

## Intermediaries Regulations (IR35) - 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.

**Q. The online tool asks 'Is the worker or their business an office holder for the end client?' How do I answer that question?**

A. An 'office holder' is a person who's been appointed to a position in the school but doesn't have a contract or receive a salary or other form of regular payment, unless it is a voluntary payment (honorarium).

They would have no service agreement relating to their appointment. Their duties are minimal, and they operate independently and not under the close supervision or control of the school.

These would be rare in schools aside from a governor/trustee, but might include trade union secretary, club treasurer, or a member of the clergy for example.

**Q. How might this affect a volunteer who is only reimbursed for expenses?**

A. IR35 is all about ensuring that an individual's payment for services is attracting the appropriate level of deductions (Tax/NI), and the change in legislation forces the public sector to deduct this at source where the worker is categorised (for the purposes of the legislation) as an 'employee'. Running this scenario through the online tool cannot be concluded, because when you get to the 'What's the main way the worker is paid?' screen, there is no option for declaring they are a volunteer receiving expenses only. The assumption is that it is an engagement attracting payment for service. So they are clearly out of scope, and do not need to be treated differently as a result of the IR35 change.