

**Off-Payroll Working (IR35)**

**Guidance**

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**1.0 What is the purpose of this guidance?**

The purpose of this guidance is to ensure that managers are aware of the IR35 tax rules in respect of engaging contractors and to ensure that they adhere to these rules.

**2.0 Who is this guidance for?**

This guidance is for managers with the authority to engage external contractors. It is also for the Payroll team and Accounts Payable team.

**3.0 When is a contractor “within scope” of the Off-Payroll Working (IR35) rules?**

The Off-Payroll Working (IR35) rules apply where (1) a contractor carries out work for the Council through their own intermediary, (i.e. a **personal service company** or **partnership**) **and** (2) theywould be classed as an employee if providing their services to the Council directly.

**4.0 When did the law on IR35 come into effect and who does it apply to?**

The Off-Payroll Working (IR35) legislation took effect on 6 April 2017 and applies to public sector bodies.

**5.0 What is the purpose of the IR35 legislation?**

The purpose of the 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 or whether they work through an intermediary (i.e. a **personal service company** or a **partnership)**. It should be noted that the legislation is to be applied on an engagement by engagement basis.

**6.0 What is a Personal Service Company?**

This is a business model used to describe a common type of limited company. A personal service company sells the work of an individual or small group of individuals and is owned and 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.

**7.0 What is a Partnership?**

This is a business model used to describe a relationship which exists between two or more people involved in business in common, with a view to profit.

**8.0 Which type of contractors are not covered by this guidance?**

Contractors under a business model of **sole trader** are not covered by this guidance. The IR35 tax rules do not apply to sole traders because they do not work for the Council through an intermediary (such as a personal service company or partnership). Some additional information on sole traders is shown under appendix 1. The guidance also does not apply to limited companies other than a personal service company.

**9.0 What does a hiring manager need to establish at the outset regarding a contractor?**

The hiring manager needs to establish at the outset the business model of the contractor they are planning to engage and whether they are being engaged via an intermediary (i.e. a **personal service company** or a **partnership)** and hencepotentiallywithin scope of the IR35 tax rules. Further advice on this can be obtained from Legal Services, where required.

**10.0 What have HMRC provided to assist employers to establish whether a contractor would be classed as an employee if they were providing their services directly to the Council?**

To assist in establishing whether a contractor would be classed as an employee if they were providing their services directly, HMRC have developed an online ‘Check Employment Status for Tax’ (CEST) assessment for public-sector bodies to make use of (details are shown at Appendices 2 and 3).

It should be noted that from 6 April 2021 there is a legal requirement for public sector bodies to also compile a Status Determination Statement documenting the employment status of each contractor (with a personal service company or in a partnership), and the determination of the ‘employer’ for IR35 purposes (as applicable).

The end-client (i.e. the Council) must produce this statement and give it to the contractor and to any other parties in the supply chain, including to an agency (as applicable). The Statement is compiled following the undertaking of the abovementioned CEST assessment (see paragraphs 17.0 to 28.0 below for full details on the duty in relation to Status Determination Statements).

**11.0 When should the CEST assessment be completed?**

The CEST assessment should be completed prior to commencing the procurement process and the outcome documented on the Status Determination Statement.

**12.0 What does the ‘CEST’ assessment consider?**

The assessment considers such factors as whether the client controls what, where and when the work is done, whether the contractor must do the work personally or can provide a substitute, whether he/she hires their own employees, whether he/she can work for other clients, whether he/she is paid for sickness and holidays and whether he/she is required to request leave. In essence, it determines whether a contractor would be an employee if they were providing their services directly as opposed to through an intermediary (i.e. personal service company or partnership).

**13.0 What about the outcome of the ‘CEST’ assessment?**

If the outcome of the assessment is that the contractor is considered to be working in the same manner as an ‘employee’ (i.e. within scope of the IR35 rules), the public-sector body is obliged to deduct tax and NI and to pay employers NI in the same way as for an employee. The outcome of the CEST assessment is documented on a Status Determination Statement.

**14.0 What if the contractor is engaged through an agency?**

Where the contractor is engaged through an agency, the public-sector body is still responsible for undertaking the assessment and for notifying the agency, for them to make the correct tax and NI deductions. The Council will issue the agency (as well as the contractor and any other parties in the supply chain) with a copy of the Status Determination Statement.

**15.0 What if the IR35 rules are not followed by employers?**

It should be noted that significant financial penalties can be imposed by the HMRC on public-sector bodies who fail to adhere to the IR35 rules.

**16.0 What is expected of Council managers involved in engaging contractors?**

Council managers involved in engaging contractors who have their own **personal service company** or are in a **partnership** require to follow the procedure under 30.0 below. The primary route for engaging a contractor of these two types is through one of the frameworks/compliant contracts (see 30.1 below). This will help ensure that the IR35 tax rules are adhered to and that the Council does **not** become liable for paying the tax and national insurance contributions of the contractor (thus incurring extra costs and administrative effort).

If **in exceptional circumstances** it is not possible to engage such a contractor from the frameworks/compliant contracts, then the procedure under 30.2 below should be followed.

**17.0 What is a Status Determination Statement and whose responsibility is it to produce it and when?**

It is a comprehensive document making the employment status determination in respect of a contractor (with a personal service company or in a partnership), and the determination of the ‘employer’ for IR35 purposes (as applicable). The end-client (i.e. the Council) must produce this statement (following undertaking the CEST assessment) and give it to the contractor and to any others in the supply chain, including to an agency (as applicable). This is a legal requirement from 6 April 2021, and it requires to be issued before a contract engaging a contractor commences. See template Status Determination Statement at Appendix 5, and template cover letter at Appendix 7.

**18.0 What should a Status Determination Statement contain?**

It should contain the contractor’s deemed employment status following an IR35 assessment (i.e. ‘self-employed’ or ‘employed’ for the purposes of the IR35 rules and whether ‘out of scope’ or ‘in scope’ of the IR35 rules). It will also indicate, where ‘in scope’, who the ‘employer’ and hence fee payer is determined to be for IR35 purposes e.g. the agency, as applicable, or the Council.

In addition, the Statement provides the reasons for the determination and refers parties to the status disagreement process if they disagree with the determination.

**19.0 What is the purpose of the Status Determination Statement?**

The purpose of the Statement is to ensure that the end-client (i.e. the Council) takes responsibility for documenting the ‘employment’ status determination for IR35 purposes and communicating this to the contractor and any other parties in the supply chain, including an agency. This helps to ensure that the assessment using the HMRC CEST assessment tool is undertaken in every case (in relation to contractors with a personal service company or in a partnership) and that responsibility for the deduction of the contractor’s tax and national insurance contributions under the IR35 rules is clearly identified where the contractor is ‘in scope’ of IR35.

The compilation of a Status Determination Statement is a legal requirement. If it is not compiled and issued, the end-client (i.e. the Council) becomes the fee payer and hence responsible for the deduction of tax and national insurance contributions from the contractor and payment of the employer national insurance contributions, which must be avoided.

**20.0 What constitutes ‘reasonable care’ when producing a Status Determination Statement?**

The legislation states that the end-client (i.e. the Council) must take ‘reasonable care’ when determining the employment status of a contractor for IR35 purposes. If ‘reasonable care’ is not taken in reaching a conclusion on employment status, the responsibility for the deduction of tax and national insurance contributions would fall to the end-client (i.e. the Council), which must be avoided.

‘Reasonable care’ means that the end-client (i.e. the Council) should act in a way that would be expected of a prudent and reasonable person in the client’s position when making an assessment of the contractor’s ‘employment’ status for IR35 purposes. This would involve undertaking a full and comprehensive assessment using the HMRC CEST assessment tool and retaining sufficient records to show how the decision was reached.

**21.0 What occurs if a contractor or organisation in the supply chain disagrees with the status determination?**

If a contractor, agency, or another organisation in the supply chain disagrees with the end-client’s (i.e. the Council’s) status determination of the contractor for IR35 purposes, or who the ‘employer’ is regarded as being (as applicable), they have the legal right to raise this with the Council.

In accordance with the Council’s process, they would require to lodge their disagreement with the Chief Officer of the particular Cluster engaging the contractor (or with another appropriate Chief Officer, if that person has been involved in the engagement), giving the reason(s). It would then be considered under the Council’s Employment Status Disagreement Process – IR35, with the party notified of the outcome. The process is attached as Appendix 6.

**22.0 What occurs following consideration under the Employment Status Disagreement Process**

The end-client (i.e. the Council) will consider the disagreement raised and decide whether to maintain the determination. A further CEST assessment using the HMRC tool would likely be undertaken to determine this. If it is identified as being correct, the contractor and the other parties in the supply chain would then be notified (within the statutory 45-day period) with the reasons given for the decision.

If it is identified as being incorrect following undertaking a further CEST assessment of the contractor’s status, the Council would provide a new Status Determination Statement to the contractor and the other parties in the supply chain, within the 45 day period.

**23.0 When can an employment status disagreement in respect of a contractor be raised with the end client (i.e. the Council)?**

A disagreement can be raised with the Council up until the last payment is made for the contractor’s services in respect of the engagement.

**24.0 What is the timescale for a response to an employment status disagreement in respect of a contractor?**

The Council must provide a response within 45 days of receiving notification that the contractor, agency, or other party in the supply chain disagrees with the employment status determination. During this time, the Council would continue to apply the IR35 rules in line with the original determination.

**25.0 What records must be kept by the end client (i.e. the Council) in respect of the determination of the deemed employment status of the contractor?**

The Council must retain a copy of each CEST assessment, Status Determination Statement and a record of any disagreement lodged. These must be kept by the engaging manager to the end of the current financial year plus 6 more years, in accordance with data retention requirements. The Council must be able to demonstrate that a complete and thorough status determination has been undertaken to comply with the legislative ‘reasonable care’ test.

**26.0 What occurs if the client** **(i.e. the Council) fails to respond within the statutory 45-day period of receipt of the disagreement?**

A failure by the Council to respond to the disagreement regarding the contractor’s status within the statutory 45-day period would result in the administering of the contractor’s tax and national insurance contributions becoming the responsibility of the Council. Responses must therefore be issued within the timescale to avoid this requirement occurring.

**27.0 What occurs if the working practices of the contractor change or the Council negotiates a new contract with the contractor?**

In this scenario, it will be necessary to ensure that a re-check of the employment status of the contractor is undertaken using the HMRC CEST assessment tool, to identify whether there has been any change to their employment status in relation to the IR35 rules. A new Status Determination Statement would require to be issued to the contractor and the other parties in the supply chain.

**28.0 Does an employment status determination require to be undertaken for each specific contract?**

Yes. An engagement of a contractor is for a specific contract or piece of work that the individual is undertaking. A Status Determination Statement is needed for each engagement to determine the employment status and whether the IR35 rules apply. The terms and conditions and the working practices of each particular contract are relevant to this.

**29.0 What if a manager has any questions on the content of this guidance?**

If a manager has any questions on this guidance, then they can contact the HR Service Centre at AskHR@aberdeencity.gov.uk.

**30.0 Procedure**

Council managers must adhere to the following procedure when engaging a contractor who has their own ‘personal service company’ or is being engaged through a partnership: -

**30.1 Engaging a contractor (who has their own ‘personal service company’ or who is in a partnership) through one of the frameworks/compliant contracts**

This is the primary route for engaging such a contractor and should be followed in **all** cases unless there is an exceptional reason for not doing so (see next section below if this is the case). This will help ensure that the IR35 tax rules are adhered to and that the Council does **not** become liable for the paying the tax and national insurance contributions of the contractor (thus incurring extra costs and administrative effort).

Generally, contractors engaged through an agency are likely to be regarded as ‘employees’ of the agency and on the agency’s payroll. However, a worker sourced through an agency will not always be on the payroll of the agency and it will be the responsibility of the hiring manager to ensure that appropriate checks are undertaken to establish this.

For contractors to be engaged on this basis, it is therefore necessary for the Council manager organising the engagement, to undertake the necessary assessment to determine if the Off-Payroll rules apply, using the HMRC online tool, ‘Check Employment Status for Tax (CEST) (see details at Appendices 2 and 3) and to compile a Status Determination Statement.

Once the assessment has been undertaken, and if the Off-Payroll rules apply, the manager must then notify the agency by issuing to them the Status Determination Statement (see appendix 5 for template), for them to make the correct tax and NI deductions. The agency must confirm to the hiring manager that they accept the outcome of the assessment, that they are liable for making the relevant deductions. The Status Determination Statement is also given to the contractor (and to any other parties in the supply chain).

The assessment and notification through issue of the Status Determination Statement must be undertaken **before** the contract and the work begin. The contractor must **not** commence work for the Council prior to this being done.

A copy of the assessment and the Status Determination Statement must be retained by the engaging manager as evidence that this has been undertaken, along with the agency’s acknowledgement that they accept the assessment outcome.

If the agency, the contractor or another party in the supply chain disagrees with the Council’s status determination of the contractor for IR35 purposes, or who the ‘employer’ is regarded as being (as applicable), they have the legal right to raise this with the Council.

In accordance with the Council’s process, they would require to lodge their disagreement with the Chief Officer of the particular Cluster engaging the contractor (or with another appropriate Chief Officer if that person had been involved in the engagement), giving the reason(s). Where the disagreement is made verbally, this must be recorded by the manager and then passed to the relevant Chief Officer. It would then be considered under the Council’s Employment Status Disagreement Process – IR35, with the party notified of the outcome. The process is attached as Appendix 6, which would require to be fully adhered to by the manager.

It should be noted that a disagreement can be raised with the Council up until the last payment is made for the contractor’s services in respect of the engagement.

The general process for engaging a contractor is laid out within the framework documentation and associated Buyer Guides available for each national framework. Managers can seek advice from Commercial and Procurement Services where required.

Contracts with an agency require to be recorded by the hiring manager on the Corporate Contracts Register (‘BOrganised’).

**30.2 Engaging a contractor (who has their own ‘personal service company’ or who is in a partnership) through other arrangements**

As mentioned above, the primary method for engaging such a contractor is through the frameworks/compliant contracts and should be followed in **all** cases unless there is an exceptional reason for not doing so. This will help ensure that the Off-Payroll rules are adhered to and that the Council does **not** become liable for paying the tax and national insurance contributions of the contractor (thus incurring extra costs and administrative effort).

Where it is not possible to source such a contractor through the frameworks/compliant contracts, the manager must contact Commercial and Procurement Services who will be able to help identify a compliant solution.

Managers are not permitted to engage a contractor from out with the frameworks/compliant contracts unless there has been prior approval of the Head of Commercial and Procurement Services.

If agreement were given by Commercial and Procurement Services for such an engagement to proceed, the manager would require to undertake the necessary assessment to determine if the Off-Payroll rules apply, using the HMRC online tool, ‘Check Employment Status for Tax (CEST) (see details at Appendices 2 and 3). A Status Determination Statement must also be compiled documenting the outcome of the assessment and given to the contractor (and to any other parties in the supply chain).

The assessment and the notification through issue of the Status Determination Statement must be undertaken **before** the contract and the work begins. The contractor must **not** commence work for the Council prior to this being done.

If the assessment indicates that the contractor would be ‘in scope’ for the Off-Payroll rules, the Council would be responsible for paying the tax and national insurance contributions of the contractor. It should be noted that the Council would incur the additional cost of paying the employer’s national insurance contributions in relation to the engagement.

If the contractor or a party in the supply chain disagrees with the Council’s status determination of the contractor for IR35 purposes, or who the ‘employer’ is regarded as being (as applicable), they have the legal right to raise this with the Council.

In accordance with the Council’s process, they would require to lodge their disagreement with the Chief Officer of the particular Cluster engaging the contractor (or with another appropriate Chief Officer, if that person has been involved in the engagement) giving the reason(s). Where the disagreement is made verbally, this must be recorded by the manager and then passed to the relevant Chief Officer. It would then be considered under the Council’s Employment Status Disagreement Process – IR35, with the party notified of the outcome. The process is attached as appendix 6, which would require to be fully adhered to by the manager.

It should be noted that a disagreement can be raised with the Council up until the last payment is made for the contractor’s services in respect of the engagement.

If the engagement is to proceed, the process for paying the contractor (shown at Appendix 4) must be followed, so that the Council can arrange for the deduction of tax and national insurance from the contractor and remit this to the HMRC along with the employer’s national insurance contributions. It is intended that this process would only be used in **exceptional circumstances,** where it has not been possible to source a contractor through one of the frameworks/compliant contracts.

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| Date of update | Summary of updates |
| April 2021 | Updates made to the guidance to reflect a legislative change for public sector organisations in relation to the IR35 tax rules taking effect from 6.4.21, namely that public sector organisations now require to produce a status determination statement and pass it to the contractor and any other parties in the contractual chain; and have a status disagreement process in place. |

Appendix 1

Sole Traders

A sole trader is a simple business model whereby one individual runs and owns the entire business. They are self-employed, but they are not necessarily the only worker within the business. The term sole trader refers to the structure of the business rather than the number of employees. Sole traders do not have a separate legal existence from their owner. As a result, the owners are personally liable for the businesses debts including paying tax and may have to pay them out of their own pocket.

As mentioned under 8.0 above, in the case of **sole traders**, the IR35 tax rules and hence this guidance do **not** apply. In the vast majority of cases, sole traders will be self-employed contractors and responsible for paying their own tax and NI. However, where the relationship between the Council and sole trader is akin to one of employer/employee then the Council are likely to be responsible for paying income tax and national insurance. The ‘CEST’ assessment (see appendices 2 and 3) is a useful tool for determining whether the relationship between the Council and sole trader is akin to one of employer/employee. Further advice can be sought by contacting Legal Services.

Appendix 2

# Check Employment Status for Tax (CEST) Assessment

On each occasion that you are considering engaging an individual who works via a **‘personal service company’** or **partnership**, an employment status assessment must be undertaken **prior** to the engagement starting. HMRC has produced an interactive employment status assessment tool, CEST, (see <https://www.gov.uk/guidance/check-employment-status-for-tax>) which should be used to establish whether the legislation applies.

It may not always be clear whether the worker is (effectively) an ‘employee’ or self-employed. The Council and the worker cannot simply agree that the worker is self-employed because this is advantageous to both. The underlying relationship **must** support this.

The online assessment tool must be used in all instances where a check is required.

**HMRC have indicated that they will stand by the outcome of the assessment unless a compliance check finds the information is not accurate. HMRC will not accept a result achieved through contrived answers designed to get a particular outcome and will treat this as deliberate non-compliance which could result in the Council being subject to financial penalties**.

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| Appendix 3**OUTLINE OF CEST ASSESSMENT QUESTIONS** The following is the list of questions posed in the HMRC online CEST assessment with brief guidance on potential responses.  All the assessment questions are listed here but please note that when completing the questionnaire online the response to certain questions dictates what the follow-up questions will be so you may not see all those listed. |
| Which of these describes you best? The end client is the public body, corporation or business that the worker is providing services to.  The worker  The end client  The agency paying the worker  None of the above |
| As the assessment should be completed by the engaging manager, the answer to this question should always be ‘the end client’ |
| Has the worker already started this particular engagement for the end client? Yes or No |
| The assessment **should** be completed before the supplier is engaged so the answer should be ‘No’ in all/vast majority of cases. |
| How does the worker provide their services to the end client?As a limited companyAs a partnership Through another individual (not an agency)  As a sole trader |
| Select the appropriate response. You may need to contact the supplier to establish information on how their business is set up. |
| Will the worker (or their business) perform office holder duties for the end client as part of this engagement? Being an office holder is not about the physical place where the work is done, it is about the worker’s responsibilities within the organisation. Office holders can be appointed on a permanent or temporary basis.  This engagement will include performing office holder duties for the end client, if:   * the worker has a position of responsibility for the end client, including board membership or statutory board membership, or being appointed as a treasurer, trustee, company director, company secretary, or other similar statutory roles * the role is created by statute, articles of association, trust deed or from documents that establish an organisati­­on (a director or company secretary, for example) * the role exists even if someone is not engaged to fill it (a club treasurer, for example)   Yes or No |
|  |
| If the worker’s business sent someone else to do the work (a substitute) and they met all the necessary criteria, would the end client ever reject them? The criteria would include:   * being equally skilled, qualified, security cleared and able to perform the worker’s duties * not being interviewed by the end client * before they start (except for verification checks) * not being from a pool or bank of workers regularly engaged by the end client * doing all of the worker’s tasks for that period of time * being substituted because the worker is unwilling or unable to do the work   We need to know what would happen in practice, not just what it says in the worker’s contract.  Yes - the end client has the right to reject a substitute for any reason, including if it would negatively impact the work  No - the end client would always accept a substitute who met these criteria |
| If the Council places conditions on accepting the substitute or retains the decision on whether a substitute is acceptable, then the right of substitution is limited and you should answer YES. |
| Would the worker's business have to pay the person who did the work instead of them?  Yes or No |
| Where the answer to the Substitution question is NO, the Council must clarify who will pay the substitute. Where the supplier’s business is responsible for paying the substitute, this points towards the engagement being one of self-employment or outside the IR35 regulations. |
| Can the end client move the worker to a different task than they originally agreed to do? This includes moving project or location, or changing to another task at the same location.  Yes but only with the worker’s agreement  Yes without the worker’s agreement (if the worker does not want to change, the end client might end the engagement)  No that would need to be arranged under a new contract or formal agreement |
| Where a new contract/formal agreement would have to be agreed in order to move the worker to a different task, this points towards self-employment or outside the IR35 regulations. Where the worker can be moved readily without any change to contract/agreement this indicates a level of control that points more towards employee status. |
| Once the worker starts the engagement, does the end client have the right to decide how the work is done? This does not include general induction, or the need to follow statutory requirements like health and safety.  Yes the end client decides how the work needs to be done without input from the worker  No the worker decides how the work needs to be done without input from the end client  No the end client cannot decide how the work needs to be done because it is a highly skilled role  Partly the worker and other people employed or engaged by the end client agree how the work needs to be done |
| This question is looking to establish the level of control the Council exercises over the manner in which the worker performs their work and to what extent the worker is required to follow instructions. This form of control is absent if the worker is free to carry out the work in whatever way they choose and the only check that the Council engager might have is to check that the work is of a satisfactory standard and is subject to a final quality control check. A high level of freedom to undertake the role is an indicator of self-employment.‘No – the end client cannot decide how the work needs to be done because it is a highly skilled role’ should only be selected where the supplier has skills that require significant degree of education or expertise and exercises autonomy in how the role is undertaken with little or no input from the Council. |

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| Can the end client decide the schedule of working hours? Yes - the end client decides the worker’s schedule  No - the worker decides their own schedule  Partly - the worker and the end client agree a schedule  Not applicable - no schedule is needed as long as the worker meets any agreed deadlines |
| Where the worker can decide their own schedule or is working towards deadlines and can determine their own working pattern to achieve these, this is an indicator towards the worker being self-employed or outside of the IR35 regulations. Where the worker has to adhere to a schedule decided by the Council, this is more reflective of working like an employee. |
| Can the worker choose where they work? Yes - the worker decides  No - the end client decides  No - the task determines the work location  Partly - some work has to be done in an agreed location and some can be done wherever the worker chooses |
| As with working hours, where the Council decides the location of work, this points towards the engagement being more like that of an employee. Often the task will determine the work location and there will be no other option. |
| What does the worker have to provide for this engagement that they cannot claim as an expense from the end client or an agency? These are things that:   * the worker has to provide to complete this specific engagement * are not provided by the end client * could place the worker at financial risk if the cost is not regained   They do not include expenses incurred by being based away from home for the engagement.  Select all that apply  Materials - items that form a lasting part of the work, or an item bought for the work and left behind when the worker leaves (not including stationery, and most likely to be relevant to substantial purchases in the construction industry)  Equipment - including heavy machinery, industrial vehicles or high-cost specialist equipment, but not including phones, tablets or laptops  Vehicle – including purchase, fuel and all running costs (used for work tasks, not commuting)  Other expenses – including significant travel or accommodation costs (for work, not commuting) or paying for a business premises outside of the worker’s home  Not relevant |
| The purpose of this question is to establish the level of financial risk for the worker. These must be items that you require the worker to provide for the particular engagement, it is not enough for the worker to choose to update this equipment or provide materials where there is no requirement to do so.  The provision of any materials, equipment etc needs to be significant for the role and represent a significant financial outlay for the worker’s business - you would not expect the purchase of a laptop or mobile phone to represent a significant piece of equipment. |
| What is the main way the worker is paid for this engagement? An hourly, daily or weekly rate  A fixed price for a specific piece of work  An amount based on how much work is completed  A percentage of the sales the worker makes  A percentage of the end client’s profits or savings |
| Paying the worker at an hourly, daily or weekly rate is more indicative of employee status whereas the payment of a fixed price for a specific piece of work is more likely to point to self-employment particularly if payment is conditional on certain outcomes being achieved. |
| If the end client is not satisfied with the work, does the worker need to put it right at their own cost? Yes - the worker would have to put it right without an additional charge, and would incur significant additional expenses or material costs  Yes - the worker would have to put it right without an additional charge, but would not incur any costs  No - the worker would put it right in their usual hours at the usual rate of pay, or for an additional fee  No - the worker would not be able to put it right because the work is time-specific or for a single event  No - they would not need to put it right |
| Where the Council is not satisfied with the work provided by the worker and the worker has to rectify the situation with no additional charge to the Council, this would be an indicator of self-employment. |
| Is the worker entitled to any of these benefits from the end client?  * Sick pay * Holiday pay * A workplace pension * Maternity/paternity pay * Other benefits (such as gym membership and health insurance) * These do not include benefits provided by a third party or agency. |
| There would be no entitlement to any of the above benefits for a worker engaged on a contract to supply services to the Council. |
| Is the worker responsible for any of these duties for the end client?  * Hiring workers * Dismissing workers * Delivering appraisals * Deciding how much to pay someone |
| It would not normally be expected that a supplier would be responsible for any of the above duties. If they are, this would be a very strong indicator that the contract would fall within scope of the regulations and be treated as taxable. |
| Does the worker interact with the end client’s customers, clients, audience or users? These are people who use or are affected by the service provided by the public body, corporation or business. This would not include the worker’s colleagues or other employees. Yes or No |
| When the worker interacts with the end client’s customers, clients, audience or users, how do they identify themselves? They work for the end client  They are an independent worker acting on behalf of the end client  They work for their own business |
| If the worker is interacting with customers etc of the Council and introduced themselves as working for the Council this would be a strong indicator of ‘employee’ status. |

Appendix 4

**Payment process for IR 35 cases where the Council is regarded as the ‘employer’**

This process will only to be used in **exceptional circumstances** where it is not possible to source a contractor from the frameworks/compliant contracts. The details under section 30.2 in the guidance above must be adhered to in advance of this process being applied.

1. The Function/Cluster will ensure that an invoice is sent to Accounts Payable by the contractor’s company (‘personal service company’ or partnership), containing account details for payment. The Function/Cluster will obtain the contractor’s details i.e. surname, forename, title, full address including postcode, date of birth, NI number and financial code to be used, and pass these to Accounts Payable.
2. Accounts Payable will check at the outset when they need to make payment to the contractor’s company, so they are aware of the time available for this process.
3. Accounts Payable will pass to Payroll all the contractor’s details (a current new start form can be used) and the invoice (or appropriate form) by the 10th of the month in order to meet the Payroll deadline and to allow Payroll to account for employer and employee NI and tax for the HMRC at that month end.
4. Payroll will set up a new payroll group (only needs to be done once). This will be within the ACC ‘company’ using the ACC PAYE reference. The normal Payroll bank account for the Council will be used. Finance will be informed that a new group will require to be set up. Finance will also be informed that the cost centre should follow normal rules, being coded under the cost centre that the charge is made to.

1. The Workforce Change Team will set up a job for each contractor on the system and allocate a number.

1. Payroll will set up a payroll element (or other solution) that will take the net pay down to zero after for accounting for NI and tax.

1. The HR Service Centre/Payroll will put the contractor onto the payroll system, using starter declaration ‘C’ as per document ‘The public authorities using a personal company’ sheet and ‘fee payer’ sheet.
2. Payroll will treat the individual as an employee for tax and NI purposes and use these figures for apprenticeship levy calculation.
3. Payroll will ensure this payroll group are ignored in relevant company reports.

1. The payroll will be run at the appropriate time for end of month payment.
2. Payroll will notify Accounts Payable by e-mail of the tax and employee NI details by end of the month.
3. Accounts Payable will pay the invoice less the tax and NI as per IR rules and once paid will receipt it with tax and NI deducted information for the contractor’s own use.
4. Payroll will issue a P45 to the contractor at the end of the contract (there is no requirement for a P60).

1. The Function/Cluster will inform Payroll to make the person a leaver at the appropriate point.

Appendix 5 

**Status Determination Statement**

Introduction

This status determination statement provides Aberdeen City Council’s decision on the ‘employment’ status of the contractor as detailed below in respect of the IR35 rules, with this contractor to be engaged under a specific contract to undertake work for the Council.

It is a legal requirement that this statement be completed, and this must be undertaken in respect of each contractor (with a personal service company or in a partnership) and for each separate engagement.

It identifies whether the contractor is regarded as ‘self-employed’ or ‘employed’ for the purposes of the IR35 rules and hence whether the engagement is ‘out with’ or ‘within’ the scope of the IR35 rules. It also indicates, where in scope of the IR35 rules, who the ‘employer’ and hence the fee payer is determined to be for IR35 purposes.

In addition, it provides the reason(s) for the determination.

It is a legal requirement that ‘reasonable care’ is taken when making a status determination. This means that the client (i.e. the Council) should act in a way that would be expected of a prudent and reasonable person in the client’s position, carrying out a complete and thorough determination and retaining records to show how the decision was reached.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*The Council manager completing this Statement should enter relevant details of the contractor/company and the contract in the table below.*

|  |  |
| --- | --- |
| **Contractor’s name:** |  |
| **Name of company (where applicable):** |  |
| **Name of agency (where applicable):** |  |
| **Scheduled contract start date:** |  |
| **Scheduled contract end date:** |  |
| **Main purpose of the engagement:** |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*\*Delete one below as applicable.*

The Council’s decision is that it regards the contractor in respect of the engagement above as being \*‘self-employed’/ ‘employed’ for the purposes of the IR35 rules. This means that this contractor’s engagement with the Council falls \*outside/inside the scope of the IR35 rules in respect of the administration of their tax and National Insurance contributions.

*Include the sentence below where applicable, and delete the scenario not applying.*

*Although the contractor’s engagement with the Council falls inside the scope of the IR35 rules, as the engagement is through an agency, the agency is regarded as the ‘employer’ and hence the fee payer. It will therefore be the agency, as detailed above, who will be responsible for the deduction of the contractor’s tax and national insurance contributions and paying the employer’s national insurance contributions and remitting these to the HMRC.*

*Or*

*As the contractor’s engagement with the Council falls inside the scope of the IR35 rules and the engagement is not through an agency, the Council is regarded as the ‘employer’ and hence the fee payer. It will therefore be the Council who will be responsible for the deduction of the contractor’s tax and national insurance contributions and paying the employer’s national insurance contributions and remitting these to the HMRC.* *Although you are a deemed employee for tax purposes, this does not confer any employment rights on you. Note - this scenario will normally not arise as the engagement of contractors should be undertaken through the agency frameworks or compliant contracts (see the IR35 Guidance).*

This Status Determination Statement has been produced in accordance with Section 61T Chapter 10, Part 2 Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”).

The Council’s status determination has been based upon the outcome of completion of HMRC’s ‘Check Employment Status for Tax (CEST) Assessment’. We enclose a copy of the CEST output dated [DATE], which contains the questions and answers on which our decision is based. If the contractor or agency above, or any party in the contractual chain, disagrees with this employment status determination, or disagrees with who the ‘employer’ is regarded as being (where applicable), they have the right to raise their disagreement with the Council.

Any disagreement should be submitted in writing to ?? *(enter name, job title, address, e-mail of the Chief Officer of the particular Cluster engaging the contractor, or of another appropriate Chief Officer, if that person has been involved in the engagement),* stating the reason(s).

A response will be given by the Council within 45 days of receipt in accordance with legal requirements.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Details of the Council manager who undertook this employment status determination and compiled this Status Determination Statement are as follows: -

|  |  |
| --- | --- |
| **Name:** |  |
| **Job Title:** |  |
| **Team/Cluster:** |  |
| **Signature (electronic where possible):** |  |
| **Date of completion (date the statement is valid from):** |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please complete and return the following declaration (to be completed by the contractor/company, as appropriate):

I have read the questions and answers used by HMRC’s check employment status for tax tool and confirm that the answers correctly reflect the terms of the agreement between Aberdeen City Council and [NAME OF WORKER’S INTERMEDIARY].

|  |  |
| --- | --- |
| **Name:** |  |
| **Job Title:** |  |
| **Name of company (where applicable):** |  |
| **Name of agency (where applicable):** |  |
| **Signature:** |  |
| **Date:** |  |

Appendix 6

**Employment Status Disagreement Process – IR35**

This process is to be used where a contractor, agency or other party in the supply chain disagrees with the Council’s determination of the employment status of a contractor in respect of the IR35 rules, as documented on a Status Determination Statement, or disagrees with who the ‘employer’ is regarded as being (where applicable).

Such a disagreement can be raised with the Council up until the last payment made for the contractor’s services in respect of the engagement.

The process: -

1. Where the contractor, agency or other organisation in the supply chain disagrees with the Council’s determination of employment status of a contractor in respect of the IR 35 rules, or disagrees with who the ‘employer’ is regarded as being (where applicable), they should raise their disagreement in writing with the Chief Officer of the particular Cluster engaging the contractor (or with another appropriate Chief Officer if that person had been involved in the engagement). Where the disagreement is made verbally, this must be recorded by the manager and then passed to the relevant Chief Officer. A disagreement can be raised with the Council at any time up until the last payment is made for the contractor’s services in respect of the engagement.
2. On receipt of the notification of disagreement the relevant Chief Officer will write back to the individual or organisation to acknowledge receipt of the notification of disagreement (see template letter at Appendix 8). The date of receipt of the notification will be noted, as the response to the disagreement must be given by the Council within 45 days of its receipt. During this time, the Council will continue to apply the IR35 rules in line with the original determination.
3. The Chief Officer who received the notification of disagreement will pass this to the manager who completed the Status Determination Statement, for their consideration. It may be the case that the notification of disagreement includes new information about the contractor that was not previously known.
4. The manager will examine the content of the notification of disagreement and take advice from the Council’s Legal Service (i.e. the Litigation Team).
5. Where it is deemed necessary to undertake another assessment of the contractor’s employment status (which will likely be the case), use will be made of the HMRC CEST assessment tool to recheck the employment status of the contractor. The outcome of the CEST assessment will then be considered and further Legal advice taken as appropriate.

1. The manager will then decide on the outcome, with there being two possibilities (with the result of the CEST assessment helping to inform which will apply).
2. To maintain the original employment status determination where it is concluded that it is correct. A response would then be given to the person or organisation who raised the disagreement within the 45-day deadline, giving the reason(s) for this being the case (see template letter at Appendix 9).
3. To change the original employment status determination where it is concluded that it is incorrect. In this case the manager will issue a new employment status determination statement to the party who raised the disagreement, within the 45-day deadline, along with a covering letter (see template letter at Appendix 10). The statement will contain the reasons for the determination. The new status determination statement will also require to be issued to other relevant parties in the supply chain and/or the contractor, as applicable (see template letter at Appendix 11).

Note: it should be noted that if the Council fails to respond to the disagreement notification within the 45-day period, it may become the fee payer and be responsible for deducting the contractor’s tax and national insurance (and paying the employer’s national insurance contributions) and remitting these to the HMRC.

1. The manager will retain a copy of each employment status determination statement, any CEST assessment undertaken, and also a copy of notifications of disagreement. These must be kept to the end of the current financial year plus 6 more years, in accordance with data retention requirements.

Appendix 7 Letter – Issuing SDS to the parties.

\*Amend this part of the sentence as appropriate.

[ADDRESSEE]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

CC: [WORKER’S INTERMEDIARY]

Dear

**STATUS DETERMINATION STATEMENT – IR35 RULES**

As you are probably aware, tax legislation with effect from 6 April 2017 requires public authorities to deduct income tax and NICs from payments to prescribed intermediaries where there is a deemed employment relationship between the public authority and the worker and certain conditions are met. (“the IR35 rules”). In accordance with legal requirements in respect of IR35 rules, I attach a Status Determination Statement \*relating to ?? who is being engaged under a specific contract to undertake work for Aberdeen City Council. This indicates the outcome of the employment status assessment undertaken by the Council using the HMRC Check Employment Status for Tax (CEST) assessment tool.

If you agree with this determination, please complete the declaration at the end of the Status Determination Statement and return this to me. You should retain a copy of the signed Statement for your own records.

If you disagree with the content of this Status Determination Statement you have the right to raise this with the Council by submitting details and reason(s) of your disagreement in writing to ??.

Any notification of disagreement will be considered under the Council’s Employment Status Disagreement Process – IR35.

Yours sincerely

Appendix 8 Letter – Acknowledging notification of disagreement.

\*To amend this part of the sentence as appropriate.

Dear

**DISAGREEMENT - STATUS DETERMINATION STATEMENT – IR35 RULES**

I write to acknowledge receipt of notification of your disagreement with the content of the Council’s Status Determination Statement \*relating to ?? who is being engaged under a specific contract to undertake work for Aberdeen City Council.

I would confirm that this will now be considered under the Council’s Employment Status Disagreement Process – IR35.

We will notify you of the outcome as soon as practicable, and within the 45-day statutory response period.

Yours sincerely

Appendix 9 Letter - Outcome of disagreement – existing SDS to remain.

\*Amend sentence as appropriate.

\*\*Delete one

Dear

**OUTCOME OF DISAGREEMENT – EMPLOYMENT STATUS DISAGREEMENT PROCESS – IR35**

I refer to my letter of ? with regard to the above and write to confirm the outcome of your notification of disagreement, which was considered under the Council’s Employment Status Disagreement Process – IR35. \*This relates to ?? who is being engaged under a specific contract to undertake work for Aberdeen City Council.

It has been decided that the original employment status determination, as detailed on the Status Determination Statement previously issued to you, is correct and is therefore what the Council will apply in respect of \*\*your/the contractor’s engagement.

The reason(s) for this decision is (are) as follows: -

1.

2.

3.

I would inform that this concludes the Employment Status Disagreement Process.

Yours sincerely

Appendix 10 Letter – Outcome of disagreement – new SDS.

\*Amend sentence as appropriate.

Dear

**OUTCOME OF DISAGREEMENT – EMPLOYMENT STATUS DISAGREEMENT PROCESS – IR35**

I refer to my letter of ? with regard to the above and write to confirm the outcome of your notification of disagreement, which was considered under the Council’s Employment Status Disagreement Process – IR35. \*This relates to ?? who is being engaged under a specific contract to undertake work for Aberdeen City Council.

It has been decided that the original employment status determination, as detailed on the Status Determination Statement previously issued to you, is incorrect.

The reason(s) for this decision is (are) as follows: -

1.

2.

3.

I attach a new Status Determination Statement the content of which is what the Council will apply in respect of \*your/the contractor’s engagement.

This will also be issued to ?? as required under the legislation.

I would inform that this concludes the Employment Status Disagreement Process.

Yours sincerely

Appendix 11 Letter – Outcome of disagreement - new SDS – notifying any other parties.

\*Amend this part of the sentence as appropriate.

\*\*Delete one.

Dear

**OUTCOME OF DISAGREEMENT – EMPLOYMENT STATUS DISAGREEMENT PROCESS – IR35**

I write to inform you that a notification of disagreement was received in respect of the content of the Council’s Status Determination Statement \*relating to ?? who is being engaged under a specific contract to undertake work for Aberdeen City Council.

This has since been considered under the Council’s Employment Status Disagreement Process – IR35, and with an outcome now determined.

It has been decided that the original employment status determination, as detailed on the Status Determination Statement previously issued to you, is incorrect.

The reason(s) for this decision is (are) as follows: -

1.

2.

3.

In accordance with legislative requirements, I attach a new Status Determination Statement the content of which is what the Council will apply in respect of \*\*your/the contractor’s engagement.

Yours sincerely

**Appendix 12**

Flow Chart – Engaging a Contractor (who has their own ‘personal service company’ or who is in a partnership) through one of the frameworks/compliant contracts.

The manager must in all cases undertake the assessment using the HMRC on-line tool (CEST) to determine if the off-payroll rules apply and must also compile and issue a Status Determination Statement (SDS).

If the outcome of the assessment is that the off-payroll rules do apply, the manager must notify the agency using the SDS for them to make the correct tax and NI deductions.

If the outcome of the assessment is that the off-payroll rules do not apply, then no action in relation to IR35 arrangements is necessary, with the engagement of the contractor undertaken in line with the framework/contract document, with advice taken from C&PS as required.

The agency (or contractor) can raise a disagreement to the SDS. If so this would be considered through the process at appendix 6.

The agency must confirm to the manager that they accept the outcome of the assessment, that they are liable for making the relevant deductions.

The agency (or contractor) can raise a disagreement to the SDS. If so this would be considered through the process at appendix 6.

Notes

1. The assessment, compilation of SDS, and confirmation must be undertaken before the contract and work begins. The contractor must not commence work for the Council until this is done.
2. A copy of the assessment and the SDS must be retained by the manager, along with the agency’s acknowledgement that they accept the outcome.

Once the above confirmation is received, the manager will then follow the general process for engaging a contractor in line with the framework/contract document, taking advice from C&PS as required

**Appendix 13**

Flow Chart – Engaging a Contractor (who has their own ‘personal service company’ or who is in a partnership) through other arrangements.

Where it is not possible to source a contractor through the frameworks/compliant contracts, the manager must contact Commercial and Procurement Services who will be able to help identify a solution. Managers are not permitted to engage a contractor from out with the above unless there has been prior discussion and agreement with C&PS.

If agreement were given by C&PS for such an engagement to proceed, the manager would require to undertake the necessary assessment to determine if the off-payroll rules apply using the HMRC on-line tool (CEST) and must also compile and issue a Status Determination Statement (SDS).

If the engagement of the contractor is to proceed, the process for paying the contractor (at Appendix 4) must be followed so that the Council can arrange for the deduction of tax and NI from the contractor and remit this to the HMRC along with the employer’s NI contribution.

If the outcome of the assessment is that the off-payroll rules do not apply, then no action in relation to IR35 arrangements is necessary, with the engagement of the contractor undertaken in line with C&PS requirements, with advice taken from C&PS as required. The agency (or contractor) can raise a disagreement to the SDS. If so this would be considered through the process at appendix 6.

If the outcome of the assessment is that the off-payroll rules do apply, the Council would be responsible for paying the tax and NI of the contractor (and incurring the additional cost of paying employer’s national insurance contributions). The agency (or contractor) can raise a disagreement to the SDS. If so, this would be considered through the process at appendix 6.

Note

The assessment and compilation of SDS must be undertaken before the contract and work begins. The contractor must not commence work for the Council until this is done.