

Off Payroll Working in the Public Sector Appendix A

In Scenario A, the surgery appoints a self-employed sole trader to carry out maintenance work. No materials are supplied and the practice has a small shed containing the basic tools needed (electric hedge trimmer, lawnmower, fork, shovel). He carries out all the work himself; no IR35 question arises (although the practice should review the terms from an employment status perspective).

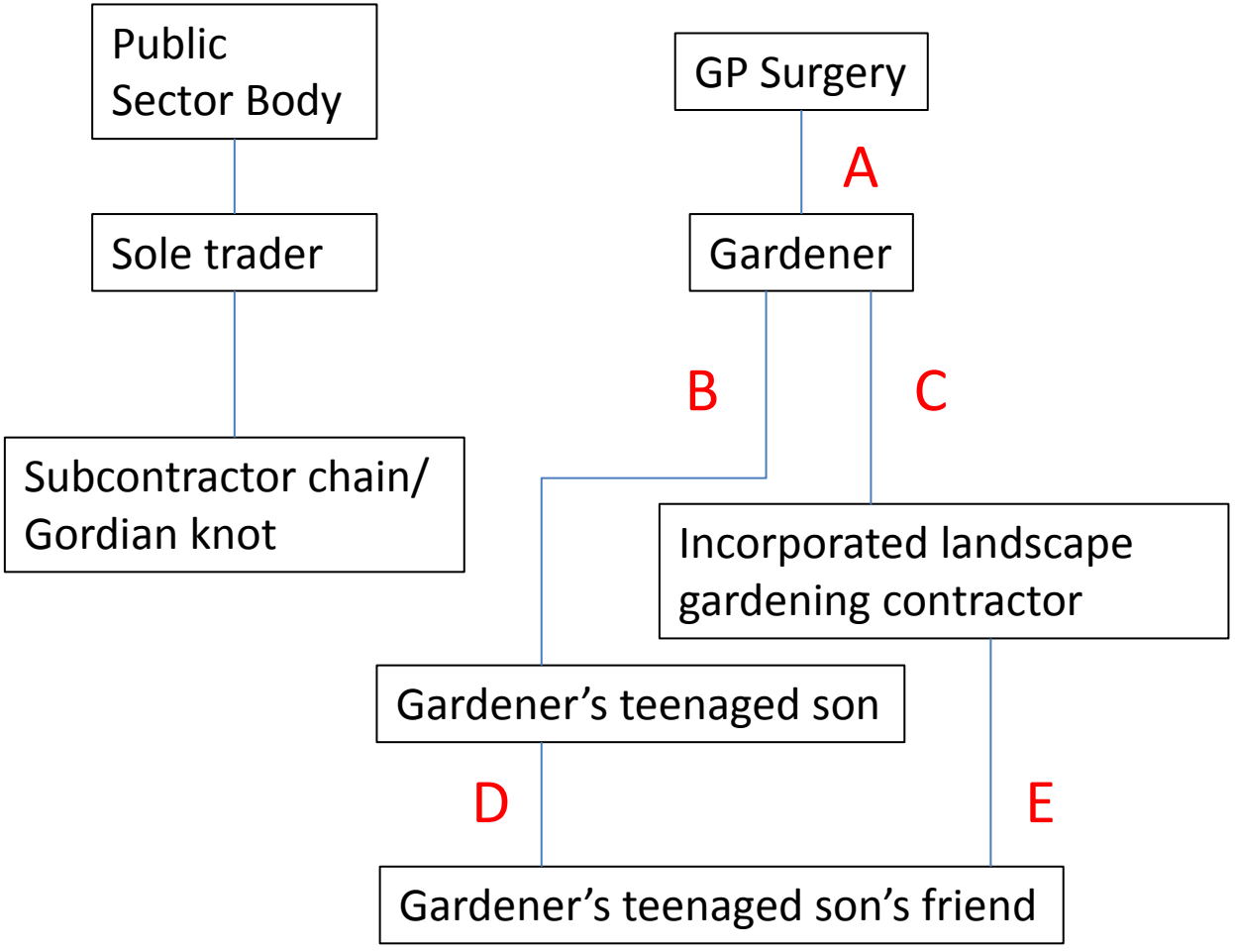
In Scenario B, the gardener's teenaged son starts to help out during the holidays. He is paid directly by the gardener. The gardener now becomes a s53 intermediary, and the practice should operate all IR35 checks and if appropriate apply RTI on the payments made to the son.

In Scenario C, the gardener's son decides he's made enough money and offers the opportunity to help out to a friend, in order that both have enough money to go to a festival later in the year. Now, the son is the s53 intermediary, and his father the entity adjacent to the intermediary, liable to carry out all checks and operate RTI on payments if appropriate.

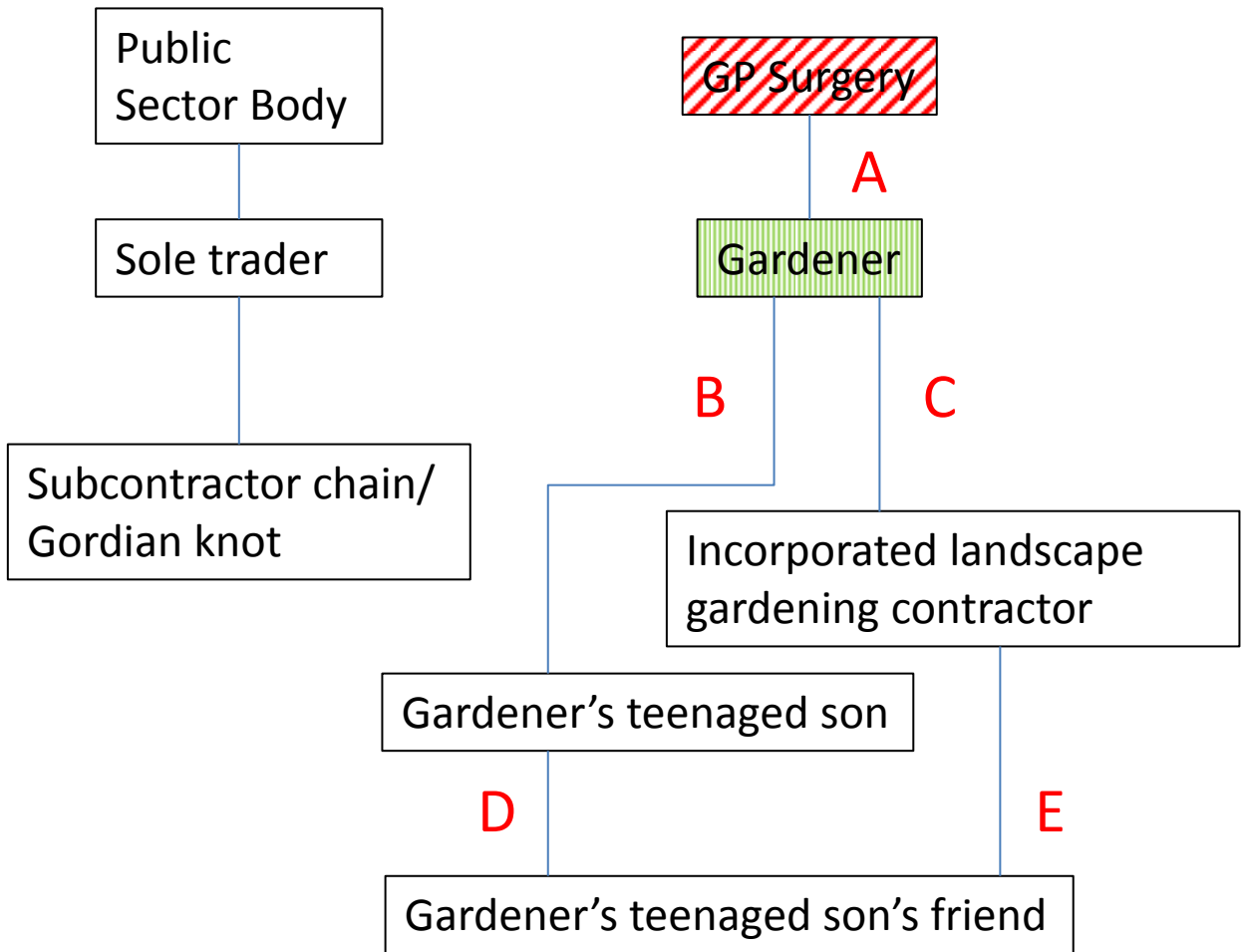
In Scenario D, the gardener realises that a large tree and its root need to be removed. The job is beyond his capacity, so he engages a local limited company to do the work for him. Provided all the work is carried out by the company's employees, or its structure is such that it cannot constitute a s51 intermediary, IR35 cannot be in point.

In Scenario E, it transpires that the sole director and major shareholder in the gardening company has asked his son, a minor shareholder (defunct s660A planning) but not employee to help out on the job. His son is none other than the gardener's own son's friend. In this circumstance, the gardening company will be a s52 intermediary and the gardener will once again need to conduct all tests and if appropriate operate RTI on the contract.

Under the current IR35 legislation, the responsibility for considering and if necessary applying IR35 falls upon the same party who would be responsible for considering employment status issues. Under the new proposals, in Scenarios B, C and E the application of IR35 would need to be considered independently of employment status. Without knowing the full conditions of the subsequent contractual chain, it is impossible for anyone from the sole trader's adjacent entity downwards to know whether they are under a legal obligation to carry out the full IR35 analysis (and since the current initial test is fundamentally flawed, even with that knowledge the obligation would not be apparent). While it may objectively appear "obvious" that IR35 would not apply in the vast majority of cases, a prudent public body, knowing that it is responsible for taxpayers funds, will take care to comply fully with the law and restrict its potential liability.

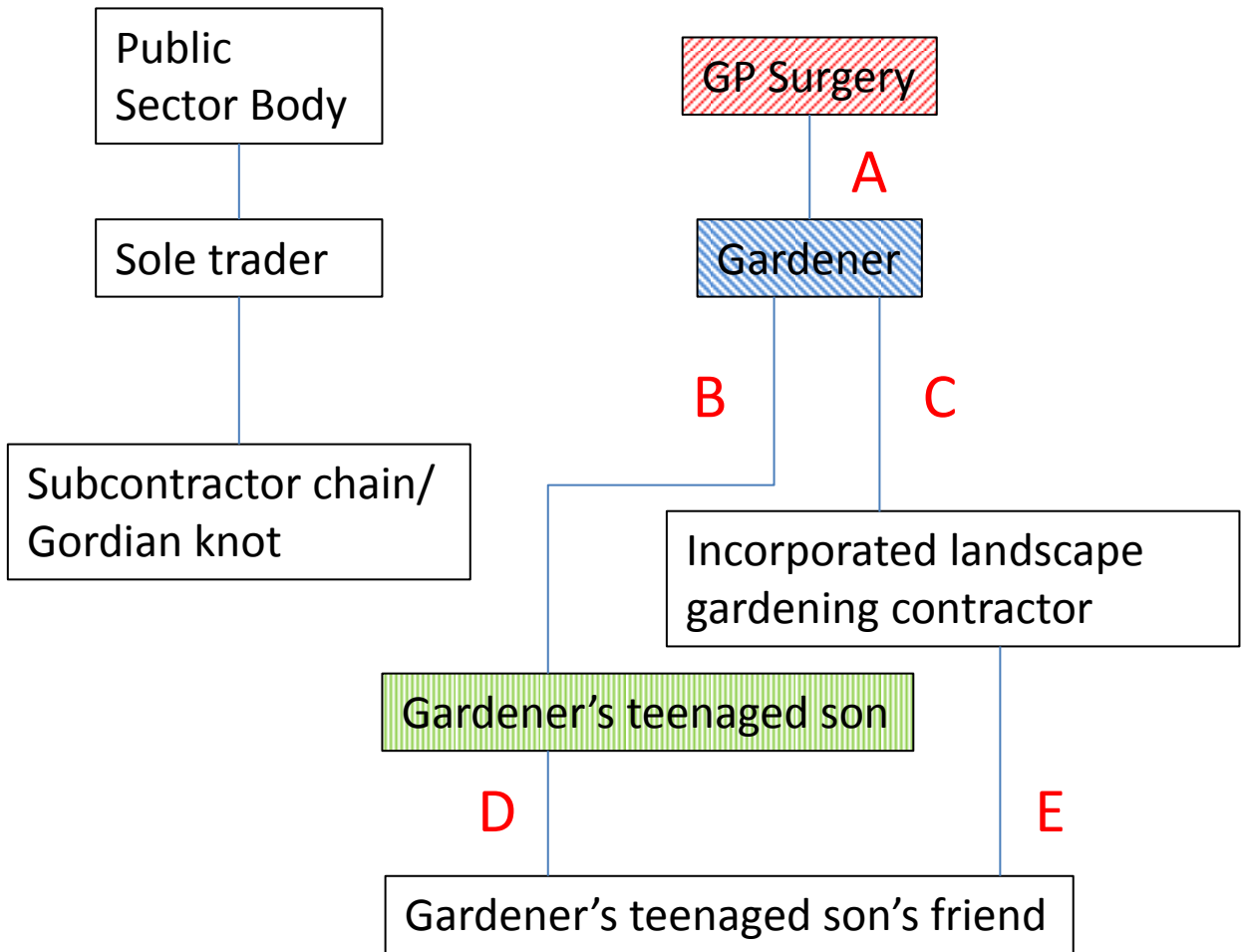


Scenario A



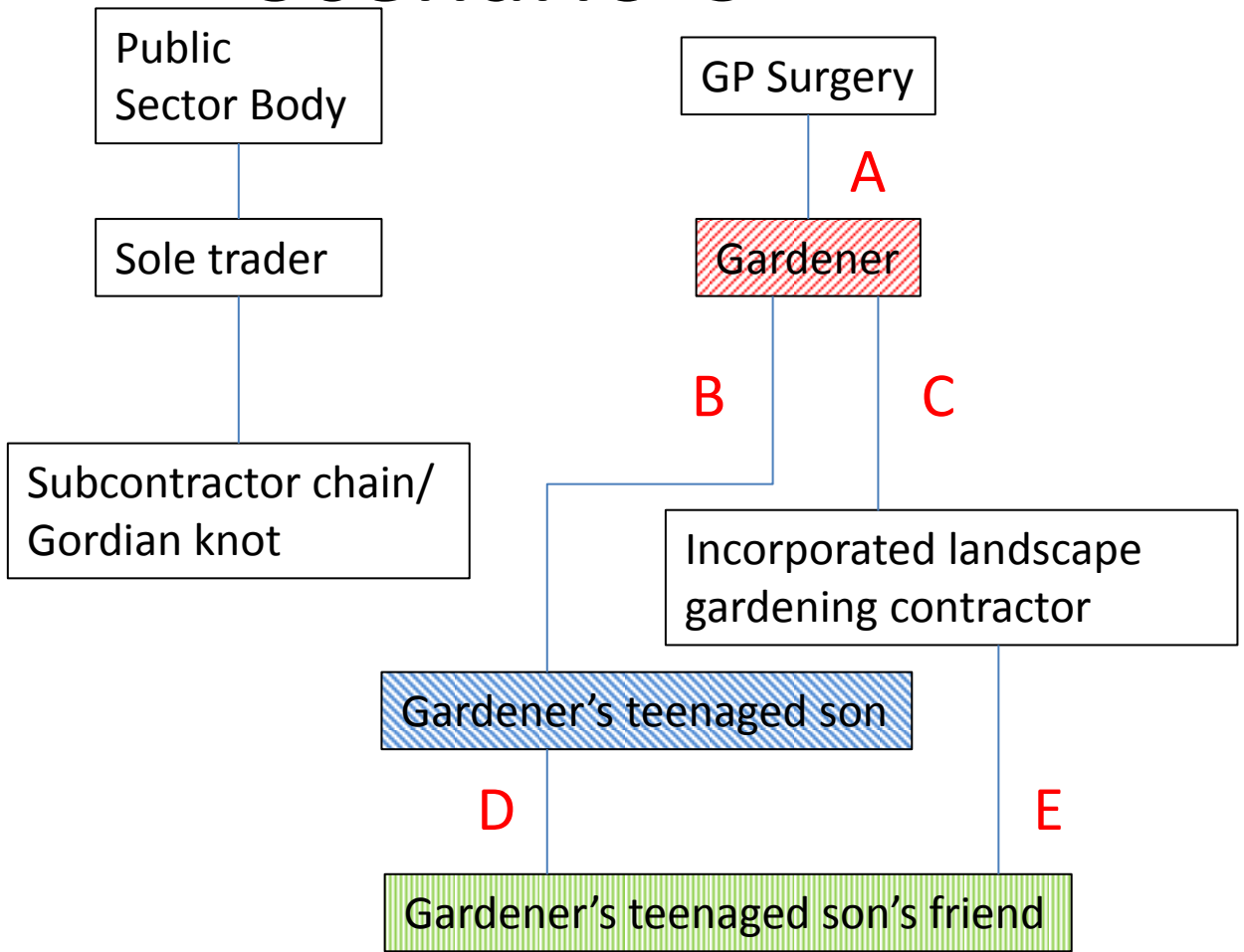
	Entity adjacent to intermediary; liability to operate RTI
	Entity adjacent to performer; consider status
	S51 Intermediary
	S53 Intermediary
	Performer – liable for own tax

Scenario B



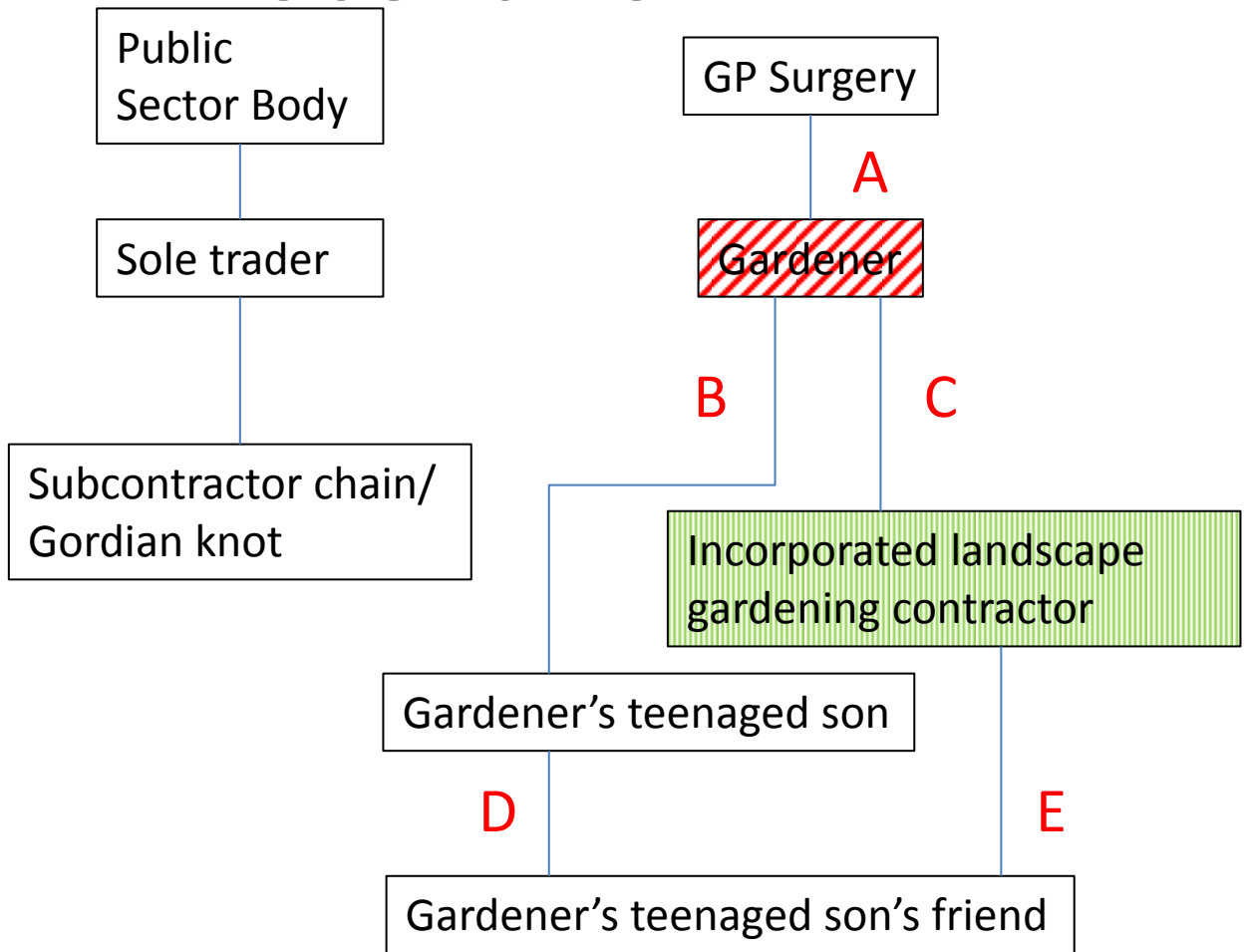
	Entity adjacent to intermediary; liability to operate RTI
	Entity adjacent to performer; consider status
	S51 Intermediary
	S53 Intermediary
	Performer – liable for own tax

Scenario C



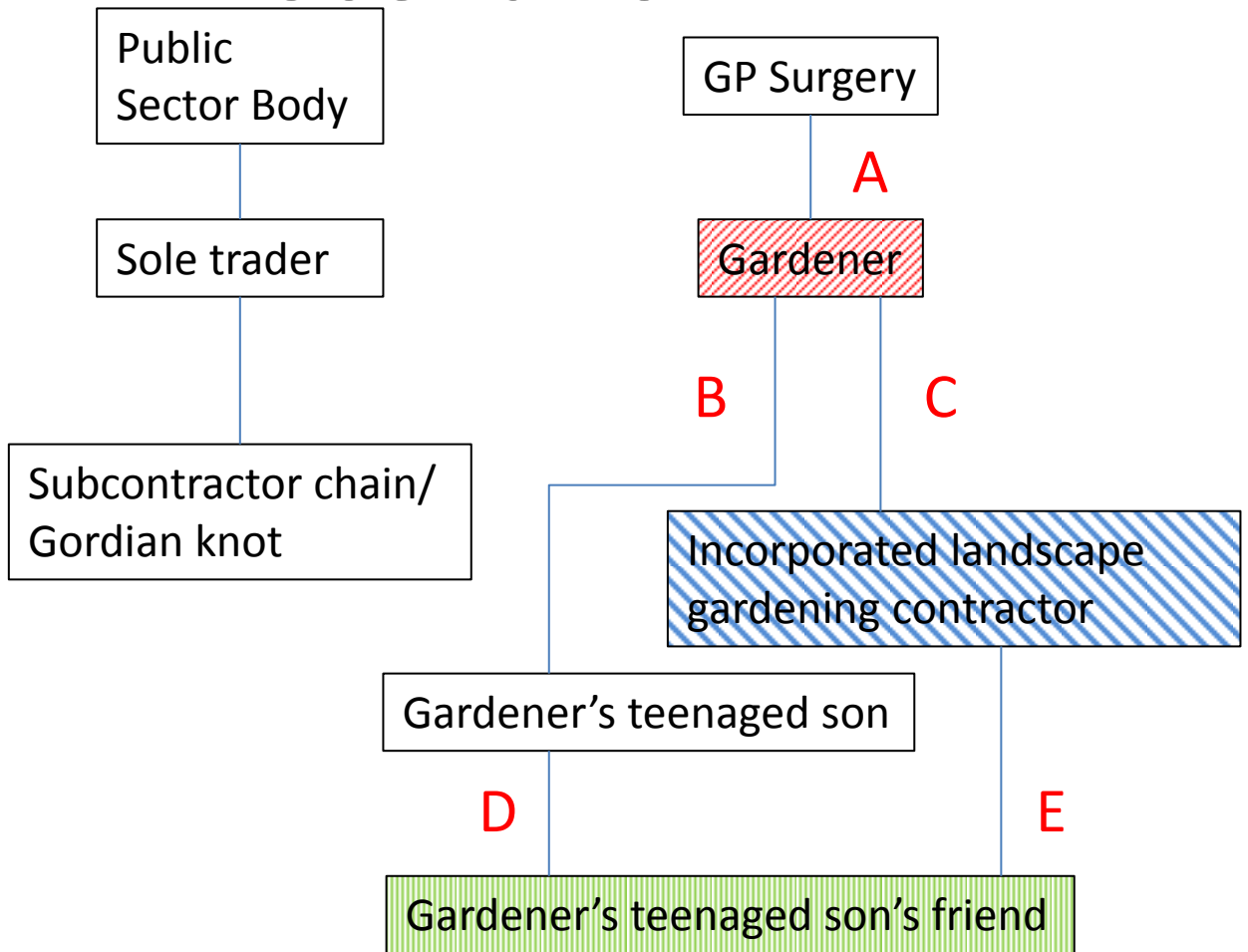
	Entity adjacent to intermediary; liability to operate RTI
	Entity adjacent to performer; consider status
	S51 Intermediary
	S53 Intermediary
	Performer – liable for own tax

Scenario D



	Entity adjacent to intermediary; liability to operate RTI
	Entity adjacent to performer; consider status
	S51 Intermediary
	S53 Intermediary
	Performer – liable for own tax

Scenario E



	Entity adjacent to intermediary; liability to operate RTI
	Entity adjacent to performer; consider status
	S51 Intermediary
	S53 Intermediary
	Performer – liable for own tax