

## Off-Payroll Working Policy and Guidance

### 1. Introduction

- 1.1 This guidance clarifies the off-payroll arrangements for persons who work under a contract for services to Glasgow Life.
- 1.2 The IR35 legislation (IR35) was introduced previously to make sure that people who do the same job in the same manner pay similar amounts of Income Tax and National Insurance (NI), whether they are employed directly or they work through an intermediary, such as their own limited company, or as a sole trader.
- 1.3 From 6 April 2017, reforms in Tax legislation take effect which impacts on how Glasgow Life pays certain contractors. This legislation is still referred to as the Intermediaries Legislation or is also sometimes known as 'Off-Payroll working in the Public Sector'. The reforms result in increased responsibilities on public sector organisations. For the purposes of this legislation Glasgow Life is deemed to be a public sector organisation.
- 1.4 Where the rules apply, people who work in the public sector through an intermediary will pay employment taxes in a similar way to employees. Glasgow Life is responsible for establishing which of its engagements are covered by the new rules.
- 1.5 It is possible for a contractor to be 'deemed employed' for tax purposes, with an employment status of self-employed, i.e. tax determination does not automatically change employment status.

### 2. Clarification of On-Payroll and Off-Payroll

- 2.1 'On payroll' means that the person has their PAYE deducted from their income at source and is not engaged using a personal services company (PSC), sole trader, a consultancy or other intermediary vehicle.
- 2.2 In most circumstances within Glasgow Life we employ individuals directly and their PAYE is deducted from their income at source. This is also usually the case if they are employed via an employment agency.
- 2.3 Where Glasgow Life engages contractors through a personal services company (PSC), sole trader, consultancy or other intermediary vehicle Glasgow Life will need to decide whether the off-payroll working rules apply.
- 2.4 A PSC is a limited company that typically has a sole director, the contractor, who owns most or all of the shares. The contractor's PSC generally supplies professional services to end user clients, either directly or via an agency. The professional services are delivered by the contractor who is also the owner and director of the business. The off-payroll rules also apply to other intermediaries such as sole traders or partnerships.
- 2.5 A sole trader is a person who owns their own business and does not have a partner or any shareholders. Sole traders are entitled to keep all profits after tax has been paid but liable for all losses.

### 3. Employed or Self-Employed for Tax Purposes?

- 3.1 HMRC has produced an interactive **employment status service indicator for tax** tool (ESS) which should be used to determine status for tax.
- 3.2 Due to the complexities of the legislation it may not always be clear whether a person is deemed employed or self-employed for tax purposes.
- 3.3 The engager (Glasgow Life) and the contractor cannot simply agree that the status for tax purposes should be self-employed or any other tax status because it is mutually advantageous to both of them. It must be based on the practicalities of the relationship that underlies this.
- 3.4 To decide whether the engagement is one of employed or self-employed for tax purposes, it is necessary to consider the characteristics of each, which the employment status service for tax tool attempts to determine.

### 4. Agency workers

- 4.1 Before engaging an agency worker Managers must consult with the agency to determine whether the worker they supply is an 'employee' of the agency, and therefore on their payroll, or whether they are supplying a worker who is using an intermediary such as a personal service company.
- 4.2 Where the agency worker is **not** an employee of the agency, Glasgow Life must determine whether off-payroll working rules should apply & notify the agency of the outcome to meet Glasgow Life's statutory responsibilities.
- 4.3 Glasgow Life must retain a copy of the outcome of employment status test supplied to the agency for compliance purposes.

### 5. Determining whether On/ Off-payroll working rules

- 5.1 Whether an engagement changes for an existing 'off payroll' contractor or you are planning to engage a new 'off payroll' contractor you are required to:
  - Check the employment status service tool via the HMRC website to determine if off-payroll working rules applies by answering the questions <https://www.gov.uk/guidance/check-employment-status-for-tax> . This tool provides guidance to determine if the contractor is employed or self-employed for tax purposes.
  - Document the outcome of employment status for tax test

## 6. Responsibilities

6.1 Contractors through a personal service company or other intermediary are responsible for;

- Providing Glasgow Life with the information they need to help determine whether the off-payroll working in the public sector rules should apply
- Where the off-payroll working in the public sector rules apply, provide Glasgow Life with the information required to allow them to deduct tax and NICs from the payment they make to the intermediary
- Reporting to HMRC on own, and company's tax affairs

6.2 Glasgow Life is responsible for;

- Determining whether off-payroll working in the public sector rules should apply initially and when there are changes to the engagement, and on new engagements
- Where they are using an agency or other third party to provide labour, notifying them whether off-payroll working in the public sector rules should apply to the contract they have with the worker
- For contracts starting after 6 April 2017, notifying their decision before entering into the contract or before the provision of services begins - if it fails to do so, it becomes responsible for accounting for PAYE as if it were a fee-payer
- Replying within 31 days to a written request from an agency or other third party as to whether off-payroll working in the public sector rules apply and setting out the reasons why - if it fails to do so, it becomes responsible for accounting for PAYE as if it were a fee-payer
- Operating employment taxes associated with the contract
- Reporting to HMRC through Real Time Information (RTI) the employment taxes deducted
- Paying relevant employers' NICs

6.3 Approving Managers, (Invoice signatories) are responsible for

- Ensuring a determination has been completed prior to approving an invoice for payment
- Checking the outcome of the determination and ensuring the invoice is sent correctly to either Payroll, where the invoice will be subject to Tax and NI deductions, or Accounts Payable, where it will be paid gross.

## 7. Compliance

7.1 When Glasgow Life pays a sum of money for service(s), it is necessary to consider whether the Off-Payroll working rules allow those payments to be made gross or whether there is deemed employment for tax purposes. This will determine whether the payment is 'accounts payable' for invoices paid gross or 'payroll' for invoices which are subject to Tax and NI deductions.

7.2 Deemed employment status is not a matter of choice, it cannot simply be decided that someone is not an employee for tax purposes because the individual wishes to be paid gross. It is not conclusive to just call or consider someone self-employed or to interpose a limited company, partnership or agency between Glasgow Life and the individual; it is the reality of the relationship between Glasgow Life and the individual that matters. There is no statutory definition of 'deemed employment' or 'self-employment' and each case has to be looked at in its own merit with a range of factors to be accounted for.

7.3 Ultimately, Glasgow Life as the engager of the contractor is responsible (not the contractor) to determine the correct tax status. If the correct status is not applied Glasgow Life will be liable for any unpaid taxes and NICs, which could also result in a liability to pay penalties and interest.

7.4 A deemed employee for the purposes of one contract, does not mean that any separate contracts will be the same. An individual can still be considered 'deemed employed' for the purposes of one contract with Glasgow life and not deemed on a separate contract engagement. Additionally a Contractor may over time become increasingly integrated into Glasgow Life to the extent that their status may change to that of a deemed employee. As such it is necessary to keep this in mind if you are aware of the nature of the engagement changing.

## **8 Paying the Worker/ Supplier**

8.1 Once the determination of tax status has been made the following outcomes and actions are detailed in the matrix below.

## 8.2 Outcome Matrix

Employment status service (ESS) Assessment of Employment Status (for tax purposes)	Service Action Required	Supplier Payment Method
Classed as 'Employed for tax purposes' or 'Intermediary legislation applies'	<p>Manager should notify the contractor/ supplier of the ESS outcome, using letter template IR35LA, and enclose an ESC1 form (section 1 to be completed by manager). Forms and letter templates can be found on the following intranet site:  <a href="http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-%28IR35%29.aspx">http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-%28IR35%29.aspx</a></p> <p>Manager should send a copy of completed status test with completed ESC1 form to set-up a payroll record to <a href="mailto:CBSServiceHR@glasgow.gov.uk">CBSServiceHR@glasgow.gov.uk</a></p> <p>Authorised Invoices should be raised to <a href="mailto:CBSServiceHR@glasgow.gov.uk">CBSServiceHR@glasgow.gov.uk</a></p>	<p>Requires to be paid via Payroll with PAYE and National Insurance deductions.</p> <p>Invoice required, where relevant to specify separately;</p> <ol style="list-style-type: none"> <li>(1) Cost of Services</li> <li>(2) Cost of Materials (where relevant)</li> <li>(3) Cost of Expenses (where relevant)</li> <li>(4) VAT (where relevant)</li> </ol>
'Intermediary legislation does not apply' or 'classed as self-employed'	<p>Manager should notify the contractor/ supplier of the ESS outcome, using letter template IR35LDA. Letter template can be found on the following intranet site:  <a href="http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-%28IR35%29.aspx">http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-%28IR35%29.aspx</a></p> <p>Manager should print and retain a copy of the tax check outcome for compliance purposes.</p> <p>Authorised invoices should be raised to <a href="mailto:glaccountsstaffmailbox@glasgowlife.org.uk">glaccountsstaffmailbox@glasgowlife.org.uk</a></p>	<p>Supplier submits invoices to Accounts payable Team without PAYE and National Insurance deductions under normal procedures.</p>
Undetermined	<p>Contact the contractor/supplier, if relevant to clarify any of the ESS questions.</p> <p>Re run the ESS assessment again:  <a href="https://www.gov.uk/guidance/check-employment-status-for-tax">https://www.gov.uk/guidance/check-employment-status-for-tax</a></p> <p>If the outcome is still deemed to be 'Undetermined' contact the HMRC Helpline. 0300 1232326.</p> <p>Once agreement is in place as to whether legislation applies, follow one of the above processes.</p>	<p>For contractors/ suppliers affected, the employment status must be clarified in order to correctly pay the supplier under the new legislation.</p>

8.3 The approving manager (signatory) is accountable for checking a determination has been completed and that the invoice is submitted to either payroll, or accounts payable.

8.4 Pro-Forma ESC1 must be used where the Individual requires paid via 'payroll', This can be found on Intranet link below:

[http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-\(IR35\).aspx](http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-(IR35).aspx)

8.5 The completed ESC1 pro-forma should be sent to [CBSServiceHR@glasgow.gov.uk](mailto:CBSServiceHR@glasgow.gov.uk) or to the address below along with a copy of the Employment Status outcome to set-up for compliance purposes.

Payroll Intermediaries, Customer and Business Services, 220 High Street, Glasgow  
G4 0QW

## **Off-Payroll Frequently Asked Questions**

### **Q1. Why are these changes being made?**

HMRC perceive that contractors paid via their own Personal Service Companies (whom could also be referred to as self-employed or sole traders) pay less tax and national insurance than employees undertaking similar roles within a public sector organisation. These changes are intended to correct this perceived anomaly and treat all similar workers and employees equally in respect of income tax and national insurance.

### **Q2. Do these changes mean that the contractors who are in scope of the changes are now to be treated the same as employees?**

No. Contractors who are determined as 'in scope' of the changes retain the status they had previously. This means that they are not entitled to employment rights applicable to employees such as maternity, sickness, adoption, paid leave or pension scheme membership.

The only change is that they must be paid via the payroll to account for the correct payment of income tax and national insurance and their earnings information must be reported to the HMRC via Real Time Information – this is a statutory obligation.

### **Q3. How can we determine who is in scope of the changes (and will have to be paid via the payroll) or out of scope (and can be paid gross via accounts payable)?**

A digital tool, known as the Employment Service Status for tax' tool (ESS) has been provided by HMRC. You are required to use this to determine the tax status of a contractor. It can be access at the link below.

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

The 'employment status for tax' tool is used to consider the type of work being undertaken. If the work relates to the normal running of a service – then most people would be engaged into permanent or temporary positions and correctly determined as employees. If the work is outside of the normal running of the service or establishment but undertaking work that could still be defined as undertaking a support activity – such as sports coaches, trainers, instructors, IT Technicians (who are not determined as employees) or other similar ad hoc workers then they may be in scope.

Persons out of scope would be those undertaking tasks that could not be regarded as any way associated with the normal running of the service – such as trades persons like builders, painters, decorators, plumbers, electricians or ad hoc workers such as piano tuners etc. Out of scope persons should continue to be engaged and paid in accordance with the existing arrangements.

**Q4. When I have determined that a person is genuinely not an employee and they are considered to be in scope – how are they paid?**

In scope persons will still be required to provide invoices, detailing the work undertaken. New arrangements are in place to enable them to be set up on the payroll separating them from employees, the rules applying to those in scope will need to satisfy all existing requirements applied to employees – e.g. personal information required for an employee should be provided. In scope persons should satisfy all other requirements associated with employees, such as safeguarding etc.

The invoice submitted should be authorised by you using form ESC1 submitted to the payroll team. Standard payroll deadlines will apply to these invoices. Invoices will be paid via the payroll according to regular payroll schedules every 4 weeks (the same payment arrangement as employees).

**Q5. If the supplier is a sole trader do I need to assess Employment status for tax using the ESS?**

Sole traders need to be assessed as to whether they should be treated as deemed employees for tax purposes. Prior to the recent reforms, sole traders' employment status for tax purposes, was required to be assessed using HMRC's previous employment status indicator toolkit.

**Q6. The supplier only provides goods; do I still need to assess employment status for tax using the ESS?**

If the supplier is only or predominantly providing goods then an ESS assessment is not required. If the supplier is providing services but also some materials then they could be affected by the new Off Payroll Worker legislation and an ESS assessment is required.

**Q7. If the supplier is already on SAP and therefore available to be used, do I still need to assess Employment status for tax using the ESS?**

If you have never engaged the services of a particular supplier then you will be required to undertake an employment status for tax check using the ESS before you engage with them. Where you have assessed the employment status based on a particular engagement and that supplier is used again for the same type of engagement, the ESS is not required to be undertaken again. However, if the type of engagement changes, even if you have used the Supplier previously, HMRC require a new ESS assessment to be undertaken for the new engagement.

**Q8. Should I notify the prospective Supplier/ Worker of the ESS outcome?**

It is recommended that the outcome of the ESS assessment should be notified to the prospective supplier. In some instances this can provide a useful mechanism to resolve any points of clarity particularly where the ESS outcome is deemed to be 'Undetermined'.

Letter templates can be accessed via the link below

[http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-\(IR35\).aspx](http://glintranet/human-resources/hr/document-library/Pages/Off-Payroll-Working-(IR35).aspx)

The prospective worker does have the right to challenge our assessment, however it is the 'engager' that is required to make the assessment with the help of the ESS toolkit, not the prospective Supplier. The ESS asks questions in relation to the practical day to day working of the relationship that the Supplier will have with the service who will engage them. The ESS must therefore be completed by the individual within the service who best understands that day to day working relationship. In certain circumstances a prospective Supplier who has always viewed themselves to be 'self-employed' could still be assessed as 'the intermediaries legislation applies' with regards an engagement to provide services to Glasgow life, due to the particular circumstances regarding how that engagement will actually be undertaken in practice.

## **Q9. A supplier has insisted that they are out of Scope of the IR35 rules because they have a right of substitution written into their Contract for Service.**

An IR35 worker is typically a one person organisation known as a Personal Service Company, or sole trader. It is therefore unlikely that in reality they could provide a substitute who was able to immediately pick up the work being undertaken and deliver to an acceptable standard.

Regardless of what is stated in a contract, it is what actually happens in practise that will determine the efficacy of the substitution clause. In most circumstances that you are likely to encounter the supplier would remain in scope and should be paid via the payroll.

## **Q10. How do we deal with suppliers engaged through Employment Agencies?**

Under the legislation it is Glasgow Life that is ultimately responsible and held liable for confirming the employment status for tax, of each new engagement of an agency worker. As such they will be in scope as they are part of the service supply chain. However, they may be genuine employees of the employment agency.

For any new agency worker engagement you should consult with the agency to determine whether the worker they supply is an 'employee' of the agency (and therefore on their payroll) or whether they are supplying a worker who is using an employment intermediary such as a personal service company.

Provided the agency has confirmed to you by email or in writing that they are on their payroll there is no requirement to undertake the HMRC employment status for tax test as the necessary employment taxes will be deducted. However, if the agency indicates that the worker supplied is not on their payroll (or is unable to confirm) you should undertake the employment status for tax test and formally advise the agency of the outcome to satisfy Glasgow life's statutory responsibilities. You should retain a copy of either agency confirmation or the outcome of the employment status test supplied to the agency for compliance purposes.

## **Q11. Will HMRC undertake checks to ensure compliance with the legislation?**

It is probable that HMRC will seek reassurance that the new legislation has been correctly implemented by all Public Sector bodies including Glasgow Life. HMRC interest is in how the day to day working relationship actually operates between the supplier and the engaging service. HMRC will note the ESS outcome but will then look for evidence to confirm the answers that were input to obtain the outcome to reflect the day to day working practises of that particular engagement.

Failure to comply with the new legislation will result in the service paying the underpaid PAYE and National Insurance contributions (plus any accrued interest) as well as incurring substantial fines for non-compliance.



**Q12. What is the process for creating a payroll record for an IR35 supplier deemed to be In Scope to enable their invoices to be paid?**

The information collected via the ESC1 form is similar to what is required for an employee but is less onerous because any references to employment rights, such as pension scheme membership, are not applicable. Other information such as their National Insurance Number, Bank Details, right to work in the UK etc. will be required as they are for employees.

If a supplier thinks they have been taxed incorrectly, they can submit a repayment claim to HMRC. HMRC will then determine if they are due a repayment of Income Tax or NICs and repay as appropriate. Please refer to guidance on tax overpayments and underpayments: <https://www.gov.uk/tax-overpayments-and-underpayments>

**Q13. Where can I find further information?**

If you have any questions that are not answered here, you can email [CBSServiceHR@glasgow.gov.uk](mailto:CBSServiceHR@glasgow.gov.uk), stating 'IR35 Query' in the email subject header.