

### **Use of Consultants Protocol**

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## **1.0 Summary**

- 1.1 The legislation known as IR35 has existed for many years but from 1<sup>st</sup> April 2017 will be extended in the public sector to the engagement of consultants and contractors through a third party.
- 1.2 The extension of intermediaries' legislation will require individuals who are engaged through a third party and meet the employment status test to pay employment taxes (Income Tax, National Insurance) and the public body who is engaging the intermediary will become responsible for Employer National Insurance Contributions (NICs), which is not currently the case. A third party can be Agency, Personal Service Company, their own company or other intermediary arrangement.
- 1.3 The Council's current process for the appointment of external specialist support is contained within the 'Use Of Consultants Protocol' and Contract Procedure Rules and these will therefore require updating as a result of these legislative changes.
- 1.4 The extension of the application of IR35 is an opportunity to review and rationalise the processes and condense them to a single point of reference.

## **2.0 Recommendations**

Cabinet are asked to:

- 2.1 Approve the simplification of the procedure for using consultants by codifying the Council's requirements from the 'Use of Consultants Protocol' by incorporating the protocol into the Council's Contract Procedure Rules.
- 2.2 Delegate authority to the Head of Human Resources and Development to review and update the 'Use of Consultants Protocol' in line with IR35.

## REPORT

### 3.0 Risk Assessment and Opportunities Appraisal

- 3.1 It may be that interims and consultants do not wish to work in the public sector because of the implications for them of being on payroll, required to work as employees and being subject to employment taxes.

(NB: This will include the following: Impact on Children and Vulnerable Adults, Risk Management, Human Rights, Equalities, Community and other Consultation)

### 4.0 Financial Implications

- 4.1 The extension of the IR35 legislation will increase the cost of using consultants and some temporary staff engaged through agencies where the work they do falls within the scope of IR35. The most significant addition will be the cost of Employer National Insurance Contributions.

### 5.0 Background

- 5.1 In the Autumn Statement 2016 the government confirmed that it will reform the intermediaries legislation contained in chapter 8 Income Taxes (Earnings and Pension) Act 2003.
- 5.2 Subject to parliamentary approval and Royal Assent this measure will introduce 'off payroll working in the public sector legalisation' extending the existing provisions to workers who provide their services to a public sector body through an intermediary. The legislation known as IR35 has existed for many years but it is now being extended to the engagement of consultants and contracts through a third party.
- 5.3 The intermediaries legislation will require individuals who meet the employment status test but work through a third party (Agency, Personal Service Company, their own company or other intermediary arrangement) to pay employment taxes (Income Tax, National Insurance and Employer National Insurance Contributions NICs).
- 5.4 The intermediary company and the public body must look at the arrangements under which the workers provides their services to the client and if using the normal employment status test it decides that but for the existence of the intermediary the test is met then Tax and NICs should be deducted at source.
- 5.5 Some of the implications of the extension to IR35 legislation are straightforward

**Office Holders** if the role is an established role within the organisation the worker could be an employee and so should be considered within IR35 and subject to employment taxes even if they are engaged through the third party.

Examples Social Workers, Administration Officers, Interim Directors.

The agency paying the worker will be responsible for paying the individuals Tax and NICs and apprenticeship levy contribution. The cost of this will be reflected in the invoice from the agency.

Other roles which will now fall inside IR35 regulations where they have previously been outside are posts like **Chairs of Safeguarding Boards**, from 1<sup>st</sup> April 2017 such roles must be on payroll and subject to employment taxes.

- 5.6 Where the work to be undertaken has not previously been carried out by an employee and does not meet employment status the consultant can be engaged as now without payment of employment taxes. This must be strictly controlled to ensure compliance with HMRC regulations guidance.
- 5.7 Amendments to the Council's Contract Procedure Rules will be required to remove or update out of date guidance as a result of changes to legislation and to incorporate the 'Use of Consultants Protocol'. The principles and safeguards that underpin the Protocol will be incorporated into the Contract Procedure Rules'. Discussions will take place with the Head of Legal & Democratic Services in respect of any necessary changes to the Contract Procedure Rules which may be implemented under her delegated powers.

<b>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</b>
<b>Cabinet Member (Portfolio Holder)</b> Michael Wood
<b>Local Member</b>
<b>Appendices</b> none