



## Public Sector Intermediaries Regulations (IR35) guidance for Schools – revised 3 March 2017

From 6 April 2017 there is a new duty on the public sector, including schools, affecting tax and NI liabilities where an individual(s) who completes work for schools and is paid by invoice (not via payroll) could otherwise be considered as an employee. This could be through;

- An individual's own company
- A personal service company (PSC), or other intermediary

**All schools who currently engage any off payroll workers (e.g. sports coaches, tutors) will need to take urgent action in order to comply with the legislation.**

This is a live document which will be amended as further guidance is made available nationally. This document was updated on 3 March 2017 to replace the previous interim guidance.

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## Overview

Public Sector Intermediaries legislation ensures that workers who work through their own company or via an intermediary (agency, umbrella business, personal service company etc.) pay employment tax and national insurance in a similar way to employees. This applies where the worker would be considered to be an employee if it were not for the intermediary.

Workers who operate in this way are referred to as 'off-payroll workers'. The criteria for determining this decision is not straightforward and involves an assessment of whether the worker can substitute their labour, the level of control they have over their work, financial risk to the worker and business structure in which they work. On 2 March 2017, the Government published its long awaited online digital tool which can be used to determine whether individual arrangements are in scope. The tool is available at <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

This document replaces the interim guidance published by NYCC in February (prior to the publication of the online digital tool) and includes advice to help you understand the impact in your school, who is potentially in scope, action you need to take and provides helpful options and template letters to assist you in your preparation.

## What type of arrangements does this affect?

Whilst not exhaustive, for schools, we anticipate that this will affect current off payroll arrangements for:

- agency workers
- supply teachers
- consultants / interims
- sports coaches / specialists
- tutors (e.g. music)
- specialist leaders

It is the schools responsibility to determine whether a worker is affected by this legislation and it is highly recommended that a record of the decision making process is retained. Determinations must be made at individual level and in relation to the particular work being undertaken as the assessment is very specific to the individual circumstances of the worker and arrangement.

If the worker is deemed to be affected it is the schools responsibility to be compliant by ensuring the worker has relevant tax and NI deductions. The worker may consider themselves out of scope of the legislation but it is the schools duty to determine this, not the workers. If you need further advice please contact the Schools HR Advisory Service on 01609 798343 or email; [schoolshradvisory@northyorks.gov.uk](mailto:schoolshradvisory@northyorks.gov.uk)

## What do I need to do before April 2017?

Prior to April 2017 (and as early as possible) your school needs to take the following actions:

- **Identify any workers** that may be in scope of this legislation
- **Use the Government's online digital tool to assess each worker / engagement.** Where a worker undertakes more than one type of work, each engagement will need to be assessed.
- **Print a copy** of the outcome
- If the outcome is that the engagement should be classed as 'employed' **consider the different ways of engaging this workers services from April 2017**, see [What options are available to schools who need to engage workers in an alternative way from April 2017?](#) If your school continues to engage with workers in the present manner this will contravene HMRC regulations, please refer to section on '[What does this mean for schools?](#)'
- If the outcome is that the intermediaries legislation does not apply to this engagement , you can continue with your current arrangements – we strongly advise that you retain a printed copy of the outcome for your records to evidence the decision.
- Where alternative arrangements need to be put in place, we recommend you **have a written record**, see [template letter 4b](#), advising the worker that you consider they are in scope of the legislation and need to discuss this further with them.

Clearly the sooner you undertake this assessment, the sooner you can assess the potential impact on the service delivery and / or cost. Where the determination made using the online tool is that the worker is employed for the purpose of tax, it will be necessary to discuss alternative arrangements with them which they will need time to consider (see Options below).

You also need to identify all agencies you work with and if they currently provide an agency worker to you who is likely to be contracted beyond April 6<sup>th</sup> 2017, or you will be engaging with them to provide an agency worker for you any time after April 6<sup>th</sup> 2017 you have a duty to inform the agency that they are contracting with a public sector body within these rules.

You may choose to do this every time you seek to engage an agency worker, please see template letter in [Appendix 4a](#).

OR

If you regularly use the same agency for provision of agency workers you may choose to inform the agency upfront that all assignments for which you process payment for from 6<sup>th</sup> April 2017 will fall within the public sector intermediaries rules and therefore

request an amend to current terms and conditions to include the agency suppliers responsibility to pay the employer and employee tax and NI contributions.

Your school will also be required to check that the agency operates the rules correctly therefore it is recommended that you contact them following submission of your letter to confirm that it has been received and the relevant actions taken. If you experience any problems please contact the Schools' HR Team for advice.

Please see [Appendix 3 Decision Tree - Public Sector Intermediaries](#)

## **Who is not affected?**

This change does not affect:

- workers who only provide their services to private sector organisations
- fully contracted - out services delivered in the public sector (i.e. outsourcing of the cleaning service for a school to a cleaning service company; school are not involved in the hiring decisions, the cleaning company is privately owned, the company decides on the worker who performs the duties, the company provide materials to perform the service, the company's performance is judged on the cleaning outputs).
- where an agency directly employs a worker and it operates PAYE and NICs on earnings it pays to the worker
- The online digital tool determines that the intermediaries legislation does not apply to this assignment

## **What does this mean for schools?**

If the online tool determines that an engagement is employment for tax purposes, then they will need to have their tax and NI deducted at source, via PAYE payroll. Employer NI contributions will also need to be paid by the school.

Failing to identify workers who are determined to be employees through use of the online digital tool and/or continuing to pay workers off-payroll, without deductions nor payment of employer NI contributions will contravene HMRC rules, and may result in action being taken accordingly by HMRC. This will involve the school paying the unpaid employee and employer tax and NI, interest in the unpaid amount, and non-compliance fines which can be an additional 40%.

Clearly, any proposed changes to arrangements will need to be discussed and agreed with individual workers. Schools need to plan for the possibility of some workers deemed to be within scope, no longer wishing to deliver a service for whatever reason – for example because direct employment may result in a reduction in their take home payment.

## What options are available to schools who need to engage workers in an alternative way from April 2017?

There are several options for you to consider.

### **Option 1: Direct employment; Relief, Fixed Term or Permanent contract**

You could employ the individual directly onto your school establishment in the normal way.

<b>Benefits</b>	<b>Risks</b>
Fully compliant with IR35	Workers not willing to work on this basis
Possible cost saving vs agency workers	Employment clearances take time and must be undertaken prior to engagement
Greater commitment/loyalty	Role subject to Job Evaluation affecting the amount that can be paid
	Entitlement to employment rights
	Workers not willing to work for the pay rate

Remember all employees must be paid the appropriate grade for the job supported by Job Evaluation, to meet equal pay regulations. We expect that in many circumstances, an existing [Job Description](#) / Person Specification (JD/PS) can be used, where not available the new JD/PS will need to progress through [Job Evaluation](#) to determine the appropriate grade for the role.

### **Option 2: Agency – engage via an agency**

Where the agency is the employer, who provide workers to the school, generally on a short-term basis.

<b>Benefits</b>	<b>Risks</b>
Fully compliant with IR35 as agency would have employer responsibilities	Higher costs with agency %age added
Tax/NI administrative burden removed for school	Workers unwilling to work through an agency
Reduced employment rights up to 12 weeks (agency worker regulations)	Agency unable to supply required talent

Agency will have resourced the talent and undertaken necessary employment checks	Workers more likely to leave before engagement period ends (commitment/loyalty)
	Entitlement to additional employment rights once retained for over 12 weeks

Important Note: if using agencies the School must ensure that the agency supplier/s are paying the associated tax/NI. Please see next section.

### **Option 3: Direct payment for service by parents**

If the activity is being delivered as an extra-curricular activity e.g. an after-school sports or music club, an option could be for parents to pay the coach/tutor directly without this going via the school.

<b>Benefits</b>	<b>Risks</b>
Not in scope of IR35 as the arrangement would be a private service between parents and the Coach/Worker	Workers not willing to work on this basis
Tax/NI administrative burden removed for school	More of an administration burden for worker/parents
	May not be viable for schools that gain subsidies for activities through another organisation e.g. Sport England or through Governing Body

### **Option 4: Agreement with a host school willing to second workers to partner schools**

Drawing on your network to share expertise. In this case the host school are the employer, and therefore are responsible for PAYE, and charge the partner school the associated costs for the secondment arrangements.

School Partnership/Secondments: As the host school is processing PAYE for all work completed across the partner schools, the partner school provide payment to the host school in full (i.e. the partner school do not need to process PAYE directly).

<b>Benefits</b>	<b>Risks</b>
Fully compliant with IR35	Availability when needed (host school withdraws)
Employed by host school	Costs competitive

No pre-employment checks as already completed by host school	Reduced choice
Possibility of secondment	
Reduced permanent establishment	

Should your school have explored and exhausted all of the options above and these are not viable please contact [schoolshradvisory@northyorks.gov.uk](mailto:schoolshradvisory@northyorks.gov.uk) for advice.

## Agency Workers (including Supply Teachers)

The type of contract and status under which agency workers engage with their agency supplier varies, as does their treatment of tax. Under the new rules the public authority must inform the agency supplier (intermediary) that the assignment/s fall under the intermediary regulations and therefore the employer and employee tax and NI contributions must be paid by the agency supplier. This instruction can form part of terms and conditions or be in the form of written instruction to the agency supplier.

The current cost structures you have with agency suppliers should incorporate the cost of tax/ni and you should **not** see an increase in agency supply costs. If the agency suppliers seek higher costs to compensate for this change we recommend that you firmly retain current costs structures. Longer term we expect that the agency workers may either seek permanent work or seek higher paid assignments to compensate them for the payment of higher tax.

As the fee-payer, the Agency's accounts department will need to ensure PAYE and NICs to be deducted from payments to agency supply teachers who fall in scope of the legislation. The employment will not be subject to pension enrolment or pay-rolled benefits arrangements. The agency will pay secondary NICs related to the engagement, as it does for directly employed people.

Remember the rules are applicable for all payments from 6 April, and therefore it is likely that agency assignments from early/mid-March will start to fall under the new obligations, where payment of invoices fall into April.

\*\* Please see section; [What do I need to do before April 2017?](#) to identify your responsibilities in relation to agencies and the legislation. [Appendix 4a](#) provides a template notification letter to send to the agency supplier.

Where schools directly engage supply staff including teachers, who are on payroll and this direct payment is made to the worker and therefore payment/deduction of employer/employee tax and NI is made at source, these do not fall under the IR35 rules; they are employed directly by the school.

## **What else do schools need to be aware of?**

- Any payment for engagements deemed to be employment and delivered during the 2016/17 tax year, but paid after that period will fall under IR35 rules – it's not when the work is done, it is when it's paid that counts. E.g. music tutor invoices the school on 10<sup>th</sup> April for the 8 tutorials they delivered in March 2017; whilst the work was complete before the 6 April, the payment of the invoice is processed after and hence the new rules apply and the invoice (net of VAT) must be paid via payroll deducting associated tax/NI at source. Please contact Schools HR to gain further guidance on Payroll instructions. Due to employment related liabilities, maintained schools will need to ensure future engagements determined to be in scope are progressed in line with one of the options outlined in this guidance.
- Off-payroll working in the public sector does not create any new pension obligations. The worker continues to be able to keep up any pension they have with their intermediary and to continue to claim tax relief there

## **Where can I find additional support and guidance?**

<https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/>

<https://www.gov.uk/guidance/ir35-find-out-if-it-applies>

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

NYCC Schools HR Advisory Service; 01609 798343 or email;  
[schoolshradvisory@northyorks.gov.uk](mailto:schoolshradvisory@northyorks.gov.uk)

## **Appendix 1**

### **Example scenarios**

#### **Sewing Club Sally**

Sally is paid by Bilton Abbey primary school to lead a 'sewing club' after school on a Wednesday. Sally brings her own expensive machinery with her and is personally responsible for any faults / repairs.

Sally has a regular pattern of work and is required to attend every Tuesday afternoon. If for any reason she cannot attend she does not send a substitute and the sewing club is cancelled.

The school supplies her with material (or she brings her own and charges the school for it as necessary).

Sally decides what she delivers in the sessions and the school do not specifically ask to see any planning or formally monitor these sessions.

Sally invoices the school for her services on a monthly basis and payment is made direct from the school account (i.e. not on payroll)

#### **Outcome:**

The school accesses the online tool which determines that Sally is self-employed for the purpose of tax.

Although she is required to attend on set days and cannot substitute herself with another person when she is unavailable, the school has a low level of control over her work and Sally has a high level of financial risk in terms of machinery. Sally is not likely to fall under IR35.

### Sports Coach Simon

Simon is a Sports coach who owns a Sports' company with 3 employees. Simon's company comes into school every Monday and Wednesday afternoon to deliver PE sessions to children. Another member of staff in the school is responsible for the planning of the PE sessions and an overall plan is provided to Simon but he has the discretion to decide how that plan is delivered and the content of his sessions.

Simon is generally the person who attends but, if for any reason he can't he is able to substitute by sending a pre-approved person in his place. That person is paid by Simon's company for the work they undertake.

The agreement is that Simon's club provides all required materials, some of which are quite bulky and require a van for transport. The company is responsible for the upkeep of the materials.

Simon's company provides similar services to a number of schools in the area.

### Outcome:

The school accesses the online tool which determines that Simon is self-employed and is not likely to fall in scope of IR35.

Part of the rationale is that Simon carries a heavy financial risk in terms of the materials supplied and the transport required for the equipment over and above normal travel to and from the place of work.

Simon can also substitute his labour.

### Sports Coach Sinek

Sinek is a sports coach who works for a local Secondary School. He has worked there for the last 5 years and works two days per week.

Sinek is required to deliver sessions against the overall curriculum plan produced by the PE coordinator and his sessions are monitored by the coordinator. Sinek has the discretion to decide how his sessions are planned.

Sinek had a period of absence last year and the school covered the absence with supply from an agency.

Sinek does not bring any of his own materials and the school are responsible for any associated insurances.

### Outcome:

The school accesses the online tool which takes them through an extensive series of questions.

The tool determines that Sinek is an employee partly due to the lack of financial risk, the lack of ability to substitute and the fact that the school has a high level of control over the worker. He is therefore likely to be in scope of the regulations and the school need to engage his services in an alternative way.

### Supply Teacher Joan

Joan used to be employed as a teacher at St Helen's Primary School, she retired two years ago but the school asked her if she would be prepared to provide supply cover to cover staff absences. Joan agreed with the school that she would work as a supply teacher if needed and that she would invoice them for any work she did.

Joan has worked on this basis for the past 2 years. The school telephone her when they need her to come into school and they tell her which class she needs to teach and provide details of the curriculum/topic to be covered. Joan can decide how she delivers the lesson within the curriculum framework provided by the school.

Joan does not bring any of her own materials, the school are responsible for providing all stationary and resources for the lessons.

### Outcome:

The school accesses the online tool which takes them through an extensive series of questions.

The tool determines that Joan is an employee as there is a low indication of substitution and there is a medium indication of control over the worker. She is therefore likely to be in scope of the regulations and the school need to engage her services in an alternative way.

## Supply Teacher Sam

Sam is a primary school teacher who has recently moved to a new geographic area. He decides to sign up with an agency as a Supply Teacher until he finds permanent teaching work.

The work sourced for Sam is provided by the agency Top Teachers.

Top Teachers are contacted by Hillside Primary School who need a teacher for 3 weeks in June. Hillside Primary School provide Top Teachers with details about the classes the teacher will need to teach and the subject/curriculum they will need to cover. The teacher has freedom to plan the lesson content.

Top Teachers recommend Sam for this assignment.

During the final week of the assignment Sam has a personal family circumstance and cannot teach the final two days. He contacts the agency to inform them and they source another agency supply teacher for the school. Sam does not have to take responsibility for substituting his labour for the period he cannot attend.

## Outcome

The school accesses the online tool which determines that Sam, or any other supply teacher working under these conditions for Top Teachers, is an employee as there is a low indication of substitution and a medium indication of control over the worker.

The school need to inform the agency Top Teachers before they contract with them for the supply of the individual teacher, to notify them that this assignment falls in scope of the Public Sector Intermediaries legislation. Please refer to section '[Agency Workers \(including Supply Teachers\)](#)' and [What do I need to do before April 2017?](#) For further information.

### Consultant/Interim Head teacher Mark Williams

Mark Williams is a former Head teacher who resigned from his established role 7 years ago because he didn't wish to work full time. He was highly regarded by the Local Authority he worked for previously and a neighbouring authority.

Mark was approached by a School who were seeking an interim head teacher for a term until a new permanent head teacher could be appointed. The school asked him to work full time, based at the school for one term only. Mark committed to this work and he has the freedom to decide which priorities/work he needs to do on a daily basis, his ultimate task is to ensure the successful running of the school in line with LA Policies and Procedures.

If Mark is unwell and unable to attend work he is not entitled to send someone else in his absence. He invoices the school for his services on a monthly basis and payment is made direct from the school account (i.e. not on payroll)

### Outcome

The school accesses the Check Employment Status for Tax tool on [www.gov.uk](http://www.gov.uk) which determines Mark is an employee because there is a low indication of substitution, a medium indication of control over the worker and a low indication of business structure.

Mark is likely to be in scope of the regulations and the school need to engage his services in an alternative way. The school could seek to employ him directly on a temporary contract or hire his services through an agency.

## **Where can I find further worked examples?**

HM Revenue & Customs have reproduced a number of scenarios that have been developed to demonstrate what **public sector organisations** have to consider when faced with any of a range of situations outlined. They all involve the engagement of individuals who provide their services through their own Personal Services Company (PSC).

## **Appendix 2**

### **Frequently Asked Questions**

**Q. Could the same worker be completing work in one school and be considered in scope of the regulations and also be working in another school and not be in scope?**

A. Yes. Depending on the type of work and the way in which they carry out the work the worker could be in scope in one school and not in scope of the regulations in another. The online tool will help you determine whether they are considered to be an employee or not for the work they do in your school.

**Q. If we identify that a worker is in scope of the regulations and we wish to employ them directly on a relief contract do we have to advertise the position and follow due recruitment process?**

A. If the relationship with the worker has been established for some time and they have regularly been completing work for the school then there is no need to advertise the position, you are simply changing the type of contract through which they are engaged. However it is important that you gain employment clearances for the individual as you would in the normal way for a new employee (e.g. eligibility to work in the UK, references, medical questionnaire and DBS). If the type of work they are delivering is relatively new or has recently started then it is recommended that you advertise and follow due recruitment process and advertise the post.

**Q. Our school has an existing contract with a sports coach which runs until the end of 2017, the online tool indicates they are an 'employee'. Does our existing contract for the way we hire and pay them stand until the contract expires?**

A. No. The new regulations over-ride any existing contracts and if the tool indicates they are an 'employee' then you must consider the options and implement a new way of engaging them for all payments made for this contract from April 2017 to ensure you are compliant with the HMRC regulations.

**Q. Are Academies covered by the new regulations?**

A. Yes, any organisation that is on the list of public authority organisations covered by the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 are covered by the new regulations; this includes Academies.

**Q. What change is being introduced and why?**

A. Currently the off-payroll workers who provide services or labour to public sector bodies, such as schools, decide the route/mechanism under which they provide their labour and this affects the way in which tax is collected.

The new measures require the public sector body (i.e. school) to assess if the arrangement for engaging an 'off-payroll worker' falls under the new intermediaries legislation.

The measure also makes the public authority responsible for deduction and payment of the associated employment taxes and National Insurance Contributions (NICs) to HM Revenue and Customs (HMRC).

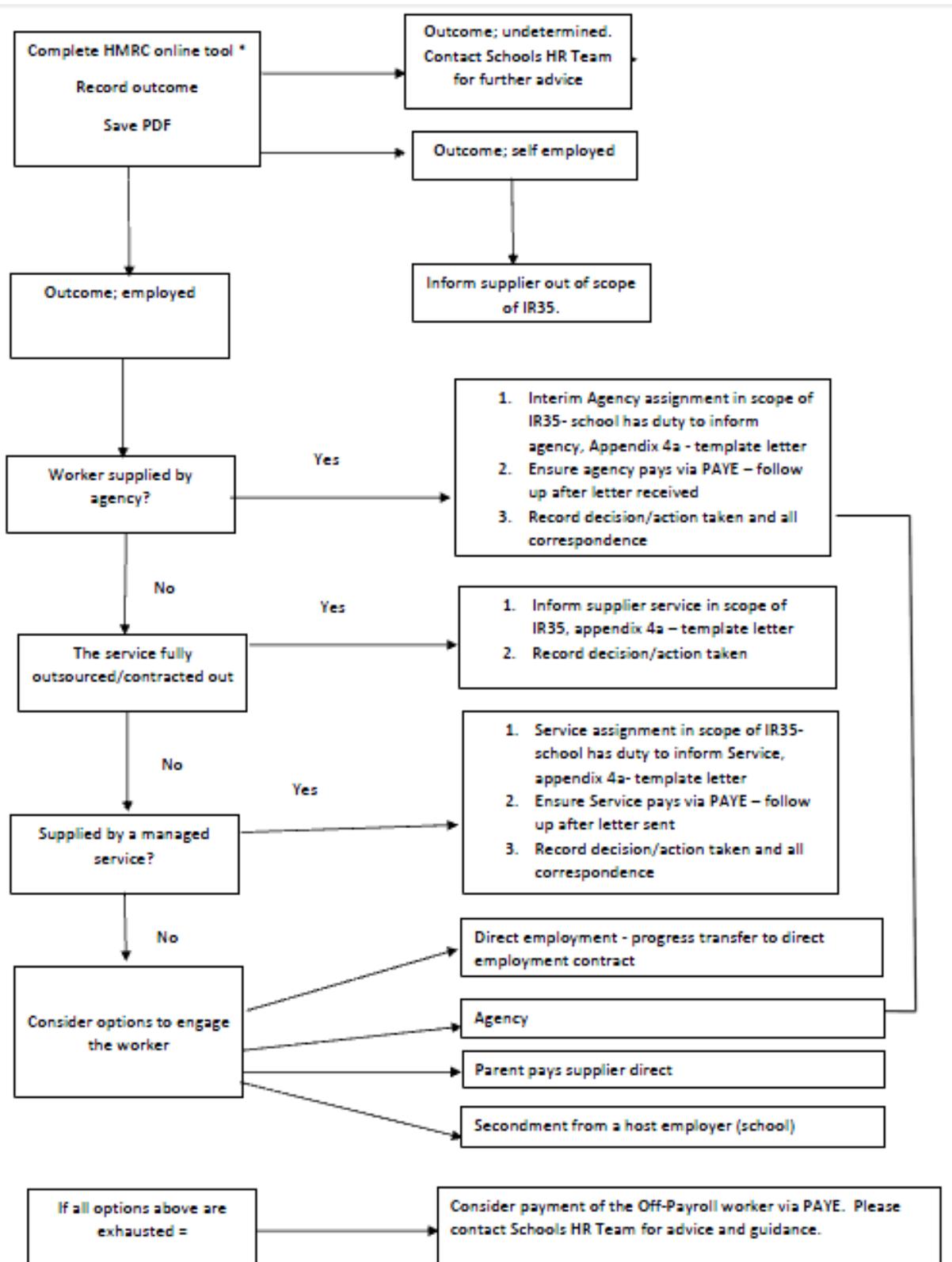
**Q. What is the reason for the change?**

A. The government have stated that these changes will make the tax system fairer for everybody. The public sector intermediaries' rules aim to tackle what the government calls 'disguised employment'. They expect the changes will make non-compliance (with tax/NI payments) that much harder by deducting at source.

**Q. What if the worker does not agree with our determination that they are in scope of the IR35 rules?**

A. If the worker questions your treatment of IR35, you must respond to this enquiry within 31 days providing information as to how you have reached your assessment. This could be for instance sending the worker a copy of the online tool outcome. Failure to do this will result in your school being liable to pay for the workers tax/NI. If the worker remains unsatisfied you should instruct them to take this up with HMRC directly; you are following HMRC's guidance and collecting taxes on their behalf. If the worker views some aspects of the assessment differently, for instance the amount of control they have, it is important that the assessment is made upon the reality of the situation.

**Appendix 3: Decision Tree - Public Sector Intermediaries\*** Currently Employment Status Indicator. In future it will be Employment Status Service assessment tool.



## **Appendix 4a – Draft letter to alert intermediary (or agency or third party) that IR35 off-payroll rules apply**

<Name>

<Address>

*[of intermediary, agency or third party]*

<Date>

Dear <Title> <Surname>

### **Intermediaries Regulations (IR35) - Off-payroll working changes from April 2017**

As you will be aware, new Regulations come into force from 6 April affecting public sector workers who are not currently paid as an employee via payroll. From that date, the public authority, agency, or third party will be responsible for deducting and paying associated employment taxes and National Insurance contributions (NICs) to HM Revenue and Customs (HMRC). We have considered the working arrangements for <insert name of worker> by accessing the Government's online assessment tool available at <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

We have determined that the agency contract for the worker detailed above falls within scope of this legislation; as a result we have a duty to inform you that, as you are contracting with a public sector body, we require confirmation that you operate the rules correctly.

Your agency is responsible for operating the new rules and collecting and paying the relevant tax and NICs, this must be paid via real time information (RTI) PAYE payroll. This must be done for all payments made on or after 6 April 2017.

This does not result in an employment relationship; the fee payer is only processing payments including tax and NI by way of meeting HMRC's requirements.

Yours sincerely<Name>

<Job Title>

## **Appendix 4b – Draft letter to alert worker that IR35 off-payroll rules are likely to apply**

<Name>

<Address>

*[of worker]*

<Date>

Dear <Title> <Surname>

### **Intermediaries Regulations (IR35) - Off-payroll working changes introduced April 2017**

The Intermediaries Regulations (IR35) change from 6 April 2017 for those undertaking work in the public sector, including in schools. These regulations determine how tax and NI are collected for workers who are completing work for public authorities but paid 'off payroll'.

This is a national, government led revision that we have a duty to comply with as a public sector employer, which you can read more about by accessing this website:

<https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note>

We have undertaken an assessment of the work you do with us by applying the HMRCs' online assessment tool for <insert assignment title/service title>. The tool is available at <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

As a result of this assessment, we have determined that the work you undertake in our school falls within scope of this legislation.

To ensure our school is compliant with this legislation we therefore need to review the way in which we engage your services as soon as possible, please contact <insert name of Head teacher/School Business Manager> to discuss this further.

Yours sincerely<Name>

<Job Title>