



Tax Centre of Excellence

IR35 Assessment Guidance

Off-payroll working in the public sector

August 2020

V10.1

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The Tax Centre of Excellence (Tax CoE) is a central resource for departmental tax advice and services available to government departments. Further information on the Tax CoE can be found at the [Tax CoE website](#).

This is additional information to help members make decisions on the tax status of off-payroll workers and the content has been checked with HMRC for accuracy. The information on these pages does not replace or modify HMRC's own guidance, which is available on gov.uk.

Background

- The intermediaries (IR35) rules exist to ensure that workers who would be classed as employed for tax purposes, if they were providing their services directly instead of via an intermediary (usually their own personal service company - PSC), pay tax and national insurance contributions at broadly the same rate as an employee.
- A change to IR35 in April 2017 has made public sector bodies (PSBs) responsible for determining the Employment Status for tax purposes of all off-payroll workers. Previously, workers themselves were responsible for ensuring compliance with the rules, although public sector bodies were required to seek assurance on status and, where deemed employment existed, additional assurance of tax paid.
- HMRC have introduced an online tool to assist with determining the Employment Status of off-payroll workers and have stated they will stand by outcomes delivered when using the Check Employment Status for Tax (CEST) tool. However, answers to CEST questions must be made in accordance with legislation and guidance.
- The CEST tool should confirm a determination made by considering contractual and working relationships between engager and worker. The starting point for determining employment status will usually be the written terms of the engagement, but consideration of the actual working practices is important as contractual terms may not reflect the true relationship.
- Where an engagement is outside-of-scope for IR35 (a self-employed like arrangement), invoices from the worker's PSC may be made gross; however, where IR35 rules apply (in a deemed employment arrangement), deduction of tax and NI must be made through PAYE on all earnings from the engagement. In practice this will mean:
 - Public sector bodies are required to deduct tax and NICs themselves through PAYE if they pay the worker directly, and IR35 rules apply.
 - In all cases, If the worker is paid by an agency or other provider, the PSB needs to inform the body that pays the worker (the fee payer) whether or not IR35 rules apply so that they know whether to deduct tax / NICs from the commencement of the engagement.

April 2021 Requirements – What is Changing

Note that the reforms to off-payroll rules have been delayed from 6 April 2020 to 6 April 2021. The following pages describe the current proposal.

- From April 2017, Public Sector Bodies (PSBs) have had a requirement to determine the IR35 status of off-payroll workers that are engaged via an intermediary (commonly the worker's own Personal Service Company). From April 2021, this requirement will also be rolled out to medium and large private sector enterprises and some additional public authorities not previously subject to the rules.
- Some new requirements have been included in the legislation which will apply equally to Public Sector Bodies from 6 April 2021:
 - The PSB must issue the worker, and the party that the PSB contracts with for the workers services, with a “**Status Determination Statement**”. This must state whether or not the worker will be an employee or officeholder for tax purposes as well as the reasons for reaching that determination. Until a Status Determination Statement is issued to the worker and the party that the PSB contracts with, the PSB will be held liable for any employment taxes that are due. The PSB will also be held liable for employment taxes (and possibly additional penalties) if they fail to take reasonable care in reaching a conclusion on the worker's status;
 - The worker or their agency will have the right to raise a dispute with the PSB if they believe that the conclusion reached is incorrect and the PSB will need to implement and operate a **status disagreement process**. The PSB must respond within 45 days to inform the worker or agency of the outcome of its consideration of the status, whether it be that the original conclusion was correct, or that the conclusion has changed, accompanied by a revised Status Determination Statement. Failure to respond to disputes within 45 days means that the PSB has liability for any employment taxes that are due.
- The CEST Tool has been amended already in advance of April 2021 changes with amendments to the way questions are phrased and the addition of new questions that explore whether the worker is in business on his/her own account. This guidance is based on the revised version of the tool.



New processes and responsibilities need to be agreed and put in place within your organisation as soon as possible to meet these new requirements.

The new requirements will apply to all engagements with off-payroll workers with fees being paid on or after 6 April 2021, regardless of when the work was actually carried out.

The deadline for issuing the Status Determination Statement (SDS) is on or before the date the first payment is made from 6 April 2021.

SDS's will therefore need to be issued to all existing off-payroll workers and the 3rd party the PSB contracts with, on or prior to the date of first payment from 6 April 2021.

Example 1 - An existing contract with an off-payroll worker ends on 31st March 2021 with the final payment being made to the worker on 7 April 2021. The new requirements will apply to this engagement because the worker has been paid on or after 6 April 2021. Therefore in this example, an SDS must be issued to the worker, and the 3rd party that the PSB contracts with for the worker's services, by 7 April 2021.

Example 2 – A new engagement with an off-payroll worker begins on 23 March 2021. They receive their first payment on 13 April 2021. An SDS must be issued to the worker, and the 3rd party that the PSB contracts with for the worker's services, on or before 13 April 2021.

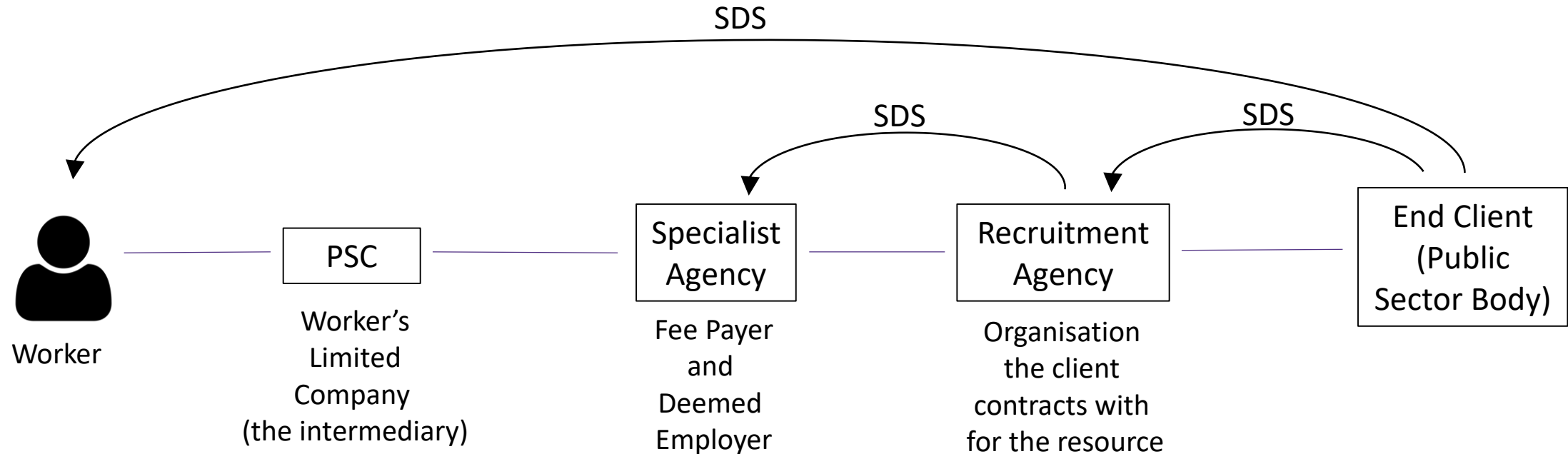
Note – different commencement rules apply for Private Sector bodies and Public Sector Bodies not previously subject to Chapter 10 Part 2 ITEPA 2003 legislation before 6 April 2021. For these bodies, the rules only apply to services provided and payments made on or after 6 April 2021.



Status Determination Statements (SDS)

- The legislation does not specify the form that an SDS should take but specifies the following requirements:
 - stating whether or not the worker would be an employee or officeholder for tax purposes if they were directly engaged by the PSB (ie. it must state whether they are in-scope or out-of-scope of IR35 legislation for the engagement in question);
 - providing reasons for coming to that conclusion. These should give the worker the information they need to understand why the conclusion was reached and enable them to make representations to the PSB if they disagree; and
 - taking “reasonable care” in reaching the conclusion on the worker’s status – see [here](#) for more information.
- HMRC state that an accurate CEST output can be used to provide the reasons for the conclusion and can therefore form part of a valid SDS – this will provide the responses given to the CEST questions, giving the worker some insight into the factors behind the status conclusion. **This should be considered as the minimum standard required for providing reasons in the SDS.**
- We recommend that the rationale behind how the CEST questions have been answered are also captured and stored when IR35 assessments are undertaken. This will enable your organisation to better consider and respond to disputes, support demonstration of reasonable care if subject to an HMRC review and also enable you to provide reasons in the SDS that give more contextual detail linked to the specific role and working practices. A template is included [here](#) that you can use to capture this information.
- Evidence should also be retained to support business working practices that underpin status determinations. For example, evidence to support instances of workers providing substitutes.
- An example Status Determination Statement template that meets the legal requirements can be found [here](#), along with some example reasons for in-scope and out-of-scope engagements.

Example Contractual Chain



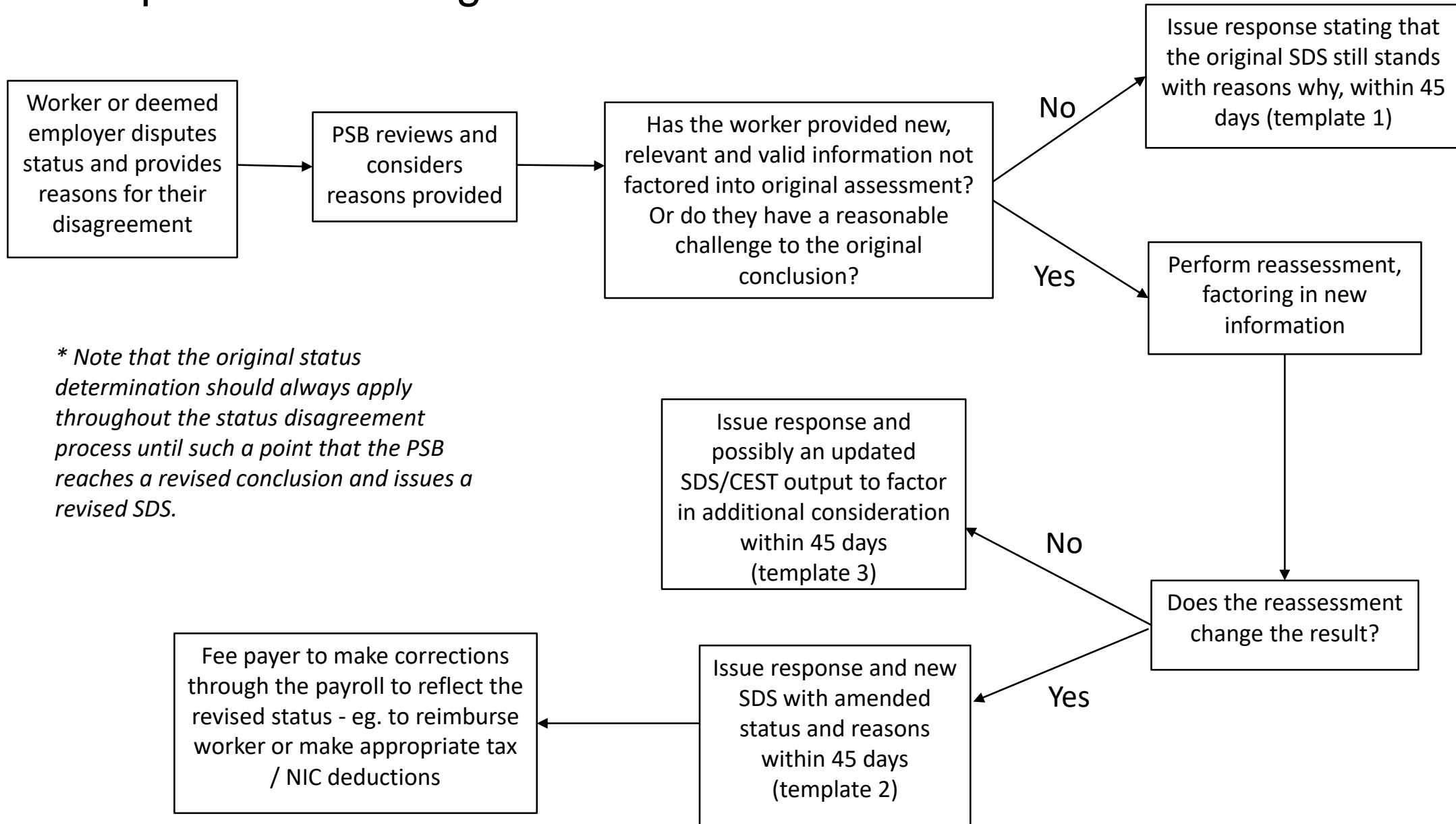
- PSBs must pass the Status Determination Statement (SDS) to the worker and to the body they contract with for resources.
- The SDS must then be passed down the contractual chain to the fee payer / deemed employer who is the lowest entity in the chain immediately above the intermediary.
- If anybody in the chain fails to pass on the SDS then the liability for employment taxes and NICs will rest with them.
- Where the worker is assessed as employed for tax purposes (in-scope of IR35), the fee payer / deemed employer must operate a payroll, deduct employment taxes / NICs and pay these over to HMRC.
- The worker and the deemed employer have the right under the legislation to challenge the status determination with the PSB.



Status Disagreement Process

- Under the legislation, the worker and/or the deemed employer have the right to challenge the status determination made by the PSB. They will need to provide reasons why they disagree so that the PSB has sufficient information to consider the dispute.
- A central contact point should be established to which workers or the deemed employer can direct any disputes. This should be referenced in the Status Determination Statement. This will ensure disputes do not go to the wrong place and enable you to react promptly in order to meet the 45-day deadline for responses.
- A disputes process and responsibilities should be established within your organisation along with supporting templates for responses to workers and/or deemed employers. A suggested process flowchart is included on the next slide and supporting letter templates can be found [here](#).
- The legislation requires the PSB to:
 - ✓ Give consideration to the worker's / deemed employer's representations and rationale for their disagreement;
 - ✓ Respond to the worker or deemed employer within 45 days;
 - ✓ Inform the worker or deemed employer that either: the original SDS was correct, providing reasons; or that the original conclusion was wrong, providing a new SDS and the date the original SDS was withdrawn.
- The PSB is only required to respond to status disagreements made during the period of the engagement, up to the date of the last payment to the worker.
- Where the process results in a change to the worker's status, a revised SDS should be issued by the PSB and the "fee payer" should make any necessary corrections through the payroll.

Example Status Disagreement Process



** Note that the original status determination should always apply throughout the status disagreement process until such a point that the PSB reaches a revised conclusion and issues a revised SDS.*

What does “reasonable care” look like

HMRC’s view on behaviours that would indicate a PSB has taken reasonable care in determining the worker’s status, can be found [here](#) along with some examples.

Essentially, in reaching a conclusion on the worker’s status you should:

- Complete the CEST tool questions accurately with due regard for and application of HMRC’s wider guidance on determining status;
- Keep accurate records of off-payroll workers you engage, status conclusions reached and preserve sufficient records to show reasons/rationale for reaching status conclusions (retention rules can be found [here](#));
- Ensure that people involved in the determination process are knowledgeable and have a good understanding of the work they are undertaking with adequate training and support;
- Seek qualified professional advice where required;
- Review individual determinations periodically to ensure they remain valid;
- Evaluate status determination processes periodically and amend if necessary to ensure they remain fit for purpose;
- Have processes in place to spot where there are changes to worker T&Cs and/or working practices and ensure a re-assessment of status is undertaken where this happens;
- Give consideration to the specific facts of every case – do not make blanket determinations where there could be variations in working practices or contractual T&Cs;
- Check and review the status determination processes of any 3rd parties to which you sub-contract this responsibility, to ensure they are fit for purpose.

Procuring a resource or a service?

It is important to identify all off-payroll resource engaged in your organisation so that you can ensure that you are complying with the off-payroll legislation for the public sector. The off-payroll rules only apply where there is a supply of resource / staff substitutes / contingent labour and not for people who are delivering outsourced services as part of a supply by an external organisation. It is important to understand the distinction between the two.

For example, ABC plc, a managed service provider, sends an off-payroll worker to the Public Sector Body (PSB). The worker is based in the PSB’s office and engages with the PSB’s staff to deliver the requirement. Consider the following when determining whether the arrangement represents a supply of resource or a managed service:

Consideration	Indicators of a supply of resource	Indicators of a supply of a managed service
How are the deliverables articulated?	The contract with ABC plc may specify a worker or X number of workers to augment resource in the public sector body or to deliver Y.	Deliverables are outcome based with the detail of the outcomes clearly specified in the contract with ABC plc.
Who do you articulate the deliverable to?	Detailed deliverables are articulated directly to the worker. High level deliverables may be referenced in the contract with ABC plc but the detailed “ask” of the worker is discussed with them directly.	Deliverables are articulated to ABC plc. ABC plc will tell the worker(s) what is required of them to deliver the contract.
Is the worker under the day to day direction or control of the public sector body or ABC plc?	The public sector body may have some day to day control over the activities of the worker, depending on the nature of the engagement – eg. specifying tasks, and when, where or how the work needs to be done. The public sector body might also be able to move the worker from one task to another depending on priorities. Day to day direction of the worker’s activities is a clear indicator of a supply of resource, however lack of day to day direction does not mean there is no supply of resource – the level of control can vary from one engagement to another.	The worker is under the day to day direction and control of ABC plc.
Who does the public sector body go to if they have an issue with the quality of service?	The public sector body raises quality or non-delivery issues directly with the worker.	The public sector body raises quality or non-delivery issues with ABC plc.
Where does the risk of failure sit?	Risk of failure sits with the public sector body.	ABC plc are held accountable for non-delivery of requirements specified in the contract.
Are you looking to hire a specific worker?	The public sector body requires the services of a particular worker.	The public sector body does not care who ABC plc sends to perform the work / deliver the service.

Case Study A – Resource vs Service

Scenario

A Government Department has a shortage of Digital Risk Analysts within its IT Security team and it has struggled to recruit this type of skillset into permanent posts. The role involves undertaking IT Security risk analyses of the Department's existing and newly developed systems and drafting risk reports setting out issues and proposed resolutions. The Department decides to go out to the market and contracts with G-cloud Supplier Ltd to undertake the required work.

G-cloud Supplier Ltd provides CVs for a number of workers and the Department selects the workers with the best experience. The majority of the workers are independent contractors who operate through PSCs contracting with G-cloud Supplier Ltd. The contract with G-Cloud Supplier Ltd appears to be a contract for an outsourced service specifying outcomes but there are also terms and conditions that gives the Department the right to:

- select the workers having reviewed CVs and undertaken interviews;
- prevent the supplier from moving workers off the contract unless the Department approves it first and require workers to work a 4 week notice period where this is approved.

The workers are given instructions by managers within the Department in terms of which systems they should review and when. The worker's undertake work in exactly the same way as the Department's own Risk Analysts who are employees with the same working practices and degree of oversight and control.

Conclusion – this is not a contracted-out service but a contract for resource. Although workers are not contracted to the Department, there is a requirement for them to provide services personally and they are ultimately under the day to day control and direction of the Department. The Department has ownership of the work and not G-cloud Supplier Ltd – it is contracting for a supply of resource to augment an in-house team.

Case Study B – Resource vs Service - Agile Development Mixed Team

Scenario

A Government Department is leading a project for development of bespoke software using agile development. There is a mixed multi-skilled agile development team comprising employees, independent contractors sourced through the Public Sector Resourcing (PSR) framework and specialist workers provided by Software House Ltd, a supplier that the Government Department has contracted with via the Digital Outcomes & Specialists (DoS) framework. The contract with Software House Ltd is for provision of a multi-skilled team to undertake developments using agile working practices. These workers are to augment in-house and contractor resource in the team.

The DoS contract reads like a service contract and specifies the agile working practices to be followed and an initial set of high level “problem statements” to be addressed over a specified period of time. It states that precise outcomes will be specified to a lead contact within the supplier every 2 weeks, representing deliverables for the next sprint, due to agile delivery being fluid and the need to iterate towards a solution over time. The development is steered and influenced by a Product Owner who is employed by the Department and who prioritises the day to day tasks (user stories) to be worked on by the agile team. The contract is on a time and materials basis with set daily rates for each of the specific roles/workers provided by Software House Ltd. The workers are all independent contractors working through PSCs that are contracted to Software House Ltd.

Conclusion

The Software House Ltd contract is a contract for resource and not a contracted out service – the development is project managed and controlled from within the Department. The contracted requirement is not for specific pre-agreed outcomes but is for workers to augment the Departments own software development capability and who will be directed on a day to day basis by the Department. Due to the features / ways of working in agile developments it is hard to envisage how the development can be broken down in order to outsource elements of it to a managed service provider. For example:

- The nature of Agile working is reliant on having a single integrated team working very closely together on a day to day basis;
- there is a need for all of the workers in the agile team to have a shared understanding of the product with team members working together to influence the direction that the development takes;
- there are frequent software releases to offer quick visibility of new features;
- the ability to reprioritise activities quickly based on evidence is important under agile;
- there is a concept of “iterate rather than predict”. I.e. the development iterates towards a solution instead of having a view of what the end product will look like from the start;
- if the development is led in-house by a “Product Owner”, they will set the expectation for their team of what is the next “problem” / piece of work they should pick up. This is typically done using a prioritised ticketing system whereby workers will pick up the next ticket or piece of work from the queue, representing control and direction over the workers;
- shared ceremonies are a part of agile team working, e.g. daily stand-ups, town halls, show and tell, etc.

Note – labelling a contract as a contracted out service or a “statement of work” will not prevent the off-payroll working rules from applying, and the reality of the arrangements should be considered.

Case Study C – Resource vs Service – Agile Development Service

Scenario

A Government Department contracts with Software House Ltd, via the Digital Outcomes & Specialists (DoS) Framework, to deliver a bespoke software development as part of a project to deliver an operational IT system. The outcomes for the development are clearly specified in the contract and the specification includes a detailed “story board” and “roadmap”. Software House Ltd use agile techniques and working practices to deliver the contract, providing and leading all members of the agile development team. The supplier decides on the detailed software specification and how to deliver the outcomes, using agile techniques to iterate towards a solution.

The supplier is responsible for planning all activity and for controlling and directing the workers to deliver the solution. The workers report to a Project Manager within Software House Ltd - they do not report to or interact with managers within the Government Department, i.e. personal service is provided to Software House Ltd. The workers are all independent contractors working through PSCs that are contracted to Software House.

The contract contains milestone payments for achievement of key outcomes specified in the contract. Oversight from the Government Department’s Digital Team is limited to monthly catch-ups with the supplier to understand progress against the milestones in order to validate invoices received from Software House Ltd, as well as to understand whether there are any blockers they can help to resolve within the Department.

Conclusion

The software development contract is an example of a contracted-out service. The deliverables have been clearly specified in the contract and fully outsourced to Software House Ltd. The workers are engaged and directed / controlled by the supplier with no involvement from the Government Department. Risk of non-delivery falls with the supplier due to payment based on outcomes.

From the worker’s perspective, Software House Ltd is their client and not the Government Department. Prior to April 2021, it is the worker’s responsibility to determine whether the engagement falls within scope of IR35 legislation or not because Software House Ltd is not a Public Body. From April 2021, it will become the responsibility of Software House Ltd to determine the IR35 status of the workers they are engaging (as they meet the definition of a medium sized company under the legislation).

HMRC CEST Tool

[Link to HMRC CEST Tool](#)

Will HMRC stand by the results of CEST?

HMRC will stand by the result produced by the service provided the information is accurate and it is used in accordance with the wider guidance available. [HMRC Employment Status Guidance](#)

Note that HMRC will not stand by results achieved through contrived arrangements that have been deliberately created or designed to get a particular outcome. They would see this as deliberate non-compliance, and you risk financial penalties.

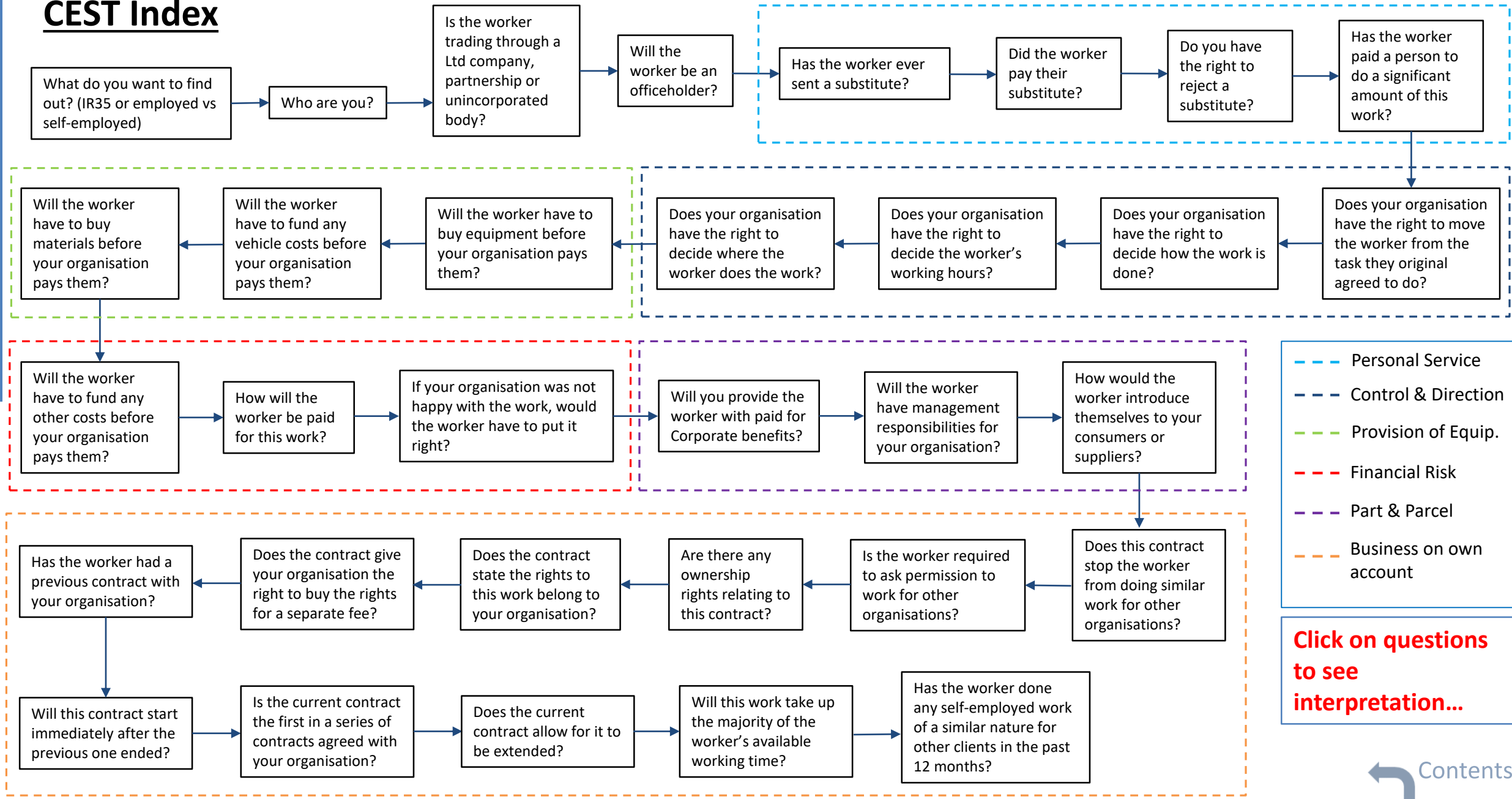
In particular you should take care in respect of:

- contrived substitution arrangements designed to keep off-payroll workers out-of-scope of IR35 legislation;
- any working practices that have been designed / implemented without reference to business need but instead to achieve a particular tax status for workers;
- engaging resource through commercial arrangements that are badged as “service contracts” but where the workers are in reality under the day to day direction and control of your organisation. Eg. particular care needs to be taken to ensure IR35 requirements are met when engaging workers through IT service frameworks such as G-Cloud and Digital Outcomes and Specialists (DoS).

What if CEST is unable to reach a determination?

- Reconsider the facts and run the tool again. Validate the answers to the Business on Own Account set of questions with the worker.
- Call the HMRC helpline on 0300 123 2326 for additional assistance if you are unclear on how to answer particular CEST questions.
- If the tool is still unable to reach a determination then you will need to form a judgement taking account of wider HMRC guidance in the Employment Status Manual here: [ESM0500](#)
- Make sure to stand back and consider the big picture to consider whether the relationship with the worker is one of an employer/employee or a client/self-employed business. Ask yourself whether there are any employees doing similar roles and working in a similar way.

CEST Index



HMRC CEST Tool - Interpretation

CEST Question	Interpretation
What do you want to find out? If the off-payroll working rules apply to a contract (IR35) If some work is classed as employment or self-employment for tax purposes	<p>If the worker is providing their services via their own limited company or partnership then there is an intermediary in the arrangement and you should answer “If the off-payroll working rules apply to a contract (IR35)”.</p> <p>If there is no intermediary between the worker and the supply chain (ie. they are not operating via their own limited company or partnership – they are just operating as a sole trader) then you should answer “If some work is classed as employment or self-employment for tax purposes”.</p>
Who are you? Worker Hirer Agency	You are undertaking the assessment as the Public Sector Body hiring the worker so you should answer “Hirer”
Is the worker trading through a limited company, partnership or unincorporated body? Yes No	It is very common that the worker will be providing their services their own Personal Service Company (PSC) and this will probably be a limited company.
Will the worker be an ‘Office Holder’? Yes No	<p>An officeholder is a person who’s been appointed to a position by a company or organisation but does not need to have a contract or receive regular payment.</p> <p>However, it’s possible for someone to be an office holder and an employee if they have an employment contract with the same company or organisation that meets the criteria for employees. See Employment Status Manual</p>

HMRC CEST Tool - Interpretation



← CEST index



CEST Question	Interpretation
<p>Has the worker ever sent a substitute to do this work?</p> <p>Yes, you accepted them Yes, but you did not accept them No, it has not happened</p>	<p>Context:</p> <p><i>Yes, you accepted them, (being that a true right existed)</i> <i>Yes, but you did not accept them, (being that the worker proposed or provided a substitute, but we rejected them).</i></p> <p>To answer “yes, you accepted them”:</p> <ul style="list-style-type: none"> - the substitute must have carried out a significant part of the original worker’s remit, performing all of the tasks assigned to the original worker over the duration of the substitution period. - the tasks undertaken by the substitute must be of sufficient breadth that the substitute would not just be considered a helper, eg: a replacement worker who delivered a training day would be a helper rather than a genuine substitute. - the substitute was not someone from a pool of workers regularly used by the business - the substitute was not interviewed or subject to any form of selection process other than confirming they had the skills do undertake the role. - the substitution must have occurred during the current engagement and the current role only. <p>Examples of substitution from previous engagements or roles would not necessarily indicate no requirement for personal service in the existing engagement / role.</p> <p>To answer yes and we agreed, this will need to be supported by evidence.</p> <p>See Case Study 9 for an example of non-genuine substitution See Case Study 10 for an example of genuine substitution</p>
<p>Did the worker pay their substitute?</p> <p>Yes No</p>	<p><i>This question will only appear in the case of engagements that have commenced, and where we have answered – “Yes, you accepted them” to the previous question.</i></p> <p>If the substitute was paid by an agency, it does not count as substitution.</p>

CEST Question	Interpretation
<p>Do you have the right to reject a substitute?</p> <p>A substitute is someone the worker sends in their place to do their role. This can include rejecting a substitute even if they are equally qualified, and meet your interviewing, vetting and security clearance procedures.</p> <p>Yes No</p>	<p>This seeks to establish both right and practicality and requires a 2 hurdle approach:</p> <ol style="list-style-type: none"> 1. If the contract, or cross-Government framework restricts the right or is silent on substitution and so the client can reject, then answer “Yes”. For instance, if the contract requires a worker to seek written permission from the client, then this alone is sufficient to restrict the right of the worker to send a substitute. Eg. This applies is to all PSR engagements where the worker has a contract directly with Alexander Mann Solutions as the contract requires written approval from the client for substitution to be allowed. 2. If the right is not restricted by the contract, consider whether substitution is both plausible and practical. If it would never happen in reality or if it just isn’t practical, still answer “Yes”. The following key points must be taken into account: <ul style="list-style-type: none"> - Substitution must be practical, plausible and acceptable for the business area concerned to answer “No” to this question. If substitution would be detrimental to delivery of the outcomes/deliverables we are buying, eg. because built up experience / knowledge / established relationships with stakeholders are important for the role, then you should answer “Yes”. - If you as the client place conditions on accepting the substitute or retains the decision on whether the substitute is acceptable or would seek to interview them first then the worker’s right of substitution is limited (fettered) and you would need to answer “Yes” to this question. - It must be possible for a replacement worker to pick up the role and perform all aspects of the engagement to answer “No” to this. If substitution would not be seamless, then you should answer “Yes”. - To count as substitution the worker would need to source and send the replacement worker themselves and also pay them. If the replacement is sourced from a third party agency or through a separate contract that the client has in place, or if the substitute is a worker regularly used by you as the client, then this does not count as substitution. - It is not enough for there to be a right of substitution clause included in contracts, it must reflect the reality of the working arrangements. - Consider whether there are practical processes in place to enable a substitute worker to come in and work effectively (system access, building access, IT equipment, any necessary security/identity checks, etc). <p>If you answer “no” and HMRC investigate, you may be asked to demonstrate how this would operate within the business and/or that they have accepted substitution during this or similar roles.</p> <p>See Case Study 9 for an example of a right to reject a substitute.</p>

HMRC CEST Tool - Interpretation

CEST Question	Interpretation
<p>Has the worker paid a person to do a significant amount of this work?</p> <p>Yes No</p>  <p>Personal Service</p>	<p>This seeks to establish if the worker has engaged a helper to undertake some of the job the worker is hired to do, either for them or with them.</p> <p>The assistance must be a clearly defined aspect of the original worker's remit, or a necessary activity that is a requirement for delivery.</p> <p>That aspect of the remit would need to be significant rather than an occasional event. The helper must be engaged and paid by the original worker.</p> <p>See Case Study 9 for an example of a helper.</p>
<p>Does your organisation have the right to move the worker from the task they originally agreed to do?</p> <p>A worker taken on for general tasks, rather than one specific task, might be moved as and when priorities change. The client may not need the worker's permission to move them.</p> <ol style="list-style-type: none">1. Yes2. No, they would have to agree3. No, that would require a new contract or formal working arrangement  <p>Control & Direction</p>	<p>Control in this context can be moving the worker to a different task or project than they had originally been engaged to do. It can also be demonstrated where the worker operates within a framework of control, for example where individual tasks are prioritised and given to the worker by the organisation.</p> <p>Option 1 indicates an expectation from the outset of the engagement that you can move the worker to a new task, project, or priority within your business. This might be because of the worker's skill set, and a general requirement for these skills or a defined way of working such as Agile Methodology whereby new tasks are prioritised by the client and given to the worker during Agile sprints. The worker has no meaningful right to decline.</p> <p>Option 2 may involve an open ended arrangement where individual tasks have not been specified, or you may wish the worker to take on work broadly similar to their existing remit. We would not expect to enter into a new contract, but would need to seek agreement from the worker to proceed as we wished. This option is only applicable where the worker has a right to decline being moved onto other tasks and it is plausible that that they would be able to decline.</p> <p>Option 3 is only applicable where a new contract or agreement is required, with further remuneration, to re-direct the worker's activities. This would suggest an engagement that is framed by a clearly defined set of tasks or outcomes to be achieved. There would be no expectation of movement of the worker outside of this work set. There is no right to direct the worker's activities like there would be in Option 1.</p>

HMRC CEST Tool - Interpretation



CEST Question	Interpretation
<p>Does your organisation have the right to decide how the work is done?</p> <p>This can include your organisation instructing, guiding or advising the way the task should be completed. This is not relevant if it is highly skilled work. For example, an airline pilot.</p> <ol style="list-style-type: none"> 1. Yes 2. No, the worker solely decides 3. No, your organisation and the worker agree together 4. Not relevant, it is highly skilled work 	<p>Option 1 suggests we are directing the worker from the outset and on an ongoing basis. The worker will not be a part of deciding how work is completed. Direction and control in this context can include:</p> <ul style="list-style-type: none"> - The worker operating within a framework of control. There is a requirement to meet or follow organisational governance and/or standards, regardless of the skillset of the worker. Eg 1) a project manager navigating the organisation's project governance and reporting requirements. Eg 2) software developers following organisational blueprints/architecture/designs to ensure their development works in the wider IT environment; - The worker being required to follow the organisation's manuals, policies, processes and procedures. Eg software engineer following organisation's checklist and process for assuring applications prior to uploading to the live environment; - A hierarchy of control in which managers plan, supervise and review the work, including assurance that Government Digital or organisational standards are met. Eg work is reviewed and approved by managers or peers who influence how the worker delivers the work. <p>Option 2 will be true if we genuinely offer no control or direction in the means of delivery for this to the worker. The worker will use their own methodology and there is no expectation that we would challenge this.</p> <p>Option 3 is where neither the organisation nor the worker have the final say in how the work is delivered but need to mutually agree.</p> <p>Option 4 will be true where we are unable to influence working methods, either because we have sought independent skills that are unavailable within our business or the degree of expertise and skillset is such that the organisation would never even contemplate telling the worker how to undertake task. Eg a cyber security engineer testing and advising on the organisation's systems for security vulnerabilities – this is a highly specialist skillset not available within the organisation <u>and the role is not subject to organisational governance or control frameworks</u>.</p> <p>Check: Options 2 and 4 may both be true, but in option 2 we have offered autonomy whereas in option 4 we have not had any choice but to do this.</p>

HMRC CEST Tool - Interpretation



CEST Question	Interpretation
<p>Does your organisation have the right to decide the worker's working hours?</p> <ol style="list-style-type: none">1. Yes2. No, the worker solely decides3. No, your organisation and the worker agree4. No, the work is based on agreed deadlines	<p>Option 1 is relevant where there is control over the worker's time. The organisation can tell the worker the core hours they must work or have first call over the worker's time. The worker may have some say over hours, eg through flexible or smarter working arrangements but this is often no different to an employee so you should still answer "Yes".</p> <p>The call over a worker's time could be an expectation that the worker attends certain meetings (eg. Agile stand-ups / ceremonies) or an expectation that the worker's core hours coincide with colleagues (eg due to the importance of Agile team working in fulfilling the role), or to align to IT system availability.</p> <p>Option 2 suggests complete autonomy on the part of the worker. Tasks may be undertaken when the worker determines, and we may not be aware of hours dedicated to the engagement. We have engaged on this basis. <i>We may request a schedule from the worker in order to make payment.</i></p> <p>Option 3 will be appropriate where there is a specific agreement on working hours between the worker and the organisation that extends beyond ordinary flexible working arrangements that are offered to employees.</p> <p>Option 4 will be appropriate if we do not require or ask for a work schedule. The engagement requires an output to be delivered at a set time.</p> <p>Check: if selecting option 4, consider how you will decide on appropriate payment if the worker bills by time spent.</p>

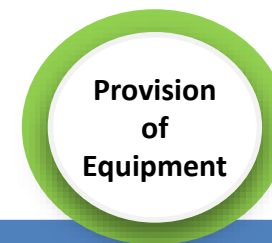
HMRC CEST Tool - Interpretation



CEST Question	Interpretation
<p>Does your organisation have the right to decide where the worker does the work?</p> <ol style="list-style-type: none"> 1. Yes 2. No – the worker decides 3. No, the task sets the location 4. No, some work has to be done in an agreed location and some can be the worker’s choice 	<p>Option 1 suggests we instruct the worker where tasks must be completed. For example, if the organisation requires the worker to work from one of its offices then you should answer “Yes”. An occasional ability to work from home (ie flexible working arrangements which are also available to employees) does not demonstrate a lack of control over work location if the organisation can stop those arrangements if they choose.</p> <p>Under Agile working, close team working is often paramount and there may therefore be the expectation that workers work alongside the rest of the team for the majority of their time to ensure optimal delivery.</p> <p>Option 2 suggests there is no direction given to the worker in this respect. The worker will decide if and when they attend your organisation’s premises. They can choose to work away from our sites throughout the engagement as they choose. An assertion that a worker has complete control of their location would require supporting narrative around practicality given the role they are performing.</p> <p>Option 3 will be true if the tasks cannot be performed other than at a specific location. For example, if work is required to be undertaken on secure IT systems that are not networked then the worker will have to be at the same location as the IT system. Where location is by preference or choice, then Option 3 will not apply – for example the worker may be required to liaise with stakeholders but this could be done remotely.</p> <p>Check: under option 3, neither worker nor the organisation is able to choose work location, however, under option 2 the worker autonomy. If option 3 is true then it should be selected in preference to option 2.</p> <p>Option 4 will be true where the worker is required to interact with the organisation’s stakeholders, such as attendance at meetings or regular co-location with a team but there is flexibility for the worker to choose where they work for the rest of the time.</p> <p>Check: if selecting option 2, you should test whether any aspect of the work might make option 4 a more appropriate answer.</p>

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CEST Question	Interpretation
<p>Will the worker have to buy equipment before your organisation pays them?</p> <p>This can include heavy machinery or high-cost specialist equipment used for this work. This does not include laptops, tablets and phones.</p> <p>Yes No</p>	<p><i>This must be considered in the context of being necessary for the engagement under consideration. You should not include any item of equipment that is not a requirement for the tasks to be completed.</i></p> <p>Everyday items that a worker might have for both work and personal reasons such as laptops, mobile phones and tablets are not indicative of financial risk and should be ignored.</p> <p>Specialist software must satisfy the test of being required for the engagement and would be a significant cost to your organisation if not provided by the worker.</p> <p>The equipment must represent a significant financial outlay eg the worker’s business is making a significant up front <u>capital</u> investment on equipment to be able to work on this engagement. The worker would bear a true risk of financial loss through incurring this expenditure.</p> <p>The investment need not be a purchase made solely for the engagement under consideration, but it must be a specific requirement needed to undertake the engagement.</p>
<p>Will the worker have to fund any vehicle costs before your organisation pays them?</p> <p>This can include purchasing, leasing, hiring, fuel and other running costs for this work. This does not include commuting or personal vehicle costs.</p> <p>Yes No</p>	<p>As indicated, the vehicle would need to be required to complete the task and would specifically not include travel between home and the work location.</p> <p>The cost incurred by the worker must be significant to answer yes.</p>

HMRC CEST Tool - Interpretation



CEST Question	Interpretation
<p>Will the worker have to buy materials before your organisation pays them?</p> <p>This can include items that form a lasting part of the work, or are left behind when the worker leaves. This does not include items like stationery. This question is most likely to be relevant to the construction industry.</p> <p>Yes No</p>	<p>These must be substantial and the worker either cannot obtain reimbursement or faces the risk of financial loss should the contract not be paid.</p> <p>To answer yes, the worker would have to face the real prospect of financial loss should the contract not be paid.</p>
<p>Will the worker have to fund any other costs before your organisation pays them?</p> <p>This can include non-commuting travel or accommodation, or external business premises for this work only.</p> <p>Yes No</p>	<p>Any cost must be significant and need to satisfy the test of being required to deliver in order to complete the tasks required.</p> <p>Any costs incurred for personal use or costs that would apply equally to employees are not relevant and you should answer “No”.</p> <p>For example:</p> <ul style="list-style-type: none">- A worker purchases some software for a small cost and/or minimal licence fee to support the work being carried out. This would not be deemed significant in this context.- An engagement specifically requires the worker to meet particular Continuing Professional Development (CPD) standards with the worker needing to spend £2000 on training to be able to undertake the role. This would be deemed significant in this context.

HMRC CEST Tool - Interpretation



CEST Question	Interpretation
<p>How will the worker be paid for this work?</p> <ol style="list-style-type: none"> 1. An hourly, daily or weekly rate 2. A fixed price for the project 3. An fixed amount for each piece of work completed 4. A percentage of the sales the worker generates 5. A percentage of your organisation's profits or savings 	<p>The selection will be determined by the contractual terms applied within the engagement.</p> <p>Option 1 is most likely to apply to engagements let under the PSR contingent labour framework.</p>
<p>If your organisation was not happy with the work, would the worker have to put it right?</p> <ol style="list-style-type: none"> 1. Yes, unpaid and they would have extra costs that your organisation would not pay for 2. Yes, unpaid but their only cost would be losing the opportunity to do other work 3. Yes, they would fix it in their usual hours at their usual rate or fee 4. No, the work is time specific or for a single event 5. No 	<p><i>When selecting an option, you should consider what will happen in practice as well as any contractual obligation placed on the worker. Eg if considering options 1 or 2 you should ask yourself whether contractual rights have ever been invoked historically, ie is there any financial risk to the worker in reality?</i></p> <p>Option 1 requires that the worker incurs significant additional cost. In this context, additional cost is defined as outgoings, and not the notional loss of income due to time spent in remedial work.</p> <p>Option 2 requires that we expect unbilled remedial work to be performed by the worker but without any cost to them in terms of cash outgoings.</p> <p>Option 3 should be selected if your organisation would not ask the worker to spend unbilled time in remedial work. This should be selected if there is no contractual right to, or no working practice of insisting a worker put work right for no additional pay – under these circumstances there is no realistic financial risk for the worker.</p> <p>Option 4 should be selected if it would not be possible for the worker to correct the work.</p> <p>Option 5 suggests your organisation would not seek redress through remedial work from the worker. This is distinct from option 4 where correction is not possible. You are saying that you would choose not to request correction. This could apply in a scenario where the worker's tasks include setting out options or proposals which you may ultimately discard.</p> <p>For example:</p> <ul style="list-style-type: none"> - Agile software development is an iterative process with a large amount of revision and rework expected as part of the process. The worker would be paid a normal day rate for this rework and revision and so Option 3 should be selected. - A worker is tasked with drafting a report to make recommendations on options for migrating data to a new cloud hosting platform. The final report is not fit for purpose and does not meet the requirements specified in the contract. The worker is required to re-write the report and reconsider the options in their own time without additional pay. Option 2 should be selected.

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CEST Question	Interpretation
<p>Will you provide the worker with paid-for corporate benefits? (This can include external gym memberships, health insurance or retail discounts)</p> <p>Yes No</p>	<p>This would include benefits that are usually associated with benefits an employee would receive, but are not statutory benefits. It is the “availability” of such benefits that is important here and not whether they are actually used or not.</p> <p>This could include benefits such as access to subsidised gym membership or a subsidised canteen.</p>
<p>Will the worker have management responsibilities for your organisation? (This can include deciding how much to pay someone, hiring or dismissing workers, and delivering appraisals)</p> <p>Yes No</p>	<p>This will be the case where the worker undertakes management tasks such as planning work, setting priorities and coordinating staff. It will also be the case where the worker has line management type responsibilities such as hiring and firing staff and delivering appraisals (but not just giving feedback on someone’s performance).</p> <p>When considering the hiring of workers, you should consider the worker to have “responsibility” where they are a part of a selection process – eg sifting applications or interviewing.</p>
<p>How would the worker introduce themselves to your consumers or suppliers?</p> <p>They work for you They are an independent worker acting on your behalf They work for their own business This would not happen</p>	<p>The worker may not state or imply that they work directly for your organisation, however:</p> <p>Option 1 will include an arrangement where the worker would appear to be working for your organisation. Eg this could be due to their job title or branding. For example, a worker requests Public Sector Body (PSB) stakeholder feedback on the latest iteration of a product. They are working for a PSB digital reform programme. Here it is very likely the stakeholder will identify the worker as working for / acting on behalf of, the PSB.</p> <p>Option 2 will apply where it is evident to the audience that the worker is independent and it is clear that the worker and not your organisation is doing the work.</p> <p>Option 3 will recognise that the worker has their own business. It does not, however, identify an independence of arrangement as defined in option 2.</p> <p>Option 4 is relevant where the worker would have no interactions with any audience external to your organisation.</p>

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CEST Question	Interpretation
<p>Does this contract stop the worker from doing similar work for other organisations? (This includes working for your competitors).</p> <p>Yes No</p>	<p>Consideration is required of the contractual terms and conditions under which the worker is engaged. If there are any restraint of trade or similar clauses then “Yes” must be chosen.</p>
<p>Is the worker required to ask permission to work for other organisations?</p> <p>Yes No</p>	<p>If your organisation has any say in whether the worker can do work for others or the contract requires your permission then “Yes” must be chosen.</p>
<p>Are there any ownership rights relating to this contract? (These types of rights are usually found in media, arts and creative industry contracts. This includes all intellectual property rights, copyright, trademarks, patents, and image rights).</p> <p>Yes No</p>	<p>There could be ownership and intellectual property rights/issues where assets are created as part of the engagement. For example, in Digital roles, there could be rights relating to developed software. If this is the case then you need to answer “Yes”.</p>
<p>Does the contract state the rights to this work belong to your organisation? (This does not include the option to buy the rights for a separate fee). Yes / No</p>	<p>Consideration is required of the contractual terms and conditions under which the worker is engaged.</p>
<p>Does the contract give your organisation the right to buy the rights for a separate fee? (If an option like this does not exist, the worker would keep all rights relating to this work).</p> <p>Yes No</p>	<p>Consideration is required of the contractual terms and conditions under which the worker is engaged.</p>

HMRC CEST Tool - Interpretation



CEST Question	Interpretation
<p>Has the worker had a previous contract with your organisation? Yes No</p>	<p>This question implies the need for you to maintain records of historical off-payroll contracts. If the worker has had short term contracts which have been renewed as well as contract extensions, then you should answer “Yes” according to your records. Separate contracts running at the same time also fall under “Yes”.</p> <p>Other Government Departments or Crown NDPBs are not classed as a single organisation for the purposes of answering this question – it should be considered from the perspective of the “contracting authority”.</p>
<p>Will this contract start immediately after the previous one ended? Yes No</p>	<p>You should answer “Yes” to this question if there is just a short period of time between contracts, eg equivalent to a holiday period.</p> <p>Where the parties agree to a period of time between contracts purely to achieve a tax status outcome, HMRC will view this as a contrived arrangement.</p>
<p>Is the current contract the first in a series of contracts agreed with your organisation? Yes No</p>	<p>If there is an understanding between your organisation and the worker, either contractually, implied, or expected, that following the end of this contract it will be renewed or another one offered, then you should answer “Yes”.</p>
<p>Does the current contract allow for it to be extended? Yes No</p>	<p>If the contract has clauses allowing for it to be extended or has no fixed end date then you should answer “Yes”. Where there is an end date but it is known/expected that the project will continue and therefore the worker is likely to be asked to continue / consider a contract extension, you should also answer “yes”.</p>

HMRC CEST Tool - Interpretation



CEST Question	Interpretation
<p>Will this work take up the majority of the worker's available working time? (This includes preparation or any other time necessary to deliver the work, even if it is not referred to in the contract).</p> <p>Yes No</p>	<p>Note that working time does not necessarily refer to traditional 9 to 5 working hours. The total time that the worker is "<u>available</u>" to work, given other commitments, is what is important when answering this question.</p> <p>As an example, a worker engaged through the PSR framework is paid to work a professional day, 5 days a week. On average this amounts to around 38-40 hours a week. In this example, the PSB contract takes up the majority of their working time, so the answer to this question is "Yes".</p> <p>As another example, a worker has 25 hours available working time due to wider childcare commitments. They spend 2 days per week (16 hours) working on this contract. You should answer "Yes", the contract takes up the majority of their working time.</p>
<p>Has the worker done any self-employed work of a similar nature for other clients in the last 12 months?</p> <p>Yes No</p> <p>(This only refers to work requiring similar skills, responsibilities, knowledge, or ability. Self-employed work is when it is the worker's responsibility to pay Income Tax and National Insurance contributions on their earnings.)</p>	<p>This information will need to be supplied by the worker themselves. It is for the worker to provide you with evidence of previous work for the purposes of answering this question.</p> <p>You should only answer "Yes" to this question where previous work relates to self-employed contracts entered into by the worker's business (eg their Personal Service Company) doing work of a similar nature / utilising similar skills and expertise..</p>

Case Study Index

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

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Ref	Role	IR35 Status	Comments
1	Software Engineer	In-scope	An example of a requirement for personal service, substitution would not be practical, control & direction exercised on the part of the PSB. Covering a permanent role.
2	QA Test Engineer	In-scope	An example of a requirement for personal service, substitution would not be practical, control & direction exercised on the part of the PSB.
3	Digital Project Manager	Out-of-Scope	An example where the worker is employed by an umbrella company so automatically out-of-scope.
4	Process Design Consultant	Out-of-Scope	An example of fettered substitution but no control and direction exercised by the PSB. Goal / output orientated delivery.
5	Reliability Engineer	In-Scope	An example of a requirement for personal service, substitution would not be practical, considerable control & direction exercised on the part of the PSB.
6	Digital Delivery Manager	In-Scope	An example of a requirement for personal service, substitution would not be practical, control & direction exercised on the part of the PSB.
7	Infrastructure Engineer (Cyber Security)	In-Scope	An example of a requirement for personal service, substitution would not be practical, control & direction exercised on the part of the PSB. Covering a permanent role.
8	Interaction Designer	In-Scope	An example of a requirement for personal service, substitution would not be practical, control & direction exercised on the part of the PSB. Covering a permanent role.
9	Software Engineer (sent a helper)	In-Scope	An example of non-genuine substitution (deemed to be a helper rather than a substitute), control & direction exercised on the part of the PSB.
10	Digital Security Architect	Out-of-Scope	An example of genuine substitution and therefore no requirement for personal service.
11	Senior programme Manager	In-Scope	An example of fettered substitution, and substitution in practice would not be practical or plausible. Control & direction exercised on the part of the PSB

Case Study 1

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time engaged	Contract	Nominated Worker?	Cover for Perm role?	IR35 In / Out-of-Scope
Software Engineer	9 months	Public Sector Resourcing (PSR)	Yes	Yes	In Scope – requirement for personal service, permanent role, control & direction present
Role Description	<ul style="list-style-type: none"> - One of two in-house software developers in the team, this is a pure software development role. - Codes micro-services written from scratch to tailor and configure an existing application that is provided by the European Commission (EC) but the application requires development to make it fit for purpose for the organisation. - Development is in an Agile way, with a product team and daily stand-ups involving user researchers, developers and testers. - Works under the steerage of the delivery manager who prioritises user stories (pieces of work) for the worker to focus on. 				
Control & Direction	What	How	Where	When	
	Not moved from project to project but the tasks being worked on are directed as the “user stories” requiring development work are prioritised by the Delivery Manager and given to the worker on a piecemeal basis in line with Agile principles.	Has some autonomy in the way they code the software but there is a wider control framework, including the need to develop in line with blueprints to fit in with the overall system architecture, must follow Agile principles and is restricted in meeting organisational security and governance standards.	Worker must work from a hub location to be in the same location as the rest of the team.	Must work core hours to enable Agile team working.	
Personal Service	Yes – no expectation that the worker will ever send a substitute as the business area would like personal service. The worker also has established knowledge of the EC system being developed which a substitute would not have, making substitution impractical.				
Part & Parcel	Plays a key role within the development team and this is a role which the team are looking to recruit permanently.				
Financial Risk	No personal financial risk for the worker in this engagement. Although the contract T&Cs allow for the client to require the worker to put right faults in their own time without further pay, the business area has no previous history of ever enacting this clause, meaning no financial risk in reality. Other factors are more significant for employment status purposes.				
COMMERCIAL ROUTE	PSR Framework via Agency Supply Chain.				

Case Study 2

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
QA Test Engineer	1 year	Public Sector Resourcing	Yes	Yes	In Scope – Requirement for personal service given lead time to get up to speed plus restriction on ability to substitute. Control in terms of what, where and when. Part & parcel of organisation.
Role Description	<ul style="list-style-type: none"> - Working on the Data Team who are delivering the design, development and implementation of the management information and reporting systems for the business area. - This is a niche development area involving “Big Data” - This is a standard QA engineer role and involves writing test scripts to test the developed functionality of the system. The test engineer is responsible for the operational stability of the products they test within the Delivery Squad. - The worker will be engaged as one of two test engineers for the duration of the project but with a view to recruiting test engineer resource permanently due to ongoing requirements. - Work is undertaken in an Agile delivery environment with user stories prioritised by the Product Owner, developed and then tested. 				
Control & Direction	What	How	Where	When	
	Only ever delivered this role but there is control in terms of Agile development practices and the worker being given user stories to be worked on, on a piecemeal basis from a prioritised list.	No real direction in terms of how they work. They were brought in for their specific skillset. The test strategy they propose is validated against organisational standards but ultimately the methodology is decided by the worker.	Worker is expected to base themselves in the main office office.	Worker is expected to work contracted hours within the scope of the organisation's flexi policies.	
Personal Service	Another suitably skilled QA resource could undertake the activity if the worker was to send a substitute. They have not substituted in the engagement to date and it would not be practical because a replacement worker would take a few weeks to get up to speed. The assignment manager would want to interview/chat to any replacement before they started.				
Part & Parcel	There is not envisaged to be a difference in how contracted resource will deliver this role versus a permanent member of staff once recruited. This is very much a team delivery, their part of which is tied in with other members of the squad. They attend Agile stand-ups, however they do not attend wider team meetings.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	PSR Framework via Agency Supply Chain.				

Case Study 3

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Digital Project Manager	13 months	Public Sector Resourcing (PSR)	Yes	No	Out-of-scope due to being employed by an umbrella company but would otherwise have been in-scope.
Role Description	<ul style="list-style-type: none"> - Project to attach IT Networks to 200 Assessment Centres nationwide. - Worker has been in post throughout planning phase and is now starting implementation. - Worker has taken the lead on discussions with key suppliers. He is a former Director at one of the main suppliers so brings a network of known contacts to help progress this work. - Worker also recruited specifically for his prior experience with this Change Programme, relocating offices and brings an understanding of how the organisation works. 				
Control & Direction	What	How	Where	When	
	Only engaged to do this, although prior to extension to contract, was working on a different project within the same Programme	Expected to follow the organisation's standard project management governance and reporting requirements as a key part of the role.	No requirement or expectation set that worker will work from a particular location.	Working hours are not dictated – left to worker to decide as appropriate	
Personal Service	Assignment manager open to worker sending a substitute but never has, despite previously taking time off. Any replacement would not have knowledge of risks / issues and everything going on in a fast moving project, wouldn't have established relationships with suppliers or knowledge of how the organisation works. Requirement for personal service given worker was specifically chosen for their prior experience and relationships with key suppliers – impractical for a substitute to replace the contractor in a seamless way.				
Part & Parcel	Represents the Department in conversations with suppliers although identifies himself as a contractor on a contract with the organisation.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	Employed by an umbrella company and then engaged through the PSR supplier. Worker is employed by umbrella company so fee already subject to PAYE deductions. As a result, engagement is automatically out-of-scope of IR35.				

Case Study 4

These studies are illustrative and intended to aide your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Process Design Consultant	15 months – 3 month contract extended 4 times	Public Sector Contingent Labour Framework (CL1)	No	No	Out-of-scope due to no control & direction present in the engagement.
Role Description	<ul style="list-style-type: none"> - Remit to design and develop “demand and workflow” management arrangements within a major Digital Programme - Provide expert advice in relation to operational readiness of 16 components of the Programme - Support and deliver design activity within the Business Process & Products strand of the Programme to specification and compliant with the organisation’s governance. Process designs are in line with departmental and ministerial requirements. 				
Control & Direction	What	How	Where	When	
	Delivery was goal orientated and the contract clearly defined the tasks for completion and timescales.	No operational direction. Low levels of supervision (manager catch up on project status once per month).	No limitations or expectations set on where the worker could work from – worker chose to spend time across various sites to gather information central to design and assessment.	No set hours as delivery is goal orientated and delivery to timescales within the contract. Worker set own schedule.	
Personal Service	The contract contains a clause allowing the worker to provide a substitute but only with the approval of the client, so the right of substitution is restricted (fettered). The worker has never considered providing a substitute in the engagement and did not know how substitution would have worked practically although believed it was an option, given the contract clause.				
Part & Parcel	The worker worked independently, not as part of a team. He did not attend team meetings or line manage anybody.				
Financial Risk	A clause in the contract allowed for the client to require the worker to rectify defects in their service at their own expense / in their own time and maintain professional indemnity insurance. Whilst this represents some risk that an employee would not have to bear, there is not any material practice of this clause being enacted, limiting the actual risk the worker faced in reality.				
COMMERCIAL ROUTE	Engaged via the Public Sector Contingent Labour One framework.				

Case Study 5

These studies are illustrative and intended to aide your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Reliability Engineer	6 month engagement	Public Sector Resourcing (PSR)	No	Yes	In Scope. Substantial control and direction. Personal service required. Part & parcel of the team.
Role Description	<ul style="list-style-type: none"> - Engineer who specialises in assurance of applications prior to uploading to hosting environment, to ensure that they meet pre-defined standards; - Applications are assessed against the organisation's 12-point assurance checklist of criteria prior to uploading to the cloud. - Worker supports applications once in hosting to ensure they are working correctly and running optimally. - Worker writes infrastructure as code and deploys automated scripts to self-heal eg. auto-restarting processes. 				
Control & Direction	What	How	Where	When	
	Products are assigned to the worker to look after as and when required. Team manager assigns additional products to workers based on who has spare capacity and the particular skillsets required.	Worker must utilise pre-defined checklists, guidelines and processes. For development work, organisational change processes must be adhered to, testing standards must be followed, development work is undertaken in Agile team environment with scrums and daily stand ups.	Worker must work from the main office – not acceptable for them to work anywhere else due to resource required to be co-located with development teams.	Expected to work 40 hours a week during business hours. Applications must be covered 24/7 therefore must also provide cover through the on-call weekend rota which is defined by the team manager.	
Personal Service	Manager requires personal service. Role is not an easy one to substitute due to complexity and built up experience in the role. Worker has never wanted to send a substitute despite time off.				
Part & Parcel	Part of the team. Permanent staff do the same role with contractors and permanent staff working in the same way.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	PSR Framework via Agency Supply Chain.				

Case Study 6

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope In-Scope – requirement for personal service and control in ways of working and being moved from one delivery to another.
Digital Delivery Manager	18 months	Public Sector Resourcing (PSR)	Yes	No	
Role Description	<ul style="list-style-type: none"> - Delivery Manager for implementation of Digital Workplace and Office 365, specifically delivery of file store infrastructure and migration of data. - Worker chosen because of previous experience in the organisation and of stakeholders involved as well as experience of implementation of Office 365. - Creates, tracks and manages plans and drives outcomes through matrix management of Product Teams. - Ensures dependencies can be delivered eg. working with Technical Services and Security teams. - Original plan was to use a DXC datacentre. Plans have changed and worker was tasked with presenting an options paper including Crown datacentre and other options. Once the preferred option was selected, the worker was moved onto this new delivery. 				
Control & Direction	What	How	Where	When	
	Worker originally brought in solely to manage delivery of this project but has recently been moved onto a different delivery within the same engagement.	Control in terms of ways of working eg. project reporting requirements every 2 weeks, attendance at delivery meetings with other delivery managers to discuss cross dependencies, requirement to navigate organisational governance requirements as part of role.	No restriction on where worker works from.	No restriction in when worker performs work.	
Personal Service	Manager stated that they would always accept a substitute but does not know practically how this would work in terms of on-boarding or how to arrange equipment or access. Sending a substitute would not be seamless in terms of delivery. A substitute would also be missing the established knowledge of the project, it's risks and issues. For these reasons there is a requirement for personal service.				
Part & Parcel	Nature of Delivery Manager role means that there is a reliance on relationships with stakeholders and would typically need to be embedded within the organisation to an extent.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	PSR Framework via Agency Supply Chain.				

Case Study 7

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Infrastructure Engineer (Cyber Security)	7 months	Public Sector Resourcing (PSR)	Yes	Yes	In-Scope – substitution restricted by contract and in practice, control & direction present in engagement and part & parcel of organisation.
Role Description	<ul style="list-style-type: none"> - Filling a highly critical and highly specialist role within the organisation involving cyber threat/risk assessment and management - Establishing and then custodian of a security risk register - quantifying and handling risks, identifying those that are real and providing recommendations to manage these - Works with and alongside wider team - Best practice advisor and part of the think tank on how to address and manage security risks - When cyber-attacks and new risks emerge, worker may investigate or be part of the team that looks at how to address and manage. - Consults with stakeholders to understand risks and to inform recommendations - Maintains current level of knowledge and expertise and stays up-to date with industry best practice - Establishing team/capability to undertake this work - a handover strategy will eventually be part of role remit 				
Control & Direction	What	How	Where	When	
	Nature of role means they must be reactive to emerging Departmental risks and threats, therefore role is relatively open ended with movement from task to task.	Nobody within the organisation has the skillset to be able to dictate how the role is performed therefore control & direction not possible. Would need to fit into security and governance processes when making recommendations on managing risks.	Location not stipulated – can work from office or from home but there is an expectation that he works from same location as rest of the team on a regular basis.	Worker chooses to align to business hours as needs to interact with other employees to carry out the role effectively but hours are not stipulated.	
Personal Service	Worker performing the role would gain significant insight into vulnerabilities and ways of exploiting the organisation's critical systems. Therefore, unrestricted substitution would be inappropriate, especially considering no process exists for undertaking on-boarding checks for substitute workers. Accrued knowledge and expertise of systems would also impact practicality of substitution. The T&Cs within the contract restrict the worker's ability to substitute.				
Part & Parcel	Performing a critical role in a permanent position within the Department – a key member of the security team. Resource request paperwork indicates that worker will be liaising with external stakeholders with the appearance of being a member of staff.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	Contracted direct to PSR supplier.				

Case Study 8

These studies are illustrative and intended to aide your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time Engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Interaction Designer	19 months	Public Sector Resourcing (PSR)	No	Yes	In-Scope – requirement for personal service and control and direction in what tasks performed, work location and how work is performed. Part & parcel of organisation.
Role Description	<ul style="list-style-type: none"> - Part of a multi-disciplinary team working alongside other designers, front end developers, researchers and software engineers. - Specialises in designing interactions and interfaces for Digital systems. This engagement is about designing front end screens for a system that captures information from users. - Agile delivery methodologies are used. - Work is described by the Product Owner who describes to the worker their vision of the 'as is' versus 'to be' in a conversation. This can happen on a daily basis with the product in Beta development. - Worker uses a prototype toolkit complete with style guides to pull the design together and the design must meet Government Digital Service (GDS) standards. - There is a requirement for the worker to work closely with the user interaction team and travels with them to engage with users. 				
Control & Direction	What	How	Where	When	
	Control in terms of the worker being moved from task to task – Agile working methodology means next priority task is given to worker once he has spare capacity. Tasks provided on a piecemeal basis.	Worker comes up with own ideas but is restricted by GDS standards and prototype toolkit / style guides.	Some flexibility on home working but ultimately must be co-located with team in a hub location to deliver effectively.	No specific restriction on working hours but worker must engage with stakeholders / team members so chooses working hours to fit in with stakeholders / team members	
Personal Service	Substitution is not practical as a new worker would not understand the ways of working and could take approximately 4 weeks to get up to speed fully. There are certain standards of which a substitute wouldn't have experience. Also, a substitute would not have the built up relationships with stakeholders involved.				
Part & Parcel	Interaction designers are being recruited permanently. No difference in how a permanent member of staff would deliver this role.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	PSR via Agency supply chain.				

Case Study 9

These studies are illustrative and intended to aide your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time Engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Software Engineer	2 years	Public Sector Resourcing (PSR)	No	No	In-scope – control & direction given Agile working practices, requirement for personal service and part & parcel of the organisation.
Role Description	<ul style="list-style-type: none"> - Works within a multi-disciplinary Agile development team containing a mixture of contractors and permanent staff, under the leadership of the Product Owner who is responsible for setting the vision for the team, prioritising the work to be undertaken and ensuring the quality of what is released to the live system; - The team work on “Problem Statements” within a large Digital Programme and the software engineer will work on multiple different Problem Statements during the course of their engagement; - The software engineer works very closely with the rest of the Agile team to iterate towards possible solutions/features. Each feature is broken down into chunks of work called “stories” which are then prioritised and sequenced by the Product Owner; - The software engineer is given development work by selecting stories to work on from the prioritised list. The engineer often pairs up with another developer to write code and developers also peer review each other’s code. 				
Control & Direction	What	How	Where	When	
	Control exists in terms of being given tasks to complete from a list prioritised by the Product Owner.	Some control in respect of coding and design standards the worker is expected to meet. Their own professional expertise is used to navigate the many different ways the software could be coded.	No stipulation of where they work from but, given requirement for close working with the Agile team and attendance at daily stand-ups, it is impractical to spend much time out of the office.	No stipulation of hours to be worked but, given requirement for close working with the Agile team, it is expected that they will work largely core hours.	
Personal Service	<p>The worker provided a substitute once during their engagement for 2 days whilst taking a long weekend. The substitute was accepted by the business, set up with a laptop and system/building access and his security clearance was vetted. It was impractical for the substitute to continue the work being performed by the worker given the short time period and lead time for getting up to speed in the role – they were instead given some simpler coding work to undertake from the Programme’s backlog. The replacement worker is therefore considered to be a “helper” and not a genuine “substitute” in the context of considering the requirement for personal service.</p> <p>Despite the contract allowing for substitution, for this role substitution would not be seamless given experience, established knowledge, relationships and the lead time for getting up to speed. There is therefore a requirement for personal service from the original worker.</p>				
Part & Parcel	The software engineer has a large amount of established knowledge and experience of the Digital Programme / organisational ways of working and is a key part of the in-house delivery team. There is no difference in the way they work versus permanent members of staff.				
Financial Risk	No personal financial risk for the worker in this engagement.				
Commercial Route	PSR via Agency supply chain.				

Case Study 10

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time Engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Digital Security Architect	6 months	Public Sector Resourcing (PSR)	No	No	Out-of-Scope – some control & direction in terms of tasks given but no requirement for personal service and substitution demonstrated.
Role Description	<ul style="list-style-type: none"> - Digital architect with specialist IT security expertise. - Assesses and assures Digital services within the organisation to ensure that all aspects comply with a host of security standards including organisational standards, industry standards and GCHQ standards. - The worker's workload is driven by Agile working practices whereby Digital systems / services are prioritised and allocated to the worker using a workflow ticketing system. - The worker provides services from his own limited company within which there are 3 individuals with similar skillsets. Given the scarcity of workers with this skillset, the client has discussed the possibility of other workers within the company providing cover or undertaking additional work where required. 				
Control & Direction	What	How	Where	When	
	Control exists in terms of being allocated work to complete from a prioritised list on a piecemeal basis.	Given the highly specialist skillset of the worker it is not possible for the client to provide any control or direction in how to complete the work.	No stipulation of where they work from – the worker can be flexible in terms of working from home or other sites / offices. They work fairly independently.	No stipulation of hours to be worked – as long as work is completed to agreed deadlines. The worker can work relatively independently.	
Personal Service	The worker was engaged on the basis that other workers in the company would also be available to complete security work as and when required. The worker sent a substitute from his company for period of 2 weeks whilst he went on holiday. The substitute was set up with a laptop and system access prior to starting and undertook all of the worker's responsibilities for the period of substitution without any noticeable impact on delivery. For assurance purposes, the worker's company issued the client with documentation detailing what the substitute delivered during the 2 week period to demonstrate value for money and that they undertook the full role. It is clear that, to an extent, the worker's business has been engaged to provide services and not the worker personally.				
Part & Parcel	The Security Architect is an important part of the in-house Agile delivery team and does engage with internal stakeholders regularly. The worker has no management or financial responsibilities nor any other pointers to being part and parcel of the organisation besides being an important element in the Agile delivery team.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	PSR via Agency supply chain.				

Case Study 11

These studies are illustrative and intended to aid your understanding. They cannot be relied upon to determine a worker's employment status. Each case must be considered on its own merits and the relevant facts

Role	Time Engaged	Contract	Nominated Worker	Cover for Perm role?	IR35 In / Out-of-Scope
Senior Programme Manager	12 months	Public Sector Resourcing (PSR)	No	No	In-Scope – requirement for personal service and control and direction in what tasks performed, work location and how work is performed. Substitution not practical or plausible.
Role Description	<ul style="list-style-type: none"> - Lead, inspire and shape a multi-disciplinary team of civil servants and suppliers across digital delivery Work with the wider senior management of the organisation to support delivery of enabling services - Deliver the programme to time, cost and quality parameters - Developing innovative solutions to complex issues providing expertise, support and advice to both delivery teams and the top tier of the organisation - Drive cultural and behavioural change outside your direct sphere of influence and provide coaching, mentoring and development support to the wider team 				
Control & Direction	What	How	Where	When	
	Worker brought in to manage delivery of the programme.	Control in terms of ways of working eg. Regular programme reporting requirements, attendance at programme delivery meetings, ad-hoc 1-1s with director. Subject to organisational governance requirements as part of role.	Flexible working type agreement with Public Sector Body (PSB) although a requirement to attend programme meetings etc.	Works a professional day, 5 times a week but that can be at either PSB premises or remote in line with departmental flexible ways of working.	
Personal Service	The worker is an expert, and role requires an accumulation of departmental knowledge, in particular a high level of understanding of the programme itself and also the need to influence senior stakeholders. No readily available replacement exists and it would not be possible to pick up the worker's task(s) without pre-training or any lead-in time. The reality is, any substitute could not operate at the same level as the original worker from the outset in all aspects of the engagement and provide seamless continuity for the Public Sector Body. Although substitution has never happened, the T&Cs within the contract restrict the ability to provide a substitute. Here we have an example of where in practice, substitution is not practical or plausible.				
Part & Parcel	Nature of role means that there is a reliance on relationships with key internal/external stakeholders and would typically need to be embedded within the organisation to an extent.				
Financial Risk	No personal financial risk for the worker in this engagement.				
COMMERCIAL ROUTE	Contracted direct to PSR supplier.				

Q1. Under April 2021 rules is there a requirement to issue an Status Determination Statement (SDS) to:

- A worker not on the Public Sector Body's (PSB's) payroll, but who is on the payroll of and employed by an umbrella company with their fee already subject to PAYE; or
- a worker not on the PSB's payroll but who is employed by and on the payroll of another supplying organisation that the PSB contracts with?

A. There is no worker's intermediary involved (e.g worker's PSC or Partnership) so there is no intermediary as defined by the legislation (the worker is a direct employee of the umbrella company or supplying organisation). The intermediaries legislation does not therefore apply and therefore there is no requirement for the PSB to undertake an IR35 assessment, issue an SDS or operate any dispute process for these engagements.

Q2. Will a new SDS be needed at each extension to an engagement even if nothing has changed and the PSB has re-checked that the status will remain the same for the extension? For example they are doing exactly the same work with the same working practices and they remain in-scope.

A. Each extension should be carefully considered to understand whether it is really just an extension with no changes to terms & conditions, role, deliverables or working practices, or if there are changes which mean it should be considered to be a new engagement. A new assessment needs to be undertaken and a new SDS issued for new engagements and where there are changes to the engagement, role, T&Cs or working practices. Where there are no changes, there is no requirement to reassess or issue a new SDS but it is good practice to consider the original determination at extension to ensure it remains accurate. PSBs may also wish to re-issue the SDS at extension, even if this is only to confirm to the worker that nothing has changed so that parties are clear on the basis moving forwards.

Q3. Under the new legislation from April 2021, the worker can dispute the status within the period of their current engagement. What is the definition of "current engagement"? E.g. a worker engaged for 3 years with the engagement being extended every 6 months – is the current engagement the full 3 years or just the period of the current extension?

A. A disagreement can be raised before the final chain payment for the engagement is made. If the engagement has been extended on the same terms and so it is the same engagement, a disagreement can be raised about the whole engagement until the final chain payment is made. If it is a series of engagements, once one of those engagements ends, so the final chain payment is made, there is no consequence for the client for failing to respond to a disagreement on that particular engagement.

Q4. Can a worker raise a disagreement about their status relating to an engagement period that pre-dates 6 April 2021?

A. The worker can raise a disagreement about their status relating to their current engagement which can cover a period prior to 6 April 2021. If the dispute is upheld and the worker's IR35 status is amended, then the adjustment must be backdated to the start of the current engagement or the point in time at which the status was deemed to become incorrect, if this is later.

Q5. If a worker raises a disagreement about their status prior to the 6 April 2021, do we need to respond to it?

A. If a disagreement is received prior to 6 April 2021 then the legislation states that the disagreement is to be treated as being received on the 6 April 2021 with the 45 day time period starting from that day. The PSB can choose to respond earlier if they wish to but must respond by 21 May 2021 at the latest (45 days after 6 April 2021).

- Q6. What is the extent of the PSB's obligations where an off-payroll worker claims to be engaged via an umbrella company (and would therefore be out-of-scope of the legislation if employed by the umbrella)? Should the PSB undertake assurance to confirm that the worker is indeed employed by the umbrella and that PAYE is being operated on the fee?
- A. It is important that PSBs understand and assure their labour supply chains. Failing to identify the need to operate off-payroll worker rules for an engagement will result in the PSB becoming liable for employment tax / NICs and potential penalties. Information on the contractual arrangements would be available from various parties including any agencies in the supply chain. Some organisations are claiming to be umbrella companies but are operating non-compliant schemes. Steps you can take to assure the supply chain could include the following (you may wish to work with your framework providers so that they can provide you with the necessary assurance):
- Seeking information on the contractual arrangements in place within the chain to identify the presence of a worker's intermediary;
 - seeking confirmation that umbrella companies in the chain have appropriate accreditations;
 - undertaking risk based checks to confirm the operation of PAYE on the worker's fee.
- Q7. The PSB will often need to quote the IR35 status when they advertise a role. Therefore they will not know who the worker is when they first undertake the status assessment on CEST and so will not be asked the "Business on own account" questions that require information that will only be known by the worker. Does the PSB need to re-run the CEST assessment to answer these questions once they know who the worker is?
- A. There is no obligation for the PSB to re-run the assessment to factor in this additional information unless the worker raises a disagreement about their status and provides information that they believe could affect the result. The "Business on own Account" questions allow CEST to provide a status determination based on a slightly more granular level of information but by itself will not be determinative. The PSB will need to re-run the status assessment if there is a material change from the way they planned to engage the worker and it is good practice to consider the assessment once the worker has started to ensure that the working practices match those envisaged when the assessment was undertaken.
- Q8. What are HMRC's expectations with regards to the PSB assuring the answers that the worker provides for the "Business on own account" questions in CEST? Are PSBs expected to seek evidence from the worker in respect of responses provided where these will impact on the status outcome?
- A. The PSB should take steps to assure, as best they can, that the answers being input to CEST are accurate. If a worker provides fraudulent information with the intention of avoiding the off-payroll working rules then the worker will become responsible for taxes and NICs but this protection will only apply where the worker is deemed to have acted fraudulently. The PSB will be liable for mistakes made in answering the CEST questions and should take reasonable care when coming to their conclusion on status.

- Q9. What are the PSB's responsibilities under off-payroll working rules where a worker is living abroad, working remotely for a UK Government Department from a foreign country and operating via a PSC that is registered abroad?
- A. The basic principle is that **the off-payroll worker rules will not apply if the worker would not be chargeable to UK tax and/or NICs if they were actually employed by the end client**. If the worker would be chargeable in the UK were they employed, then the PSB should undertake an IR35 assessment and pass an SDS to the worker and the party that they contract with for the worker. To determine whether the worker would be chargeable to UK tax or not there are 2 key considerations:
- UK residency status of the worker; and
 - where the work is performed

If the worker is UK resident then the worker would be liable for tax on UK employment income. Therefore the off-payroll rules would apply;

If the worker is non-UK resident and all of the work is performed abroad then there would be no liability for tax on UK employment income and the off-payroll rules would not apply;

If the worker is non-UK resident and there is some work performed in the UK which is more than incidental to the overseas work ("incidental" is defined by case law and means ancillary things like training or general meetings), then the income would be apportioned with the portion performed in the UK being subject to UK tax (under s.27 ITEPA 2003). In this case the off-payroll rules would apply but only part of the income would be subject to UK tax.

Further Information

[HMRC Employment Status Manual Guidance](#)

[HMRC Employment Status Manual – Chapter 10 ITEPA 2003 Principles from 6 April 2021](#)

[Tax Centre of Excellence off-payroll / IR35 pages](#)

[Legislation introduced in Finance Act 2017](#) – Workers' Services provided to Public Sector Through Intermediaries