



People, Performance and Development Committee
22 March 2017

Off-payroll Working in the Public Sector: Reform of Intermediaries Legislation (IR35)

Purpose of the report:

This report is brought to the People, Performance and Development Committee to inform them of a new duty on Surrey County Council to ensure correct tax deductions are being paid to HMRC where a worker is engaged through an intermediary as well as to provide information on how the Council is responding to this new duty.

Recommendations:

It is recommended that the People, Performance and Development Committee note the new duty on the Council in relation to tax deductions for individuals providing their services to the council through an intermediary and the Council's response to this.

Introduction:

1. IR35 is a piece of tax legislation which applies to people who supply their services to a client through their own company. They are often known as a 'personal service company' (PSC), a limited company (LTD) or a limited liability partnership (LLP). The IR35 rules affect the requirements for such workers in relation to tax payments and National Insurance Contributions (NICs).
2. With effect from 6 April 2017, the responsibility for ensuring that the correct amount of tax is being paid is changing from the individual to the organisation the person is engaged to work for.
3. Surrey County Council (SCC) has to ensure all workers engaged through an intermediary who are, for all intents and purposes, working in the same way as an employee, pay the correct amount of tax and National Insurance.

4. The county council are taking the approach that all agency workers and contractors operating in this way are in scope of the intermediaries legislation and are working with colleagues in other authorities, Adecco and service representatives to identify and manage the Council's response to this new duty.
5. Workers have been organised into three groups and the total number of workers or vendors in each group as at March 2017 are identified below:
 - i. workers appointed through the Adecco supply chain – 149;
 - ii. agencies not part of the Adecco supply chain – 62 (these agencies and the number of individual workers are being reviewed with services); and
 - iii. contractors and consultants not engaged via an agency – 173
6. This work is also reviewing the arrangements in place for any agencies not engaged as part of the Adecco supply chain to verify and ensure that the appropriate framework or contract arrangements are in place.

Determining if IR35 applies:

7. Public sector bodies are responsible for determining which roles are out of scope of IR35 and this can only be confirmed using an online HMRC tool.
8. HR are compiling a list via service representatives of any workers who believe they are out of scope of IR35. These workers have been advised to review the information provided by the Council and on the HMRC website to consider the factors that support this assertion. The individual will complete the assessment with their hiring manager and forward it onto their service rep and HR to validate. Additional resource has been identified to enable swift completion of the tool and a prompt decision.
9. Where the tool confirms a worker is in scope, their agency will be informed and will assume responsibility for making the appropriate deductions. Where the appointment has been made by a service via Procurement or Buying Solutions, these deductions will be managed through Payroll.
10. Any worker deemed in scope of IR35 by the tool, who refuses to have these deductions made by their agency or the Council will have their assignment concluded. Should this be required, HR will liaise with the service representative, the hiring manager, the agency (where there is one) and the worker to address the impact of this and manage the situation appropriately. This will be completed as quickly as possible to mitigate any impact to service delivery.

Conversion rates

11. Along with London councils, SCC is adopting the position that bill rates will not be increased as a result of this legislation. Workers operating through an intermediary will have a conversion calculation applied to

their hourly bill rate to reflect the additional costs to the agency and Council of the worker moving to PAYE. This includes an annual leave allowance, (which is provided to the worker as annual leave) and the employer's NICs.

12. For a social worker being paid £28 per hour through their intermediary, this would equate to a PAYE rate of £21.90, equivalent to an annual salary of £41,115 and grade PS10SC point 2. An employed social worker at the same level (PS9SC) would have an annual salary of £32,839 - £38,312.
13. An Approved Mental Health Professional being paid £40 per hour through their intermediary would convert to a PAYE rate of £31.29, equivalent to an annual salary of £58,736 which is above the top point on the career pay band of PS12SC. An employed Approved Mental Health Professional at the same level (PS10SC) would have an annual salary of £39,270 - £43,150.

Pension costs

14. As a result of an individual moving onto PAYE in response to IR35, they are able to enrol in the pension scheme provided by their agency. A portion of the agency cost of this is charged to the council as per the contractual arrangements with Adecco. For those individuals currently on PAYE through the Adecco supply chain who are enrolled in the agency pension scheme, the council is charged an additional 0.8% of the workers' pay rate. The take up of this is low (approximately 12%) which equates currently to £320 per month. An increased number of workers eligible to enrol in the agency pension scheme will potentially increase the cost to the council.
15. It is not possible to determine the actual additional pension costs as it is dependent on the number of workers converting to PAYE who enrol in their pension scheme and their hourly rate.
16. Applying the current enrolment rate of 12% to the group 1 workers (149) means that approximately 18 additional workers might choose to enrol in the agency pension scheme. Using an average hourly PAYE rate of £20 for this group equates to an additional cost to the council of £4,811 per annum.

Apprentice Levy

17. On 6 April 2017 the new Apprentice Levy to be applied to employers with a pay bill of £3m or more will come into effect. This applies to the temporary workforce as well as the employed workforce.
18. Discussions have been held with Adecco, Legal and ESPO (the Eastern Shires Purchasing Organisation who own the MSTAR framework through which we contract with Adecco) regarding the liability for the new Apprentice Levy. Whilst this is not as a result of IR35, the timing of the Apprentice Levy is such that this is being considered by the same project team and Adecco have confirmed their intention to pass this levy onto

SCC as a statutory cost which will incur a 0.5% cost of the agency worker pay bill.

19. Based on the Adecco spend for January 2017 of approximately £1.1m, the Apprentice Levy would equate to an annual levy of £66,000.
20. Adecco have expressed a view that they will charge the Council for the Apprentice Levy for all assignments without discounting those where the 3rd party supplier has a pay bill of less than £3m, however this is being challenged since no additional cost will be incurred by Adecco or the supply chain. Discussions are also ongoing regarding the system and process by which the money paid into the levy might be utilised by the Council.

South East Region arrangements for locum social workers

South East Regional Children's Services Memorandum of Cooperation

21. The Memorandum of Cooperation provides for a maximum pay cap that local authorities signed up to the Agreement will pay for each level of Social Work role. Without agreement from the group, the Council would not increase pay rates over the existing maximum social workers receive.
22. The Governance Group discussed IR35 in January 2017 and all those present confirmed that their organisations will be taking a strong stance on this in relation to which roles are in scope of IR35 and which are not and no one wished to discuss raising pay rates in response to this.

Association of Directors of Social Services (ADASS) South East Region Memorandum of Understanding (MoU)

23. The ADASS MoU provides for a maximum pay cap that the South East Region member authorities will pay for each level of Locum Social Work, Occupational Therapy and Approved Mental Health Professional role in Adult Social Care. No request has been presented from within the (ADASS) South East Region authorities to review rates in response to IR35 and this is being monitored through the ADASS network.

Orbis

24. SCC, ESCC and BHCC have been working together to develop common understanding of the challenges and, as much as is possible, to align our organisational responses to this issue.

Risk of workers ending their assignment early

25. This duty is only coming into effect for public sector bodies. Workers in social work roles are expected to be in scope of IR35 and therefore will be required to have PAYE deductions. As many councils have confirmed their position not to increase bill rates in response to IR35, there is limited benefit for locums to move councils.

26. Workers engaged in roles that are transferrable to the private sector may choose to end their assignment early and endeavour to continue working through their intermediary. This risk is present in specialist roles such as Procurement and IMT as well as senior interim workers. HR and Procurement are working with service representatives to identify and manage these risks.

Conclusions:

27. The new duty on public sector bodies presents a challenge to SCC of identifying all workers in scope of IR35, assessing them and ensuring the correct deductions are being made. This is being managed through close working with services and colleagues across the public sector.
28. The impact of IR35 and the limited tax benefits for locums, supported by recruitment controls as a result of the number of social workers due to graduate from the Social Worker Academy, have placed a time limited opportunity for locums to convert to permanent. These opportunities are being optimised through targeted conversion conversations.

Financial and value for money implications

29. As bill rates are not being increased in response to IR35, additional costs are limited to pension costs (0.8% of the worker's pay) and the Apprentice Levy (0.5% of the agency pay bill for applicable workers).
30. Administering this new duty places a burden on the Council which is shared between Procurement, HR, Buying Solutions and Payroll. The impact of this is being mitigated through close working and utilising existing systems where possible.

Equalities and Diversity Implications

31. None

Risk Management Implications

32. This new duty places a financial risk on the Council of incorrectly assessing a workers tax liability. To mitigate this, all workers are deemed in scope, subject to the HMRC assessment confirming otherwise, and the responses validated by the service representative and HR. Once the decision has been confirmed by the Council, the liability for making the deductions passes onto the agency where there is one or remains with the Council where deductions are being made through payroll.

Next steps:

33. HR will coordinate the completion of assessments for individuals and maintain a central audit point of all assessments and validations.
34. Business operations colleagues will review the associated systems and processes to facilitate the effective ongoing management of IR35.

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Background papers:

1. SCC position statement



IR35 position
statement SCC FINAL