

Appendix O: Financial Regulations

IR35 Legislation– Off Payroll Workers

Purpose

The Our Lady of Lourdes Catholic MAC strives to fully comply with its legal obligations in relation to the engagement of its workforce. In order to do so it 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 and personal taxation is duly calculated and paid to HMRC.

Detail IR35

Intermediaries legislation came into force on 6th April 2017 and is the strengthening of existing legislation. It applies to all public sector organisations and it changes who is responsible for determining if IR35 applies. Previously it was the individual (self-employed) or the workers' own company (often an individual setting themselves up as a limited company) that held this responsibility and for assessing if IR35 applied and for paying any tax and NI due. The revised legislation now switches the responsibility and accountability very clearly to the public sector organisation. In our case Our Lady of Lourdes Catholic MAC.

Over the last few years there has been a significant growth in the number of workers who are in effect self-employed and undertake work for public sector organisations such as schools and academies. Many of these workers are supplied through an intermediary. An intermediary can be an agency; a limited company (owned by the individual engaged in the work; a majority shareholder or director of a company or a partner in a partnership). Sometimes these organisations are referred to as a Personal Services Company or PSC.

On first examination they may appear to be employees of that supplying agency or other organisation but in reality, they can often be self-employed workers. In certain circumstances these workers are deemed by HMRC to actually be 'disguised employees' of the engaging organisation for whom the work is done. So, the relationship is that of employer/employee and not, as it may first appear, client/contractor

The Our Lady of Lourdes Catholic MAC must clarify the position of all persons it engages and comply with IR35 if it applies. Workers are engaged in two ways:

Directly Engaged

Where a Our Lady of Lourdes Catholic MAC academy engages directly with a self-employed person or intermediary/PSC. Our Lady of Lourdes Catholic MAC must fully assess the relationship and ensure it acts in compliance with IR35. This may involve deducting/collecting tax and NI from any payment and paying this to HMRC.

Indirectly Engaged

This is where the intermediary is an agency. In these circumstances the agency is responsible for applying and carrying out IR35 but it is the responsibility of Our Lady of Lourdes Catholic MAC to inform the agency that they are contracting with a public sector organisation and that they need to apply IR35. Our Lady of Lourdes Catholic MAC is also charged with ensuring that the agency is complying with IR35 and applying the rules correctly.

Our Lady of Lourdes Catholic MAC may be held liable to pay any unpaid NI or tax, resultant interest and may be given a fine if it fails in any of these duties. HMRC can review taxes for 20 years from the work or for an individual. Complete records must be retained on file for this period.

How to decide if IR35 applies?

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.

If the worker is an employee of a company which has a number of employees and operates a payroll under PAYE, then IR35 will not apply. The relationship with this organisation is clearly that of a client/contractor.

Where the above paragraph does not apply, full assessment of employment status is required. Simply having a contract or ordering/invoicing takes place with an intermediary to deliver some work does not define the employment status as that of client/contractor. HMRC sets this aside the existence of the intermediary and looks at key features of the relationship between the engager and the worker.

There are three key features in determining employment status:

1. Level of control exerted by the engager over the worker
2. Level of control exerted by the engager over the work undertaken.
3. The input or output driven nature of the contractual arrangement

Control

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?

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.

Output Driven

Preference should be given, wherever possible, in any future engagement, to contracts that are purely output driven. An example of an output driven contract would be:

A specified price to deliver say a data analysis report by a specified date. No person is named to undertake the work. They are working from home or their own premises, although they may attend a site for a meeting or to gather some data. They can choose what time they work. They use their own computer or equipment. They can switch from one client work to another at any point.

There is no significant level of control and the contract output driven i.e. to supply the report. There is no input requirement such as set hours etc. In this case IR35 compliance will not be the responsibility of Our Lady of Lourdes Catholic MAC.

Please use the flow chart attached as **appendix A**

How to Assess Employment Status

Assessing 'employment status' is therefore the key to determining if IR35 applies.

It is imperative that HMRC's Employment Status Indicator tool is used in all cases. This can be found at <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>.

The outcomes of this test must be printed off, held on file and FOLLOWED

Provided the online assessment tool has been properly used, HMRC agree to stand by the outcome given.

At the end of the process the checker will decide employment status and will set out below this the actions Our Lady of Lourdes Catholic MAC must take in order to comply.

If the outcome is that the payment can made gross (we do not have to deduct tax and NI) then any invoice can be processed in the normal way through the finance software SAGE. Issue standard letter **Appendix B – Letter D**. Attach a copy of the assessment and outcome.

If the outcome is that the payment must paid net of taxation and National Insurance, then:

- Issue Appendix B Letter C to the individual together with a copy of the assessment.
- Enclose with the above a copy of Appendix C HMRC Starter Form
- Once the duly completed HMRC Starter Form is received, forward a copy of it to HR@Lourdesmac.org.uk
- **Only when all three of the above steps have been completed can an invoice be paid**. The original invoice must be manually endorsed with 'Authorised to pay – IR35 Applies and payment must be net'. This should be in large bold writing diagonally across the invoice. The endorsement must be signed by an appropriately authorised signatory. The duly authorised and signed invoice must then be scanned and forwarded via email to the HR@lourdesmac.org.uk for payment.
- **Be aware that only one pay run will be conducted monthly. The cut-off date for receipt by HR Transactions is 7th of each month.**
- Retain a copy of all paperwork and original invoices on file locally for reference and audit purposes.

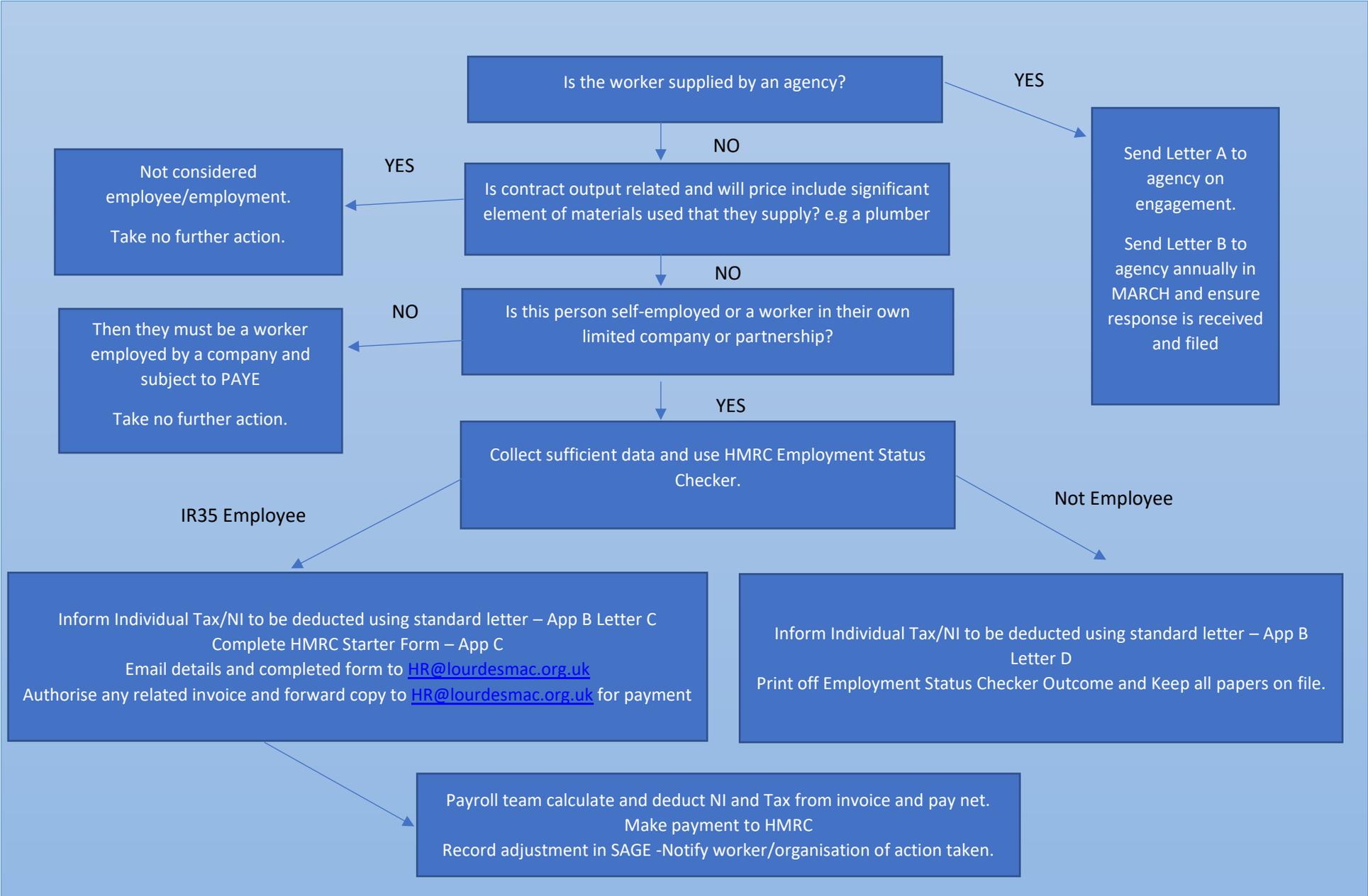
Scope

The Chief Finance Officer is responsible for ensuring compliance with the Financial Regulations. This procedure applies to all activities within the Our Lady of Lourdes Catholic MAC. These standards apply to all workers who are not employed under a contract of employment and subject to the Company's normal PAYE process.

Appendices:

Appendix A	Decision flow chart
Appendix B	Letter A Letter B Letter C Letter D
Appendix C	HMRC Starter Form

**Appendix A – Financial Regulations
IR35 Decision Flow Chart**



Appendix B – Financial Regulations
IR35 – Letter A

[Name]
[Position]
[Address]
[Address]
[Address]
[Post Code]

[Date]

Dear

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 Our Lady of Lourdes Multi Academy Company and that Our Lady of Lourdes Multi Academy Company is 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 Our Lady of Lourdes Multi Academy Company, 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

[Name – Title]

**Appendix B – Financial Regulations
IR35 – Letter B**

[Name]
[Position]
[Address]
[Address]
[Address]
[Post Code]

[Date]

Dear

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 Our Lady of Lourdes Multi Academy Company, 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

[Name – Title]

Appendix B – Financial Regulations
IR35 – Letter C

[Name]
[Position]
[Address]
[Address]
[Address]
[Post Code]

[Date]

Dear

IR35 Intermediaries Compliance – Public Sector Organisation

In accordance with our legal duty set out within the above legislation, which came into force on 6th April 2017, I write to inform you that you have been identified as supplying a service to Our Lady of Lourdes Multi Academy Company and that Our Lady of Lourdes Multi Academy Company is a public sector organisation.

The school has used the HMRC tool <https://www.tax.service.gov.uk/check-employment-status-fortax/setup>, as is required of us, to determine your off-payroll worker status. A copy of this assessment is attached, which sets out the questions asked, our responses and the outcome judgement given. If you feel that we have answered any of the questions incorrectly then please inform me in writing without delay.

As you can see, the online tool has determined that the Our Lady of Lourdes Multi Academy Company is responsible for deducting appropriate income tax and national insurance; and for passing this to HMRC directly. This means that for every invoice you present to the school, payment will not be made in full but will be made net of these deductions.

As a consequence of the above you will need to ensure that you keep accurate records for your use in any tax returns that you may subsequently complete, so as to ensure that you can demonstrate that income tax and national insurance has been paid on such earnings.

Please complete the form attached and return it to the school as soon as possible so that prompt payment of your invoice, tax and national insurance can be made.

Yours sincerely

[Name – Title]

**Appendix B – Financial Regulations
IR35 – Letter D**

[Name]
[Position]
[Address]
[Address]
[Address]
[Post Code]

[Date]

Dear

IR35 Intermediaries Compliance – Public Sector Organisation

In accordance with our legal duty set out within the above legislation, which came into force on 6th April 2017, I write to inform you that you have been identified as a supplying a service to Our Lady of Lourdes Multi Academy Company and that Our Lady of Lourdes Multi Academy Company is a public sector organisation.

The school has used the HMRC tool <https://www.tax.service.gov.uk/check-employment-status-fortax/setup> , as is required of us, to determine your off-payroll worker status. A copy of this assessment is attached, which sets out the questions asked, our responses and the outcome judgement given. If you feel that we have answered any of the questions incorrectly then please inform me in writing without delay.

As you can see, the online tool has determined that the Our Lady of Lourdes Multi Academy Company is not considered to be your employer under IR35 and is not responsible for deducting income tax and national insurance at source from payments to you. **This means that your invoices will be paid in full and that you remain legally responsible for any and all income tax and national insurance payments that may relate to your income from the payment or payments made.** This position will remain in force until we notify you of any change.

Yours sincerely

[Name – Title]

**Appendix C – Financial Regulations IR35HMRC
Starter Checklist**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783186/Starter checklist for 2019 to 2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783186/Starter_checklist_for_2019_to_2020.pdf)