Guidance on IR35

Off-Payroll Working

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**Introduction**

This Guidance will provide information regarding Off Payroll (IR35) rules, what they are, who they affect and how to apply them. For the purpose of this guidance Managers are referred to as **‘Hiring Managers’** as they are responsible for the hire of or engaging services.

Any Hiring Manager that engages an individual that will not be deemed an employee of the Highland Council (ie does not get paid through our payroll system) must check whether Off-Payroll (IR35) rules apply to the worker. This would be undertaken at the outset before any engagement.

From 6th April 2017, public sector bodies became responsible for ensuring that the Off-Payroll (IR35) tax rules are applied to suppliers who provide a service through their own intermediary.

An intermediary will usually be the worker’s own personal service company, but could also be any of the following:

* a **Sole Trader/Self Employed** individual
* a **Partnership**
* a **Personal Service Company** (PSC)
* an **Agency Worker** (through an intermediary) – see [Agency Worker guidance](https://www.highland.gov.uk/staffsite/info/24/human_resources/286/vacancies/4)

**What is a Sole Trader/Self Employed individual?**

A sole trader is a simple business structure whereby one individual runs and owns the entire business and is personally liable for the businesses debts.

A Sole Trader/Self Employed individual is not covered by the Off Payroll Working (IR35) rules. However, HMRC require that this is verified, therefore an employment status assessment (CEST) should still be undertaken.

**What is a Partnership?**

This is business model used to describe a relationship which exists between two or more people who personally share responsibility for the business, including any losses made. Partners share the business’s profits and each partner pays tax on their share.

**What is a Personal Services Company (PSC)?**

This is a business model used to describe a common type of limited company. A personal services company sells the work of an individual or small group of individuals and is owned an operated by that individual or small group of individuals as a limited company. Typically, the individual performing the work will be the sole director and shareholder of the limited company.

1. **Off-Payroll Working (IR35) Rules**

From 6th April 2017, public sector bodies became responsible for ensuring that the Off-Payroll (IR35) tax rules are applied to suppliers who provide a service through an intermediary.

This guidance refers to the Off Payroll Working (IR35) 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.

The purpose of the HMRC Off-Payroll Working (IR35) legislation is to ensure that people who do the same job in the same manner, pay similar amounts of income tax and national insurance, whether they are employed directly by the Council of whether they work through an intermediary (ie a personal service company or a partnership).

Hiring Managers are responsible for ensuring that the Off-Payroll Working (IR35) regulations are applied where appropriate and Highland Council are compliant with HMRC regulations and the Highland Council Financial Regulations.

The Off-Payroll Working (IR35) rules can apply if worker/contractor/freelancer/ consultant that the Hiring Manager engages 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
1. **Responsibilities of the Hiring Manager**

Before any work commences the Hiring Manager needs to establish whether Off Payroll Working (IR35) legislation applies to supplier they are planning to engage. i.e. are they a personal services company, partnership, sole trader etc. To do this the Hiring Manager must complete an **HMRC Check Employment Status for Tax (CEST)** – link in part 3 below.

The Hiring Manager is responsible for:

1. Ensuring that Off Payroll Working (IR35) regulations are applied prior to the supplier contract.
2. Completing the CEST on a contract-by-contract basis, not just as a one-off exercise for a particular supplier.
3. Retaining all documents relating to the CEST, these are **legally binding documents** and may be required in the future for audit purposes. This includes verification of Sole Traders/Self Employment.
4. **Checking Employment Status for Tax (CEST)**

The **Check Employment Status for Tax (CEST)** considers factors as whether the client controls what, where and when the work is done. In essence, it determines whether a supplier would be an employee if they were providing their services directly as opposed to through an intermediary (i.e. personal services company or partnership).

If the outcome of the CEST assessment is that the supplier is considered to be working in the same manner as an ‘employee’ (ie Off Payroll Working (IR35) rules apply), the Highland Council is obliged to deduct tax and NI and to pay employers NI in the same way as for an employee.

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 - Before you start, you’ll need to know:

* details of the contract including actual working practices
* the worker’s responsibilities
* who decides what work needs to be done
* who decides when, where and how the work is done
* how the worker will be paid
* if the contract includes any corporate benefits or reimbursement for expenses

Step 3 - The CEST Tool gives the HMRC’s view of a worker’s employment status, based on the information you provide. This will allow you to decide if the Off Payroll Working (IR35) Rules apply to a contract.

The tool provides the following determinations based on the information you give:

* employed for tax purposes for this work
* self-employed for tax purposes for this work
* off payroll working (IR35) rules apply
* off payroll working (IR35) rules do not apply

You may receive an ‘unable to determine’ result. When this happens, refer to the [HMRC Employment Status Manual (ESM](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000)) and consider if there is sufficient weighted answers to make a determination and retain appropriate evidence to support the decision made.

Step 4 - Suppliers being considered under the Off Payroll Working (IR35) rules, must be provided with a copy of the outcome of the CEST assessment along with a Status Determination Statement (SDS) providing reasons for the determination. The Hiring Manager must complete a Status Determination Statement using the results received from the HMRC tool.

Step 5 - (a) If Off Payroll Working (IR35) rules do not apply, the Worker or Intermediary is not regarded as an employee of the Highland Council for tax purposed for the duration of the contract. The following documents should be sent to the Worker or Intermediary:

* Status Determination Statement (Off Payroll Working (IR35) rules DO NOT apply)
* 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 Off Payroll Working (IR35) rules **apply**, the Worker or Intermediary is a deemed employee of the Highland Council for tax purposes for the duration of the contract. **No payment can be made to the Worker or Intermediary until the steps on this** [**flowchart**](https://www.highland.gov.uk/peopleandtransformation/info/28/hr_topics/38/off-payroll_working) **have been completed.**

A copy of the CEST and corresponding Status Determination Statement must be retained centrally in the Service for Audit purposes.

The Highland Council Payroll Section will apply off-payroll (IR35) rules and tax and national insurance will be deducted from fees and reported and paid over to HMRC in real time along with employers NICs. 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.

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

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, **in writing**, with the details of the Off Payroll Working (IR35) Status Determination Statement that they disagree with, putting forward the grounds of their appeal and 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 Manager’s 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 the outcome of the consideration of the appeal and the reason(s) for that outcome:

* If the Status Determination Statement has not changed there will be no further action.
* If the original decision has been reversed, 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 “Payroll” with the date it is valid from.

1. **Workers engaged through an Agency Supplier**

Generally, workers engaged via an agency are likely to be ‘employees’ of the agency and on the agency payroll, in which case the Off Payroll Working (IR35) rules do not apply. However, a worker sourced through an agency will not always be on the payroll of the agency and the Council then becomes responsible for undertaking the assessment and for providing the agency with a copy of the Status Determination Statement so that they can make the correct tax and NI deductions.

It is the responsibility of the Hiring Manager to ensure that Check Employment Status for Tax is undertaken in all cases. Refer to the guidance [here](https://www.highland.gov.uk/staffsite/downloads/file/9382/guidance_on_ir35_regulations_when_seeking_to_engage_an_agency_worker) for full advice.

1. **Further Guidance**

For further guidance and information on Off Payroll Working (IR35) please visit [HMRC](https://www.gov.uk/guidance/understanding-off-payroll-working-ir35).

Flowchart - Off-Payroll rules apply – steps to follow

The steps below should be followed where the [HMRC Check Employment for Tax (CEST)](https://www.gov.uk/guidance/check-employment-status-for-tax) Test has determined that ‘Off-Payroll (IR35)’ rules apply to an engagement. Full guidance on Off Payroll Working can be found [here](https://www.highland.gov.uk/peopleandtransformation/info/28/hr_topics/38/off-payroll_working).

***NB*** *- IR35 supersedes Construction Industry Scheme (CIS) deductions.*

