

# IR35 – Off Payroll Working



## When IR35 rules apply

For the IR35 rules to apply, three conditions need to be present.

Firstly, the individual will personally perform services for a client.

Secondly, the services will be provided via an intermediary. The IR35 rules contain a definition of intermediary, which includes certain partnerships and work arranged via other individuals, but by far the most common type of intermediary is a company referred to as a “personal service company” or “PSC”.

The classic PSC is one in which the individual worker is the sole director or shareholder, or one which is established as a family business with the worker’s spouse, civil partner and/or children holding shares in the company.

The third condition is the one that causes the most difficulty. The IR35 rules only apply where the individual would have been regarded as an employee of the client if the arrangements had been made directly between the individual and the hirer, making a judgment about someone’s employment status can be difficult.

## When IR35 rules apply

The way that HMRC assesses employment status for tax purposes is not exactly the same as the way that a court or employment tribunal determines the question. In some cases, this can lead to the confusing situation in which an individual is deemed to be an employee or worker under employment law but is classed as self-employed for tax purposes, or vice versa.

The rules apply on a contract-by-contract basis, they may have some contracts which fall within off payroll working and some which do not.

A written contract should be in place – it should include a clause on IR35 and deductions

Ensure checks are carried out before the engagement takes place

# What you need to do

## Managers/Engagers should Identify any individual that is affected by IR35 or Employment status

- An individual who registered as self-employed e.g. removal firm, photographer
- An individual engaged through their own limited company e.g. an individual operating their own consultancy is engaged to deliver a training session
- An individual engaged through an agency or third-party e.g. a social worker supplied by an agency who is not operating PAYE.

## Determine the employment status

- Carry out Check Employment Status for Tax (CEST) tool
- Ensure the correct selection is made: self-employed or off payroll worker
- Complete questionnaire to support the CEST – further guidance on HMRC website providing examples
- Ensure all documents are stored and accessible
- Inform the worker of the outcome
- Issue SDS if required( not required for self-employed only off payroll)
- If it is determined that off-payroll applies, or they are employed for tax purposes send to [IR35@coventry.gov.uk](mailto:IR35@coventry.gov.uk) who will then issue the forms necessary to set them up on the IR35 payroll.

# Key determining factors

## Substitution

Whether or not we will accept a substitute will be one of the deciding factors

A clause should be in the contract that states whether a substitute can be sent if the worker is not available

The worker would need to pay the substitute of this to apply

It would also need to be possible for the worker to find a suitable alternative to undertake the worker

# Control

- Right to move the worker from task to task - **Would a new formal contract be required ?**
- Right to decide how the work is undertaken - **Is this decided jointly/is it a highly skilled role/does the worker decide ?**
- Who decides the working hours - **Is this decided by the organisation or the worker/are there agreed deadlines**
- Who decides where the work is carried out - **Is this decided by the organisation or the worker or does the task determine the location**

## Financial Liability

- Does the worker need any of their own equipment
- Are there any vehicle costs (does not include ordinary commuting)
- Do they bring any supplies and are these left behind
- Do they need to fund any extra costs (business costs, this can include accommodation or non-commuting travel)
- How they are paid for the work (hourly rate/fixed cost/% of profit etc)
- If we are unhappy with the work does the worker have to put this right and is this paid or unpaid

## Benefits & responsibilities

- Do they receive any corporate benefits
- Do they have any management responsibilities
- How would they introduce themselves - Independent person/work for their own business/they work for you
- What contract they have had in the past
- Are they stopped from working elsewhere
- Are there any ownership rights
- Is there a series of ongoing contracts
- Does the contracts take up the most of the worker's time
- Have they done similar for in the last 12 months for other clients



## Results

- Once all the questions on the CEST have been answered it will give you a result
- It is advisable that the CEST is undertaken with the worker so you agree the answers - this will reduce the possibility of a disagreement process being entered
- The questionnaire should support the CEST as it should contain further details about the engagement or additional comments to support the decision
- If the outcome is that they are an off-payroll worker or that the off payroll working rules does not apply an Status Determination Statement (SDS) needs to be sent to the worker to advise them how they will be treated for tax purposes.
- On occasions the result will be unable to determine – payroll can support managers in these instances [IR35@coventry.gov.uk](mailto:IR35@coventry.gov.uk)
- If it is relation to recruitment or consultant agencies you should ensure that the agency is operating PAYE-evidence should be kept to support this.

## Other considerations

- While IR 35 does not apply to all engagements it is still essential that you determine the employment status of the worker, therefore a CEST is still required for sole traders/self-employed individuals.
- If a worker is deemed as employed for tax purpose it does not make them an employee
- Noncompliance carries large financial penalties - we need to evidence that we have a process in place to demonstrate reasonable care is taken when making a determination.
- Artists- There are specific employment status rules for the entertainment industry, please refer to the link to check whether these apply- <https://www.coventry.gov.uk/downloads/file/43478/entertainment-industry>

# Guidance for Schools

- our internet page – <https://www.coventry.gov.uk/human-resources/ir35-off-payroll-working>
- [GOV.UK - Understanding off payroll working IR35](#)
- [Schools flowchart](#)
- [CEST Tool](#)
- [Status questionnaire](#)
- [Employment Status Manual ESM11000](#) information is available on each section of the CEST
- [Employment Status Manual ESM4100](#) information for Artists
- [SDS Deemed Status](#)
- [SDS No Deemed Status](#)
- [Eversheds Sutherland IR35 training](#)
- [HMRC webinar - Check Employer Status for Tax \(CEST\) tool](#)
- [HMRC webinar - engagements](#)
- [Self-employed contractors: Understanding the law | CIPD](#)