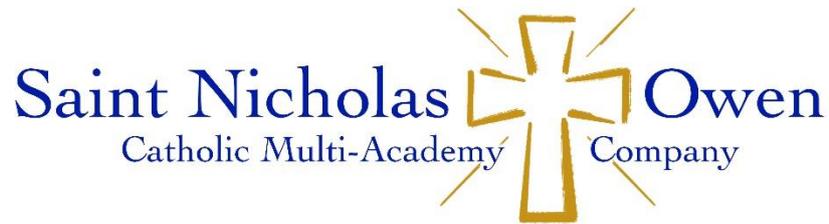


2nd DRAFT



Appendix O: Financial Regulations IR35 Legislation– Off Payroll Workers

Purpose

The Saint Nicholas Owen Multi-Academy Company 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 St Nicholas Owen Catholic Multi Academy Company.

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.

SNOMAC 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 SNOMAC academy engages **directly** with a self-employed person or intermediary/PSC. SNONMAC 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 SNOMAC to inform the agency that they are contracting with a public sector organisation and that they need to apply IR35. SNOMAC is also charged with ensuring that the agency is complying with IR35 and applying the rules correctly.**

SNOMAC 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 clients 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 SNOMAC.

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 on line 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 SNOMAC 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 PS Financials. 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 Dudley MBC – HR Transactions Team via email (FAO Rachel Timmins) HR.Transactions_Schools@dudley.gov.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 Dudley MBC HR Transactions Team (email address as above) for payment.
- **Be aware that only one pay run will be conducted monthly. The cut-off date for receipt by HR Transactions is 8th of each month.**
- Retain a copy of all paperwork and original invoices on file locally for reference and audit purposes.

Scope

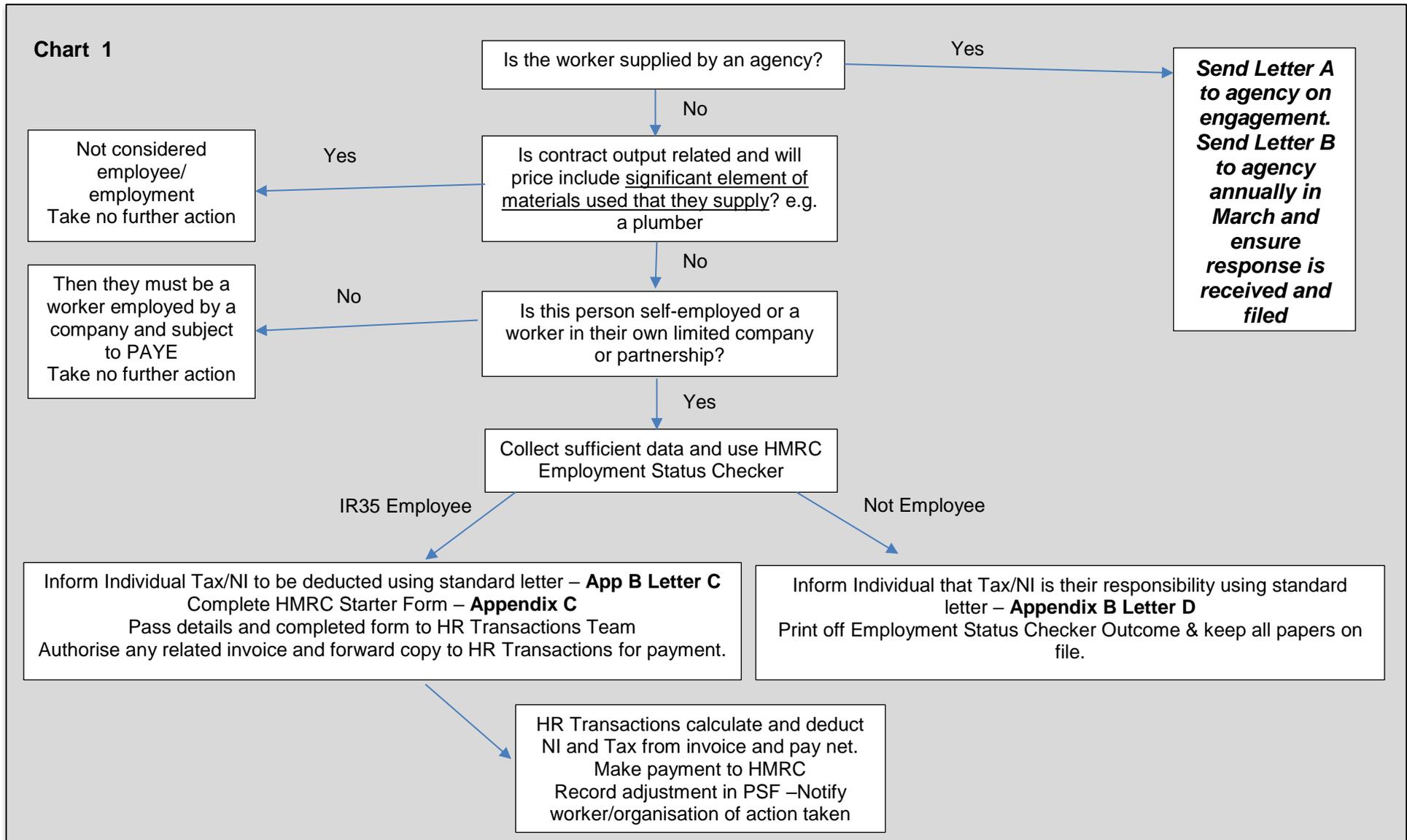
The MAC Business Director is responsible for ensuring compliance with the Financial Regulations. This procedure applies to all activities within the Saint Nicholas Owen Multi-Academy Company. These standards apply to all workers who are not employed under a contract of employment and subject to the Company's 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 St Nicholas Owen Catholic Multi Academy Company and that St Nicholas Owen Catholic 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 St Nicholas Owen Catholic 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 St Nicholas Owen Catholic 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]
[Trader name]
[Address]
[Address]
[Address]
[Post Code]

[Date]

Dear [Name]

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 St Nicholas Owen Catholic Multi Academy Company and that St Nicholas Owen Catholic Multi Academy Company is a public sector organisation.

The school has used the HMRC tool <https://www.tax.service.gov.uk/check-employment-status-for-tax/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 St Nicholas Owen Catholic 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]
[Trader name]
[Address]
[Address]
[Address]
[Post Code]

[Date]

Dear [Name]

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 St Nicholas Owen Catholic Multi Academy Company and that St Nicholas Owen Catholic Multi Academy Company is a public sector organisation.

The school has used the HMRC tool <https://www.tax.service.gov.uk/check-employment-status-for-tax/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 St Nicholas Owen Catholic 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



HM Revenue
& Customs

Starter checklist

Instructions for employers

This Starter Checklist can be used to gather information about your new employee. You can use this information to help fill in your first Full Payment Submission (FPS) for this employee. You need to keep the information recorded on the Starter Checklist record for the current and previous three tax years. Do not send this form to HM Revenue and Customs (HMRC).

Instructions for employees

As a new employee your employer needs the information on this form before your first payday to tell HMRC about you and help them use the correct tax code. Fill in this form then give it to your employer. Do not send this form to HMRC.

Employee's personal details

1 Last name

2 First name(s)

Do not enter initials or shortened names such as Jim for James or Liz for Elizabeth

3 Are you male or female?

Male Female

4 Date of birth DD MM YYYY

5 Home address

<input type="text"/>
<input type="text"/>
<input type="text"/>
Postcode
<input type="text"/>
Country
<input type="text"/>

6 National Insurance number (if known)

7 Employment start date DD MM YYYY

Employee statement

8 You need to select only one of the following statements A, B or C

- A This is my first job since last 6 April and I have not been receiving taxable Jobseeker's Allowance, Employment and Support Allowance, taxable Incapacity Benefit, State or Occupational Pension.
- B This is now my only job but since last 6 April I have had another job, or received taxable Jobseeker's Allowance, Employment and Support Allowance or taxable Incapacity Benefit. I do not receive a State or Occupational Pension.
- C As well as my new job, I have another job or receive a State or Occupational Pension.

Please turn over >

Student Loan

9 Do you have a Student Loan which is not fully repaid?

Yes If yes, go to question 10

No If no, go to question 12

10 Are you repaying your Student Loan direct to the Student Loans Company by agreed monthly payments?

Yes If yes, go to question 12

No If no, go to question 11

Student Loan Plans

You will have a Plan 1 Student Loan if:

- You lived in Scotland or Northern Ireland when you started your course, or
- You lived in England or Wales and started your course before September 2012

You will have a Plan 2 Student Loan if you lived in England or Wales and started your course on or after 1 September 2012.

11 What type of Student Loan do you have?

Plan 1

Plan 2

12 Did you finish your studies before the last 6 April?

Yes

No

For further guidance about repaying Student Loans go to www.gov.uk/new-employee/student-loans

Signature

Name

Date DD MM YYYY