Guidance on IR35

Off-Payroll Working

1. [**IR35 – Off-Payroll Working**](#IR351)
2. [**Agency Workers**](#AgencyWorker)
3. [**Checking Employment Status for Tax (CEST)**](#CEST)
4. [**Paying an off-payroll employee**](#PayingOffPayroll)
5. [**Status Disagreement Process.**](#StatusDisagreement)

Version 1 – May 2021

|  |  |  |  |
| --- | --- | --- | --- |
| Version 1 | May 2021 | Approval - | Review May 2022 |

1. **IR35 – Off-Payroll Working**

This guidance refers to the off-payroll arrangements for workers that are hired by the Highland Council. Most Highland Council staff are ‘on payroll’ and has their PAYE deducted from their income at source. This is also usually the case if the worker has been hired via an Agency.

Hiring Managers are responsible for ensuring that the ‘off payroll’ working rules are applied and the Highland Council are compliant with the Intermediaries’ Legislation (IR35) and the Highland Council Financial Regulations.

The off-payroll working rules (IR35) can apply if worker /contractor/freelancer/ consultant that you engage provides a service through either their own limited company or another type of intermediary to the Council.

Examples of Intermediary are:

* the Worker/Contractor’s own Personal Service Company or another Personal Service Company (PSC)
* a Partnership
* own Limited Company
* an Individual
* Recruitment/Consultant Agency (see below)
* Umbrella Companies

The purpose of the IR35 legislation is to ensure that all Workers/Contractors working in an organisation, in the same way as permanently hired staff, will pay the same Tax and National Insurance contributions as an employee. This may be deducted directly from the Worker or from their Intermediary where applicable.

1. **Agency Workers**

All Hire of Agency Workers should be undertaken through the appropriate Procurement Framework as per our Guidance [here](https://www.highland.gov.uk/staffsite/info/24/human_resources/286/vacancies/4). Strict adherence to this procedure will ensure that PAYE applies to all Workers engaged and IR35 rules do not need to be checked.

If however, the engagement of a Worker has not been through the appropriate Procurement Framework then the Hiring Manager will need to ensure the following:

* There is a record of all the individual engagements and the relevant Agencies
* There is a contract in place with the Agency that states that PAYE will be operated
* Where no PAYE is being operated the Hiring Manager must determine the employment status and should follow the process from [Step 1](#Step1) below

1. **Checking Employment Status for Tax (CEST)**

From 6th April 2021 the Hiring Manager must complete an HMRC **Check Employment Status for Tax (CEST)** in all cases where PAYE cannot be applied to any Worker/Intermediary. This must be completed before any contract begins.

Step 1 – Click [here](https://www.gov.uk/guidance/check-employment-status-for-tax) for the link to HMRC Check Employment Status for Tax (CEST). The Hiring Manager to complete the online tool.

Step 2 - The Hiring Manager will receive results from HMRC that will confirm whether off-payroll working (IR35) will apply (inside IR35) or not (outside IR35).

Step 3 - The Hiring Manager, using the results received from the HMRC tool must complete a Status Determination Statement

Step 4 - (a) If IR35 does not apply, the Worker or Intermediary is not regarded as an employee of the Highland Council for tax purposed for the duration of the engagement. The following documents should be sent to the Worker or Intermediary:

* Status Determination Statement (Outside IR35)
* Highland Council Status Disagreement Process.

The Service should retain a copy of the CEST and corresponding Status Determination Statement centrally for Audit purposes.

(b) If IR35 does apply, the Worker or Intermediary is regarded as an employee of the Highland Council for tax purposes for the duration of the engagement. No payment can be made to the Worker or Intermediary until the actions below have been completed.

The Hiring Manager must issue the following documents to the Worker or Intermediary:

* Status Determination Statement (Inside IR35).
* IR35 New Worker Start form - complete ‘you and your organisation details’. The Worker or Intermediary should complete the remainder of this form and return to Hiring Manager.
* Highland Council Status Disagreement Process

(c) Upon return of the completed IR35 New Worker Start form from the Worker/Intermediary, the Hiring Manager should:

* Check the details match the assignment that the Worker has been engaged to undertake.
* Complete The Off Payroll Worker, Supplier Set up Form
* Send both documents to the [Creditors Team](mailto:Creditors.Team@highland.gov.uk?subject=IR35).
* Retain a copy of the CEST and corresponding Status Determination Statement centrally in the Service for Audit purposes.

The Highland Council Payroll Section will be notified by the Creditors Team 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.

Budget Holder and Hiring Manager should Note: there will be an additional charge to cost centre for Employer’s National Insurance Contributions.

1. **Paying an off-payroll employee**

Upon receipt of an invoice where IR35 Off Payroll rules applies (Inside IR35) the Hiring Manager must:

* Check and sign the Workers/Intermediaries invoice;
* add the correct ledger code, scan and email to “[Creditors Team](mailto:Creditors.Team@highland.gov.uk?subject=IR35)” confirming that off- payroll working rules apply.
* The Creditors Team will process the invoice through Integra PRL and the budget holder will see the charge in their cost centre in due course.

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 Highland Council which has already had Income Tax and NICs deducted.

1. **Status Disagreement Process.**

If the Worker or Intermediary disagrees with the Status Determination Statement that has been issued they have the right to appeal following the process below:

* Contact Highland Council with the details of the IR35 Status Determination Statement that they disagree with.
* Put forward the grounds of their appeal, listing the specific reasons for disagreement.
* The Worker or Intermediary should keep a record of all emails, letters and written correspondence.
* A disagreement can be raised until the last payment is made for a Worker or an Intermediary’s services

The Hiring Manager must respond to any challenge/appeal to the Status Determination Statement within 45 days of receiving it. However, during this time the original determination will stand.

It is the Hiring Managers responsibility to review the Worker/Intermediary’s challenge/appeal to the Status Determination Status.

Once the determination has been reviewed the Hiring Manager must notify the Worker or Intermediary whether:

* the Status Determination Statement has not changed or
* the original decision has been reversed and the Hiring Manager should issue a new Status Determination Statement confirming the date it is valid from stating the previous determination has been withdrawn.

Any tax or national insurance wrongly deducted will be repaid to the Worker or Intermediary.

The Hiring Manager must email any revised Status Determination Statements to “[Creditors Team](mailto:Creditors.Team@highland.gov.uk;%20TalentTeam@highland.gov.uk?subject=IR35)” with the date it is valid from.