

IR35 OFF PAYROLL WORKERS

AUGUST / 2019

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If this document has been printed or saved to another location, you must check that the version number on your copy matches that of the document online.

If you need this document in a different format or language (e.g. large print, Braille, audio or easy read), please contact us on 01482 344700, or email HULLCCG.contactus@nhs.net, or write to: NHS Hull Clinical Commissioning Group, 2nd Floor, Wilberforce Court, Alfred Gelder Street, Hull HU1 1UY.

Name of Policy:	IR35 Off Payroll Workers
Date Issued:	December 2019
Date to be reviewed:	12 th November 2021

Policy Title:	IR35 Off Payroll Workers	
Supersedes: (Please List)	Any previous versions of IR35 off payroll workers policy	
Description of Amendment(s):	Reformatting to new policy template/ rewording as necessary / review of impact analysis	
This policy will impact on:	All paid workers working for the CCG not on payroll	
Policy Area:	Finance	
Version No:	2.0	
Author:	Victoria Rimmington, Finance Manager	
Effective Date:	December 2019	
Review Date:	12 th November 2021	
Equality Impact Assessment Date:	27 th September 2019	
APPROVAL RECORD		Date:
	Integrated Audit and Governance Committee	12 th November 2019
	Integrated Audit and Governance Committee	12 th September 2017
Consultation:		
	Senior Leadership Team	2 nd August 2017



CONTENTS

		Page
1.	INTRODUCTION	4
2.	SCOPE	4
3.	POLICY PURPOSE AND AIMS	4
4.	IMPACT ANALYSIS	5
4.1	Equality	5
4.2	Bribery Act 2010	5
5.	NHS CONSTITUTION	5
5.1	The CCG is committed to:	5
5.2	This Policy supports the NHS Constitution and	5
6	ROLES / RESPONSIBILITIES / DUTIES	6
6.1	Manager	6
6.2	Finance Team	6
6.3	Human Resources	6
6.4	Payroll	6
7.	IMPLEMENTATION	6
7.1	Off Payroll Worker Rules	6
7.2	Process	7
7.3	Review of Compliance	8
7.4	Compliance with IR35 Checks	8
8.	MONITORING AND EFFECTIVENESS	8
9.	POLICY REVIEW	9
10.	REFERENCES AND ASSOCIATED DOCUMENTATION	9
APPENDICES		
Appendix 1	Letter 1 and Starter Form – IR35 applies, NHS Hull Responsible	10
Appendix 2	Letter 2 – IR35 applies, third party responsible	12
Appendix 3	Letter 3 – IR35 does not apply	13
Appendix 4	Finance Form – Payment Log for Payroll	14
Appendix 5	Equality Impact Analysis	15

1. INTRODUCTION

To meet business requirements, it may sometimes be necessary for NHS Hull Clinical Commissioning Group to cover substantive or temporary (project) posts without directly employing the individuals.

HMRC have enforced rules under IR35 off Payroll Worker rules to ensure correct accounting for any tax and national insurance implications are in place.

Any requests for payment, for a person who is not currently on our payroll, who has done work for the CCG, must be assessed under the off-payroll worker rules.

These rules assess whether the payment should be paid on invoice or through payroll.

The off payroll worker rules are in place to make sure that where an individual is effectively acting as an employee, they pay broadly the same tax and National Insurance contributions (NICs) as if they were an employee on payroll.

Non-compliance places the CCG at risk of substantial fines and penalties.

This policy outlines the procedures to ensure compliance with the HMRC legislation.

2. SCOPE

This policy applies to all employees of the CCG, any staff who are seconded to the CCG, contracted and agency staff and any other individual working on CCG premises.

This policy is not applicable to any employees being paid through the payroll system.

This policy is available on the CCG website

3. POLICY PURPOSE AND AIMS

This policy aims to identify and correctly account for all off-payroll workers to avoid non-compliance with HMRC rules.

4. IMPACT ANALYSIS

4.1 Equality

The CCG is committed to:

- Eliminating discrimination and promoting equality and diversity in its policies, procedures and guidelines, and
- Designing and implementing services, policies and measures that meet the diverse needs of its population and workforce, ensuring that no individual or group is disadvantaged.

To ensure the above this policy has been Equality Impact Assessed (see Appendix 5).

4.2 Bribery Act 2010

NHS Hull Clinical Commissioning Group has a responsibility to ensure that all staff are made aware of their duties and responsibilities arising from The Bribery Act 2010.

The Bribery Act 2010 makes it a criminal offence to bribe or be bribed by another person by offering or requesting a financial or other advantage as a reward or incentive to perform a relevant function or activity improperly performed. The penalties for any breaches of the Act are potentially severe. There is no upper limit on the level of fines that can be imposed and an individual convicted of an offence can face a prison sentence of up to 10 years.

For further information see <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-quick-start-guide.pdf>.

If you require assistance in determining the implications of the Bribery Act please contact the Local Counter Fraud Specialist on telephone number 01482 866800 or email at nikki.cooper1@nhs.net.

Due consideration has been given to the Bribery Act 2010 in the review of this policy document and no specific risks were identified.

5. NHS CONSTITUTION

5.1 The CCG is committed to:

- The achievement of the principles, values, rights, pledges and responsibilities detailed in the NHS Constitution, and
- Ensuring they are taken account of in the production of its Policies Procedures and Guidelines.

5.2 This policy supports the NHS Constitution by committing to use NHS resources responsibly and fairly and providing best value for taxpayer's money.

6. ROLES / RESPONSIBILITIES / DUTIES

6.1 Manager

The manager responsible for recruiting the to a post where it is intended that payment is via an invoice rather than through the payroll is responsible for checking compliance with IR35 liaising with the finance team and informing the worker providing the services of the assessment.

6.2 Finance Team

The finance team will support the IR35 process, assisting managers in the IR35 testing. The invoices received will be sent on to payroll for processing.

6.3 Human Resources

HR will process and provide any support necessary to ensure the correct action is taken to comply with IR35.

6.4 Payroll

The payroll department must compute the payments through payroll, deducting tax and NIC contributions for those that IR35 applies. The employer's contribution must be paid and all payments must be notified and paid to HMRC.

7. IMPLEMENTATION

7.1 IR35 off Payroll Worker Rules

An off payroll worker as defined by HMRC is a person who

- Provides a service to the CCG through his/her own intermediary

The intermediary can be:

- a worker's own limited company - known as a personal service company (PSC)
- a partnership
- another individual

NHS Hull CCG are responsible for deciding if off-payroll working rules apply.

The person providing services through their own intermediary will need to provide

information to NHS Hull CCG to help them make their decision.

When deciding if the off-payroll working rules apply to an engagement, Hull CCG need to assess the employment status, and the relationship if there wasn't an intermediary involved.

If the rules apply, Hull CCG, agency or other third party who is responsible for paying the worker's intermediary must deduct tax and Class 1 NICs. They must also pay employers contributions and report taxes to HMRC.

Other employment rights and statutory rights (e.g. sick pay, maternity pay) are unaffected by IR35 rules.

7.2 Process

When a temporary/project worker is recruited the manager should liaise with the finance team to assess the IR35 rules using the HMRC online checker to establish whether the rules apply for this contract.

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

To assess the IR35 rules below are some of the things that will be required to know as listed on the HMRC online tool to help with the assessment? This list includes:

- the worker's responsibilities
- who decides what work needs doing
- who decides when, where and how the work's done
- how the worker will be paid
- if the engagement includes any benefits or reimbursement for expenses

A log of all IR35 assessments will be recorded and kept in the finance department.

Dependent on the decision made, a letter should be sent to the intermediary (templates appendix 1-3) informing of the decision and actions to be taken.

7.2.1 If IR35 rule applies and NHS Hull CCG responsible for payment to intermediary

A letter including off payroll worker starter form (appendix 1) should be sent to the intermediary by the manager responsible for the worker.

The starter forms should be completed and returned to the manager who will authorise and send to finance.

Finance will then code and authorise before sending onto HR: hr.humber@nhs.net

HR will process and notify payroll of new IR35 starter.

All Invoices should be sent to finance team at Wilberforce Court. No invoices will be

paid via the oracle invoicing system

A log (Appendix 4) will be kept and sent to payroll before the cut-off, (6th of the month) to enable payment on the 27th. Where submission is after cut-off date, these will be paid in the following month's payroll.

Employee's tax and NIC will be deducted from the invoice amount and the difference paid to intermediary. Employers NICs will also be paid. This will be reported by payroll to HMRC

7.2.2 If IR35 rule apply and agency responsible

A Letter (appendix 2) will be sent to agency by the manager informing that it is the agencies responsibility to apply the IR35 rules and deduct tax and NICs before paying the worker. Invoices from the agency are to be sent to the NHS Hull CCG SBS invoicing address, for approval by budget holder to allow payment of the full invoice amount.

7.2.3 If IR35 rule does not apply

A letter (appendix 3) is sent to the intermediary informing that IR35 has been assessed but does not apply.

Invoices from the intermediary are to be sent to the NHS Hull CCG SBS invoicing address, for approval by budget holder to allow payment of the full invoice amount.

7.3 Review of decision

The decision should be reconsidered every time a new contract starts, contract extended, or changed.

If the person you have a contract with asks for the reasons behind your decision in writing, the CCG must respond within 31 days. If the CCG fails to do this becomes responsible for paying the tax and NICs due.

7.4 Compliance with IR35 checks

The following conditions must be met. If they are not met, the tax and NIC liability automatically transfers to NHS Hull CCG.

1. Contracts after 6 April 2017

NHS Hull CCG must inform intermediary on IR35 status before the contract is valid or services started.

2. Contracts before 6 April 2017

NHS Hull CCG must inform intermediary on status before first payment is made after 5 April

3. Further requests for information from intermediary

NHS Hull CCG must respond within 31 days.

8. MONITORING AND EFFECTIVENESS

This policy will be monitored by regularly spot checking ledger for any payments to any workers by invoice, and checking that these have been assessed under the IR35 on the log kept in finance.

HMRC may review NHS Hull CCG at any time, to ensure all transactions processed correctly.

9. POLICY REVIEW

This Policy will be reviewed annually from implementation, or more frequent if new legislation or guidance is provided from HMRC.

The new legalisation coming into effect from April 2020 on IR35 rules does not affect this policy. This is extending existing rules for private sector.

10. REFERENCES AND ASSOCIATED DOCUMENTATION

HMRC guidance

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

Check Employment Status

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

HMRC Starter Check List

<https://www.gov.uk/government/publications/payee-starter-checklist>

Appendix 1



NHS Hull CCG
2nd Floor
Wilberforce Court
Alfred Gelder Street
Hull
HU1 1UY
Tel: 01482 344700
Email: XXX
Date: XX/XX/XXXX

Compliance with HMRC IR35

Post: XXX
Contract Start Date: XXX
Contract End Date: XXX

Dear XXX

NHS Hull CCG are required to assess the contracts of all individuals providing a service to the CCG under the IR35 'Off Payroll Worker' rules required by HMRC.

The above post has been assessed, and it has been decided that the IR35 rules do apply,

The reasons for this are:

- XXX

NHS Hull CCG is therefore required to process all invoices through payroll, which will deduct tax and NICs from the amount invoiced.

The following steps are required:

1. Complete the attached IR35 Worker Payroll Starter Form (Sections 1-3), and the HMRC Starter checklist (<https://www.gov.uk/government/publications/payee-starter-checklist>) and return to XXmeXX
2. Send all invoices for the attention of Andy Parsons, Finance at the above address or email Andrew.parsons@nhs.net

More information can be found at <https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>

If you require further information, please contact me XXXmanager detailsXX

Kind regards,

XX manager XX

IR35 Worker Payroll Starter Form

Sections 1 - 3 to be completed by the Claimant This form must be completed before any invoices can be processed through Payroll (NB – You must supply date of birth and NI number to secure payment)	
Section1: Personal Details	
Forename (s):	
Surname:	
Title:	
Date of birth:	
NI number:	
Address:	
Post Code:	
Section 2: Bank Account Details	
Bank Sort Code:	
Bank Account Number:	
Bank Name:	
Section 3: Certification	
I certify that the above details are correct and any changes will be notified to my authorising officer.	
I understand that payments made to me will be subject to statutory deductions.	
Signed:	Date:
Manager/Budget Holder's signature:	Date:
Manager/Budget Holder name:	
Section 4: Financial Authorisation	
Cost Centre:	
Payments Authorised by:	
Signature:	
Date:	

Once complete please return this form to hr.humber@nhs.net

Appendix 2



NHS Hull CCG
2nd Floor
Wilberforce Court
Alfred Gelder Street
Hull
HU1 1UY
Tel: 01482 344700
Email: XXX
Date: XX/XX/XXXX

Compliance with HMRC IR35

Post: XXX
Contract Start Date: XXX
Contract End Date: XXX

Dear XXX

NHS Hull CCG are required to assess the contracts of all individuals providing a service through their intermediary to the CCG under the IR35 'Off Payroll Worker' rules required by HMRC.

The above post has been assessed, and it has been decided that the IR35 rules do apply.

As the work being provided is through **agency/supplier XXX**, it will be **agency/suppliers** responsibility to ensure tax/NIC is deducted from **XXX** pay.

The reasons for this are:

- XXX

NHS Hull CCG will pay the **agency/supplier** invoices through the normal invoicing process.

Agency/Supplier invoices should be sent to the following address:

NHS HULL CCG
03F PAYABLES L295
PHOENIX HOUSE
TOPCLIFFE LANE
TINGLEY
WAKEFIELD
WF3 1WE

More information can be found at <https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>

If you require further information, please contact **me XXXmanager detailsXX**
Kind regards,

XX manager XX



NHS Hull CCG
2nd Floor
Wilberforce Court
Alfred Gelder Street
Hull
HU1 1UY
Tel: 01482 344700
Email: XXX
Date: XX/XX/XXXX

Compliance with HMRC IR35

Post: XXX
Contract Start Date: XXX
Contract End Date: XXX

Dear XXX

NHS Hull CCG are required to assess the contracts of all individuals providing a service to the CCG under the IR35 'Off Payroll Worker' rules required by HMRC.

The above post has been assessed, and it has been decided that the IR35 rules do not apply.

The reasons for this are:

- XXX

It is **xxworkerxx** responsibility to ensure tax and NIC contributions are made.

NHS Hull CCG will pay the invoices through the normal invoicing process.

Invoices should be sent to the following address:

NHS HULL CCG
03F PAYABLES L295
PHOENIX HOUSE
TOPCLIFFE LANE
TINGLEY
WAKEFIELD
WF3 1WE

More information can be found at <https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>

If you require further information, please contact me **XXXmanager detailsXX**

Kind regards,
XX manager XX

Appendix 4

Payment Log for Payroll

Name	Assignment Number	Invoice Number	Invoice Date	Payment Value (Subject to Tax/NICs)	Allowance (e.g. Expenses)	Claimable VAT	Non Reclaim VAT

Appendix 5

Please refer to the EIA Overview & Navigation Guidelines located in Y:\HULLCCG\Corporate Templates and Forms\Equality and Diversity Information before completing your EIA)

HR / Corporate Policy Equality Impact Analysis:	
Policy / Project / Function:	IR35 Off Payroll Workers
Date of Analysis:	27 th September 2019
Completed by: (Name and Department)	Victoria Rimmington, Finance Manager
What are the aims and intended effects of this policy, project or function?	To ensure compliance with the IR35 off payroll worker rules in force by HMRC
Are there any significant changes to previous policy likely to have an impact on staff / other stakeholder groups?	No significant changes
Please list any other policies that are related to or referred to as part of this analysis	None
Who will the policy, project or function affect?	Any work carried out by individuals for NHS Hull GCCG that are not on NHS Hull CCGs payroll.
What engagement / consultation has been done, or is planned for this policy and the equality impact assessment?	Previously gone to director consultation. No major changes from previous version
Promoting Inclusivity and Hull CCG's Equality Objectives. How does the project, service or function contribute towards our aims of eliminating discrimination and promoting equality and diversity within our organisation?	This policy applies to all off payroll workers regardless of any protected characteristics. This policy aims to give a clear procedure to everyone to ensure compliance with the HMRC rules. This policy is available on the internet and is available in different formats and languages if necessary

<p>How does the policy promote our equality objectives:</p> <ol style="list-style-type: none"> 1. Ensure patients and public have improved access to information and minimise communications barriers 2. To ensure and provide evidence that equality is consciously considered in all commissioning activities and ownership of this is part of everyone's day-to-day job 3. Recruit and maintain a well-supported, skilled workforce, which is representative of the population we serve 4. Ensure the that NHS Hull Clinical Commissioning Group is welcoming and inclusive to people from all backgrounds and with a range of access needs 	
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Equality Data	
<p>Is any Equality Data available relating to the use or implementation of this policy, project or function?</p> <p>Equality data is internal or external information that may indicate how the activity being analysed can affect different groups of people who share the nine <i>Protected Characteristics</i> – referred to hereafter as '<i>Equality Groups</i>'.</p> <p>Examples of <i>Equality Data</i> include: (this list is not definitive)</p> <ol style="list-style-type: none"> 1: Recruitment data, e.g. applications compared to the population profile, application success rates 2: Complaints by groups who share / represent protected characteristics 4: Grievances or decisions upheld and dismissed by protected characteristic group 5: Insight gained through engagement 	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Where you have answered yes, please incorporate this data when performing the <i>Equality Impact Assessment Test</i> (the next section of this document). If you answered No, what information will you use to assess impact?</p> <p>Please note that due to the small number of staff employed by the CCG, data with returns small enough to identify individuals cannot be published. However, the data should still be analysed as part of the EIA process, and where it is possible to identify trends or issues, these should be recorded in the EIA.</p>

Assessing Impact

Is this policy (or the implementation of this policy) likely to have a particular impact on any of the protected characteristic groups?

(Based on analysis of the data / insights gathered through engagement, or your knowledge of the substance of this policy)

Protected Characteristic:	No Impact:	Positive Impact:	Negative Impact:	Evidence of impact and, if applicable, justification where a <i>Genuine Determining Reason</i> ¹ exists (see footnote below – seek further advice in this case)
<p>It is anticipated that these guidelines will have a positive impact as they support policy writers to complete meaningful EIAs, by providing this template and a range of potential issues to consider across the protected characteristics below. There may of course be other issues relevant to your policy, not listed below, and some of the issues listed below may not be relevant to your policy.</p>				
Gender	✓			This has been considered and has no impact. This policy applies to all regardless of gender.
Age	✓			This has been considered and has no impact. This policy applies to all regardless of age
Race / ethnicity / nationality	✓			This has been considered and has no impact. This policy applies to all regardless of race, ethnicity or nationality
Disability	✓			This has been considered and has no impact. This policy applies to all regardless of disability
Religion or Belief	✓			This has been considered and has no impact. This policy applies to all regardless of religion or belief.
Sexual Orientation	✓			This has been considered and has no impact. This policy applies to all

1. ¹ The action is proportionate to the legitimate aims of the organisation (please seek further advice)

				regardless of sexual orientation
Pregnancy and Maternity	✓			This has been considered and has no impact. This policy applies to all regardless of pregnancy and maternity
Transgender / Gender reassignment	✓			This has been considered and has no impact. This policy applies to all regardless of transgender or gender reassignment
Marriage or civil partnership	✓			This has been considered and has no impact. This policy applies to all regardless of marriage or civil partnership

Action Planning:

As a result of performing this analysis, what actions are proposed to remove or reduce any risks of adverse impact or strengthen the promotion of equality?

Identified Risk:	Recommended Actions:	Responsible Lead:	Completion Date:	Review Date:

Sign-off

All policy EIAs must be signed off by Mike Napier, Associate Director of Corporate Affairs

I agree with this assessment / action plan

If *disagree*, state action/s required, reasons and details of who is to carry them out with timescales:



Signed:

Date: 09.10.19