

## **EMPLOYMENT MATTERS COMMITTEE**

**14 JUNE 2017**

### **PERSONAL SERVICE COMPANIES (IR35) AND HOLDERS OF OFFICE**

Report from: Carrie Mckenzie, Chief People Officer

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#### **Summary:**

Effective on 6 April 2017, The Finance Bill 2017 introduced changes to the way that a worker operating within the public sector through an intermediary (Personal Service Company (PSC)) would be required to make PAYE and NI payments. This report gives background to these changes, the implications for a worker captured by these changes and how the Council has implemented these statutory changes.

#### **1. Budget and Policy Framework**

1.1 Whilst there is no specific decision to be made based on this report, it is important that the committee is aware of the changes introduced by legislation and to understand the arrangements that the Council has put into place to meet its statutory obligations.

#### **2. Background**

2.1 The Finance Bill 2017 introduced changes to the way that a worker operating within the public sector as a Personal Service Company would be required to make PAYE and NI payments.

2.2 Prior to the implementation of the legislation, a worker who was engaged by the Council through either that workers intermediary, usually their own Limited status company, or certain types of “umbrella” company or agency, would be paid on presentation of an invoice for that work. The intermediary would then be responsible to make arrangements for the payment of any tax and NI contributions due on that income (known as an IR35 payment).

2.3 Under the arrangements at 2.2, the worker was able to make use of various tax arrangements resulting in a lower personal tax and NI liability than the worker would have been paid from an “employed” status.

- 2.4 The legislation fundamentally changed this position and placed the responsibility with the employing body of firstly assessing whether a worker falls within the scope of the new legislation and then making arrangements to deduct PAYE and NI at source for those who are captured by the new rules.
- 2.5 To facilitate this assessment, HMRC made available an on-line employment assessment tool whereby data related to the workers working arrangements would be entered and the assessment tool provided an outcome as to whether the worker was “in scope”.
- 2.6 As an example, where workers were engaged to cover a substantive post within the Council’s structure they would be regarded as “in-scope” and thereby the Council would be required to make deductions for PAYE and NI from the gross amount payable under their agreed contract.
- 2.7 As an alternative example, where a worker with a specific skill set not found within the Council was engaged for a finite period of time into a role not recognised within the Council’s substantive, to complete a specific project then it would be likely that that worker would not be captured by the new arrangements.
- 2.8 The legislation further covers any appointment of a worker into a statutory post (a Holder of Office) i.e. Head of Paid Service, Section 151 Officer and Monitoring Officer and where that Holder of Officer is not an employee then they are automatically regarded as being “in-scope” under the new arrangements.

### **3. Implementation**

- 3.1 The Council agreed a number of principles behind the implementation of the legislation
- 3.2 The Council have identified the cohort of workers operating under a Personal Service Company arrangements (or under other qualifying intermediaries as detailed in 2.2) and their respective details have been evaluated using the HMRC employment status tool.
- 3.3 At the time of the publication of this report, 63 assessments had been made with 48 of these resulting in an “in-scope” outcome
- 3.4 Workers who have been assessed as being “in-scope” will send their usual invoice for payments to the Payroll team who will make the payment to the worker less deductions for PAYE and NI in line with the normal payroll timetable.
- 3.5 The Council have further informed all of its staffing agencies that unless otherwise specifically stated, all future contracts will be “in-scope” of the legislation.

3.6 The Agency Framework agreement has been revised to reflect the Council's position.

#### **4. Advice and analysis**

4.1 The Council has introduced what it considers to be robust processes for the implementation of the new arrangements and on-going processing of PAYE and NI deductions for qualifying workers.

4.2 The Council recognises that there is a risk that workers captured under these new arrangements may seek alternative work outside of the public sector (the private sector is not included under the scope of the legislation) and we will continue to monitor this position.

4.3 In the event that the Council incorrectly assesses the employment status of the worker as being "out of scope", then the Council would be liable to pay to HMRC all of the workers personal tax together with employee and employer National Insurance payment. These payments would be further subject to backdating, an interest payment would be applied and in the event that HMRC determined that the assessment was deliberately manipulated to achieve the outcome then a penalty would be levied.

#### **5. Financial and legal implications**

5.1 The financial and legal implications are set out at 4.3

#### **6. Risk Management**

6.1 The risk implications arising from this report are detailed below:

Risk	Description	Action to avoid or mitigate risk	Risk rating
Failure to have implemented the new legislation correctly and/or failure to have correctly assessed individual PSC workers.	Should the Council not have correctly implemented the new legislation this could lead to PSC workers either not being identified and/or being incorrectly assessed. This could lead to HMRC levying penalties against the Council equivalent to the value of under paid PAYE and NI.	<p>Robust processes have been implemented to capture all PSC workers and the HMRC employee status tool has been used in all cases as the objective assessment tool.</p> <p>These processes will be subject to an internal audit during Q3. The Chief People Officer will agree an action plan to close out any areas that are identified as requiring improvement.</p>	D3

## 6. Recommendation

6.1 That the Committee notes the report.

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### Background papers:

None

### Appendices:

Appendix 1 – Diversity Impact Assessment