

Public
Key Decision - No

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: IR35 Status Determination Disagreement Process

Meeting/Date: Employment Committee – 24 November 2021

Executive Portfolio: Cllr David Keane (DK)

Report by: Strategic HR Manager (AW)

Wards affected: N/A

Executive Summary:

The IR35 Status Determination Disagreement Process is a new workforce procedure, the purpose is to meet regulatory requirements that came into effect April 2021; under the updated IR35 rules.

IR35 Rules are designed to assess whether a contractor is a genuine contractor rather than a 'disguised' employee, for the purposes of paying tax.

These 'off-payroll' working rules have applied to public sector for several years; and were updated in April 2021 to apply to Medium and Large private sector organisations. As part of the update, a new requirement was introduced to provide a disputes process when determining 'inside/outside' IR35.

The responsibility to determine is on the hirer 'HDC'; and to share with the contractor/and agency and they have a right to disagree with the 'hirers determination'. This process formalises that obligation; and sets out how any disputes will be handled to ensure that we're legally compliant.

The Employee Reps Group and Senior Leadership Team have reviewed and endorsed the Process.

Recommendation(s):

The Committee is asked to comment on and endorse the IR35 Status Determination Disagreement Process.

1. PURPOSE OF THE REPORT

- 1.1 The report draws Committee attention to IR35 Status Determination Disagreement process, that we are seeking endorsement from Committee to introduce.

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

- 2.1 When hiring contractors, we are required to determine the status for on/off payroll working, to ensure that we are complying with tax regulations. We utilise the HMRC status determination tool 'CEST' (Check Employment Status for Tax).

Contractors may disagree with our determination and under the updated regulations (April 2021) have the right to disagree with that determination.

The process ensures that managers responsible for hiring understand this obligation and provides a consistent organisational approach to responding to any disagreements; in line with the regulations.

3. KEY IMPACTS / RISKS

- 3.1 This process minimises the risks, by introducing a process which complies with the regulatory requirements.

4. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 4.1 Following employment Committee the HR team can implement immediately, the following actions will be taken to implement fully:
- 4.1.1 Update the flowchart and guidance for managers on hiring contractors;
 - 4.1.2 briefing to HR team and procurement;
 - 4.1.3 Upload to Intranet.
 - 4.1.4 Email managers with current contractors to share this new process.

5. LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND/OR CORPORATE OBJECTIVES

Engaged and Motivated Workforce, as part of Being a More Efficient & Effective council – through updated, clear employment policies.

6. CONSULTATION

Senior Leadership team and Employee Reps Group have been briefed and been given the opportunity to review the process and support the implementation.

7. LIST OF APPENDICES INCLUDED

Appendix 1 – IR35 Status Determination Disagreement Process

CONTACT OFFICER

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