# What is IR35?

This is legislation from the Government that is aimed at ensuring that individuals who work thrugh their own company or as individuals pay employment taxes in a similar was to employees if the relationship they have with the organisation is that of an employee. From April 2017, where the University (or one of its subsidiaries) engages a contractor through a Personal Service Company (PSC), the University will be responsible for assessing whether the off-payroll rules (often known as IR35) apply and will be liable and responsible for operating payroll and paying the correct taxes to HMRC if they do. The changes will apply to contracts entered into, or payments made, on or after 6 April 2017.

# What is a Personal Service Company (PSC)?

The generally accepted definition of a PSC is a limited company that typically has a sole director, the contractor, who owns most or all of the shares. The contractor’s PSC generally supplies professional services to end user clients, either directly or via an agency. The professional services are delivered by the contractor who is also the owner and director of the business.

# What does this mean for the University?

There are occasions when the University needs to bring in individuals to undertake work on a

short-term or one-off basis (e.g. to deliver a lecture on a specific topic, contribute expertise to a

particular project or undertake a service or task). This guidance does not apply where it is proposed from the outset that an individual should be engaged as a casual worker or an employee on a fixed term contract.

However, in situations where it is proposed to treat the individual as a service supplier and provide payment in respect of services provided against invoices, or through fees, the University is required to assess firstly whether HMRC rules on off payroll working in the public sector apply or whether such individuals should properly be classed as employees, in which case income tax and national insurance will need to be deducted. In cases where an employment relationship exists from an employment law perspective, the individual should be engaged as a casual worker or as an employee on a fixed term contract.

It is the responsibility of the person commissioning the work, with the support of Procurement and HR, to ensure that the appropriate employment status is established prior to engaging an individual to undertake work for the University.

The recruiting manager must complete the HMRC Employment Status Service tool, to establish under tax law whether the individual should be treated as employed or self employed, or the intermediaries off-payroll working rules apply.

# How do I work out if a worker or a service provider is a Personal Service Company and needs to be paid net of tax and National Insurance?

This status of the worker/ supplier can be checked by HMRC at;

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

# I have the assessment outcome – “the individual should be treated as a worker/employed” or “the intermediaries’ legislation applies” - payments will be subject to PAYE tax and NIC deductions by the University – what does this mean?

The commissioning manager should decide how the individual should be engaged depending on the assignment. The options are;

ENGAGE THEM AS A CASUAL WORKER FOR WORK LESS THAN 13 WEEKS IN DURATION - if the worker can be engaged as a Casual Worker then follow the Casual Worker process and engage with the worker via Eploy.

ENGAGE WITH THEM AS AN EMPLOYEE ON A FIXED TERM CONTRACT FOR WORK OVER 13 WEEKS IN DURATION – if the worker is deemed to be an employee then advice needs to be sort from HR regarding moving them to a Fixed Term contract through the normal recruitment procedures.

ENGAGE WITH THEM AS A SUPPLIER BUT WITH PAYE DEDUCTIONS - if the worker is supplier of services then they need to be set up on Proactis and receive a Purchase Order and submit invoices.

# Assessment outcome – “the individual should be treated as self-employed” or “the intermediaries’ legislation does not apply” - payments are not subject to PAYE tax and NIC deductions by the University

The commissioning manager can set the individual up as a supplier to the University.

Please complete a New Supplier Request form indicating that the individual should be treated as self-employed/ intermediaries’ legislation does not apply. The New Supplier Request form can be found at <http://www.birmingham.ac.uk/forms/finance/newsupplierform.aspx>

# What does this mean for the suppliers?

The supplier can also check their status on the HMRC website. Suppliers should be aware of this deductions change and whether it applies to them via their Accountant. Any suppliers that are deemed to be PSC’s will need to receive a Purchase Order from the University and submit their invoices which will be paid nett of tax and National Insurance liability.

# What does this mean for the member of university staff who is commissioning a worker to undertake some work for them as a supplier or PSC and they are not set up on Proactis?

Three steps are to be undertaken;

* Complete a New Supplier Set Up Request if the supplier/ worker
* Indicate if the supplier is a personal service company from the HMRC questionnaire in the notes field on the Supplier Set Up form
* The supplier/ worker will be set up on Proactis and you will be notified when this is done

If the HMRC Employment Status Service tool is unable to provide a definitive outcome, the manager

should contact the HMRC helpline for further advice either by phone on 0300 123 2326, or by email at ir35@hmrc.gov.uk If the worker/ supplier is unhappy with the outcome of the assessment they will need to contact HMRC. The commissioning manager should proceed with the engagement in accordance with our assessment outcome.

# How do I engage/ place a Purchase Order to a Personal Service Company(PSC)?

Firstly follow the University’s Procurement rules regarding engaging with suppliers of services around the need to use a contracted supplier or framework, obtain quotations or single source approval. Once this stage is complete check with your College or Department Finance Team if the individual or company is set up on Proactis. Then submit your request to raise a Purchase Order in the normal way. If the supplier is not on Proactis then the PSC needs to be set up as a supplier to the University so please complete a New Supplier Request form which can be found at <http://www.birmingham.ac.uk/forms/finance/newsupplierform.aspx>

To check if the company/ worker is a PSC complete the HMRC questionnaire and if the result is that the worker/supplier is a personal service company and is subject to tax and National Insurance through PAYE please indicate this on the New Supplier Set Up request form. The supplier will then be set up with the suffix PSC on their supplier ID number.

A purchase order can then be raised to the supplier and the supplier can commence engagement. The supplier will then submit an invoice at the end of the work. The purchase order must be goods receipted to confirm that the order is complete and the invoice can then be processed for payment on Proactis.

# Do agency workers fall under this?

There is a requirement to assess the employment status of agency workers who are supplying

services through their own limited company, personal service company (PSC) or partnership.

Due to the nature of our contract with the recruitment agencies (i.e. to supply temporary workers) our assessment is that the intermediaries’ legislation off-payroll working rules will apply. It is then the responsibility of the temporary recruitment agency to ensure PAYE deductions are made.

Invoices from the agency will be paid through the normal procedures. For advice on agencies please contact Procurement at ADM-SupplierReq@adf.bham.ac.uk

# What about workers who we currently pay on Self Employment Claim forms via Payroll?

These workers’ status needs to be checked at <https://www.gov.uk/guidance/check-employment-status-for-tax> and the appropriate Supplier Set Up procedure followed. The commissioning manager needs to determine the status of the worker as they know what work they are asking the worker to undertake and the relationship the worker will have with the University. The Self Employment Claim form should not be used for payments after 1st August 2017 but there will be a transition period during August and September to accept Self Employment Claim forms in to Payroll by 11th of the month to enable payments to continue. During this time please submit supplier set up requests to set up the workers you will then be using in September and onwards.

# Does this apply to overseas workers as well as those based in the UK?

Yes the process is the same for UK and Overseas workers they will need to be set up as suppliers to the University, receive a Purchase Order and submit an invoice for payment on completion of the work or at the agreed billing stages.

# The worker is based overseas and is undertaking all the work overseas how do I pay them?

The worker will need to be set up as a supplier to the university and a purchase order raised so that the worker can submit an invoice to request payment. As they are based overseas and are working overseas they are not subject to UK tax and NI.

# Does the worker need to state their UTR (Unique Tax Payer Reference) on their invoice?

No

# Do I need to undertake a Right to Work checks on the workers who will be suppliers of their services to the University?

No, there is no need to carry out Right To Work checks as these individuals are working as suppliers to the University and not employees.

# What information does a supplier need to include on their invoice?

The workers accountant should be able to advise what information needs to be included but as a bare minimum the information the University will require is;

Name and Address of the Supplier

Date of Invoice

Invoice number

University of Birmingham Purchase Order number

Description of work undertaken

Value and VAT breakdown if applicable

Supplier VAT number if applicable

Supplier Bank Details

# How do I make payment to an External Examiner of Lower degrees/ Undergraduate?

These will continue to be paid via EPLOY.

# How do I make payment to an External Examiner of Higher degrees/ Postgraduate and or Post Graduate Research degrees?

These are paid via the completion of a FIN105 Payment Request. This form enables a gross payment to an individual as per the HMRC rules around payments to External Examiners of Higher Degrees. The FIN105 needs to be completed with the workers details and workers bank details and a description of the work undertaken. The completed FIN105 forms need to be sent to Accounts Payable to be processed for payment. Guidance on how to complete these forms can be found at; <https://intranet.birmingham.ac.uk/finance/documents/staff/How-to-complete-a-FIN105-to-make-payment-to-an-External-Examiner-of-PG-Degrees.docx>

# What do I do if I need to pay an External Examiner who undertakes both Undergraduate AND Postgraduate examining?

The Undergraduate element needs to be paid via EPLOY and the post graduate element needs to be paid on a FIN105.

# EXAMPLE - One off lectures - I have an individual who comes in and gives a lecture on a specialist subject each term. They don’t have an office, or a UoB phone or email address. How do I pay them?

These would be set up as a supplier and a purchase order would be raised to them and they would submit an invoice for payment on completion of the lecture. They would not be a PSC as they will likely perform this service at other institutions or have employment elsewhere.

# EXAMPLE - I have the need to use the services of a specialist individual who tunes/ repairs/ maintain a specialist piece of equipment. How do I pay them?

These would be set up as a supplier and a purchase order would be raised to them and they would submit an invoice for payment on completion of the work. Consider raising a single Purchase Order at the start of term or even financial year with an estimate of the spend and the supplier can then quote the same purchase order on their invoices throughout the year.

# EXAMPLE - I have a need to get a visiting lecturer in for 10 weeks to cover teaching. How do I pay them?

These would be set up on EPLOY and an assignment sent to them for the 10 week working period.

# EXAMPLE – I have someone who supervises students on a distanced learning programme. They undertake this work completely abroad and they are resident in the country they are working in. They do not have a UoB phone number or email address. How do I pay them?

These would be set up as a supplier and a purchase order would be raised to them and they would submit an invoice for payment on completion of the supervision.

# EXAMPLE – I have someone who visits campus and delivers a day long workshop. The worker attends campus, delivers the workshop and departs. The worker may or may not return later in the year to deliver more workshops. How do I pay this worker?

These would be set up as a supplier and a purchase order would be raised to them and they would submit an invoice for payment on completion of the supervision.

# EXAMPLE – I need a consultant to come in an assist on the preparation of a research bid/ give specialist advice in the capacity of a consultant. How do I pay them?

These would be set up as a supplier and a purchase order would be raised to them and they would submit an invoice for payment on completion of the supervision.