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**LMS Document
No. 2017/02**

FAO: Bursars and Business Managers of All Maintained Schools & PRU's

IMPORTANT: 'Off-Payroll' Payments to Individuals and Compliance with HMRC Rules

When engaging an individual to provide a service, Schools are required to determine the worker's employment status. The worker's employment status will affect the way tax and national insurance are calculated and whether or not the school has to pay the individual through the payroll. HMRC require employers, including schools, to be able to evidence that they have checked the self-employment status of the individual prior to paying them 'off-payroll'. To do this, schools should complete an Employment Status Indicator (ESI) check using the HMRC tool, and retain a copy of the results. If the results of the check indicate that their status is employed, not self-employed, then they **must** be paid through the payroll and will be subject to the statutory deductions as appropriate.

In November 2016 schools completed a survey regarding 'off-payroll' payments made to individuals for work done. The results of the survey were disappointing - 38% of schools which had engaged and paid individuals off-payroll in the last 12 months had not completed an ESI check to ascertain employment status, and a further 15% had only completed the check for some, but not all of the individuals. The main reason given for why the checks had not been undertaken was because they had been unaware of the need to complete the ESI checks. This is despite my writing to you twice in 2015 ([LMS Document 2015/04](#) and [LMS Document 2015/27](#)) regarding this matter.

This means that you may be wrongly paying individuals who should be treated as employees for Tax and NIC purposes, and subsequently HMRC could require the school to pay extra tax, NIC, interest and penalties.

HMRC has previously identified a number of failings to properly account for tax in Suffolk County Council, and have made it clear that this area should be periodically reviewed. They were also clear that Suffolk County Council would be fined if their rules were not followed in the future. **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.**

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.*

To ensure future compliance, Schools must:

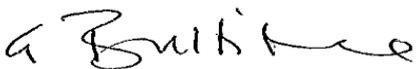
- *Ensure all relevant staff within the school are made aware of the HMRC requirements*
- *Ensure that the school's local procedures include these requirements (as set out in this document and LMS 2015/27)*
- *Carry out a review of all individuals currently providing a service to the school, but who are not paid through the payroll, to ensure that the HMRC requirements have been met. 'Individuals' could include consultants, visiting speakers, sports coach, handyman or music tuition. An ESI check should be completed and retained, and appropriate action taken if the results deem the worker's status as employed*
- ***Ensure that when engaging any individual in the future that an ESI check is undertaken and retained, and that depending on the result that appropriate action is taken. The on-line HMRC tool can be found at: [Employment Status Indicator - HM Revenue & Customs](#).***

As a result of questions raised during the survey exercise, further information and FAQs have been provided in Appendix A.

Audit Services will be revisiting this area in the future. 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. 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.

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



Gavin Bultitude
Assistant Director – Resources and Support

APPENDIX A

Question	Answer
What is an ESI?	<p>The Employment Status Indicator (ESI) is an HMRC tool which enables you to check the employment status of an individual - that is, whether they're employed or self-employed for tax, National Insurance contributions or VAT.</p> <p>The ESI tool is completely anonymous, so no personal details about the worker or engager are requested. The tool will ask you a series of questions about the working relationship between worker and engager. It will then provide you with an indication of the worker's employment status, which will then determine whether you should pay the worker through your payroll.</p>
How can I access the ESI tool?	<p>Further HMRC guidance and the link to the ESI tool can be found at: https://www.gov.uk/guidance/employment-status-indicator</p>
Why do we need to complete an ESI check?	<p>To comply with HMRC requirements, you must be able to evidence that you have determined the employment status of any individual you engage to provide services to the school. If an individual has been paid 'off-payroll' but HMRC determine that the working relationship is 'employed,' the school will be subject to paying additional tax, national insurance, interest and penalties.</p> <p>HMRC has previously identified non-compliance in SCC and issued a penalty notice. This was suspended subject to SCC ensuring that staff are made aware of the HMRC requirements, and regular reviews of this area by Audit Services.</p>
Who should complete the ESI?	<p>The engager (i.e. the school) not the individual should complete the ESI. HMRC will not be bound by the outcome if the individual has completed the ESI.</p>
The ESI result is that the worker is self-employed – now what do I do?	<p>HMRC advise that 'You can rely on the ESI outcome as evidence of a worker's status for tax/NICs/VAT purposes if both of the following apply:</p> <ul style="list-style-type: none"> - your answers to the ESI questions accurately reflect the terms and conditions under which the worker provides their

	<p>services</p> <ul style="list-style-type: none"> - the ESI has been completed by an engager or their authorised representative (if the tool has been completed by or on behalf of a worker the result is only indicative). <p>HMRC will only be bound by the ESI outcome if you can produce the ESI document, so you must download and print, or save, the PDF results from the summary of outcome page – this records the 14 digit ESI reference number, the outcome of the check, and an answer summary.</p> <p>A contract for service should be put in place – guidance should be sought from your HR service provider.</p>
The ESI result is that the worker is employed – now what do I do?	The individual must be set up and paid via the payroll.
The ESI result is inconclusive – now what do I do?	An opinion on status will have to be provided by a member of the HMRC Status Customer Service Team, who can be contacted on 0300 123 2326 - Option 1.
The worker says they are self-employed and are already registered with HMRC / they can provide a UTR (Unique Tax Reference)	An ESI must still be completed for the role they are to undertake. Just because a worker is self-employed in one role does not mean that they will be self-employed in the role you are offering.
The worker already provides us with another service / or also works for another school	An ESI must still be completed for the role you want them to undertake. The nature of the working relationship can differ from role to role or from school to school, so an ESI must be undertaken for each role.
We have several individuals carrying out the same work, do we have to complete an ESI for each of them?	If it is the same role that is being filled e.g. 2 after school football coaches, then only one ESI needs to be completed to determine the employment status for that role, and the results will apply to all workers who are carrying out that same role.
We are using a company; so do we have to complete an ESI?	If the supplier is a limited company (registered as such with Companies House), then currently an ESI check is not required. However, just because an invoice or quote is in the name of a company this does not mean that they are a limited company and you should check carefully. For example, a company called AB Training, or AB & Sons, may be a sole trader and not a limited

	company, and therefore an ESI is still required.
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If in any doubt, complete and retain an ESI check. If you have any queries regarding the results of the ESI, contact HMRC.