1. Introduction

As you may be aware, the Government has announced that there will be reforms to the intermediaries legislation (otherwise known as IR35) in the public sector, which will come into force on 6th April 2017. Detailed information can be found online at: https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation

This will affect how individual consultants, who provide their services through a personal service company (PSC), are assessed for tax and – as a result – how UCL contracts for those services in future.

For reference: a PSC is a limited company - the primary purpose of which is to supply the services of a single individual, normally its Director or majority shareholder. This excludes service providers (companies that perform an outsourced service through the provision of any number of employees or resources) and agencies.

These guidance notes are intended to advise you of the legislative change, introduce you to the new template contract for PSCs and set out the actions to be undertaken by departments to ensure that UCL remains compliant with the new legislation. They are to be read in conjunction with UCL’s new PSC Contract (the PSC Contract 2017).

It should be noted that this guidance only applies to engagements where UCL is directly contracting with the PSC. Separate guidance has been issued for PSCs that provide services to UCL via an agency.

2. Background

Currently (i.e. prior to 6th April 2017), when a contractor provides their services via a PSC, there are tests in place to determine whether or not that contractor would be subject to employment tax if they had performed those services directly for the client. This is ‘facts and circumstance’ assessment that looks at the relationship between the parties and determines whether the way in which those services are delivered is indicative of genuine self-employment.

Where a contractor performs those services in a way that is more indicative of employment (i.e. ‘inside’ IR35), the PSC must tax its income in a manner similar to employment income.

It is the responsibility of the PSC to carry out this assessment and, where necessary, to make the appropriate PAYE tax and National Insurance payments to the UK tax authority (HMRC). If the PSC gets the assessment wrong, the PSC is liable. Importantly, there is no risk or liability for UCL.

The new legislation, however, shifts both the responsibility to carry out the assessment and the liability for tax away from the PSC and on to the client (i.e. UCL).

From 6th April 2017, UCL, as a public body, will have to decide whether IR35 applies to the work undertaken by its PSC contractors. If IR35 applies (i.e. the contractor is deemed to operate in a way
that is more akin to employment), UCL must ensure that PAYE and NICs are deducted and paid to HMRC as if the PSC contractor were an employee of UCL.

If UCL gets the IR35 assessment wrong, UCL will be liable for the unpaid income tax and NICs on the PSC contractor’s pay, together with any fines, penalties and interest levied by HMRC.

3. Direct PSC Engagements

As a result of these changes, UCL has reviewed the engagements it holds with PSC contractors and has issued an updated template agreement in the form of the PSC Contract 2017 to ensure that our contracts with PSC contractors are in line with the new legislation and adequately protect UCL’s position.

As far as is possible, all PSC engagements from 6th April 2017 onwards should be entered into using the PSC Contract 2017, and PSC contractors currently working at UCL must be transferred from their existing arrangements onto the PSC Contract 2017 by 6th April 2017 or as soon as possible thereafter.

It is important to note that, in addition to a change in contractual terms, engagement under this contract may require both UCL and the PSC contractor to operate in a way that differs from past practice. In order for this contract to protect the position of all parties, it is essential that the terms it contains are genuinely reflected in working practices on the ground.

If the terms are genuinely reflected in working practices, UCL are of the opinion that a PSC contractor engaged under this contract can be considered ‘outside IR35’. It is important that careful consideration is given to the guidance below as this sets out the basis on which that opinion is based.

Where it is not possible to accommodate an engagement within the terms and working practices set out in the PSC Contract 2017, then the contract should not be used and an alternative approach must be adopted. This may include the deduction of PAYE and National Insurance Contributions from payments made to the PSC, as well as entering into alternative contracting arrangements. In the first instance, further guidance should be sought from your HR Business Partner.


There are a number of key provisions in the new PSC Contract 2017, which you should be aware of from an operational perspective. It is important that the work undertaken is in line with these important terms.

The over-arching principle to bear in mind is that the PSC contractor is to be treated as an independent professional services provider. This is fundamental to the PSC contractor’s IR35 status. Where there is an underlying employment relationship, UCL will incur liability to pay income tax and NICs on the PSC contractor’s pay.

The key provisions are as follows:

(a) The Parties

The PSC Contract 2017 is drafted so it is a legal agreement between UCL and the PSC.

The PSC is then under an obligation to supply the “individual” as identified in Schedule 1 to UCL to carry out the work for UCL.
(b) Term and Termination

The agreement will start on the commencement date set out in Schedule 1 and will end automatically on the expiry date set out in Schedule 1 - or the date the work is completed (if the PSC contractor completes their work earlier than initially expected).

This opportunity for the PSC contractor to benefit financially from delivering the services more efficiently is one of the key elements of a genuine contractor-client relationship.

Either party may terminate the agreement at any time before the expiry date by giving the other party at least 7 days’ written notice (clause 2.2).

UCL may terminate the agreement immediately by giving the PSC contractor written notice on the grounds set out in clause 11.1.

Please note that clauses 2.2 and 11.1 are the only circumstances in which UCL may terminate the agreement. If you attempt to terminate the agreement other than in accordance with clauses 2.2 and 11.1, you will breach the agreement and UCL may be liable for the breach.

If either party gives notice under the agreement, it must follow the mechanism set out in the notices clause at clause 15 otherwise the notice will be invalid.

(c) Locations

There is an obligation on the PSC contractor to carry out the work for UCL at such locations as are necessary for the proper performance of the work (clause 3.1.2).

Please note that this clause expressly states that the PSC contractor is not required to attend UCL’s premises but is permitted to do so to perform the work.

As the PSC contractor is an independent professional services provider under IR35, the PSC contractor should have some degree of discretion to decide for themselves where to work to get the job done.

If the PSC contractor needs to carry out the work at UCL’s premises (e.g. because they need access to UCL’s systems, facilities or equipment or to attend project team meetings), then they should be allowed to attend UCL’s premises. However, if the PSC contractor decides to work from another location (e.g. remotely from their own home or office), they should be allowed to do so.

If you oblige the PSC contractor to work at UCL’s premises, you may affect the PSC contractor’s IR35 status and cause UCL to become liable for income tax and NIC on the PSC contractor’s pay.

(d) Management Responsibilities

There is an obligation on the PSC contractor to liaise with the "engaging manager" identified in Schedule 1 to the agreement (clause 3.1.3).

Please note that this clause expressly states that the PSC contractor will not be managed by the engaging manager and will not be responsible for managing UCL employees.

For the purposes of this clause, ‘management’ of the PSC contractor should be understood in terms of normal line management duties, such as: prioritisation of workload, specific direction on approach and process, provision of new or replacement tasks, etc. It is essential to the purpose of the contract that the PSC contractor acts independently and has discretion as to how they deliver their services and to what schedule.
The exercising of ‘management’ represents a level of control that is indicative of employment rather than self-employment and, as a result, may affect the PSC contractor’s IR35 status and cause UCL to become liable for income tax and NIC on the PSC contractor’s pay.

(e) Defects in the Services
The PSC contractor is responsible for correcting any errors in their work at their own cost (clause 3.1.6).

Please note however that defects in the PSC contractor’s work must be notified to the PSC contractor within 21 days of discovery, otherwise the work will be deemed accepted by UCL. You should make sure you have processes in place to identify defects and to notify them to the PSC contractor quickly.

(f) Equipment
The PSC contractor is responsible for providing the equipment needed to carry out the work unless the nature of the work means UCL’s equipment should be used (clause 3.2).

You should require the PSC contractor to use their own equipment wherever possible because this will support UCL’s position under IR35 that the PSC contractor is an independent professional services provider rather than an employee of UCL.

(g) Scope of the Services
The PSC contractor is engaged by UCL to provide only those services set out in Schedule 1 to the agreement. The agreement states that the PSC contractor will not provide any work beyond that set out in Schedule 1 (clause 3.4), except through a formal process of contract variation.

As the PSC contractor is an independent professional services provider under IR35, you should not ask or require the PSC contractor to undertake any work for UCL except for those services set out in Schedule 1.

It is also of key importance that scope of the work in Schedule 1 is properly described, and set out in terms of specific deliverables and milestones, rather than as generic duties or responsibilities (which are strongly indicative of an employment relationship).

There must also be a sensible correlation between the service milestones and the payment of fees. In some cases, there will be identifiable stages of a project against which milestones will be set. In others, there will only be a single project deliverable so the milestones will be expressed in terms of a percentage of progress towards that goal (see also 2(j) below regarding fees).

If you find that the scope of work you need the PSC contractor to undertake changes over time, you should agree a new Schedule 1 with the PSC contractor following the procedure set out in clause 3.3.

If you ask the PSC contractor to undertake work for UCL outside of Schedule 1 – or Schedule 1 is drafted in a way that more closely resembles a job specification than a set of specific outputs - you will affect the PSC contractor’s IR35 status and cause UCL to become liable for income tax and NIC on the PSC contractor’s pay.
(h) **Supplying Substitutes**

The agreement gives the PSC contractor the option to provide a "substitute" instead of the "individual" named in Schedule 1 to carry out the work for UCL. UCL must be satisfied that the substitute is suitably skilled and qualified to undertake the work, and UCL retains absolute discretion not to accept substitutes (clause 3.6).

(i) **UCL Policies and Procedures**

The PSC contractor is required to comply with UCL's policies and procedures (clauses 3.8, 3.9). You must provide copies of these to the PSC contractor at the start of the engagement.

(j) **Fees and Payment**

UCL must pay the PSC contractor the fees included on Schedule 1 (clause 4.1).

It is essential to the purpose of this contract that engagements are entered into on a fixed fee basis, such that the PSC contractor is exposed to the financial risk of overruns and stands to benefit from efficient delivery of the services. These fixed fees may be attached to the delivery of individual milestones or outputs listed on Schedule 1, or they may be attached to completion of the assignment overall.

Time based methods of payment (i.e. day rates) are strongly indicative of an employment relationship and therefore must not be incorporated into the contract.

The contract does, however, provide for interim and stage payments and an expected payment schedule can be set out in Schedule 1 if required. As with the overall fee, these interim payments must be linked to the proportionate completion of the milestones – as agreed between the PSC contractor and the engaging manager from time to time - and may not be derived from time spent in delivering the service.

UCL is under a duty to consider and verify the PSC contractor’s invoices in a timely fashion (clause 4.4). You must assist UCL to meet this obligation by raising advance purchase orders, forwarding PSC contractor invoices to Accounts Payable and promptly responding to any questions on the invoice.

UCL must pay the PSC contractor's valid and undisputed invoices within 30 days of receipt (clause 4.5).

(k) **Expenses**

UCL is not obliged to pay any expenses to the PSC contractor unless those expenses are set out in Schedule 1 (clause 5). Please therefore make sure all expenses are clearly set out in Schedule 1 or that Schedule 1 clearly says "expenses not payable by UCL".

5. **Moving Existing PSC Contractors to the New Contracts**

Firstly, you will need to terminate the existing PSC contract between the PSC contractor and UCL. To do this, you will need to take the following steps:

- Obtain the template letter of termination which accompanies this guidance
• Populate all of the highlighted sections of the letter
• Arrange for the letter to be signed on behalf of UCL by an authorised signatory
• Ask the PSC contractor to sign the letter as well to confirm agreement
• Retain a copy of the signed letter for your records

Once you have terminated the existing PSC contract, you will need to engage the PSC contractor on the PSC Contract 2017 - please see section 6 below. This process is necessary to properly protect the tax position of both the contractor and UCL.

Please note that the letter of termination is drafted so that the existing PSC contract is terminated immediately and any notice periods set out in the existing PSC contract are automatically waived.

6. Engaging PSC Contractors on the New Contracts

To engage a PSC contractor on the PSC Contract 2017, you will need to take the following steps:

• Obtain the template agreement that accompanies this guidance
• Populate all of the highlighted sections of the agreement - please see section 7 below
• Arrange for the agreement to be signed on behalf of UCL by an authorised signatory
• Ask the PSC contractor to sign the agreement as well to confirm agreement
• Retain a copy of the signed agreement for your records

7. How to Populate the New Contracts

The PSC Contract 2017 has a number of blank sections that need to be populated by the engaging manager. It is important that these sections are completed fully and accurately before the agreement is signed, otherwise the agreement may be legally unenforceable and may expose UCL to unintended legal risks or liabilities. The sections of the PSC Contract 2017 which you need to complete are as follows:

(a) Identity of the PSC contractor

You must enter the PSC contractor’s full legal name, company registration number and registered office address at the top of page 1 of the agreement. You should ask the PSC contractor to provide you with this information and you should verify it at Companies House: https://beta.companieshouse.gov.uk/.

(b) Commencement Date

You must complete the "commencement date" for the PSC contractor in Schedule 1 at page 15 of the agreement. The commencement date is the date the PSC contractor first starts working for UCL.

Please note that if you are moving an existing PSC contractor from a previous contract onto the PSC Contract 2017, the commencement date in the new agreement must be the date the previous agreement was terminated in line with the above. You must not use the date the PSC contractor first started working for UCL, as the earlier period of work will be covered by the previous agreement.
If you are agreeing a new engagement with a PSC contractor who has worked for UCL before, the commencement date must be completed as the first day the PSC contractor will work for UCL under the new agreement.

(c) Expiry Date

You must complete the "expiry date" for the PSC contractor in Schedule 1 of the agreement. The expiry date is the date the PSC contractor is scheduled to finish working for UCL but, in practice, will be an earlier date if they finish the work faster than expected.

If at the end of the agreement, the PSC contractor is to continue working for UCL, you must enter into a new PSC Contract 2017 with the PSC contractor.

(d) The Individual

You must complete the name of the "individual" who will actually work for UCL in Schedule 1 of the agreement. Please insert the individual’s full name e.g. Mr John Peter Smith.

(e) The Fees and Invoicing Frequency

You must insert the fees and invoicing frequency into Schedule 1 of the agreement.

The fees UCL will pay the PSC contractor should be set out as a fixed sum per project, milestone or deliverable.

The frequency at which the PSC contractor will invoice UCL can be monthly but must be linked to achievement of a particular project milestone or to an agreed stage of completion.

Please do not add any information about VAT or payment terms to Schedule 1. These points are already covered in the main body of the agreement. Clause 4.1 states the PSC contractor’s fees are deemed to be VAT inclusive. Clause 4.4 states UCL will pay the PSC contractor’s valid and undisputed invoices within 30 days of receipt.

(f) Expenses

You must insert details of any significant one-off expenses payable by UCL into Schedule 1 of the agreement. This may not include travel to and from UCL’s premises or to business meetings expected as part of the services.

If UCL will not pay the PSC contractor’s expenses, you should enter "expenses not payable by UCL" into this section.

(g) Engaging Manager

You must enter the details of the UCL engaging manager into Schedule 1 of the agreement.

The engaging manager is the person with responsibility for liaising with the PSC contractor in relation to the PSC contractor’s work for UCL.
(h)  The Services and Milestones

You must enter full details of the services the PSC contractor will undertake for UCL, together with details of all milestones to be completed as part of the services, into Schedule 1 of the agreement.

You must make sure this part of the agreement is completed in sufficient detail to allow anyone reading the contract, including a court, to understand the work the PSC contractor has been engaged to undertake for UCL. As set out in section 4 above, the services must be set out in terms of specific deliverables and milestones, rather than generic duties or responsibilities (which are strongly indicative of an employment relationship).

You must also include details of the reporting procedure which will apply to the PSC contractor. For example, if the PSC contractor will be required to submit weekly progress reports to the engaging manager, then this obligation should be set out in this part of the agreement.

Please make sure that you do not use wording which suggests that the PSC contractor is managed by UCL’s staff or that the PSC contractor is responsible for managing UCL’s staff. For IR35 purposes, the PSC contractor is deemed to be an independent professional services provider who is not subject to the management or control of UCL and not responsible for line managing UCL’s staff. If you use wording in Schedule 1 which suggests otherwise, UCL could incur liability to pay income tax and NICs on the PSC contractor’s pay to HMRC, together with fines, penalties and interest.

8.  Further Assistance

If you have any questions on these guidance notes or the PSC Contract 2017, or if you require any assistance, please contact your HR Business Partner.