
Employment Status (IR35)

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Issued by the Chief Accountant's Team

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What is IR35?

IR35 may also be referred to as Intermediaries Legislation, Employment Status Law or Off-payroll Working Rules.

It is tax legislation that is designed to combat [tax avoidance](#) by workers supplying their services via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used.

This legislation affects all payments made on or after 6 April 2017, regardless of whether the work has been completed or not.

Who Does This Apply To?

This guidance applies to Kent County Council (KCC), all of KCC's wholly owned companies, such as GEN² and Invicta Law, and KCC schools. For ease of reference in this guide all of these entities will be referred to as 'KCC'.

Connect2Kent will assess workers that are engaged via them. All other engagements must be assessed by the hiring manager.

Connect2Kent should be the only agency used unless there is particular framework which allows others to be used. Engagements with other agencies, not on an official framework, will be disallowed.

HMRC will levy penalties if KCC does not comply with the employment status legislation. At least part of the charge may come out of the hiring manager's budget.

What Do We Need To Do?

KCC is required to assess the employment status of any worker that they engage who is not being employed as a staff member.

The assessments must be carried out on a contract-by-contract basis. A worker may have some contracts which fall within the off-payroll working rules and some which do not.

HMRC have designed a Check Employment Status for Tax (CEST) tool which must be completed for each engagement to assess whether the worker is classed as employed or self-employed for tax purposes.

The tool is available online here: <https://www.gov.uk/guidance/check-employment-status-for-tax>

The assessment should be carried out for all non-KCC staff engagements before the contracted work begins.

The KCC Procurement Team include the assessment as part of the New Supplier process.

Schools must carry out the assessment themselves.

Ongoing engagements must be reassessed if there has been a change to an existing contract, working arrangement or service agreement or if the information that was originally provided is no longer accurate. The reassessment should be sent to the KCC Procurement Team as part of the New Suppliers Process.

Long term engagements must be reviewed at least annually, even if circumstances do not appear to have changed.

The hiring manager must inform the worker of the assessment outcome in writing.

Assessment Results

The result of the CEST assessment will be one of the following:

- In scope of the intermediaries legislation
- Outside scope of the intermediaries legislation (i.e., this means the assignment is considered by HMRC to be self-employment)
- Undecided (i.e., not enough information can be provided for the assignment to make a definite decision)

Inside the Scope

This means the assignment is considered by HMRC to be employment for tax purposes.

This means that Income Tax (PAYE) and Employee's National Insurance must be deducted from payments to the worker, and Employer's National Insurance and the Apprenticeship Levy paid by the employer (KCC).

The worker must be added to the payroll or advised to join Connect2Kent. Connect2Kent can offer the most financially attractive solution to the individual.

Outside the Scope

This means that the worker is considered to be self-employed and can be paid by invoice in the usual way.

Undecided

If the outcome of the test is undecided, the assignment requires further investigation and advice should be sought from the Chief Accountant's Team. The Chief Accountant's Team will make an informed decision on the determination of employment status.

Further guidance is available on Kelsi, and more specific advice can be sought from the Schools Financial Services.

Informing The Worker

The worker must be informed of the result of the CEST in writing.

Example letters can be found in Appendix C.

The worker has the right to appeal the result of the test. If this happens, please contact the Chief Accountant's Team for guidance.

Appendix A - Key Terminology

Intermediary	A limited company, partnership, or sole trader who/which is engaged to complete a piece of work / cover a job role
Substantive Post	A permanent position in your organisation, for example Headteacher, Secretary, etc.
Office Holder	<p>A permanent, substantive position that exists independently from the person who fills it.</p> <p>Holding office includes board membership or statutory board membership, or being appointed as a treasurer, trustee, company director, company secretary or other similar statutory roles.</p>
Personal Service Company (PSC)	<p>A limited company that typically has a sole director, the contractor, who owns most or all the shares.</p> <p>The contractor's PSC generally supplies professional services personally, either directly or via an agency.</p>
PAYE	Pay As You Earn
NI	National Insurance

Appendix B – Clarification of Key Questions in the CEST

“Which of these describes you best?”

KCC is the end client.

“Is the worker or their business an office holder for the end client?”

An office holder is a statutory appointment, such as a company director, company secretary, board member or trustee of KCC.

Office holder does not mean someone covering a permanent role in the organisation.

“Is the worker entitled to any of these benefits from the end client?”

The worker would not normally be entitled to any of these benefits unless they are an employee.

“Would the end client accept the worker’s business sending someone else to do this work instead?”

Consider whether you would be happy if someone else completed the work who was not who you originally engaged. The worker would choose the substitute, with no involvement from KCC and it would be the worker’s responsibility to pay the substitute.

Upon HMRC challenge, if it was found you would not accept a substitute, KCC could become liable for the tax and National Insurance, and face penalties.

“What does the worker have to provide for this engagement that they can't claim as an expense from the end client or an agency?”

This refers to any significant expenditure that is not included in the hourly rate/contract price.

The use of a vehicle and other travel related expenditure must relate to work tasks, **not commuting**.

“What’s the main way the worker is paid for this engagement?”

An hourly, daily, or weekly rate is likely to result in the engagement being employment. However, a fixed price for a piece of work is more likely to deem the engagement to be self-employment.

“If the end client isn’t satisfied with the worker’s output, when would the worker have to put it right?”

If the worker would have to rectify any issues, it’s important to note the distinction between two of the options:

“In their usual working hours at the usual rate of pay” is a very strong indication of employment, as they have no financial risk.

“Outside of their usual working hours at additional cost to the worker” is a very strong indication of self-employment, as the worker takes on the risk if work is unsatisfactory or not as per the agreement.

Appendix C – Example letters

1) Inside the Scope

Dear

Further to your upcoming engagement with Kent County Council, I can confirm that, as a result of the HMRC Employment Status Check, the assignment is considered to be inside IR35 (i.e., deemed to be employment).

To comply with the Intermediaries Legislation, the authority's policy is to direct intermediaries to our agency Connect2Kent. The engagement can then be completed through Connect2Kent.

To register with Connect2Kent, please see website address below.

www.connect2kent.co.uk

If you have any queries, or would like to challenge this outcome, please contact me using the contact details provided.

Yours sincerely

2) Outside the Scope

Dear

Further to your upcoming engagement with Kent County Council, I can confirm that, as a result of the HMRC Employment Status Check, the assignment is considered to be outside IR35 (i.e., deemed to be self-employment).

I can confirm that there will be no change in the payment terms of your assignment.

If there are changes to the assignment in the future, the Employment Status Check will need to be completed again.

If you have any queries, please contact me using the contact details provided.

Yours sincerely,

Appendix D – IR35 Flowchart

