

Redacted I am looking for a small favour reference the message below. Can you review the HMRC guidance around IR35 and provide me with some advice on how we establish who is outside of IR35 ?

Give me a call if you want to discuss.

Redacted Redacted Redacted

From Redacted **On Behalf Of** Baron-Broadhurst L (Lisa)
Sent: 03 December 2018 13:16
To: Redacted **Subject:** FW: OFFICIAL SENSITIVE - PERSONAL

Redacted Is this something you could take forward or advise on?

Redacted – Redacted | Social Security Programme Management and Delivery Division – Social Security Directorate | Scottish Government | Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.

Redacted) please use my mobile if you cannot get me on my office number
T: [@ScotGovSocSec](https://twitter.com/ScotGovSocSec)



From: Redacted **Sent:** 26 November 2018 14:47
To: Baron-Broadhurst L (Lisa) <Lisa.Baron-broadhurst@gov.scot>
Subject: OFFICIAL SENSITIVE - PERSONAL

Hi Lisa,

I mentioned to you last week that Redacted had contacted me about the services that Redacted is providing and whether they had changed as a result of the restructure. I advised Redacted there was no change to the services that Redacted Redacted provides however Redacted has come back asking me to clarify the approach currently being taken in relation to IR35 and provide assurance that this has been fully considered in Redacted case.

She has noted that Redacted is named in the Terms of Reference for Business Design Authority as Deputy Chair with oversight and responsibility for the overall business design for the Programme and has stated that this would appear to meet the test of being an office holder for the client according to the HMRC guidance <https://www.gov.uk/guidance/ir35-find-out-if-it-applies#find-out-if-the-rules-apply>

This isn't an area I have any experience or knowledge therefore I am unsure how to respond. Is there someone that can help?

Many thanks

Redacted Redacted Redacted – **Social Security Policy Division, Social Security Directorate**

Area 2C South | Victoria Quay | Edinburgh | EH6 6QQ

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HR Helpdesk x 48500

Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South
Victoria Quay | Edinburgh EH6 6QQ Redacted

Redacted

Redacted



From: Redacted

Sent: 26 September 2018 14:24

To: Redacted

Subject: RE: coding of contractors employed through personal service contracts (IR35)

The one that comes to mind in particular is Redacted. Redacted). If he was outside IR35 we could replace Redacted and it is a deliverable, he appears to take on a management role instead.

Redacted was badged up as a deliverables contract so that is was a SOW type contract, however Redacted is now in a position that it doesn't sit well.

Happy to sit down and talk about it later in the week if that works?

Kind Regards

Redacted

Redacted | Redacted | Social Security Directorate | Scottish Government | 5 Atlantic Quay
| 150 Broomielaw | Glasgow G2 8LU | Redacted

Redacted

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T: [@ScotGovSocSec](https://twitter.com/ScotGovSocSec)

From: Redacted

Sent: 26 September 2018 13:26

To: Redacted **Subject:** RE: coding of contractors employed through personal service contracts (IR35)

Redacted

Why do we think we have contractors through Redacted who are inside IR35? Is it their behaviour or ours that is causing that? Are we clear that Redacted is not a personal service contract – i.e. it is not one individual wearing the cloak of a limited company to avoid tax?

Redacted

Happy to talk this through!

Redacted Redacted Redacted Social Security Directorate
5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
Redacted | Redacted
Web: beta.gov.scot/policies/social-security/ | Twitter: @ScotGovSocSec

From: Redacted
Sent: 26 September 2018 12:33
To: Redacted **Subject:** FW: coding of contractors employed through personal service contracts (IR35)

Hi Redacted

Following on from the email from Redacted as previously discussed, Redacted but are not treated as such.

How would you like to progress this? I can get a list of Redacted employees and review it following the 19/20 budget stuff, etc?

Kind Regards

Redacted
Redacted) | Redacted | Social Security Directorate | Scottish Government | 5 Atlantic Quay
| 150 Broomielaw | Glasgow G2 8LU | Redacted Keep up to date with the development of
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From: Redacted **Sent:** 26 September 2018 08:02
To: Redacted **Subject:** FW: coding of contractors employed through personal service contracts (IR35)

Hi,

Will this mean we need to look at all our agency staff and set up new PO's for the new account codes?

Thanks,

Redacted Redacted Redacted Social Security Agency Implementation
Social Security Directorate | Scottish Government | 5 Atlantic Quay, 150 Broomielaw,
Glasgow, G2 8LU

Redacted **From:** Redacted
Sent: 18 September 2018 18:02
To: BCLO and DBCLO List <DLECONPBCLONBCLO@gov.scot>; BCLO Programme
<DLFINPBCLOPROG@gov.scot>
Subject: coding of contractors employed through personal service contracts (IR35)

Colleagues, BCLOs who have responsibility for monitoring staffing budgets are reminded that they should check with the Budget Holder whether there are any contractors working in the business areas who are paid through personal service

contracts (e.g. a self employed individual's own limited company) and if there are contractors employed on this basis ensure that they are charged to account 40000468 Salaries - IR35. It is important that this check is made to help the SG comply with changes to tax legislation introduced in April 2017.

It is likely at the main areas that would have contingent workers that fall into this category are ARE and Digital but there will be smaller business areas who may also be affected.

For your info there is IR35 guidance on Saltire which sets out the process that business areas should take to assess contingent workers and what to do if it applies.

<http://saltire/my-workplace/vacancies-and-recruitment/temporary-recruitment/Pages/Interim-workers-and-IR35.aspx>

Redacted Operating Costs Team
Redacted 18/9/18

Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ | Redacted Redacted Redacted)

-----Original Message-----

From: Redacted Sent: 15 November 2018 16:36

To: Redacted

Subject: RE: Confidential - IR 35 issue

Redacted

Redacted

Redacted

Redacted Redacted Redacted Social Security Directorate

5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU

Redacted Web: beta.gov.scot/policies/social-security/ | Twitter: @ScotGovSocSec

-----Original Message-----

From: Redacted Sent: 15 November 2018 09:28

To: Redacted Subject: RE: Confidential - IR 35 issue

Hi Redacted

Redacted You will see I have asked Redacted for clarification and I have suggested in that e-mail that perhaps this is a comms issue. If so we need to make sure people understand the importance of being clear so we don't create artefacts which suggest someone is in a role which in fact they are not occupying.

I agree it would be for Lisa to decide - I wonder if we need to add a risk to the Finance risk register around this issue? The mitigations could include making sure comms is clear and we have an audit trail to support our approach.

Redacted Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ Redacted Redacted

-----Original Message-----

From: Redacted Sent: 14 November 2018 21:19

To: Redacted Subject: RE: Confidential - IR 35 issue

Hi Redacted

I don't take from the newsletter (which I've just managed to access) that Redacted has been appointed to a Redacted role - I suspect this is loose language and he's just been lumped in with the actual Redacted but we can confirm this with Redacted - my understanding is that Redacted Redacted has always been working Redacted Redacted and this isn't a changed role? The civil service commissioner rules

certainly wouldn't allow Redacted to be appointed to any civil service role in this fashion without an external job advert/interview process, those processes have not taken place.

Redacted , Redacted

I'd suggest we find out exactly what the rules are around IR35, who's at risk if we treat an outside IR35 worker in an inside IR35 way Redacted

Redacted Redacted Redacted Social Security Directorate
5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
Redacted Web: beta.gov.scot/policies/social-security/ | Twitter: @ScotGovSocSec

-----Original Message-----

From: Redacted
Sent: 14 November 2018 16:41
To: Redacted Subject: RE: Confidential - IR 35 issue

Redacted

Either way I would like some assurance that this has been fully considered and we have an audit trail to support any challenge.

Redacted Redacted| Redacted | Social Security Directorate | Scottish Government |
2D South Victoria Quay | Edinburgh EH6 6QQ | Redacted Redacted Redacted

-----Original Message-----

From Redacted Sent: 14 November 2018 16:35
To: Redacted Subject: RE: Confidential - IR 35 issue

Redacted - agree this is a risk, is it our risk or Redacted
Redacted Redacted
Social Security Directorate
5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
Redacted Web: beta.gov.scot/policies/social-security/ | Twitter: @ScotGovSocSec

-----Original Message-----

From: Redacted
Sent: 14 November 2018 16:03
To: Redacted Cc: Redacted Subject: Confidential - IR 35 issue

Hi Redacted

For your awareness, Redacted. As you'll see below I have asked Redacted to confirm that she is ok with this.

Redacted Redacted| Redacted | Social Security Directorate | Scottish Government |
2D South Victoria Quay | Edinburgh EH6 6QQ Redacted
Redacted

-----Original Message-----

From: Redacted Sent: 14 November 2018 15:55

To: Redacted Subject: FW: Social Security Programme - PMO - Internal Comms - Fortnightly Update - 12 Nov 2018 (A22692427)

Hi Redacted

I see from the attached note that Redacted has been appointed to a Redacted post. My understanding is that Redacted services are procured through the Redacted contract and that as such he is not treated as an interim manager under IR35.

Redacted Thanks

Redacted Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ Redacted | Redacted

-----Original Message-----

From: Redacted Sent: 14 November 2018 15:40

To: DIRECTORATE FOR SOCIAL SECURITY <DLODOGSOS@gov.scot>

Subject: Social Security Programme - PMO - Internal Comms - Fortnightly Update - 12 Nov 2018 (A22692427)

Dear Colleagues,

Please see link to our PMO fortnightly comms update.

As always, we love to hear your thoughts and feedback!

Many Thanks,

Redacted Redacted Redacted Programme Management Office Social Security Directorate | Social Security Programme Management and Delivery Division | 2D South Victoria Quay, Edinburgh, EH6 6QQ Redacted Please save paper – do you need to print this e-mail?

Redacted| Redacted | Social Security Directorate | Scottish Government | 2D South
Victoria Quay | Edinburgh EH6 6QQ Redacted
Redacted

-----Original Message-----

From: Redacted Sent: 21 November 2018 12:35

To: Redacted Cc: Redacted

Subject: RE: Confidential - IR35 issue

Hi Redacted

Thank you for the confirmation - it is useful to have clarity around this.

I think it is important that we make sure that the Programme is not creating artefacts which might lead an external party to take a different view. There is also a need to ensure that any governance supports the approach being taken. I note for example that Redacted Redacted. This would appear to meet the test of being an office holder for the client according to the HMRC guidance

<https://www.gov.uk/guidance/ir35-find-out-if-it-applies#find-out-if-the-rules-apply>

I understand that this has been looked at previously so for my understanding can you clarify the approach currently being taken and provide assurance that this has been fully considered.

Thanks

Redacted Redacted | Redacted | Social Security Directorate | Scottish Government |
2D South Victoria Quay | Edinburgh EH6 6QQ | Redacted E-mail: Redacted Note:
Redacted

-----Original Message-----

From: Redacted Sent: 21 November 2018 11:38

To: Redacted

Cc: Redacted Subject: RE: Confidential - IR35 issue

Hi Redacted

I spoke to Lisa yesterday and she advised there is no change to the services that Redacted provides.

Many thanks

Redacted RedactedHR Business Partner – Social Security Policy Division, Social
Security Directorate

Area 2C South | Victoria Quay | Edinburgh | EH6 6QQ
Redacted]

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HR Helpdesk x 48500

-----Original Message-----

From Redacted Sent: 14 November 2018 17:13

To: Redacted Cc: Redacted Redacted Subject: Confidential - IR35 issue

Hi Redacted

Please could you clarify the position regarding Redacted new role? The attached update from PMO suggests that Redacted has been appointed to Redacted post however as Redacted has confirmed below the terms of his contract do not allow for this.

Has there perhaps been some confusion in the communication from PMO or do we need to review the contract arrangements?

Thanks

Redacted Redacted| Redacted | Social Security Directorate | Scottish Government |
2D South Victoria Quay | Edinburgh EH6 6QQ | Redacted Note: Redacted

-----Original Message-----

From: Redacted Sent: 14 November 2018 17:04

To: Redacted Subject: RE: Social Security Programme - PMO - Internal Comms -
Fortnightly Update - 12 Nov 2018 (A22692427)

Hi Redacted

Redacted is a contractor providing services under the SG contract for Architecture Delivery Services with. He is not an interim manager and as such is not within scope of IR35 and cannot be appointed to a.

If he is now providing services that are different to those detailed in the Statement of Work under the ADS Contract, we can amend the contract to reflect the revised services. Apologies I am not able to advise whether his role has changed to bring him in scope of IR35.

Regards

Redacted Redacted More Powers Implementation Procurement Team Collaborative
& Scottish Government Procurement The Scottish Government, 5 Atlantic Quay, 150
Broomielaw, Glasgow, G2 8LU
Redacted Redacted information) www.scotland.gov.uk/procurement

-----Original Message-----

From: Redacted: 14 November 2018 15:55

To: Redacted Subject: FW: Social Security Programme - PMO - Internal Comms -
Fortnightly Update - 12 Nov 2018 (A22692427)

Hi Redacted

I see from the attached note that Redacted) has been appointed to Redacted
Redacted post. My understanding is that Redacted services are procured through
the Redacted contract and that as such he is not treated as an interim manager
under IR35.

Can you confirm that you are content for him to undertake this post under the terms
of the contract through which his services are purchased and that there are no tax
implications as a result of his appointment? Has he perhaps moved to become an
IR35 contractor?

Thanks

Redacted Redacted | Redacted | Social Security Directorate | Scottish Government |
2D South Victoria Quay | Edinburgh EH6 6QQ | Redacted
Redacted

-----Original Message-----

From: Redacted Sent: 14 November 2018 15:40

To: DIRECTORATE FOR SOCIAL SECURITY <DLODOGSOS@gov.scot>

Subject: Social Security Programme - PMO - Internal Comms - Fortnightly Update -
12 Nov 2018 (A22692427)

Dear Colleagues,

Please see link to our PMO fortnightly comms update.

As always, we love to hear your thoughts and feedback!

Many Thanks,

Redacted Redacted Programme Management Office Social Security Directorate |
Social Security Programme Management and Delivery Division | 2D South Victoria
Quay, Edinburgh, EH6 6QQ ☐ Redacted☐ Please save paper – do you need to print
this e-mail?

Redacted Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ Redacted
Redacted



From: Redacted **Sent:** 17 December 2018 15:21

To: Redacted **Cc:** Redacted **Subject:** RE: Private & Confidential: Business Design Authority - outstanding action re ToR

Sensitivity: Confidential

Thanks Redacted— Redacted has spoken to me about this and will be speaking to Redacted this week.

Redacted

Redacted | Redacted | Social Security Programme Management and Delivery Division
5th Floor, Atlantic Quay, Glasgow G2 | Redacted Keep up to date with the development of our new social security powers:

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From: Redacted **Sent:** 17 December 2018 15:16

To: Redacted **Cc:** Redacted

Subject: Private & Confidential: Business Design Authority - outstanding action re ToR

Sensitivity: Confidential

Hi Redacted

I have an outstanding action from BDA to approve the revised Terms of Reference. I have not been able to do this as the ToR present us with a governance issue which needs to be resolved

I have discussed the issue with Redacted who has undertaken to take this forward. I thought you should be aware of the background as this outstanding action may be raised at BDA tomorrow which I understand you are chairing. Redacted

Thanks

Redacted

Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ Redacted

Redacted



From: Redacted

Sent: 06 December 2018 13:11

To: Redacted **Cc:** Redacted Redacted **Subject:** Private & Confidential: Business Design Authority - IR 35

Sensitivity: Confidential

Hi Redacted

Thanks for your time yesterday and the opportunity to discuss the IR35 governance issues. You explained that you are reviewing the situation and are looking to expert advice regarding the current position.

You will see below that Redacted has confirmed the views expressed by both Redacted Redacted and myself that we are currently not complying with the rules.

I hope this is helpful. Please let me know if you need any further assistance with this.

Thanks

Redacted Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ Redacted
Redacted



From: Redacted **Sent:** 06 December 2018 12:05

To: Redacted **Subject:** RE: Private & Confidential: Business Design Authority - IR 35

Hi Redacted

Redacted – but happy to discuss. I've tried to call you a few times irt Redacted)

Regards

Redacted

Redacted More Powers Implementation Procurement Team
Collaborative & Scottish Government Procurement

The Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU

Redacted www.scotland.gov.uk/procurement



From: Redacted

Sent: 26 November 2018 11:46

To: Redacted **Subject:** Private & Confidential: Business Design Authority - IR 35

Hi Redacted

As a member of BDA I have been asked to review and approve its revised Terms of Reference. Redacted

Happy to discuss

Thanks

Redacted

Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ | Redacted

Redacted



From: Redacted
Sent: 11 January 2019 09:08
To: Redacted Redacted **Cc:** Redacted **Subject:** RE: Contractor Autonomy
Sensitivity: Private

Hi Redacted

HR will be able to advise- Redacted Redacted Hope this helps.

Regards

Redacted
Redacted More Powers Implementation Procurement Team
Collaborative & Scottish Government Procurement
The Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
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From: Redacted **Sent:** 10 January 2019 16:41
To: Redacted **Cc:** Redacted **Subject:** RE: Contractor Autonomy
Sensitivity: Private

Thanks Redacted. Good to see that this issue is being addressed.

Is there also an issue in terms of length of engagement? Does the 2 year rule apply for interim managers – if so presumably that is something we need to consider in terms of Redacted and possible succession planning.

Redacted Redacted | Redacted | Social Security Directorate | Scottish Government | 2D South Victoria Quay | Edinburgh EH6 6QQ Redacted
Redacted



From: Redacted
Sent: 10 January 2019 13:53
To: Redacted **Subject:** FW: Contractor Autonomy
Sensitivity: Private

FYI...

Redacted More Powers Implementation Procurement Team
Collaborative & Scottish Government Procurement
The Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
Redacted www.scotland.gov.uk/procurement



From: Redacted
Sent: 09 January 2019 11:51
To: Redacted **Subject:** RE: Contractor Autonomy
Sensitivity: Private

All,

This isn't an IR35 issue as such, more of an Interim worker v's service provider issue. IR35 has an impact but not as much to provide an answer here. Other factors are more important in considering who and how we supervise, direct and control Interim workers or contractors.

I'm made some assumptions here, so correct me if I'm wrong I'll assume that **Redacted** is an Interim worker sourced through the collaborative frameworks for Interim Professionals. I've read below that **Redacted** is an employee of **Redacted**

Redacted has been recruited as a temporary worker, essentially to take the place of a civil servant. Interim workers can fulfil a wide range of tasks that the civil servant would be expected to do, including managing staff, both civil servants and other temporary workers, represent the Department on committees and some boards, take decisions on the Departments behalf within our governance etc. They are prevented from doing some things like completing staff reports and assessing posts for IR35. People Directorate should be able to give you a fuller list of what you can expect an Interim worker to do and not to do. Whether **Redacted** sits inside or outside of IR35 doesn't affect the list of tasks he can/can't do, it's his status as an interim worker that allows him to do those things. IR35 reflects only his employment status for tax purposes. If he's doing the job of a civil servant then IR35 says he should be taxed like a civil servant. To be outside of IR35 we would have assessed his role as being unlike that of a civil servant and more like a personal service.

So it's really **Redacted** status as an Interim worker that determines what we can allow him to do for us, not his IR35 status. As an Interim worker we always exercise supervision, direction and control over him, he had a boss ultimately in the civil service. That in turn contributes to his IR35 status.

Redacted can be given most tasks a civil servant could. **Redacted** status is different. **Redacted** is not under our supervision direction or control, we don't line manage him and he answers to a boss in **Redacted** ultimately. We have a contractual relationship with **Redacted** where we have agreed to pay them for deliverables. Limits of liability are different as are dispute resolution, IPR etc are all treated differently. **Redacted** may well be limited in what they can bid for in future should we expose them to parts of developing work.

IR35 only applies to Personal Service Companies (PSC), typically a one person company where that one person is the sole employee. That gives the individual/PSC a strange status in the Interim worker space, as they are actually a sub-contractor of the Prime contractor on the framework. By completing the IR35 test on these posts we flip liability for collecting and paying employment taxes from us to the

Prime contractor. If the job changes, we should really re-run the test. Redacted seems to be firmly inside IR35 currently, but if his job was to change, more freedom to do his tasks like a service contract, off premises say, or with less supervision, direction or control then the IR35 test should be run again.

If we directly engaged Redacted not through the framework, we've effectively contracted with his PSC. That means we are responsible for collecting and paying employment taxes. Redacted should come onto our payroll and be treated as an employee for tax purposes. He is then a contractor, not an Interim worker and the same rules would apply to his PSC as would to Redacted in this instance. If Redacted was not an employee of Redacted, and was working as a PSC subcontracted to Redacted, we need to run the IR35 test on his job. The duties we give Redacted, including the level of supervision direction and control would affect his IR35 status in that case.

Hopefully this helps. Give me a call if I can help explain or expand on any of the above.

Redacted Redacted | [Scottish Procurement](#)

The Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU

Redacted www.gov.scot/procurement

[@ScotProcurement](#)



From: Redacted **Sent:** 07 January 2019 10:18

To: Redacted

Cc Redacted **Subject:** RE: Contractor Autonomy

Sensitivity: Private

Hi All,

I've copied Redacted in who will provide a response.

Regards

Redacted

Redacted More Powers Implementation Procurement Team

Collaborative & Scottish Government Procurement

The Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU

Redacted

www.scotland.gov.uk/procurement



From: Redacted **Sent:** 04 January 2019 14:29
To: Redacted **Subject:** RE: Contractor Autonomy
Sensitivity: Private

Redacted

In my view yes, if they're inside IR35 we can have them sit on a board. I'd even say they could chair but we'd have to be careful that the individual powers of the chair don't cut across any answers Redacted might give to procurement question below.

Redacted

Redacted Redacted Social Security Directorate
5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
Redacted Web: beta.gov.scot/policies/social-security/ | Twitter: @ScotGovSocSec

From: Redacted **Sent:** 04 January 2019 14:26
To: Redacted **Subject:** RE: Contractor Autonomy
Sensitivity: Private

Redacted Thanks for the quick response and the clarification. Am I right then to interpret that as any contractor inside IR35 Redacted will be able to sit on the governance boards without any caveats but those outside Redacted for their own protection and that of our own, shouldn't sit on any boards.

Redacted Redacted | Redacted – [Social Security Directorate](#) | [Scottish Government](#) | [Atlantic Quay, Glasgow, G2 8LU](#) | [Victoria Quay, Edinburgh, EH6 6QQ](#) Redacted Keep up to date with the development of our new social security powers:
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T: [@ScotGovSocSec](#)

From: Redacted
Sent: 04 January 2019 14:11
To: Redacted **Subject:** RE: Contractor Autonomy
Sensitivity: Private

Hi Redacted

I think the only question that I can maybe offer some views on is the first IR35 question (which probably also answers your 4th question). The recruitment and procurement questions I'll leave to Redacted and Redacted.

In terms of IR35 – I'm not sure how much you know, but IR35 relates to the tax status of an individual, very generally it's whether the individual pays PAYE (if treated as an employee) or corporation tax/dividend tax (if not employed but providing services through a company). There is a clear benefit to being outside IR35 as it will significantly reduce the tax burden on the individual. What determines the status is how we treat the individual providing us with services, do we treat them as an employee or not? It is for us to determine whether the person providing services is inside or outside (it used to be for the individual to decide).

There is an HMRC tool, which is here: <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup> and will let you assess any service provision to understand whether it is inside or outside of IR35. The minute we have any individual sit on a governance body in any capacity the intermediaries legislation applies (they are inside IR35). This probably easily allows the assessment to be completed. There is significant reputational risk and a financial risk (to the SG) if we have an individual outside IR35 and then treat them in a way which means they are inside IR35 – there is also a significant financial risk to the individual if we treat them as inside when we have recorded as outside.

The other important piece of information is FGN2012/03 from the SPFM: <https://www.gov.scot/publications/scottish-public-finance-manual/tax-planning-and-tax-avoidance/tax-planning-and-tax-avoidance/> - this basically says that we cannot engage in any conduct which seeks to lighten the burden of tax on an individual. If we class someone as outside IR35 and then treat them as inside IR35 we could be viewed as being in breach of this finance guidance note – the SPFM and FGN's are Ministerial Directions, these are then a red line in terms of what we can and cannot do.

Happy to discuss if that helps – IR35 is a nightmare!

Redacted Redacted Redacted Social Security Directorate
5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
Redacted Web: beta.gov.scot/policies/social-security/ | Twitter: @ScotGovSocSec

From Redacted **Sent:** 04 January 2019 13:45
To: Redacted **Subject:** Contractor Autonomy
Sensitivity: Private

Redacted I'm looking for a bit of guidance on how we take forward the fact that we have contractors in management positions but there are limitations on how they can operate. I understand there are a couple of immediate blockers in that they can't directly recruit staff (this is both the recruitment of permanent SG staff and contractors from the frameworks) and they have been asked to step down from governance boards.

Given we want to keep these people in management positions and make full use of their skills I'd like to understand what the blockers are. So my first step is I'd like to fully understand what, from your perspectives, they should and shouldn't be allowed to do. To add to the complexity there are 2 examples I have Redacted and Redacted Redacted is within IR35 and therefore deemed to be "employed" whilst Redacted) currently sits outside IR35 and provides his services through Redacted

I'd be grateful for your views on both Redacted and Redacted for the following:

Does the IR35 status make a difference? If so what?
Can we empower them to recruit permanent staff?
Can we empower them to procure (on behalf of the Programme) contractors/services from existing frameworks? And if not are there any they could use?
Can we give authority for them to sit on (and if need be chair) the relevant boards?

Thanks

Redacted

Redacted|

Redacted – Social Security Directorate | Scottish Government | Atlantic Quay, Glasgow, G2 8LU
| Victoria Quay, Edinburgh, EH6 6QQ Redacted

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Name of the person that completed this check [REDACTED]

End client's name The Scottish Government

Engagement job title Lead Delivery Manager

Reference (for example, worker's name or contract number) Lead Delivery Manager

The intermediaries legislation applies to this engagement

Why are you getting this result

The answers you have given suggest that the working practices of this engagement mean the worker is employed for tax purposes.

About the people involved

Which of these describes you best?

The end client is the public body, corporation or business that the worker is providing services to.

The end client

Has the worker already started this particular engagement for the end client?

No

How does the worker provide their services to the end client?

As a limited company

About the worker's duties

Workers that perform office holder duties for the end client are classed as

employed for tax purposes.

Will the worker (or their business) perform office holder duties for the end client as part of this engagement?

Being an office holder is not about the physical place where the work is done, it is about the worker's responsibilities within the organisation. Office holders can be appointed on a permanent or temporary basis.

This engagement will include performing office holder duties for the end client, if:

- the worker has a position of responsibility for the end client, including board membership or statutory board membership, or being appointed as a treasurer, trustee, company director, company secretary, or other similar statutory roles
- the role is created by statute, articles of association, trust deed or from documents that establish an organisation (a director or company secretary, for example)
- the role exists even if someone is not engaged to fill it (a club treasurer, for example)

If you are not sure if these things apply, please ask the end client's management about their organisational structure.

No

About substitutes and helpers

We ask these questions to find out if the worker is being engaged as a business or on a personal service basis. If the end client has not or would not agree to the worker's business arranging for a paid substitute to work instead of them, it suggests that they are being engaged on a personal service basis.

If the worker's business sent someone else to do the work (a substitute) and they met all the necessary criteria, would the end client ever reject them?

The criteria would include:

- being equally skilled, qualified, security cleared and able to perform the worker's duties
- not being interviewed by the end client before they start (except for verification checks)
- not being from a pool or bank of workers regularly engaged by the end client
- doing all of the worker's tasks for that period of time
- being substituted because the worker is unwilling or unable to do the work

We need to know what would happen in practice, not just what it says in the worker's contract.

Yes - the end client has the right to reject a substitute for any reason, including if it would negatively impact the work

About the work arrangements

We ask these questions to find out how much right of control the end client has over what the worker does during this engagement. If the end client has a right of control, this would suggest the working practices are similar to those of an employee.

Can the end client move the worker to a different task than they originally agreed to do?

This includes moving project or location, or changing to another task at the same location.

No - that would need to be arranged under a new contract or formal agreement

Once the worker starts the engagement, does the end client have the right to decide how the work is done?

This does not include general induction, or the need to follow statutory requirements like health and safety.

Partly - the worker and other people employed or engaged by the end client agree how the work needs to be done

Can the end client decide the schedule of working hours?

Yes - the end client decides the worker's schedule

Can the worker choose where they work?

No - the end client decides

About the worker's financial risk

We ask these questions to identify the level of financial risk the worker must take during this engagement. Workers who do not risk their own money by, for example, buying assets, or paying for overheads and materials are more likely to be employed for tax purposes.

What does the worker have to provide for this engagement that they cannot claim as an expense from the end client or an agency?

Not relevant

What is the main way the worker is paid for this engagement?

An hourly, daily or weekly rate

If the end client is not satisfied with the work, does the worker need to put it right at their own cost?

Yes - the worker would have to put it right without an additional charge, but would not incur any costs

About the worker's integration into the organisation

We ask these questions to find out how integrated the worker is into the end client's organisation. Workers who receive benefits, have line management responsibilities for other people and represent themselves as working for the end client are more likely to be employed for tax purposes.

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

- Sick pay
- Holiday pay
- A workplace pension
- Maternity/paternity pay
- Other benefits (such as gym membership and health insurance)

These do not include benefits provided by a third party or agency.

No

Is the worker responsible for any of these duties for the end client?

- Hiring workers
- Dismissing workers
- Delivering appraisals
- Deciding how much to pay someone

No

Does the worker interact with the end client's customers, clients, audience or users?

These are people who use or are affected by the service provided by the public body, corporation or business. This would not include the worker's colleagues or other employees.

Yes

When the worker interacts with the end client's customers, clients, audience or users, how do they identify themselves?

They work for the end client

You should now do the following:

Public sector

If you are the worker you should tell the organisation that pays your fees (the fee payer) to deduct tax and National Insurance from your payment.

If you are the fee payer you need to deduct tax and National Insurance from the worker's deemed employment payment(s) (<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#fee-payer-accounts-for-tax-nics-apprenticeship-levy>) during this engagement.

If you are the end client, and not the organisation paying the worker (fee payer). You should tell the fee paying agency to deduct tax and National Insurance from the worker's deemed employment payment(s) (<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#fee-payer-accounts-for-tax-nics-apprenticeship-levy>) during this engagement.

Private sector

If you are the worker you need to follow this guidance (<https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies>) about your taxes.

About this result

The intermediaries legislation will apply to this engagement where the worker's business (the intermediary) satisfies these specific conditions of liability (<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm3100>) .

HMRC will stand by the result given unless a compliance check finds the information provided is not accurate.

HMRC will not stand by results achieved through contrived arrangements designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance with associated higher penalties.

HMRC can review your taxes for up to 20 years.

HMRC will not keep a record of this result.

Decision Service Version: 1.5.0-final

This version number is used for HMRC internal purposes only. HMRC will stand by your result unless working practices have changed, in which case you should use this service again to reflect those changes