



Off-payroll working (IR35) Policy

Approved by the Trust Board: 12th February 2024

1 Introduction and scope

- 1.1 This document applies to all DDAT Schools and the Trust). It provides guidance on the requirements to comply with the legal obligation and compliance with Financial Regulations in relation to the engagement of the workforce and the off-payroll working rules. In order to do so Executive Headteachers / Headteachers / Head of School / CEO (can be delegated to a member of the Central Team) must formally assess the nature of its relationship with those undertaking work on its behalf, in order to discharge its duty to ensure that appropriate National Insurance (NI) and personal taxation is duly calculated and paid to HMRC.
- 1.2 The off-payroll working rules make sure that a worker (sometimes known as a contractor) pays broadly the same Income Tax and NI as an employee would. The rules apply to all public authorities and if the worker who provides services to a client (the Trust or school) through their own intermediary would have been an employee if they were providing their services directly to that client. The rules are also known as 'IR35'. The Trust / school is the client where it has commissioned and received services from a worker (even if that is through a third party, for example an agency).
- 1.3 If the Trust / school is receiving contracted out services from a third party, for example an outsourcing company, the Trust / school will not have to apply the off-payroll IR35 working rules. This will be the responsibility of the organisation supplying a worker's services.
- 1.4 These standards apply to all workers who are not employed under a contract of employment and subject to the Company's normal PAYE process. The Trust / school must decide the employment status of every worker who operates through their own intermediary, even if the worker has been provided through an agency.
- 1.5 This policy does not form part of any employee's contract of employment and the Trust may amend it at any time following consultation with recognised trade unions or as directed by the Board of Trustees.

2 Checking if the rules apply

- 2.1 The Trust / school (as a client who receives the service of a worker) must decide the employment status of all persons it engages. This process is delegated to the person with responsibility for the HR function within the school e.g. SBM/SBO or equivalent / central team.
- 2.2 Workers are engaged in two ways:
 - 2.2.1 **Directly engaged:** where the Trust / school engages directly with a self-employed person or intermediary/personal services company (also known as PSC or a limited company), it must fully assess the relationship and ensure it acts in compliance with IR35. This may involve deducting/collecting PAYE Tax and NI from any payment and paying this to HMRC.
 - 2.2.2 **Indirectly engaged:** where the intermediary is an agency, the agency is responsible for applying and carrying out IR35 checks but it is the responsibility of the Trust / school to inform the agency that

they are contracting with a public sector organisation and that they need to apply IR35. The Trust / school is also charged with ensuring that the agency is complying with IR35. The Trust / school may be held liable to pay any unpaid NI or Income Tax, resultant interest and may be given a fine if it fails in any of these duties.

- 2.3 The responsibility for deducting PAYE Income Tax and employee NI contributions, and paying employer NI contributions, is that of the Trust / school until the Trust / school tells the worker and the person or organisation contracted with of the Trusts / schools determination and the reasons for it.
- 2.4 Where working practices of the engagement change or a new contract with the worker is issued, the Trust / school will carry out a new check.
- 2.5 The off-payroll working rules apply on a contract-by-contract basis. A worker may have some contracts which are within the scope of off-payroll working rules and some which are not. A contract for the purpose of the off-payroll working rules is a written, verbal, or implied agreement between parties.
- 2.6 The 'employment status' of each worker is the key to making this decision. Depending on a range of factors workers will be deemed either to have employee status or contractor (non-employee) status. HMRC sets this aside the existence of the intermediary and looks at key features of the relationship between the engager and the worker.
- 2.7 There are three key features in determining employment status:
 - 2.7.1 Level of control exerted by the engager over the worker.
 - 2.7.2 Level of control exerted by the engager over the work undertaken.
 - 2.7.3 The input or output driven nature of the contractual arrangement control.

3 If the rules apply

- 3.1 If the rules apply, the client is responsible for determining the worker's employment status for PAYE tax and National Insurance, and they should produce a status determination statement (SDS) including the reasons for their determination.
- 3.2 A Status Determination Statement must:
 - be passed to the worker and the person or organisation you contract with
 - give your decision made on an engagement and the reasons for reaching it. Failure to do so will result in the Trust / school being responsible for the workers PAYE Income Tax and NI contributions.

4 Process

- 4.1 The worker / hirer or agency must complete the HMRC's employment status indicator tool. This can be found at <https://www.tax.service.gov.uk/guidance/check-employment-status-for-tax/start>. It is preferred that that the hirer completes the checks however, can

be the employee if required.

- 4.2 At the end of the process it will indicate the actions the Trust / school must take in order to comply.
- 4.3 The outcomes / actions of this test must be saved for future reference in accordance with section 6 of this policy and emailed or printed off and submitted to the relevant School Business Manager / School Business Officer / HR@DDAT for the Central Team to review the documentation and assess if a worker falls inside the scope of IR35.
- 4.4 The Trust / school will review the details and outcome / actions provided by the online assessment tool and deliberate on the following essential questions:
- Is the worker having to attend a specified location in order to undertake the work?
 - Is the worker inducted and/or trained by the engager? Is the start and end time of the working period specified?
 - Is the person required to carry out the work in certain way/house style?
 - Is someone employed supervising or overseeing the work they do?
 - Is the worker unable to simply pass the work to someone else to do?
 - Is the worker provided with a uniform?
 - Is the worker required to use equipment supplied by the engager?
 - Is the worker given access to a network and/or a computer?
 - Is the worker only able to work for one client at a time?
- 4.5 If the answer is Yes to any of the above then IR35 is likely to apply as there is significant specified input (place of work, times of work, days of work specified etc.) and control.
- 4.6 Provided the tool has been properly used, HMRC agree to stand by the outcome given.
- 4.7 **If the outcome falls outside of IR35** and the payment can be made gross (we do not have to deduct PAYE Income tax and NI) then any invoice can be processed in the normal way. Issue standard letter appendix b – letter d. Attach a copy of the assessment and outcome.
- 4.8 **If the outcome falls within IR35** and the payment must be paid net of taxation and national insurance, then refer to the Trusts / schools payroll provider in order to facilitate this.
- 4.9 A Status determination statement should be completed and signed by a relevant individual, on behalf of the school / Trust once a determination has been reached. It must then be shared with the worker and any necessary third parties.

5 Disagreement with the decision

- 5.1 Where a worker or seemed employer may disagree with the employment status determination the Trust / school has reached the worker should outline their reasons for the disagreement in writing to the Trust / school.

- 5.2 The Trust / school will consider the written reasons for the disagreement and respond within 45 days of receiving the notifications. Where the Trust / school determines the decision is correct, they will provide written reasons in response. Where the Trust / school agrees the original determination was incorrect a new determination will be provided and a date of when the new determination is valid from.

6 Records

- 6.1 Detailed records of all the employment status determinations made, including the reasons for the determination and fees paid will be kept for a period of 20 years (the period in which HMRC can review taxes).
- 6.2 A record of the contractors the Trust / school has engaged with, including names and addresses of both the contractor and their intermediary where appropriate will be kept.

7 Useful contact details

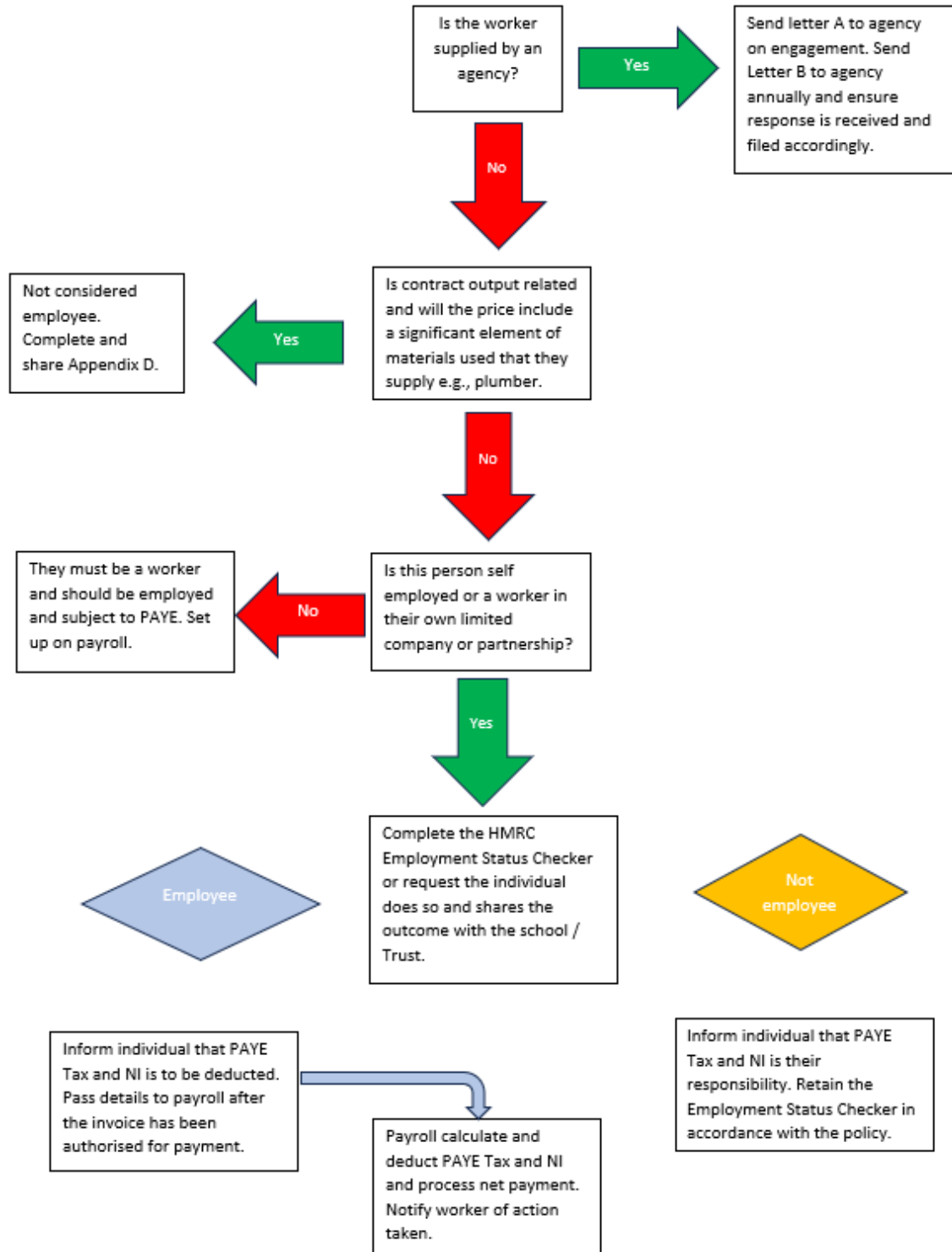
HMRC helpline number is 0300 1232326 for the following:

- help with enquiries about the off-payroll working rules
- a full run-through of the Check Employment Status for Tax (CEST) tool

[Off-payroll working \(IR35\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/off-payroll-working-ir35)

APPENDIX A

IR35 Decision Flow Chart



Appendix B IR35 – Letter A

[Name]

[Position]

[Address]

[Date]

Dear [Name]

IR35 Intermediaries Compliance – Public Sector Organisation

In accordance with our legal duty set out within the above legislation, I write to inform you that your organisation has been identified as a supplying agency to [School Name] / DDAT (the Trust) as a public sector organisation.

As a result of this, it is also my duty to inform you that compliance with IR35, relating to the correct assessment, deduction and payment to HMRC of taxation and national insurance, for all workers you supply to the Trust, rests with you as an agency. Please acknowledge receipt of this letter in writing and by return together with confirmation of your acceptance of its content.

Yours sincerely

Appendix C IR35 – letter B

[name]
[position]
[address]

[date]

Dear [name]

IR35 intermediaries compliance – public sector organisation

Further to my letter of [date] and your letter of response dated [date], I write to remind you that it is your legal duty as an agency, to comply with the requirements of IR35 with regard to the correct assessment, deduction and payment to HMRC of taxation and national insurance, for all workers you have supplied to [school] / DDAT (the Trust), in the tax year that ends [5th April ...].

Please acknowledge receipt of this letter in writing and by return together with confirmation of compliance with your legal duties as set out above.

Yours sincerely

APPENDIX D - Status determination statement

This template should be completed and signed by a relevant individual, on behalf of the school / Trust once a determination has been reached. It must then be shared with the worker and any necessary third parties. A completed copy should be given to the worker for reference and another completed copy should be kept by the school for its records.

Issued to:

Trust / School name:

Title of role being assessed:

Name of worker or contracted company:

Contract start date:

Contract end date:

Agency (if applicable):

Completed by (name and job role):

Date completed:

Determination: please tick the relevant box to reflect the school's determination

Role falls inside scope of IR35 Role falls outside scope of IR35

Please state the reasons for your determination below:

Upon signing the school confirms that reasonable care has been taken in reaching this determination.

Signed:

Date:

Print name:

If the worker wishes to dispute the result of this determination, they should contact the school / Trust via [email address]