

Off- Payroll Workers Engager Guidance Notes



Version	Date Last Updated	By: Post	Post Holder	Main Amendments
1	23/03/2017	Project Accountant	Yvonne Laird	Original Version
2	04/05/2017	Project Accountant	Yvonne Laird	Change to flowchart
3	01/10/2019	Payroll & Pensions Manager	Shona Donohoe	Full revision
4	25/08/2020	Senior Payroll Assistant	Lisa Jobling	Update tool screens
5	07/03/2024	Pay and Pensions Manager	Carrie Brett	Change to flowchart. Revision of guidance.

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1. Process Background

Legislation

The objective of the process is to ensure that the University complies with the HMRC Intermediaries (IR35) legislation that was brought in on 6th April 2017 for payments made on or after that date.

The change in legislation made it the responsibility of the University to determine whether there is an employment relationship with specific types of service providers. If this was determined to be the case, then the University must process the payment through the payroll system to account for the individual's tax and NICs. This is referred to as off-payroll working.

Who is affected?

The new legislation has been put in place to ensure that individual providing services either as a self-employed individual, partnership, through an agency or through their own company, pay employment taxes if the engagement is determined to have an employed status.

Please refer to Appendix 1 for company structure information.

Key differences between Goods and Services

- Goods are the material items that customers are ready to purchase for a price. Services are the amenities, benefits or facilities provided by other persons.
- Goods are tangible items i.e. they can be seen or touched whereas services are intangible items.
- Goods can be returned to or exchanged with the seller, but it is not possible to return or exchange services, once they are provided.

2. How does it work?

IR35 involves applying three principles to determine employment status. These are known as the principal 'tests of employment':

- **Control:** what degree of control does the client have over what, how, when and where the worker completes the work
- **Substitution:** is the personal service by the worker required, or can the worker send a substitute in their place?
- **Mutuality of obligation:** mutuality of obligation is a concept where the employer is obliged to offer work, and the worker is obligated to accept it.
- Other factors considered to determine whether they are caught by IR35 include the contract type, whether they are taking a financial risk, if they are '**part and parcel**' of the hirer's organisation, if they are in business on their own account and provision of equipment.
- All this evidence is considered, and if the balance of probabilities is that the worker is an employee then IR35 applies. So, for example, if a worker has an unfettered right to send a substitute in their place, personal service is not required and IR35 cannot apply.

3. HMRC Check employment status for Tax (CEST)

HMRC have provided an online toolⁱ that should be used to determine the employment status of an engagement with the University. The person who has asked the specific service provider to conduct the work will have the most knowledge about the circumstances surrounding the engagement and as such is the most appropriate person to complete the HMRC tool. They are referred to as the hirer and will be completing the tool as a representative of the end client the University, therefore the first question in the tool should be answered as “The Hirer.”

The tool cannot be completed by the person who is providing the service to the University.

The HMRC webpage suggests that before completing the tool you should know the following:

- the worker’s responsibilities
- who decides what work needs doing?
- who decides when, where and how the work is done?
- how the worker will be paid
- if the engagement includes any benefits of reimbursement for expenses

It also states that answers should be chosen that best match the usual working practices of the engagement.

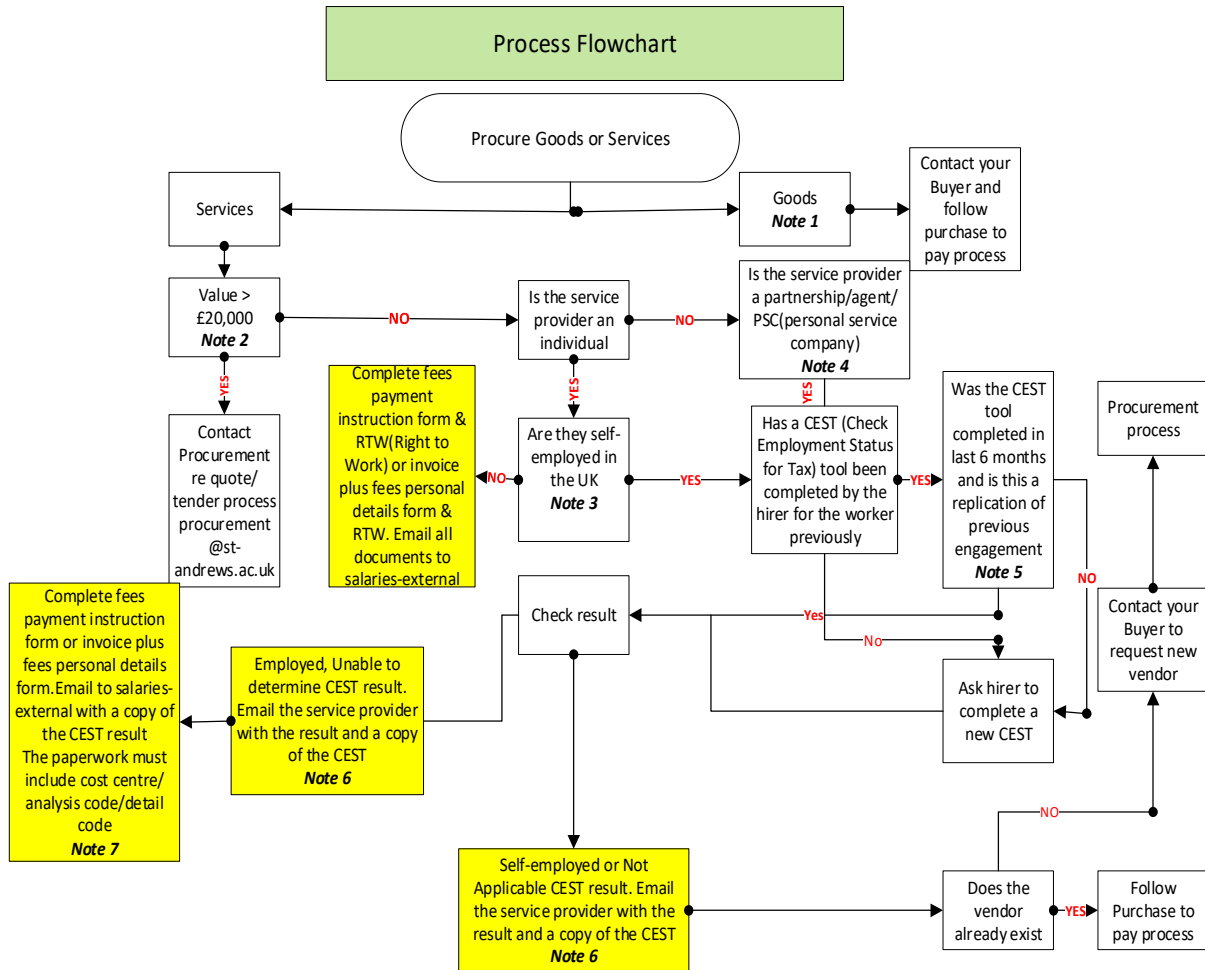
HMRC will stand by the result given unless a compliance check finds the information provided is not accurate.

HMRC will not stand by results achieved through contrived arrangements designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance with associated higher penalties.

ⁱ <https://www.gov.uk/guidance/check-employment-status-for-tax>



4. Flowchart



Flowchart Information

Note 1: If you are procuring goods the normal Purchase to Pay process should be followed. You should contact Procurement and information can be found via the Procurement Financial Operating Procedure found within the following webpage <https://www.st-andrews.ac.uk/staff/money/procurement/policies/>

Note 2: If the services are > £14999 then the quote/tender process should be followed. You should contact Procurement and information can be found via the Procurement Financial Operating Procedure found within the following webpage <https://www.st-andrews.ac.uk/staff/money/procurement/policies/>

Note 3: If it is an individual providing the service, then you need to find out if they are registered as self-employed in the UK. Having a UTR does not necessarily mean that they are registered as self-employed so this needs to be established.

Please see Appendix 1 for further company structure information.

Note 4: The off payroll working rule will not apply if the agency, umbrella company or similar third party that supplies the worker directly employs them and deducts Income Tax and NICs from their payments e.g. KPMG (accountants) or Thornton's (lawyers). No HMRC tool is required and payment would be completed via the vendor process <https://www.st-andrews.ac.uk/staff/money/procurement/buynetwork/newvendor/>

Note 5: If there is an existing tool result for the worker submitted by your School or Unit, it needs to be established if the current engagement is the same as when that tool was completed or if it has changed. If it is the same and was completed in the last 6 months, then the existing tool can be used and a new one is not required.

Note 6: The result of the tool should be communicated to the worker/individual along with a copy of the CEST. There are email templates provided in Appendix 2.

Note 7: All the relevant documents must be completed:

- fees payment instruction form or invoice.
- fees personal details form
- CEST (check employment status for Tax)
- Paperwork must include cost centre/analysis code/detail code and be authorised by an authorised signatory.

Queries regarding off-payroll working can be sent to Salaries (salaries-external@st-andrews.ac.uk) who can give guidance if required.

Appendix 1- Company Structure Information

Sole Trader/Self-employed

With this structure, the business is not a separate entity from the individual. A sole trader does receive all profits but is also personally liable for all debts or legal action taken against the business.

Partnership

A partnership is another common structure for small businesses. These are formed when two or more individuals are co-owners of a business venture.

Like a sole trader, a partnership is not a separate legal entity from its owners. This means the partners are personally liable for all debts and obligations of the business.

Limited Company

A company is a separate entity from its owner, meaning it has its own liabilities, debts, and profits. You are not personally financially liable for what happens to the company.

Must inform HMRC and register with Companies House.

There must be one director who is legally responsible for running the company.

<https://www.shopify.co.uk/guides/united-kingdom/business-structures>

Personal Service Company (PSC)

There is no clear definition in law of what constitutes a personal service company.

The accepted definition of a personal service company is a limited company that typically has a sole director, the contractor, who owns most or all the shares.

If the service provider/worker is also the director of the limited company providing the service, then it would be classed as a PSC.

https://www.contractorcalculator.co.uk/what_is_a_personal_service_company.aspx

The off payroll working rule will not apply if the agency, umbrella company or similar third party that supplies the worker directly employs them and deducts Income Tax and NICs from their payments.

However, if the worker is engaged by the agency, umbrella company or similar third party through the worker's intermediary (e.g. their own Limited company and invoicing the agency, umbrella company or similar third party) then the off payroll working rules may apply. This is because the tax and NICs are not being removed by the agency, umbrella company or similar third party and then the worker could avoid payment.

<https://www.gov.uk/guidance/ir35-find-out-if-it-applies>

Appendix 2- How to create pdf of CEST result.

When the tool is accessed, initially it would be the second option that would be selected first, see Figure **Error! Main Document Only..**

<https://www.gov.uk/guidance/check-employment-status-for-tax>

Then if that does not provide a result, the first option should be used and that should give a result.

About you and the work

What do you want to find out?

- If the off-payroll working rules (IR35) apply to a contract
- If some work is classed as employment or self-employment for tax purposes

Continue

Figure **Error! Main Document Only..**: HMRC tax tool

Once the result has been generated based on the answers to the questions, just click on the “Get a copy of this result” button and you can then add some extra details to the result such as the name of the person completing the form and the name of the individual. The result is then displayed and there is a “Save to pdf” link.

Appendix 3- Status Determination Statement (SDS)

Off Payroll Workers

Hirers should issue the following communication to service providers depending on the outcome of the Check employment Status for Tax (CEST)

A: Deemed a Worker (the intermediaries legislation applied to this engagement)

Dear

As you may be aware, tax changes have been introduced that require the University to undertake an assessment of all individuals who provide a service to the University and traditionally were classed as self-employed.

The University has undertaken an assessment of the services provided by you, using the HMRC Check employment Status for Tax (CEST)

<https://www.gov.uk/guidance/check-employment-status-for-tax>.

The employment status tool has deemed you as a **worker**. As a result of this, the payments made to you will be subject to tax and National Insurance. A copy of the outcome is attached for information. The salaries team will make the payment. If you have any queries regarding the payment, please contact salaries-external@st-andrews.ac.uk

If you believe this decision to be incorrect, please contact the hirer within 45 days of receiving this information to discuss the outcome and provide evidence to clarify the relationship.

You can also submit a repayment claim to HMRC. HMRC will then determine if you are due a repayment of Income Tax or NICs. Please refer to guidance on [tax overpayments and underpayments](#).

B: Unable to determine

Dear

As you may be aware, tax changes have been introduced that require the University to undertake an assessment of all individuals who provide a service to the University and traditionally were classed as self-employed.

The University has undertaken an assessment of the services provided by you, using the HMRC Employment Status tool.

<https://www.gov.uk/guidance/check-employment-status-for-tax>.

The employment status tool has been **unable to determine your employment status**. As a result of this, the payments made to you will be subject to tax and National Insurance. A copy of the outcome is attached for information. The salaries team will make the payment. If you have any queries regarding the payment, please contact salaries-external@st-andrews.ac.uk



If you believe this decision to be incorrect, please contact the hirer within 45 days of receiving this information to discuss the outcome and provide evidence to clarify the relationship.

You can also submit a repayment claim to HMRC. HMRC will then determine if you are due a repayment of Income Tax or NICs. Please refer to guidance on [tax overpayments and underpayments](#).

C: Self Employed (this engagement should be classed as self-employed for tax purpose)

Dear

As you may be aware, with effect from 6 April 2017, tax changes have been introduced that require the University to undertake an assessment of all individuals who provide a service to the University and traditionally were classed as self-employed.

The University has undertaken an assessment of the services provided by you, using the HMRC Employment Status tool.

<https://www.gov.uk/guidance/check-employment-status-for-tax>.

You have been deemed as **self-employed**. As a result of this, the payments made to you will not be subject to tax and National Insurance. A review of this status will need to be undertaken if the status of this engagement varies or changes.

Your payment will be made by the Accounts Payable (Finance Dept) you can contact them at accpay@st-andrews.ac.uk

5. Dispute process

If the worker/individual disagrees with the outcome of the CEST they have 45 days to contact the hirer regarding the outcome.

The hirer and worker/individual must discuss the outcome and if necessary, the worker can provide evidence of any change to the relationship which would affect the outcome.

If there is consensus that a new CEST should be done it must be completed and sent to salaries-external@st-andrews.ac.uk with a covering email stating that the outcome has changed to self-employed for tax purposes and the salaries team will reimburse any tax and/or National Insurance that was deducted due to the original outcome.

If the hirer believes that the outcome should stand then the worker/individual can contact HMRC to determine if they are due a repayment of Tax and/or National Insurance. If they received written notification that Tax and NI should be repaid they can send this to salaries-external@st-andrews.ac.uk for a refund.