

IR35 assessment

It is mandatory for recruiting managers to use the HMRC assessment tool to assess whether a particular assignment falls in scope of these changes. There is no obligation to run every individual through HMRC's tool – it may be possible to reach reasoned conclusions about groups of workers once a few have been tested where the facts appear to be the same. The decision must be notified to all of the suppliers through the standard call-off proforma.

Schedule 1 of the proforma provides the appropriate text to be included in either scenario, i.e. whether the post is in or out of scope of IR35, and managers should delete the relevant text as appropriate. Managers should also attach with the proforma a copy of the HMRC tool assessment and keep another copy for their records.

Where the rules apply, the supplier (Parity, Harvey Nash, Spring Technology, ASA Recruitment) will calculate income tax and NICs and pay them over to HMRC. These amounts are deducted from the interim worker's fee for the work provided.

If the role is filled by the worker directly and not via a supplier, the Scottish Government must create a payroll record for the worker and deduct tax and NICs at source and report the collection of the statutory deductions to HMRC via the Pay As You Earn (PAYE) monthly payroll reports. Read guidance for managers on IR35.

When using the HMRC tool, managers should ensure that the answers that they give are correct and accurately reflect the position in relation to the worker and the post. This is essential to ensure that the correct tax procedures are put in place and that the actions taken would meet a robust audit requirement.

At the point at which the manager issues the authorisation to recruit form to the deputy director (DD), they must also attach the HMRC tool printout. Should the DD agree the recruitment they will also be agreeing the determination. If for any reason in the process the test has to be re-run, then the new printout should be sent to the DD for their approval.

This is now established procedure and business areas must follow this closely in every instance where they are considering filling a temporary vacancy with an interim worker.

Interim workers and IR35

The Scottish Government is responding to the UK Government's changes to the off-payroll rules (often known as 'IR35', or 'the intermediaries legislation') which commences on 6 April 2017.

Who is affected?

This change may impact workers in the public sector who are engaged through an intermediary company (typically a Personal Service Company, or PSC) subject to the nature of individual posts. From 6 April 2017 where the IR35 rules apply to a worker, responsibility to pay employment taxes moves from the worker's PSC to the public sector body or the recruitment agency engaging the worker.

This change has an impact within the Scottish Government and public bodies, including those public bodies for which we provide payroll and/or invoicing functions. This change may affect you if you are not directly employed by the Scottish Government and are not being paid via PAYE. If you are directly employed by the Scottish Government on a Fixed Term Appointment there is no change for you.

All managers, including managers in public bodies for which the Scottish Government provides payroll and/or invoicing, need to be aware of IR35 changes and assess interim workers' posts using the HMRC tool 'Check employment status for tax' and associated guidance.

What do managers need to do?

If you are a manager recruiting an interim worker, follow these steps:

1. Assess the post

Review the temporary recruitment step-by-step guidance. Information on job profile and authorisation includes advice about flexible resourcing and IR35 as well as more about completing the HMRC assessment tool. Staff employed by a recruitment agency and are subject to PAYE deductions by their recruitment agency, are not part of the IR35 changes.

2. Review and complete the supporting documents

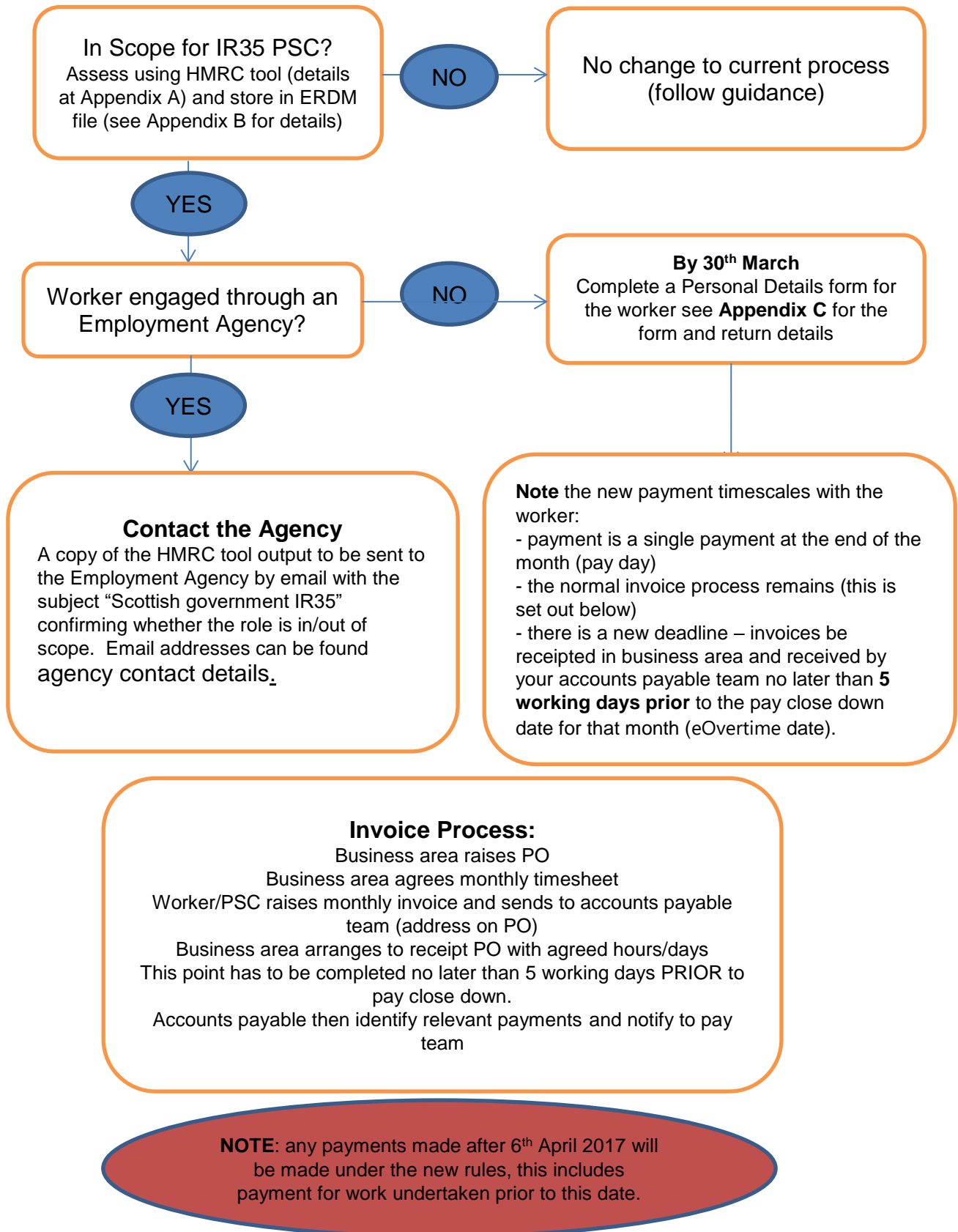
The IR35 manager guidance contains:

- managers' process flowcharts (pre and post 6 April 2017)
- a tool outcome register to be completed and stored in ERDM, sending the agency or HR your view as to whether each contract is inside or outside the scope of the off-payroll reform
- a Scottish Government HR notification form (solely for those engaged directly within the Scottish Government) to be sent to HR payroll to confirm that a role

has been assessed and is considered to be in-scope of IR35 and should be added to the Scottish Government payroll.

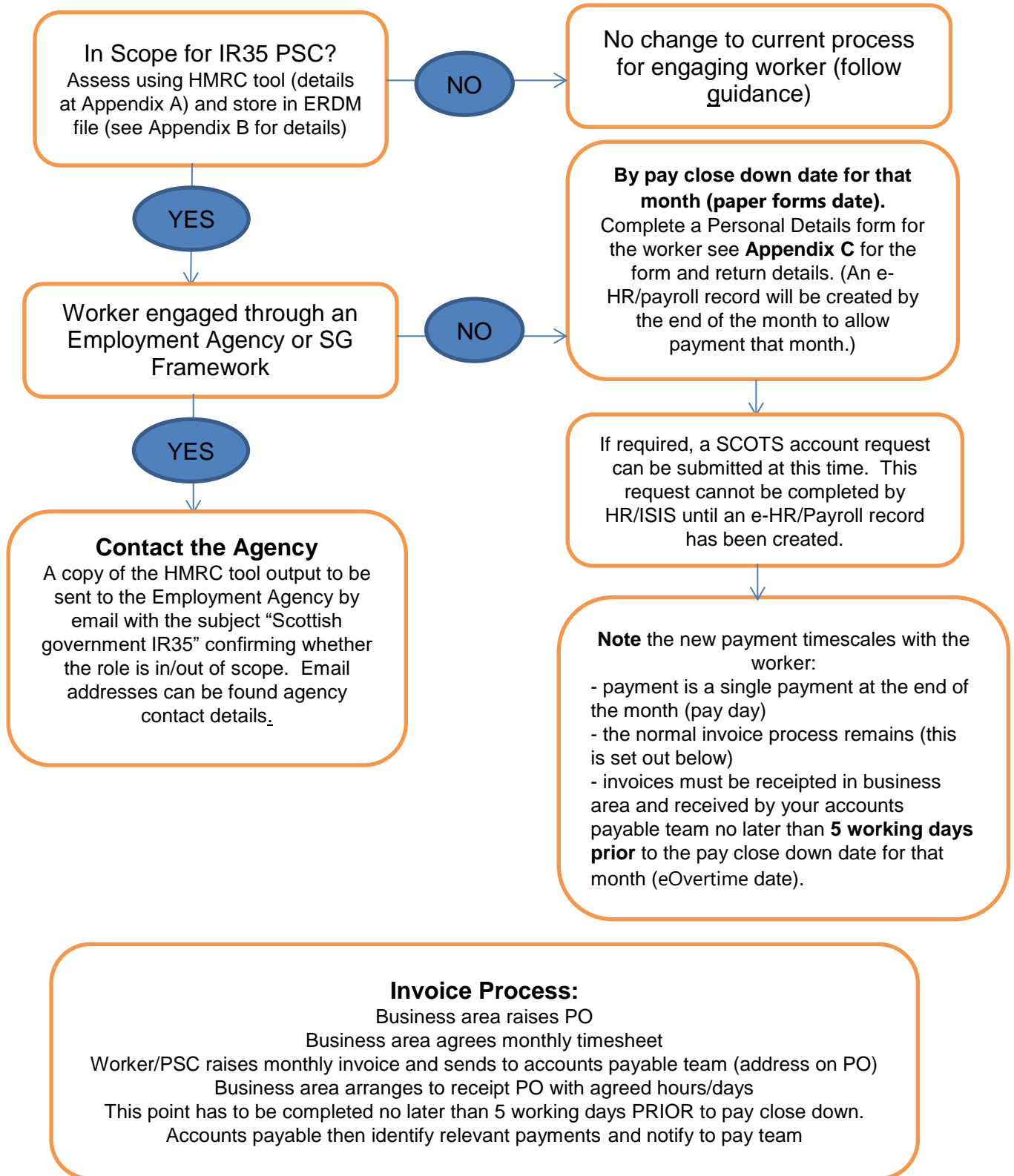
IR35 Manager flow charts (pre-post 6 April charts below)

WORKERS ALREADY ENGAGED PRIOR TO 6 APRIL 2017



IR35 Manager flow chart

Workers engaged from 6 April onwards



MANAGER PLEASE NOTE - UK draft Finance Bill 2017 has currently key points included, which refer to IR35, Bill is expected to be finalised on 18 April, however as IR35 has currently a deadline of 6 April, we would ask all managers to follow the following advice:

- line managers need to assess each post that is currently filled through an intermediary and inform either (a) HR if the intermediary has been engaged directly or (b) the relevant recruitment agency if the intermediary has been engaged through one of our Frameworks;
- where the intermediary has been engaged through a Recruitment Agency, the line manager has a responsibility to notify the agency of the result of the assessment before the first payment to the intermediary on or after 6 April becomes due;
- for contracts entered into on or after 6 April the information must be given on or before entry into the contract or before the services begin to be performed if later; and,
- failure to notify the agency, or to notify the agency in time, will result in the public body becomes liable for payment of employment taxes.

Appendix A

Detailed information can be found at the following website. The key considerations are copied below.

<https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note>

A tool has been developed by HMRC to help make assessments and is available online - <https://www.gov.uk/guidance/check-employment-status-for-tax>

Engagements to which the new rules apply

The new provisions apply when:

- a worker personally performs services, or is under obligation to personally perform services for the client
- the client is a public authority
- the services are provided under circumstances where, if the contract had been directly with the client, the worker would be regarded for Income Tax purposes as an employee of the client or the holder of an office with the client, or the worker actually is an office holder with the client

Managers should consult the HMRC technical guidance fully. It contains useful examples of IT, HR, Communications, Project Management and other types of contractors, and whether the off-payroll rules would apply or not in each example.

1. Appendix B

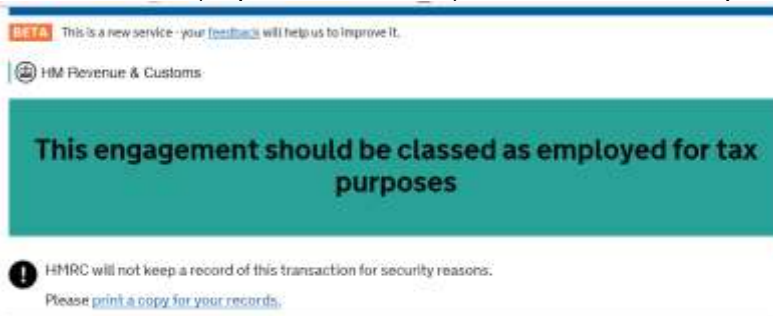
To ensure the Employment Assessment outcome is available for Audit purposes the business area must store the output result of the assessment.

An eRDM file needs to be set up locally (in each business area). If you are in an area where you do not have access to eRDM filing system a centrally accessible file location should be created for your business area to use.

Add the IR35 Employment Assessment Register spreadsheet below to the central storage file that has been created

Follow the steps below to create a unique employment assessment number:

1. Add the Business area name to the spreadsheet
2. Use the first available row and complete columns B- H. Your unique ID for this assessment is 0001. See example in the spread sheet above.
3. Complete the assessment on the role using the tool in [Appendix A](#)
4. Screen shot (or print and scan in) the assessment outputs See example below



About this result

HMRC will stand by the result given unless a compliance check finds the information provided isn't accurate. HMRC can review your taxes for up to 20 years.

Optional: you can customise this summary by adding some information before you print it. This is for your reference only and won't be stored by HMRC.

Check performed by (name)

Your reference (contractor name or contract reference)

[Print this page](#)

5. Return to eRDM and save the assessment in eRDM using the unique reference number and the naming convention i.e. 001: IR35 PSC – In Scope – (add job title)

6. Now complete columns I – K of the assessment register.

The recording and retention of all assessment results is an essential part of this new process in case of audit and FOI.

Appendix C **DO NOT COMPLETE FOR AGENCY CONTRACTORS**
 IR35 Personal Details Form

<p>To be completed by the manager of the role – this is a confirmation that the role has been assessed against the IR35 Off Payroll Worker rules.</p> <p>This information will be used to add the worker to payroll. Payment through payroll does not change the contractual terms and does not infer any employment relationship</p>	
Job Title (of the role the worker is carrying out)	
IR35 assessment completed	Date: ___ / ___ / _____
eRDM assessment spreadsheet unique number	
Reference number of assessment (from IR35 assessment spreadsheet referenced in <u>Appendix B</u>)	
Is the worker currently engaged within the Scottish Government/Executive Agency/NMD/NDPB?	YES/NO
If YES to above: Current SCOTS number Current work phone number Current Line Manager Name / Phone number	
Will there be more than 1 engagement at the same time for this worker? Please provide details	
Work phone number	
Worker details	
First Name	
Surname	
Date of Birth	___ / ___ / _____
National Insurance Number	-----
Nationality	
Home Address	
Personal e-mail	
Home Phone	
Company bank account Sort code / account number	----- / -----

Details of assignment	
Start Date (of new assignment)	
End Date (if not currently known an initial proposed end date MUST be provided and will be used). See <u>Saltire</u> for information on how to extend the period	
DG/Affiliated/Other	
Directorate/Other	
Division	
Branch	
Team	
Cost Centre, Programme code and Entity	_____ / _____ / _____
Location	
Manager Authorisation	
Name	
Signature	
Business Area	
Date	

Once completed, this form should be returned by the business area by email to the HR Pay and Leave Team (hrsscct@gov.scot) with the subject "IR35 personal details form".