

Completing IR35 assessments

Version Control	Changes Made	Author
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Introduction

Whenever a manager engages a new Externally Provided Worker (EPW), either through an agency, self-employed or through their own limited company, then they **MUST** do an IR35 assessment.

The assessment determines how and when their tax and NI is deducted. If they are deemed to be inside the IR35 regulation then the agency that pays the individual, pays the correct tax and NI direct to HMRC in line with the tax paid by employees. This does not mean that they become an employee of the Council or accrue employment rights. If they are outside the IR35 regulations the individual pays their own company's taxation and NI contributions direct to HMRC. The IR35 assessment process was changed to stop tax evasion.

Failure to do the assessment, or failure to answer the questions correctly and honestly can result in substantial fines for the Westmorland and Furness Council for each EPW inaccurately assessed from HMRC. The EPW will also have to back pay the sums due for Tax and NI and may be penalised with an additional fine.

We would normally expect that any EPW covering a normal Westmorland and Furness Council post will be classed as employed for tax purposes and IR35 will therefore apply.

If the assessment states IR35 does not apply then please contact People Management for further guidance.

Questions you will need to ask the EPW

Prior to completing the IR35 assessment, you will need to ask the EPW some questions (see appendix 1) to aid you when completing the online assessment.

It is the manager's responsibility as the person hiring the individual to complete the IR35 assessment. The manager should not accept an IR35 assessment completed by the EPW as accurate.

Completing the assessment

The link to the HMRC tool is below:

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

If there are any questions you are unsure of please contact People Management. The tool is basically an algorithm, so how you answer each question determines the next question.

Once you have completed the tool then please save your assessment. You need to add in details of who the assessment relates to. The assessment should then be attached to the service centre portal ticket

which you need to complete to engage the EPW. You will need to advise both the EPW and any agency of the result.

Please note a new assessment **MUST** be completed for each new engagement or extension to an engagement.

Outcomes

If the result states:-

- "Employed for tax purposes for this work" or
- "Off-Payroll working rules (IR35) apply"

Then it means in both cases that IR35 applies and the tax and NI needs to be sent direct to the tax office by the Westmorland and Furness Council or the agency before the payment is made to the individual.

If the tool result is "Off-payroll working rules (IR35) cannot apply" then you should restart the tool and choose the "If some work is classed as employment or self-employment for tax purposes" option.

If the result states:-

- "Self employed for tax purposes for this work"
- "Off-payroll working rules (IR35) does not apply"

This means that IR35 does not apply. However, as mentioned above please contact HR at **PPL Home - People Management Portal (service-now.com)** to go through the questionnaire.

If People Management agree that this is the correct result, then the EPW is responsible for paying their own tax and NI. You still need to inform the EPW and the agency if necessary and make sure the assessment is retained should HMRC query the position.

You should then complete a Service Centre ticket so that the EPW can be recorded on iTrent and their ICT equipment ordered. You should attach the completed IR35 assessment to the ticket.

If you have any queries please contact HR at [PPL Home - People Management Portal \(service-now.com\)](https://service-now.com)

Dated: December 2019

EPW's Name	
Manager's Name	
Engagement Start date	
Engagement End date	
Date of IR 35 assessment	

Questions for the EPW	
Questions	Answer
Is the person self-employed or a sole trader?	
Does the person have their own limited company?	
Are they being hired through an agency?	
Has the worker had a previous contract with WMF?	
Will the work take up the majority of the worker's available working time?	
Has the worker done any self-employed work of a similar nature for other clients in the last 12 months?	

Questions for the Manager to consider	
Questions	Answer
Will the EPW need to provide any of their own equipment (Not laptops, tablets or phones) or materials (not stationary)? If yes, what exactly?	
Does the contract with us stop the worker doing similar work for other organisations?	
Is the worker required to ask for permission to work for other organisations?	
Are there any ownership rights relating to this contract? e.g. Media, arts, intellectual property rights, copyright, trademarks etc	
Will you accept a substitute? This is must be a substitute provided by the EPW themselves not an agency providing someone and you DO NOT have the right to see them first. You must be happy for an individual to turn up and work without any input from you.	

Are they an office holder?

This is a legal appointment and can include being a board member, treasurer, trustee, company secretary or company director. They do not usually have a contract for receive regular payments. It is unlikely that WMF has any office holders.