

Off-payroll working Guidance

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1. Introduction

This guidance clarifies the off-payroll arrangements for workers that are hired by the Highland Council.

From 6th April 2017, public sector bodies and agencies are responsible for operating the tax rules that apply to off-payroll working in the public sector

The intermediaries' legislation (IR35) was introduced to make sure that people who do the same job in the same manner pay similar amounts of income tax and National Insurance (NI), whether they are employed directly or they work through an intermediary, such as their own limited company.

2. Clarification of the scope

On payroll means that the worker has their PAYE deducted from their income at source and is not engaged using a personal services company (PSC), a consultancy or other intermediary vehicle.

Therefore in most circumstances within the Highland Council we employ individuals directly and their PAYE is deducted from their income at source. This is also usually the case if they are employed via an employment agency.

If however you have a worker who is engaged using a personal services company (PSC), a consultancy or other intermediary vehicle the **Highland Council** will need to decide whether the off-payroll working rules apply.

3. Employed or self-employed

The HMRC has produced an interactive employment status indicator tool (see www.gov.uk/guidance/employment-status-indicator) which can be used to gain an indication of whether a worker is employed or self-employed.

It may not always be clear whether the worker is an employee of the Highland Council or self-employed. The Highland Council and the worker cannot simply agree that the worker is self-employed because this is advantageous to both of them — the underlying relationship must support this.

To decide whether the relationship is one of employment or self-employment, it is necessary to consider the characteristics of each. The following table summarises some of the key characteristics of each.

Employed	Self-employed
Has to do the work him- or herself	Can hire someone to do the work or engage helpers
Someone can tell them what to do, where to do the work, when to do the work and how to do the work	Not supervised
Works a set number of hours	Works the number of hours needed to complete the job
Is provided with the equipment needed to do the job	Provides own equipment
Has to undertake the work given and can be moved from task to task	Can decide what work to do and where to provide services (no obligation to accept work offered)
Paid by hour, week or month	Agrees a fixed price for the job regardless of how long it takes
Works for one person/company	Regularly works for a number of different people
May be paid overtime or bonus payments	Must correct unsatisfactory work in own time and at own cost

In some cases, a worker will have some of the characteristics of both employment and self-employment. For example, a person may provide his or her own equipment and may have the right to send someone else rather than do the work him- or herself, but may be paid by the hour rather than charge a fixed price for the job. In these cases, it is necessary to consider the bigger picture and look at the relationship as a whole to determine whether, on balance, it is one of employment or self-employment (See appendix 1).

4. Do off-payroll working rules apply?

Continuing to engage an existing ‘off payroll’ worker or planning to engage a new ‘off payroll’ worker:

The first step is to check the employment status service tool via the HMRC website to determine if off-payroll working rules apply, see www.gov.uk/guidance/employment-status-indicator. This tool provides guidance to determine if the worker is employed or self-employed for tax purposes.

Paying an off payroll employee

If the tool determines that off-payroll working rules apply the Budget Holder should sign the invoice; add the correct ledger code to it and then scan it to “**Creditors Team**” confirming that off- payroll working rules apply. This team will process the invoice through Integra PRL and the budget holder will see the charge in their cost centre in due course. Note: there will be an additional charge to cost centre for employer’s NIC.

5. If off-payroll working rules don’t apply

If the Employment Status Service indicates that the rules don’t apply, you should pay the contractor’s invoices as normal and retain the records that support this decision.

6. Contract with an agency who pays the personal service company

The Highland Council should inform the agency that you have determined that the engagement should be subject to off-payroll working rules. The budget holder will pay the agency’s invoice for providing the worker as per the contract with the agency.

7. Compliance

Managers are responsible for ensuring that the ‘off payroll’ working rules are applied and the Council are compliant with the intermediaries’ legislation (IR35) and the Highland Council Financial Regulations. All managers will be asked to confirm on the relevant forms that they have followed the process (Section 4) for ‘off payroll’ working. Formal action may be taken for non-compliance.

8. Summary

To remain outside of off-payroll working rules when providing services through a Personal Services Company, it is vital that the true relationship between the worker and Highland Council, ignoring the Personal Services Company, is one of self-employment. Otherwise, off-payroll working rules will apply.

Appendix 1 - Marginal Cases

In many cases, a worker will have some of the characteristics of both employment and self-employment. For example, a person may provide his or her own equipment and may have the right to send someone else rather than do the work him- or herself, but may be paid by the hour rather than charge a fixed price for the job. In marginal cases, it is necessary to consider the bigger picture and look at the relationship as a whole to determine whether, on balance, it is one of employment or self-employment. In reaching a decision, consideration should be given to the following.

- *Contract* — The contract or other written terms is a useful starting point. An employee will have a contract of services, whereas a self-employed worker will have a contract for services. However, the contract must reflect the underlying relationship accurately.
- *Right of substitution* — An employee must perform the tasks of the job him- or herself, whereas in self-employment situation the contract is generally for the services to be performed rather than to be performed by a specific individual. However, where the contract relates to specialist skills, the inability to provide a substitute will not necessarily mean the relationship is one of employment.
- *Mutuality of obligation* — In an employment relationship, the employer must provide work and the employee must undertake that work. There no ongoing obligation to provide and accept work in a self-employment relationship.
- *Right of control* — A master/servant situation is more likely to exist in an employment situation, whereas in a self-employment context the worker is his or her own boss.
- *Provision of tools* — An employee will be provided with the tools to do his or her job, whereas a self-employed worker will generally provide his or her own tools.
- *Financial risk* — This is an important indicator of status. A self-employed worker will bear financial risk and will rectify mistakes at his or her own costs. He or she will bear financial responsibility for the success of the business and the decision he or she makes. In an employment situation, the financial risk is borne by the employer rather than the employee.
- *Opportunity to profit* — Again this is an important indicator of status. A self-employed person will benefit from doing a job quicker or under budget. An employee may earn commission or a bonus but does not have the same opportunity to profit.
- *Length of engagement* — A long period of engagement may be indicative of employment, whereas self-employment by be characterised by a number of shorter engagements. However, this is not always the case as employees

may work on short-term contracts.

- *Part and parcel of the organisation* — An employee is likely to be part and parcel of the organisation, be invited to staff events, such as Christmas parties, and receive from employee-type benefits, such as a pension. These are not usually available to the self-employed.
- *Right to terminate* — An employment contract is more likely to contain the right to terminate on giving notice. By contrast, a contract for services (self-employment) will come to an end when the contract has been fulfilled.
- *Personal factors* — Personal factors must also be taken into account. For example, a senior employee or one with specialist skills may not be supervised but this in itself does not make the worker self-employed.
- *Intention of the parties* — While this can be useful, it is not decisive as the intention must be supported by the facts of the actual relationship.

Off-payroll working

Frequently Asked Questions

Q1: Who does this affect?

It applies to:

- public authorities who hire off-payroll contractors
- agencies and third parties who supply contractors to the public sector
- contractors who provide their services to a public authority through an intermediary

Q2: Who is responsible for deciding if the legislation applies?

The responsibility for deciding if the legislation should apply is the **Highland Council recruiting manager**.

The managers should check the employment status service tool via the HMRC website to determine if off-payroll working rules applies, see www.gov.uk/guidance/employment-status-indicator.

Where the rules apply, the fee-payer (the Highland Council, agency, or other third party paying the intermediary) will calculate Income Tax and employee National Insurance contributions (NICs) and pay them over to HMRC. These amounts will be deducted from the intermediary's fee for the work provided.

The worker's intermediary is able to set against its own Income Tax and NICs liability in the tax year, an amount equivalent to the payment received from the fee-payer which has already had Income Tax and NICs deducted.

The fee payer will also pay over appropriate employers NICs to HMRC.

Q3: What do I do if the HMRC tool shows that the off payroll working rules do not apply?

Keep the results of the HMRC online tool for reference. Remember to review this if there is a change in the contract/relationship as this may change the outcome of the results.

Q4: What do I do if the HMRC tool states that the off payroll working rules do apply and they invoice the Highland Council directly?

To confirm the payment is due, the Budget Holder should sign the invoice; add the correct ledger code to it and then scan it to "**Creditors Team**" confirming that off- payroll working rules apply. This team will process the invoice through Integra PRL and the budget holder

will see the charge in their cost centre in due course. Note: there will be an additional charge to cost centre for employer's NIC.

Q5: What do I do if the HMRC tool states that the off payroll working rules do apply and they are an agency employee?

Contact the agency and confirm that the worker is subject to off-payroll working legislation and ask for confirmation this request has been actioned and that the agency is deducting PAYE and NI from the worker.

Provide, if requested, reasons for this decision to the agency.

NB: The worker is still the employee of the agency not Highland Council however the local authority has the responsibility to confirm that the off payroll rules apply.

Q7: What are the workers responsibilities?

A worker working through a Personal Service Company (PSC) or other intermediary is responsible for:

- Providing the Highland Council with the information they need to help determine whether the off-payroll working rules should apply.
- Where the off-payroll working rules apply, provide the fee-payer (Highland Council, agency, or other third party) with the information required to allow them to deduct tax and NICs from the payment they make to the intermediary.
- Reporting to HMRC on own, and company's tax affairs.

Q8: What are the recruiting manager's responsibilities?

- Complete the HMRC online tool to determine whether the post or service they are looking to fill is likely to be subject to off-payroll working rules. People applying, through their own intermediaries will need to know the tax implications in advance.
- Where the recruiting manager is using an agency, or other third-party to supply workers they will need to tell them if the rules apply for the positions they are filling.
- Confirm to the creditors team that off-payroll rules apply and provide the necessary information.

Q9: What are Payroll responsibilities?

- Where payroll have been notified that off-payroll working rules apply, tax and national insurance will be deducted from fees, and reported and paid over to HMRC in real time along with employers NICs.