

**OFF PAYROLL WORKER
MANAGERS GUIDE AND
ASSURANCE PACK (IR35 PROCEDURE)
(For Interims (Contractors) and Agency Workers)
Issued: September 2018**

This guidance is for managers to use when engaging Off Payroll Workers. It only applies to Off Payroll Workers, including agency workers, Interim or Specialist Contractor Directly engaged with the WCCCG or via an Umbrella Body, Interim or Specialist Contractor employed through an intermediary company, (typically those provided via a personal services company (PSC) or limited company.

This guidance does not apply to anyone considered to be a directly employed member of staff, including: -

- Fixed Term Worker
- Bank Worker
- Permanent Staff

Please refer to the CCG's Managers Guidance for recruitment and selection procedures for directly employed staff.

Please also refer to the West Cheshire Clinical Commissioning Group (CCG) Clinical Leadership & Governing Body Remuneration Framework in relation to positions covered by this Framework

Equally, this guidance does not apply to **Consultant arrangements** – for guidance on these arrangements, please refer to Appendix D (Definition of Interims) guidance and/or contact one of the Finance team.

Section 1: Introduction

Interims and off payroll workers working alongside the CCG's on-payroll workforce, represents the most effective use of NHS resources in the organisation's pursuit of specific business objectives, and allows CCG to be a dynamic organisation, minimises risks and aligns to our strategic plan.

BEFORE you can engage an Off Payroll Worker however, there are a number of requirements for which the CCG will hold you to account as the manager engaging the worker. These are summarised below and detailed guidance, for each is provided throughout this document.

1. **Procurement** of Contingent Labour,
2. **Completion of the Off Payroll Worker process** outlined in this guidance
3. **NHS England** approval (if required – as described below) and,
4. **HMRC** requirements.

1. Procurement and Use of Frameworks – information for managers

Use of a national framework as a mechanism to contract with an off-payroll worker or agency is recommended, as it offers the CCG the ability to contract workers in compliance with the Agency Worker Regulations and Public Contract Regulations. Where applicable Crown Commercial Service (Cabinet Office) frameworks offer compliance with NHS Improvement price caps and clear charge rates.

For information on how to access the latest framework agencies visit the CCS website:
<https://ccs-agreements.cabinetoffice.gov.uk/contracts/rm971>

2. NHS England Business Case

For any Off Payroll requirement, that will be for longer than 6 months, or where the day rate (chargeable rate which includes agency on costs) is more than £600, then there must first, be approval from NHS England, through the submission of a Business Case prior to the engagement (please refer to Appendix C),

Please note that an OFF PAYROLL WORKER requirement could be covered by numerous workers, but the aggregated duration, cannot exceed 6 months (or the rate be more than £600 per day) – without the business case approval.

The CCG would not typically expect an off payroll requirement to be for longer than 6 months. If the engagement is to cover a vacancy, it would be usual to engage the worker whilst a recruitment process is undertaken to fill that vacancy, even if this is a Fixed Term appointment.

For requirements that are not anticipated for more than 6 months and for whom the daily rate is less than £600 per day, an NHS England Business Case is **not** required, however, approval from the CCG's Accountable Officer, in liaison with the Finance Team and Head of Governance, is required.

3. HMRC and IR35 Legislation

IR35 is the informal name for the 'Intermediaries Legislation'. It is tax legislation for off-payroll workers and it is designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a personal service / limited company, but who would be an employee if the intermediary was not used. Such workers are called 'disguised employees' by Her Majesty's Revenue and Customs (HMRC)

From April 2017 CCG is required by HMRC, to provide assurance against the Off-Payroll Workers regulations, as to whether IR35 rules apply. IR35 itself is not new. What has changed is where the decision as to whether a worker should be treated as being inside or outside of IR35 rules is made.

The revisions move the responsibility for deciding if the off-payroll rules apply from an individual worker's intermediary to the public authority (in this case the CCG), agency, or third party paying the intermediary. NHSE requirements mean that the CCG must ensure our classification of OFF PAYROLL WORKERS is accurate, as we could be audited by HMRC at any time.

So what does this mean?

This means that the CCG considers **ALL** Off Payroll Workers, with whom we engage, to fall **INSIDE** IR35 regulations. This is because typically, the following will apply: -

- ✓ That the worker is fulfilling a role where there is a vacancy
- ✓ That CCG will decide how the work is done
- ✓ That CCG will be able to move the worker to a different task than they originally agreed to do, with, or without the workers agreement
- ✓ That CCG will veto any substitute from the third party (typically an agency) and has the right to reject that substitute for any reason.
- ✓ That CCG decides the schedule of working hours
- ✓ That CCG decides where the work is done
- ✓ That CCG provides the worker with materials to carry out the work
- ✓ That CCG will pay to the third party (typically an agency), an hourly or daily rate for the work carried out

- ✓ That CCG can expect any unsatisfactory work carried out, to be put right, by the worker within their normal hours of work
- ✓ That the worker is not entitled to any other benefits from CCG
- ✓ That the worker will identify themselves to others in CCG or our customers that they work for CCG

If a worker is sourced and falls into one of the following categories: -

- As a Limited Company
- As a Partnership
- Through another individual (not an agency)
- As a Sole Trader

Then the CCG has a further responsibility to carry out an 'Employment Status Indicator' or ESI.

Section 2: What Do I Need to Do?

You must ensure that all the steps below, are read, understood and actioned appropriately, BEFORE you engage an OFF PAYROLL WORKER.

Step 1

Procurement and Use of Frameworks including Public Sector Resourcing (PSR) – information for managers

Please refer to Appendix D – Definition of Interims

Use of a national framework as a mechanism to contract with an off-payroll worker or agency is recommended, as it offers the CCG the ability to contract workers in compliance with the Agency Worker Regulations and Public Contract Regulations. Where applicable Crown Commercial Service (Cabinet Office) frameworks offer compliance with NHS Improvement price caps and clear charge rates.

For information on how to access the latest framework agencies visit the CCS website:
<https://ccs-agreements.cabinetoffice.gov.uk/contracts/rm971>

Step 2 NHS England Business Case

For any Off Payroll requirement, that will be for longer than 6 months, or where the day rate (chargeable rate which includes agency on costs) is more than £600, then there must first, be approval from NHS England, through the submission of a Business Case prior to the engagement (please refer to Appendix C),

Please note that an OFF PAYROLL WORKER requirement could be covered by numerous workers, but the aggregated duration, cannot exceed 6 months (or more than £600 per day) – without the business case approval.

The CCG would not typically expect an off payroll requirement to be for longer than 6 months. If the engagement is to cover a vacancy, it would be usual to engage the worker whilst a recruitment process is undertaken to fill that vacancy, even if this is a Fixed Term appointment.

For requirements that are not anticipated for more than 6 months and for whom the daily rate is less than £600 per day, an NHS England Business Case is **not** required. However, managers are responsible for informing the CCG, if a requirement will be extended beyond the original planned period, to ensure that we can monitor and report to NHSE accordingly, and to ensure that it does not exceed 6 months without a business case being in place. In any circumstances where the engagement is planned to be extended, please inform the following: -

amcgivern@nhs.net (Andy McGivern, Head of Finance) and debbie.bryce@nhs.net (Head of Governance)

If the engagement of the worker will cost more than £600 per day, (excluding VAT and expenses but including agency fees), then similarly, an NHS England Business Case must be submitted and approval must be given, prior to the engagement.

The Business Case can be found **in Appendix C**

For further support and advice, please contact the [Head of Finance](#).

Step 3 Setting up an OFF PAYROLL WORKER within the CCG

Please ensure that you remember to check compliance with the NHS England Business Case requirements for engaging an Off Payroll Worker, as above and in line with Appendix C.

The CCG is required under the IR35 regulations, to ensure that appropriate deduction of tax and NI is made by the third party supplying that worker.

As CCG considers **ALL** Off Payroll Workers, with whom we engage, to fall **INSIDE** IR35 regulations, then you must inform the third party, (typically the agency), in writing, (email is fine), that the role falls inside the IR35 regulations and therefore Tax and NI has to be deducted, by them, at source, also known as PAYE.

This **MUST** be done **BEFORE** the worker commences **AND** written confirmation from the third party **MUST** be obtained, usually via email, to confirm that they will be operating PAYE.

Assurance requirements you must complete: -

- An email must be sent to the Agency (from the manager), confirming that the CCG believe that the worker falls inside the regulations and therefore, the CCG requires written confirmation, via a return email, that they operate PAYE and, therefore, TAX and NI are being deducted by them, at source.
- Obtain the email response from the Agency providing assurance that PAYE is being operated and that TAX and NI are being deducted by them, at source.
- Return a copy of your original email to the Agency as well as the reply from the Agency to the Finance Team for retention and audit purposes.
- If not secured through a national framework, obtain a copy of the contract from the Agency, containing the clause 'the CCG has the right to request assurance in respect of Tax & NI'
- Please **request approval of the Off Payroll engagement from the Accountable Officer, in liaison with the Finance Team and Head of Governance.**

For further guidance, please contact the Head of Finance

Step 3a HMRC and IR35 Legislation - What do I have to do?

Notwithstanding Step 3 above, if a worker is sourced and falls into one of the following categories: -

- As a Limited Company
- As a Partnership
- Through another individual (not an agency)
- As a Sole Trader

(this can include an Umbrella Company / Managed Services Company / Personal Services Company)

Then CCG has a further responsibility to carry out an '**Employment Status Indicator**' or **ESI**. This can be found at the following link [HMRC Employment Indicator Tool](#).

The HMRC tool is available for use by anyone, however, it must be the CCG hiring manager (as the end-client) who ultimately assesses and decides on the status of each role that they wish to fill with an off-payroll worker. As a hiring manager you must complete the HMRC assessment **FOR AND ON BEHALF** of the CCG. The hiring manager will have the most comprehensive knowledge of the role being recruited to, and therefore is the best placed person for determining the status of the role.

It is important that you answer the questions in the tool accurately, as the outcome determines the tax implications for the individual that is selected for the role /engagement. The CCG must ensure that all of its workers are paying the correct rates of tax and National Insurance, and it also needs to be able to assure HMRC of this. The IR35 outcome should be stored by the line manager on the personal file of the worker and copied to the Finance Team and Head of Governance to enable the CCG to report on this information as needed, and when requested to do so by bodies such as HMRC.

You need to complete this on-line tool by answering a number of questions. It is helpful to review the responses below, as these are typical responses that would be expected: -

- ✓ That the worker is fulfilling a role where there is a vacancy
 - ✓ That CCG will decide how the work is done
 - ✓ That CCG will be able to move the worker to a different task than they originally agreed to do, with, or without the workers agreement
 - ✓ That CCG will veto any substitute from the third party (typically an agency) and has the right to reject that substitute for any reason.
 - ✓ That CCG decides the schedule of working hours
 - ✓ That CCG decides where the work is done
 - ✓ That the CCG provides the worker with materials to carry out the work
 - ✓ That the CCG will pay to the third party (typically an agency), an hourly or daily rate for the work carried out
 - ✓ That the CCG can expect any unsatisfactory work carried out, to be put right, by the worker within their normal hours of work
 - ✓ That the worker is not entitled to any other benefits from the CCG
- That the worker will identify themselves to others in the CCG or our customers that they work for CCG
- ✓ **Appendix A provides you with a guide to the HMRC on-line tool to assist you through this stage of the process.**

To find out more about employment status and IR35, please visit <https://www.gov.uk/government/collections/employed-or-self-employed>

You should also ensure you refer to Appendix D – Definition of Interims, alongside this section.

Step 3b The Outcome of the Assessment

Once completed, the assessment will tell you what the employment status of the role is, and these are the possible outcomes:

Outcome	What this means	What does this mean for the worker
a. The intermediaries legislation does not apply to this engagement – out of scope	<p>The IR35 rules do not apply - the role is not an employee type role.</p> <p>Where the output from the ESI confirms that the worker falls OUTSIDE IR35, (the output will read <i>'The intermediaries legislation does not apply to this engagement'</i>), <u>then you MUST refer to the Head of Finance who will review this.</u></p>	<p>If the worker is providing their services through their own limited company, they can still be paid a gross amount to their limited company. i.e. Tax and NI deductions need not be made prior to payment</p>
b. The intermediaries legislation applies to this engagement – in scope	<p>This means that the IR35 rules do apply and the role should be treated as an employee for Tax and NI purposes.</p> <p>This means that the person fulfilling the role should have tax and NI deducted at source, before they are paid, in the same way an employee on any PAYE arrangement would.</p>	<p>If the worker is providing their services through their own limited company, the agency paying them must deduct tax, NI and employers NI prior to paying the limited company.</p> <p>Many workers may prefer to move onto a PAYE arrangement directly with the agency.</p>
c. The intermediaries legislation is unable to determine this engagement	<p>If the online test is unable to provide a 'yes' or 'no' answer it will state: "Unable to determine the tax status of this engagement", and direct you to further HMRC guidance.</p>	<p>Finance Team will have to decide that the outcome is to be (b) – The intermediaries legislation applies to this engagement. This will be necessary to remove the risk of any off-payroll worker not paying the correct levels of tax and NI.</p>

What's Next?

Where the output from the Employment Status Indicator confirms that the worker falls **INSIDE** IR35, (the output will read '*The intermediaries legislation applies to this engagement*'), then you **MUST do the following:** -

- You must inform the workers agency, that the intermediaries legislation applies to the engagement of this worker and that they must operate PAYE. You must do this in writing and ask for a written response from the agency to confirm this is being operated. Email correspondence is fine.
- Return a copy of your original email to the Agency as well as the reply from the Agency to the Finance Team for retention and recording purposes

If, for any reason, the workers agency, or third party, cannot operate PAYE, then you CANNOT engage the worker. In these circumstances, you must: -

- Discuss with the worker whether it would be more appropriate to offer an employment contract, for a fixed period whilst the work is undertaken. You should then follow the Recruitment Policy in discussion with your Senior HR Business Partner.

Exceptional Circumstances

'Outside' the Regulations:

Where the output from the Employment Status Indicator confirms that the worker falls **OUTSIDE** IR35, (the output will read '*The intermediaries legislation does not apply to this engagement*'), **then you MUST refer to the Head of Finance who will arrange for this to be looked at.**

Typically, this will apply to workers who: -

- ✓ are contracted to run a specific project or task, which is **not related** to an employee-type role
- ✓ are not required to carry out the work on CCG premises.
- ✓ have autonomy as to how the work is carried out.
- ✓ have limited contact with the CCG throughout the task
- ✓ deliver an output for the CCG, branded as their own company,
- ✓ hand over that output to the CCG for us to use in whatever way we feel appropriate.

You must refer to Appendix D which describes the differences between OFF PAYROLL WORKERS and Consultancy

Examples of where this may be the case are where the worker is: -

Engaged via a Managed Services Company (MSC), which is a form of intermediary company through which workers provide their services to end clients. The worker doesn't exercise control over the company.

Engaged via a Personal Services Company (PSC), which is usually the individuals company, through which they provide their services to end clients.

In order for this assessment to take place, you will need to send the following documents: -

- IR35 Assessment
- Task Outline
- Any other details that will help to inform the assessment

The worker must not commence until the outcome of the assessment has been made.

If, after the assessment has been carried out by Finance **and** the outcome of the assessment has determined that the role falls 'outside' the regulations, then the engagement is not subject to the Off-Payroll worker regulations and as such the CCG will not be required to seek assurance that deductions of tax and national insurance are being made at source.

As CCG **CANNOT** engage OFF PAYROLL WORKERS who fall outside of IR35 regulations, then HR and Finance will support you in assessing other routes to securing the worker – for instance, a fixed term employment contract; working on a Bank arrangement, or whether the work is actually suitable for procurement as Consultancy. (This will follow SFIs and as such, an invoice for the work should be submitted as normal, in line with CCG Standing Financial Instructions (SFIs) and procurement rules, which will require a purchase order number.)

Please note

An assessment against the Employment Status Indicator tool **must** be carried out for each separate project or assignment (this includes simultaneous assignments). For example an individual undertaking a project for one part of the organisation who then goes on to work on another project will need to be reassessed for each engagement.

Contracted out services

The rules don't apply where a public authority has fully contracted out services to a third party (like an outsourcing company) and the workers do not personally provide their services to the public authority

Section 3: Remuneration Committee Compliance

Since (insert date) 2018, the CCG Remuneration Committee now requires regular monitoring of all OFF PAYROLL WORKER activity. As such a report is produced for the Committee meetings and the Head of Governance needs to be informed of off payroll worker activity.

In addition, the Remuneration Committee are monitoring non-compliance with this guidance due to the high levels of scrutiny of the CCG, for the use of OFF PAYROLL WORKERS and the financial penalties that we face if we do not engage them properly, hence the need to have a zero tolerance approach to non-compliance.

As such, a Breach Report must be completed by the manager, for any non-compliance with this process and you will be contacted if this applies to you.

The breach report can be found in Appendix B.

You must complete the breach report as requested and within the timescales advised.

Section 4: Statutory and Mandatory Training

In accordance with the Off Payroll Workers Policy, budget holders / managers hold responsibility for ensuring the appropriate induction and training of off-payroll workers according to the tenure of their engagement.

As a minimum, all off-payroll workers, irrespective of their tenure, should observe the local induction to their immediate area of work, led by their immediate line manager.

Off-payroll workers anticipated to be embedded in the organisation for in excess of three months should also attend a Corporate Induction, and complete the Statutory and Mandatory training.

Managers must therefore ensure that they register the OFF PAYROLL WORKER with an LMS account, by completing the registration form on the LMS site, and send it back to csu.learning@nhs.net

For reference, please find below a list of the current Statutory and Mandatory Courses: -

Equality and Diversity
Information Governance
Fraud and Bribery
Health and Safety
Safeguarding Children L1
Safeguarding Adults L1
Prevent L1
Fire Safety Awareness
Moving and Handling
Infection Control
Conflicts of Interest Module One

Section 5: Travel and Expenses

With the exception of secondees, off-payroll workers are not authorised to approve the timesheets of other off-payroll colleagues.

Managers should ensure that all travel and expenses incurred by OFF PAYROLL WORKERS is authorised via the normal approval of timesheets and invoice process in line with SFIs.

Section 6: Ending an Off Payroll Worker

It is important to ensure that the appropriate leavers forms are completed for workers paid via payroll (with tax and NI deducted at source) and that the Finance Team are informed, along with the Head of Governance.

It is equally important to ensure that any CCG property is returned by the OFF PAYROLL WORKER, as it would be for anyone employed directly by CCG. This will include door access fobs, laptops, mobile devices etc. Please ensure that you complete the leavers checklist to ensure all considerations have been taken into account for exiting the worker.

Section 7: Appendices

[Appendix A – Guide to the HMRC on-line tool](#)

[Appendix B – Breach Report](#)

[Appendix C – NHS England Business Case Template](#)

[Appendix D – Definition of Interims](#)