

Off Payroll Workers (IR35) for Public Sector Guidance for Managers

Version Control

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Overview

Legislation introduced in April 2017 moved the obligation to assess employment status and account for PAYE and NIC away from the PSC (Personal Service Company) and onto the Council.

Any public body who contract workers to provide service for them through an intermediary need to decide whether the off-payroll rules apply

The off-payroll rules make sure workers pay broadly the same tax and National Insurance as an employee if they:

- Provide services through their own intermediary – most commonly a limited company that they control
- Would have been an employee if they were providing their services directly

The intermediary will normally be the worker's own personal services company, but could also be a partnership, a managed service company or an individual.

Where off-payroll worker rules apply, the fee-payer (East Lothian Council) is required to deduct tax and primary Class 1 NIC from those payments. The public sector client, agency or third party is treated as if it is the employer of the worker for tax and NIC purposes in respect of these payments and will account for them through RTI (Real Time Information).

Crucially the Council is responsible for determining the employment status of a worker to see if the off-payroll working rules apply.

Thereafter we must tell the person or organisation we contract with of our determination and if the rules apply. This must be done on or before the contract is entered into, or when the work starts if that is later.

If we you do not tell them of our determination, the Council become responsible for paying the tax and National Insurance contributions due.

If the Council use an agency or other labour provider, the responsibility for deducting tax and National Insurance contributions will be the fee-payer. The fee-payer is the one who pays the worker's intermediary.

As the "hiring manager" you must keep evidence of the decision you have made. HMRC may carry out a compliance inspection and this evidence would be asked for. Copies of this should also be provided to the **IR35 email inbox**, ir35assessments@eastlothian.gov.uk.

Only an ELC Service Manager (or equivalent role) can carry out the CEST check as HMRC require that this is done with 'reasonable care' – this task cannot be delegated to another member of staff.

HMRC can go back 6 years, if it turns out that the worker should have been on the off-payroll workers payroll the service area the worker was engaged with the Council will be liable for the unpaid TAX and NI of that individual and higher fines may be applicable if the Council has not taken 'reasonable care'.

For further information please follow the below link direct to HMRC's website. <https://www.gov.uk/topic/business-tax/ir35>

Off-Payroll worker legislation Service vs Resource

The Tax Centre for Excellence tool can be used to assist you in identifying whether you are likely to be procuring workers\resource and therefore you need to consider the off-payroll working legislation.



Tax Centre of Excellence

Contracted-Out-Service or Supply of Resource Determination Tool

If the supplier is a company of one person, sole trader, self employed or a partnership with between 2 to 9 employees and is providing a service, a HMRC IR35 check is required.

What do managers have to do?

An ELC Hiring Manager, **must** complete the HMRC Employment Status Tool to establish if the Off-payroll workers rules apply. Hiring Managers are required to complete an Employment Status Test for each proposed worker/resource, once the identity of the worker/supplier is known and prior to agreeing a final start date. The test must be completed on each anniversary thereafter for the period of the contract.

Only an ELC Service Manager (or equivalent role) can carry out the CEST check as HMRC require that this is done with ‘reasonable care’ – this task cannot be delegated to another member of staff.

The tool can be accessed here [Employment Status Tool](#).

Dependent on the results of the check, a Status Determination Statement (**SDS**) should be sent by the Hiring Manager to the worker and to the party in the supply chain that the Council contracts with for the worker’s services (letter templates appendices 2 - 4 may be used for this purpose) informing of the decision and actions to be taken. A copy of the results should be sent to **Payroll and the IR35 email inbox**, ir35assessments@eastlothian.gov.uk, (see sections below).

Copies of **all** assessments/letters (Status Determination Statements) and evidence must be forwarded to the Council’s IR35 inbox at ir35assessments@eastlothian.gov.uk.

Person/Departments Responsibility	Area of Responsibility
Hiring Manager (means ELC Service Manager or equivalent role)	The manager is responsible for undertaking the necessary assessment as to whether the supplier is to be paid via invoice or payroll. This includes gaining necessary approvals, using the Employment Status for Tax tool, notifying the intermediary/worker/supplier of the outcome and liaising with Procurement, Payroll and Finance as appropriate.
Creditors	Will support the IR35 process by making payment for invoices received by payroll for in-scope workers. Payments will then be made via Creditors to the worker providing the services. Creditors will update the finance system record for supplier accordingly.
Procurement	Procurement will update the finance system for the suppliers of procured services. Procurement will advise departments at start of a procurement process with regard to resource vs contracted out service.
Payroll	Will process payments through payroll, deducting tax and NIC contributions for those that IR35 applies. The employer’s contribution must be paid and all payments must be notified and paid to HMRC. Payroll will process and notify Creditors who will ensure correct payment to worker providing the services.
IR35 mailbox (accessed by Creditors, Procurement, Payroll, HR and Legal)	Will record results of all assessments carried out along with the Status Determination Statements issues to suppliers.

If the CEST assessment returns an unable to determine response, East Lothian Council’s policy is to treat as employed for tax purposes and therefore operate PAYE on the worker’s earnings, subject to a successful challenge via the appeals process.

Where, as the Hiring Manager, you are unsure about anything. HMRC can be contacted via the following.

Telephone: 0300 123 2326 **Email:** ir35@hmrc.gov.uk

What should I do if the legislation applies?

If the legislation applies you must in addition to the Employment Status Tool arrange for the worker to complete a notification of off-payroll workers form (See [Appendix 1](#)) and issue a letter ([Appendix 2](#)) to the worker, and to the party in the supply chain that the Council contracts with for the worker's services, advising that the legislation applies. The notification form must be signed by the worker and ELC Hiring Manager and sent to HR Payroll team, with a copy of the off-payroll workers invoice and electronic blue creditors slip cc'd to the **IR35 email inbox**, ir35assessments@eastlothian.gov.uk.

These forms must be submitted in line with Payroll deadline which is the 10th of the month to enable payment on or around the last working day of each month. Where submission is after the cut-off date, these will be paid in the following month's payroll. Employee's tax and NIC will be deducted from the invoice amount and the difference paid to intermediary via Finance. Employers NICs will also be paid. This will be reported by payroll to HMRC.

Step A - Hiring Manager

- Completes CEST (this must be done before the start date of the engagement)

Step B - Hiring Manager

- Populates and sends (in scope) SDS letter ([Appendix 2](#)) to worker which advises that that the engagement has been found in scope and they will be paid through IR35 payroll

Step C - Hiring Manager

- Sends the following for each new engagement to the IR35 inbox:
 - Copy of [Appendix 2](#) letter sent to worker
 - Copy of CEST result and supporting evidence
 - Notification form ([Appendix 1](#)) completed by the worker

Step D - Worker

- Submits invoice for work to the ELC Hiring Manager

Step E - Hiring Manager

- Must approve each invoice before sending it to Payroll
- And must send the following with the first and each subsequent invoice until the engagement ends:
 - Copy of CEST result and supporting evidence
 - Notification form ([Appendix 1](#)) completed by the worker.
- If there is a NEW engagement with the same worker then re-start process at step A.

Process is continued on the next page

Step F - Payroll

- Must receive all relevant forms by 10th of month and will input key elements from invoice into iTrent to complete calculations. Spreadsheet with deductions will be passed to Creditors team for payment.

Step G - Creditors

- Will make relevant payment as outlined in the spreadsheet. Estimated pay timescale is 8 days.

Step H - Hiring Manager

- If worker does more work, the individual will submit another invoice to the ELC Hiring Manager (go to step D).
- If worker does more work for ELC which is a new engagement restart process from step A.
- If worker's engagement with ELC has ceased contact Payroll inbox to remove the worker from ELC payroll on iTrent.

What should I do if the legislation does not apply?

If the legislation does not apply and therefore the worker is not classed as an off payroll worker. The Hiring Manager must send a letter ([Appendix 3](#)) to the worker, and to the party in the supply chain that the Council contracts with for the worker's services, informing them that IR35 has been assessed but does not apply.

Invoices from the intermediary are to be sent to the Hiring Manager and the Hiring Manager will process to Finance to allow payment of the full invoice amount.

Step A - Hiring Manager

- Completes CEST (this must be done before the start date of the engagement)

Step B - Hiring Manager

- Populates and issues SDS letter (Appendix 3) to the worker\intermediary advising that they are responsible for applying tax.
- Sends the following to **IR35 inbox**
 - Copy of SDS letter sent to worker (Appendix 3)
 - Copy of CEST and supporting evidence

Step C - Hiring Manager

- Raises an order via PECOS (**only if an operating supplier and not an individual**).

Step D - Worker

- Submits invoice for work to Hiring Manager

Step E - Hiring Manager

- Sends invoice to Creditors with CEST result

Step F - Creditors

- Receives the invoice and pays the individual for the amount on the invoice
- Check record keeping has been completed.

Step G - Individual\Hiring Manager

- Continue to submit and process invoices (step D onwards)
- Hiring manager to re-do CEST if engagement lasts for 1 year - send result to IR35 inbox.

What should I do if the off-payroll workers rule apply and agency responsible?

Temporary or Interim Workers sourced via an Agency:

Before agency worker starts check with the Agency whether the agency worker is directly employed by the agency or not. **Assurance is required from the Agency that PAYE deductions are in place in respect of the entire fee.**

- If the agency worker **is** directly employed by the Agency then **no further steps** are required.

OR

- If **not** directly employed by the Agency the Hiring Manager must carry out the **CEST** and issue the Status Determination Statement (SDS) to the Worker and the Agency:

If off-payroll worker rules apply and the agency provider is responsible, a letter ([Appendix 4](#)) should be sent to the agency by the Hiring Manager informing that it is the agency's responsibility to apply the off-payroll worker rules and deduct tax and NICs before paying the worker. Invoices from the agency should be sent to the Hiring Manager and the Hiring Manager will process to Finance to allow payment of the full invoiced amount.

Step A - Hiring Manager

- Completes CEST (this must be done before the start date of the engagement)
- Complete AWAFF* form and send to Head of Service for approval. Send approved AWAFF to HR hr@eastlothian.gov.uk.

Step B - Hiring Manager

- Populates and issues SDS letter (where CEST result is in scope) (Appendix 4) to the agency advising that they are responsible for applying tax.
- Sends the following to **IR35 inbox**
 - Copy of SDS letter sent to agency (Appendix 4)
 - Copy of CEST and supporting evidence

Step C - Hiring Manager

- Raises an order via PECOS (**only if an operating supplier and not an individual**).

Step D - Agency

- Submits invoice for work to Hiring Manager

Step E - Hiring Manager

- Sends invoice to Creditors with CEST result

Process is continued on the next page

Step F - Creditors

- Receives the invoice and pays the agency for the amount on the invoice
- Check record keeping has been completed.

Step G - Agency\Hiring Manager

- Continue to submit and process invoices (step D onwards)
- Hiring manager to re-do CEST if engagement lasts 1 year - send result to IR35 inbox.

*HR Agency Worker Approval Form (AWAF) online. The form can be found on ELNET: [Agency Worker Authorisation Form \(AWAF\)](#)

What if the worker does not agree with the status?

If the person or organisation we contract with asks for the reasons behind our determination, or disputes our determination, we must respond within 45 days of receiving notification that the worker or deemed employer disagree with our employment status determination. During this time, we should continue to apply the rules in line with our original determination. If we are not the fee-payer and we do not respond, the Council becomes responsible for paying the tax and National Insurance contributions due.

In the event of dispute please immediately e-mail the **IR35 e-mail inbox**. A panel from HR, Legal and Procurement shall advise on any disputes.

Appendix 1

Off-Payroll Workers Notification Form (replaces the Deemed Earnings form)

<p>Sections 1 - 3 to be completed by the Claimant. This form must be completed before any invoices can be processed through East Lothian Council Payroll (NB – You must supply date of birth, NI number and address to secure payment). <i>Please also provide an e-mail address so that ELC Creditors team can confirm payment details.</i></p>	
<p>Section1: Personal Details</p>	
Forename (s):	
Surname:	
Title:	
Date of Birth:	
NI number:	
Address	
Postcode:	
E-mail address:	
<p>Section 2: Bank Account Details</p>	
Sort Code:	
Account Number:	
Roll Number (If applicable):	
Bank Name:	
<p>Section 3: Certification I certify that the above details are correct and any changes will be notified to my authorising officer. I understand that payments made to me will be subject to statutory deductions.</p>	
<p>Claimant Signed: Date:</p>	
<p>Manager Signed: Date:</p>	
<p>Cost Centre: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p>	<p>Site: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p>
<p>Employee Type: <input type="text"/> <input type="text"/></p>	
<p>Payroll Signed: Date:</p>	
<p>Once complete please return this form to the recruiting manager who you received your letter from.</p>	

Data Protection/Privacy Notice

Section 1: Our contact details

<i>Your personal information is being collected by:</i> Payroll Section East Lothian Council John Muir House Haddington EH41 3HA Email: payrollforms@eastlothian.gov.uk	<i>Data Controller:</i> East Lothian Council John Muir House Haddington EH41 3HA	<i>Data Protection Officer:</i> East Lothian Council John Muir House Haddington EH41 3HA Telephone: 01620 827827 Email: dpo@eastlothian.gov.uk
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Section 2: Why we need your personal information

East Lothian Council needs this information in order to assess your claim\invoice for deductions of Income Tax and National Insurance and to advise HMRC that these deductions have been made.

East Lothian Council is legally required to protect the public funds it administers. For this reason, your information may also be used to prevent and detect fraud, and we may share your information with other organisations responsible for auditing and administering public funds. For more information, please visit:

https://www.eastlothian.gov.uk/info/210598/access_to_information/12340/privacy_and_cookies/1

Section 3: Legal Information

In order for us to collect and use your information, we have to have a 'legal basis' for doing so. The legal basis for processing your personal information is:

We are processing your information as part of our public task as a local authority. We need to process your information to carry out a contract and we have a legal obligation to process your information under HMRC Off-Payroll Workers in the Public Sector (IR35) Legislation.

The kinds of personal information we are collecting include:

- a. Name
- b. Title
- c. Address
- d. Date of Birth
- e. National Insurance No.
- f. Bank Details
- g. Email address

Section 4: Sharing and transfer

We will be sharing your personal information with the following:

- Other services within East Lothian Council, including Corporate Finance, Creditors Payments, Human Resources.
- HMRC

Section 5: How long will we keep your personal information?

We keep your personal data in line with our data retention policy, called a Retention Schedule. For a downloadable copy of the Council's Retention Schedule, please visit our website at www.eastlothian.gov.uk and search for 'Retention Schedule'.

Section 6: Your rights

1. **You have the right to be informed about how your information will be used.**
2. **You have the right to access your personal information. Normally this is done by placing a 'Subject Access Request' with the Council. For more information on placing Subject Access Requests, please visit https://www.eastlothian.gov.uk/info/210598/access_to_information/12300/access_to_information/1**
3. **You have the right to ask us to correct inaccurate or incomplete information.**
4. **In certain circumstances, you have the right to have your personal information erased.**
5. **In certain circumstances, you have the right to ask us to limit the ways we use or share your information.**
6. **In certain circumstances, you have the right to ask us to move, copy or transfer your information to another organisation in an electronic format.**
7. **In certain circumstances, you have the right to object to the ways we process your information.**
8. **In circumstances where your data is processed automatically, without human intervention, you have the right to certain protections.**

You can find more information about data protection and your rights on the Information Commissioner's Office (ICO) website at <https://www.ico.org.uk>.

Section 7: Complaints

We take your privacy seriously, and would like to know about your concerns so that we can address them as soon as possible. If you wish to make a complaint, we recommend that you contact the Council's Data Protection Officer using the contact details at the start of this Privacy Notice.

If we are unable to resolve the issue to your satisfaction, you have the right to complain to the Information Commissioner's Office (ICO). You can find further information about raising a concern with the ICO on their website: <https://ico.org.uk/concerns/>.

You can contact the ICO by post at:
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Telephone: 0303 123 1113 / 01625 545 745

Section 8: Information about other people

If you have provided anyone else's personal information, please make sure that you have told them that you have given their information to East Lothian Council. We will only use this information to for any processing required under number 3 above.

Appendix 2

Compliance with HMRC Off-payroll workers (IR35) IR35 rules do apply

Instruction note – complete sections in yellow highlight, refer to example reasons in Appendix 5. Remove square brackets and delete this note.

Our Ref: Off-payroll workers Leg-applies

Your Ref: **XInitialsX**

[Address]

Date: **XXX**

Post: **XXX**

Contract Start Date: **XXX**

Contract End Date: **XXX**

Dear **XXX**

Under HMRC IR35 'Off Payroll Worker' rules East Lothian Council are required to assess the contracts of all individuals providing a service to the Council.

The above post has been assessed, and based on the outputs it is the view of the Council that the IR35 rules do apply.

The reasons for this are: **XXX**

The Council is therefore required to process all invoices through our IR35 payroll, which will deduct tax and NICs from the amount invoiced.

The following steps are required:

1. Complete the attached Off-Payroll Workers Notification Form (Sections 1-3).
2. Send all invoices for the attention of **[managers name]** at the above address or email **[managers email]**.

More information can be found at: <https://www.gov.uk/guidance/off-payrollworking-in-the-public-sector-reform-of-intermediaries-legislation> .

If you require further information or are not satisfied with the results of the status check, please contact me (**manager details**).

Yours Sincerely

Managers name

Manager's telephone

Manager's e-mail

Enc. ELC Off payroll workers - Notification Form

Appendix 3

Compliance with HMRC Off-payroll workers (IR35)

IR35 rules do not apply - Individual is responsible for paying Tax and NI

Instruction note – complete sections in yellow highlight, refer to example reasons in Appendix 5. Remove square brackets and delete this note.

Our Ref: Off-payroll workers Leg-does not apply

Your Ref: **XInitialsX**

[Address]

Date: **XXX**

Post: **XXX**

Contract Start Date: **XXX**

Contract End Date: **XXX**

Dear **XXX**

Under HMRC IR35 'Off Payroll Worker' rules East Lothian Council are required to assess the contracts of all individuals providing a service to the Council.

The above post has been assessed, and based on the outputs it is the view of the Council that the IR35 rules do not apply.

The reasons for this are: **XXX**

It is **[worker]** responsibility to ensure tax and NIC contributions are made.

East Lothian Council will pay the invoices through the normal invoicing process. Invoices should be sent to the above address for the attention of **[managers name]**.

More information can be found at <https://www.gov.uk/guidance/off-payrollworking-in-the-public-sector-reform-of-intermediaries-legislation>.

If you require further information or are not satisfied with the results of the status check, please contact me **[manager details]**.

Yours Sincerely

Managers name

Manager's telephone

Manager's e-mail

Appendix 4

Instruction note – complete sections in yellow highlight, refer to example reasons in Appendix 5. Remove square brackets and delete this note.

Compliance with HMRC Off-payroll workers (IR35) IR35 rules– Agency is responsible for paying Tax and NI

Our Ref: Off-payroll workers Leg applies – Agency

Your Ref: [Initials]

[Address]

Date: XXX

Post: XXX

Contract Start Date: XXX

Contract End Date: XXX

Dear XXX

Under HMRC IR35 'Off Payroll Worker' rules East Lothian Council are required to assess the contracts of all individuals providing a service to the Council.

The above post has been assessed, and based on the outputs it is the view of the Council that the IR35 rules do apply.

As the work being provided is through agency/supplier [XXX], it will be the agency/supplier's responsibility to ensure tax/NIC is deducted from [XXX] pay.

The Council will pay the agency/supplier invoices through the normal invoicing process. Agency/Supplier invoices should be sent to the above address for the attention of [managers name].

More information can be found at <https://www.gov.uk/guidance/off-payrollworking-in-the-public-sector-reform-of-intermediaries-legislation>.

If you require further information or are not satisfied with the results of the status check, please contact me [manager details].

Yours Sincerely

Manager's name

Manager's telephone

Manager's e-mail

Appendix 5

SDS Example Reasons - Inside-of-Scope

Personal Service:

- We retain a right of veto over any proposed substitute worker for this engagement, which means you do not have an unrestricted right to send a substitute;
- We require personal service from you for the duration of this engagement due to your specific established experience and knowledge of the systems being developed and Departmental processes;

Control & Direction:

- We would like to be able to utilise your skills and expertise on other projects or other aspects of this project during your engagement should our organisation's priorities change – we therefore have a right of control over what you are working on;
- As part of the agile development framework you will operate within, tasks will be prioritised and allocated to you by the Product Owner which means there is control and direction in terms of what you are working on;
- Throughout your engagement you will work as part of an Agile development team. Close team working is important and we will require you to work from the same location and similar hours as the rest of the team, indicating control and direction;
- You will be expected to follow Departmental processes and checklists in delivery of your engagement so there will be some control and direction from the Department in terms of how you deliver your engagement;
- In your project manager / delivery manager role you will be expected to follow established Departmental project governance and reporting processes so there will be control and direction from the Department in terms of how you deliver your engagement;

Part & Parcel:

- The end client has employees that undertake roles very similar to this one with working practices that are expected to be consistent, indicating that through this engagement we are augmenting our own in-house resource capability;
- You will be undertaking a senior leadership role within our organisation and will therefore be very much part & parcel of the organisation. You will be expected to react to key organisational priorities as they arise and adapt to and promote our culture and ways of working. This also demonstrates control from the Department in terms of what you work on and the way that you perform the role;
- You will be expected to recruit and manage staff as part of your engagement indicating that you will be part & parcel of our organisation.

Financial Risk:

- There is no realistic financial risk for you or your business in delivering this engagement. You will be paid a daily rate, all business expenses will be covered and you are not required to invest in any equipment or anything else in order to undertake the work.

SDS Example Reasons - Outside-of-Scope

Personal Service:

- You have a genuine unrestricted right to provide a substitute worker at any point during this engagement as we are engaging your business to provide services and not you as an individual. We have discussed availability of additional resource in your business to provide cover and assistance and will put in place security clearances in preparation;
- Your business would pay any substitute provided;
- Your business may engage helpers to assist you as and when you see fit demonstrating a lack of requirement for personal service

Control & Direction:

- You are not subject to ongoing monitoring or supervision in your delivery of this engagement indicating self-employment;
- You will determine the tasks required to deliver this engagement and schedule them as you see fit in order to deliver the outcomes required by X date. There will be no control or direction in this respect;
- You will determine how to deliver this engagement and your working methods are up to you to determine, indicating no control & direction;
- It would not be possible for us to provide any control & direction in terms of how you deliver the engagement due to the specialist nature of the tasks required;
- There are no employees that are undertaking this role within the organisation – we have engaged your business for the specialist skills it can provide;
- The role is not reliant on close working with our members of staff and you may therefore undertake the work at a time and place of your choosing with no control or direction in this respect;
- The role can only be performed from one specific location and there can therefore be no control or direction in terms of where the engagement is undertaken;

Financial Risk:

- We acknowledge the need for you to invest a significant sum of money in up-front training and equipment required to undertake this engagement which indicates financial risk for your business;
- There are significant travel expenses expected in this engagement which will not be reimbursed and which you will be expected to cover from your fee;
- You would be expected to correct defective work in your own time and at your own cost – this is part of your contractual terms and conditions and indicates some financial risk for your business;

Business on Own Account:

- You are providing multiple contracts for multiple different clients and the call on your time from this engagement makes this practical, which is indicative of being in business / self-employment.