuals; [HM Revenue & Customs: Employment Status Indicator](#)
- Once completed the results supplied by the HMRC tool must be implemented.
  - If the results state that the job being undertaken is an employee 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 Schools Choice HR (0345 606 6046) or your HR service provider.
  - If the results are inconclusive then HMRC will need to be contacted for further advice; HRMC 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 paid through payroll (including individuals deemed 'self-employed') to ensure that these requirements are being met in each case.

Payments should only be made to individuals in line with the guidance above. This includes 'self-employed' individuals engaged by the school to undertake one-off services, for example visiting authors, consultants etc. If you have any queries please contact your HR business partner or your HR service provider in the first instance.

The correct treatment of taxation and national insurance is critical to avoid penalties, more onerous audits 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 other relevant staff to ensure that they comply with the requirements set out in this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Bultitude', written in a cursive style.

Gavin Bultitude  
Assistant Director Resources and Support