

## EMPLOYMENT STATUS AND OFF PAYROLL WORKING (IR35) GUIDANCE

<b>Guideline Reference</b>	G439
<b>Version Number</b>	1.0
<b>Author/Lead Job Title</b>	Iain Omand
<b>Date of Last Changes (This Version)</b>	23 August 2024 (see change record)
<b>Date of Next Review</b>	July 2026
<b>Approved by: Date</b>	Divisional ODG 26 July 2023

**VALIDITY – Guidelines should be accessed via the Trust intranet to ensure the current version is used.**

### CHANGE RECORD

Version	Date	Change details
1.0	23 August 2024	<i>New Guideline. From previous document which was formally approved at Divisional ODG on 26 July 2023 but didn't complete document approval pathway. Now formatted to correct template, assigned a Trust document reference code and uploaded to the intranet. Minor amend to the previous document also made and signed off by Deputy Director of Finance, with EMT notified.</i>

## Contents

1	Introduction.....	3
2	Direct Engagement of a Worker.....	3
3	Engagement of a worker via an agency.....	5
	Appendix 1 – Status Determination Statement (SDS).....	8
	Appendix 2 – Engaging an intermediary/worker through an agency .....	10
	Appendix 3 – Direct Engagement of a Worker (without the use of an agency) .....	11
	Appendix 4 – Engagement via an Agency.....	12
	Appendix 5 – Worker/ Intermediary Information Required.....	13
	Appendix 6 – Useful contacts.....	14

## 1 Introduction

The purpose of this document is to provide detailed guidance on assessing tax status to those staff engaging temporary workers. This guidance does not apply to staff that are engaged via the Trust's bank.

Workers can either be engaged directly or through an agency and it is the engaging manager's responsibility to ensure they follow the correct procedure and obtain advice where necessary. Where the flexible workforce team (FWT) engage on behalf of managers they will be the engaging manager for the purposes of compliance with this guidance. Direct engagement is rare and most engagements will be through an agency arrangement.

Where the correct procedure is not followed the Trust risks an investigation by HM Revenue and Customs (HMRC) and substantial financial penalties, it is therefore necessary that all staff engaging workers ensure they have received training prior to finalising any engagements. In the context of this guidance a worker's tax status is considered in relation to whether they are deemed "on payroll" or "off payroll." A worker is deemed to be an "off payroll worker" (OPW) when they work for the Trust but are not employed by the Trust on the bank or as a substantive member of staff.

Tax rules known as IR35 apply to off payroll workers that work through an intermediary, examples of an **intermediary** are a limited (Ltd) company, a partnership, or an umbrella company that the worker operates through. If workers are deemed to be employees for tax purposes (known as being inside of the IR35 rules) the Trust or the agency must deduct tax and National insurance from any payments they make to the worker or the agency and pay employers National Insurance. Staff that are paid through the Trust's payroll (on payroll workers) have tax and National Insurance deducted from their earnings which are subsequently paid over to HMRC each month, this is not the case for staff working "off payroll." The IR35 rules exist to ensure that workers and employers both pay the correct tax at the correct time.

Not all off payroll workers will be inside the IR35 rules or need tax and/ or National Insurance deducting from payments made to them. However, most agency workers including interims, clinical staff and temporary staff are unlikely to be deemed self-employed or outside of IR35 by HMRC. The law requires that those people engaging workers make a proper assessment of the workers tax status prior to them undertaking any work for the Trust, and that tax and National Insurance is deducted where appropriate from any payments made to "off payroll" workers operating through an intermediary.

This guidance and the underpinning training set out in detail how the assessment should be undertaken and recorded, what to do once the assessment has been made, and what to do where the outcome of the assessment is not clear or has complexities. The guidance applies to all engagements regardless of the length of the engagement.

## 2 Direct Engagement of a Worker

To determine if the OPW/ IR35 rules apply the Trust is required to undertake the following steps. Direct engagement of workers is unlikely to be undertaken by the FWT.

- Step One - Identify a requirement for service provision, preferably supported by a job description/ person specification, and consider whether in normal circumstances the role would be a substantive position within the Trust.

- Step Two – Once a suitable worker has been identified determine whether they are working as a sole trader, through a ltd company, through an umbrella company or partnership or work for a company who has several workers that can undertake the role.

Should the worker's situation be any of the three below, a CEST (HMRC's employment status checking tool) will need to be undertaken by the engaging manager - without exception.

1. Operating as a self-employed sole trader
2. Working through an intermediary company in which he/she has >5% of the shares
3. Working through an intermediary which is a partnership in which he/she has a share of at least 60%

- Step Three – The OPW Panel must review the completed CEST. Where more information is required, the OPW Panel must request this from the engaging manager.
- Step Four – The OPW Panel will conclude whether the engagement is 'in scope' or 'out of scope' of the IR35 rules or 'employed' or 'self-employed' for tax purposes. If the outcome is 'unable to determine' the OPW Panel will exercise its judgement and reach a conclusion based on the information available.
- Step Five - If the outcome is that the OPW/ IR35 rules apply, then this must be communicated to both the worker and intermediary in the form of a Status Determination Statement (SDS), a copy of the CEST, together with appropriate explanations for the answers supplied and any other accompanying information (see Appendix one below for format details of SDS and accompanying letter.) Issuing a SDS and the accompanying information is a legal requirement.
- Step Six - Where the outcome is that OPW rules do not apply, this must also be communicated to the worker and intermediary in the same way as described in Step Five. The intermediary can be paid via Finance and no further action is necessary unless the engagement terms are changed or extended (see below).
- Step Seven - **The engagement of the intermediary/ worker cannot be finalised until the SDS outcome has been determined and communicated to all parties in the payment chain, and the basic information HMRC require the Trust to obtain is received (see appendix 5).** The communication to the intermediary / worker will be made by Docusign to ensure that a signature is legally acceptable. Thereafter, where the OPW rules apply, payments must be made under deduction of tax/NIC and Apprenticeship Levy and go through the Trusts payroll. Contact the Payroll Manager where this applies.
- Step Eight - Either the worker or intermediary through which they work (if applicable) can disagree with the SDS outcome (in practice this will apply only where the SDS shows that the OPW rules apply). Disagreements must be logged and dated. The original outcome of the SDS will stand until the disagreement has been fully considered. Therefore, payments should continue to be made through the Trusts payroll during this period.

- Step Nine - Within 45 days from receipt of the disagreement communication, the Trust OPW Panel must reconsider the original SDS by reference to any new information provided by the worker or intermediary. Subject to confirmation from the Trust's tax advisers, a reversal of the original decision may be made, with the reasons clearly annotated, and then communicated to the worker and intermediary. In these circumstances, payments from the date of such reversal may be made as a supplier and need no longer be paid through the Trust's payroll under deduction of tax/NIC and Apprenticeship Levy.
- Step Ten - Where the original decision is not reversed, this must be communicated to the worker and intermediary within 45 days from the date of the disagreement. In these circumstances, the intermediary will continue to be paid through the Trust's payroll and under deduction of tax/NIC and Apprenticeship Levy.
- Step Eleven - In the event of engagement terms changing and/or being extended, the engaging manager must revisit the CEST and start the process afresh. This will apply automatically in cases where engagements are still active after 12 months from original engagement.

These steps are summarised in flowchart format (Appendix Three). Please note that the flowchart is a summary for reference purposes and the processes outlined in the policy should be considered in all cases.

### 3 Engagement of a worker via an agency

To determine whether a worker is on or off payroll the following steps are needed. Please note these rules apply to agencies based in the United Kingdom only. Where the agency is based outside the UK, the Trust will be required to account for PAYE/NIC regardless of the circumstances. Please note that for OPW purposes the Isle of Man and the Channel Islands are **not** part of the UK.

- Step One – identify a worker to meet the requirements of your role whether this is by direct liaison with an agency or via the Flexible workforce team.
- Step Two – Contact the agency and ask them to confirm if the worker is provided by an intermediary or is directly employed by the agency and subject to PAYE/NIC. If the worker is directly employed by the agency record this on the “temporary assignment checklist” and notify the agency that the Trust will undertake checks from time to time. No further action is needed other than to retain the checklist digitally for 7 years.

If the agency confirms an intermediary is involved, the engaging manager must assess the tax status of the worker (known as status determination) before proceeding further. The engager will need to liaise with the agency and/ or the worker to complete their assessment, and formally notify them of the outcome.

HMRC require that reasonable care be taken when undertaking assessments and an assessment is undertaken for each engagement involving an intermediary. Many of the roles

recruited to by the Trust are generic in nature (e.g., band 5 nurse, healthcare assistant, GP). Standard assessments have been undertaken for generic roles and to the extent that the role being recruited to matches that of the standard assessment, the engager can follow the generic status determination.

Where there is no generic status determination available, or the role being recruited to differs from the generic role a bespoke status assessment needs to be undertaken. The assessment should be undertaken using HMRC's status determination tool (CEST), training is needed prior to using the tool to assess engagements to avoid erroneous outcomes. The result should be retained digitally for 7 years.

- Step Three – Where there is uncertainty on the outcome of the assessment (sometimes the CEST concludes “unable to determine”), the role must be referred to the OPW Panel by the engaging manager. The panel will conclude whether the engagement is ‘in scope’ or ‘out of scope’ of the IR35 rules for tax purposes. If the outcome is “unable to determine” the OPW Panel will exercise its judgement and reach a conclusion based on the information available.
- Step Four - If the outcome is that the OPW/ IR35 rules apply, then this must be communicated to both the worker and agency (and any other parties in the payment chain) in the form of a Status Determination Statement (SDS), a copy of the CEST, together with appropriate explanations for the answers supplied and any other accompanying information

(See Appendix for format details of SDS). This must be undertaken for all temporary engagements regardless of the length of the assignment and is the responsibility of the engaging manager.

- Step Five - Where the outcome of the CEST assessment is that OPW/ IR35 rules do not apply, this must also be communicated to the worker and agency in the same way as described. In this latter case, the agency can be paid by the Trust, and no further action is necessary unless the engagement terms are changed or extended (see below).
- Step Six - **The engagement of the worker cannot be finalised until the SDS outcome has been determined and communicated to all parties in the payment chain, and the basic information HMRC require the Trust to obtain is received (see appendix 5). The communication will be made by Docusign which is a legally acceptable.** Thereafter, where the OPW rules apply and the agency has been notified accordingly, the agency will be responsible for deducting tax/NIC and, where applicable, Apprenticeship Levy, on payments it makes to the intermediary. In some cases, the Agency will not be the fee payer to the intermediary as there will be other agencies sat below them in the supply chain. In such cases, responsibility for deduction of tax/NIC rests with the agency paying the intermediary.
- Step Seven - Either the worker or agency can disagree with the SDS outcome (in practice this will apply only where the SDS shows that the OPW rules apply). Disagreements must be logged and dated. The original outcome of the SDS will stand until the disagreement has been fully considered. Payments may continue to be made to the agency by the Trust during this period.

- Step Eight - Within 45 days from receipt of the disagreement communication, the OPW Panel must reconsider the original SDS by reference to any new information provided by the worker or agency. Subject to confirmation from the Trust's tax advisers, a reversal of the original decision may be made, with the reasons clearly annotated, and then communicated to the worker and agency. In these circumstances, payments may continue to be made to the agency by the Trust.
- Step Nine - Where the original decision is not reversed, this must be communicated to the worker and agency within 45 days from the date of the disagreement. In these circumstances, the intermediary payments may continue to be made to the agency by the Trust, and the agency (or fee payer) will remain responsible for any deductions due.
- Step Ten - In the event of engagement terms changing and/or being extended, the engager must revisit the CEST and start the process afresh. This will apply automatically in cases where engagements are still active after 12 months from original engagement.

These steps are summarised in flowchart format (Appendix Four) below. Please note that the flowchart is a summary for reference purposes and the processes outlined in the policy should be considered in all cases.

## **Appendix 1 – Status Determination Statement (SDS)**

In all cases where the worker provides services via an intermediary, e.g., a personal service ltd company, the worker and the intermediary or agency must be provided with a Status Determination Statement (SDS), in the format set out below:

### **Status Determination Statement**

**Name of intermediary company:** e.g., J Bloggs Limited

**Name of worker:** e.g., J Bloggs

**Name of agency (if applicable):** e.g., Top Recruitment Limited

**Contract start date:**

**Contract end date:**

**Date SDS completed:** [this should be completed and submitted **before** the contract start date]

**Completed by:**

### **Result**

*In our opinion this contract falls [inside/outside] the off payroll working (IR35) rules.*

*[Scenario A]*

*The conclusion is based on the HMRC tool Check Employment Status for Tax (CEST), which we have attached for your consideration.*

*[Scenario B]*

*The HMRC tool Check Employment Status for Tax (CEST) tool produced a result of 'Unable to determine.' However, in our opinion, the contract falls [inside/outside] the off payroll working (IR35) rules because:*

*[Reasons listed here – PSTAX can provide wording in such cases]*

*If you accept the outcome, the Trust will [deduct tax/NIC from payments made to J Bloggs Limited/Notify Top Recruitment Limited which will deduct tax/NIC from payments made to J Bloggs Limited/make payments to J Bloggs Limited without deduction of tax/NIC/advise Top Recruitment Limited that the contract is outside the off-payroll working rules].*

*If you disagree with this SDS, please contact [ ] setting out the reasons why you do not agree with the outcome. The Trust will respond within 45 days of receipt of your appeal.*



Draft Letter to accompany SDS (to be adapted as required)

Dear

As you may be aware, in recent years there have been changes made to the rules regarding off-payroll working (commonly referred to as IR35).

This requires the Trust to undertake certain procedures in respect of service providers that are engaged by the Trust – either directly or via an agency – through a limited company (or other intermediary) and to notify the worker/agency where the rules are deemed to apply. If it is determined by the Trust that the off payroll working rules do apply, then payments made to your company will be subject to tax/NIC deductions at source. We have identified that the engagement between the Trust and [name of intermediary] is potentially within the scope of these rules

Under the rules the Trust is obliged to issue a Status Determination Statement (SDS) setting out the details of the engagement and to notify you and the agency if the engagement is deemed to be 'in scope' of the rules.

The Trust has prepared a SDS in respect of this engagement, which is attached for your consideration. You will note that the SDS sets out the Trust's decision on whether the off payroll working rules apply and the reasons for the decision made.

However, please note that you have a statutory right to disagree with the assessment and, if that is the case, you should respond to the Trust setting out the reasons why you consider the decision is not correct. If that is the case, the Trust will commit to responding to any disagreement it receives within 45 days.

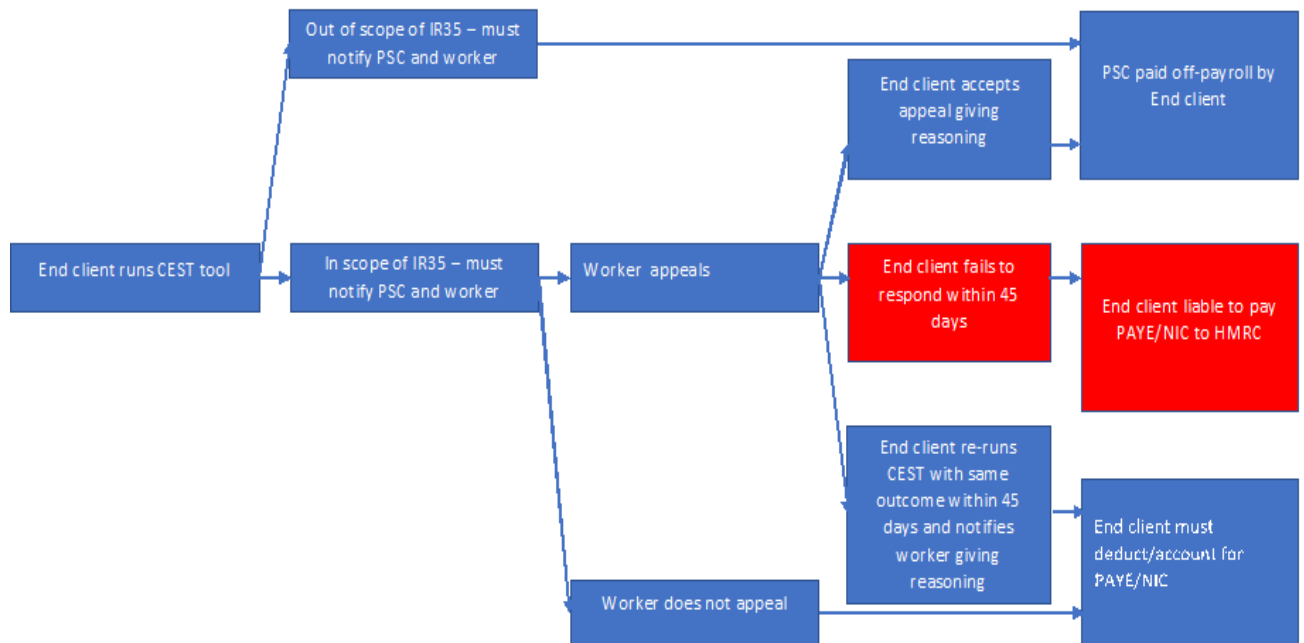
If you have any queries in the meantime, please do not hesitate to contact me.

Yours sincerely etc

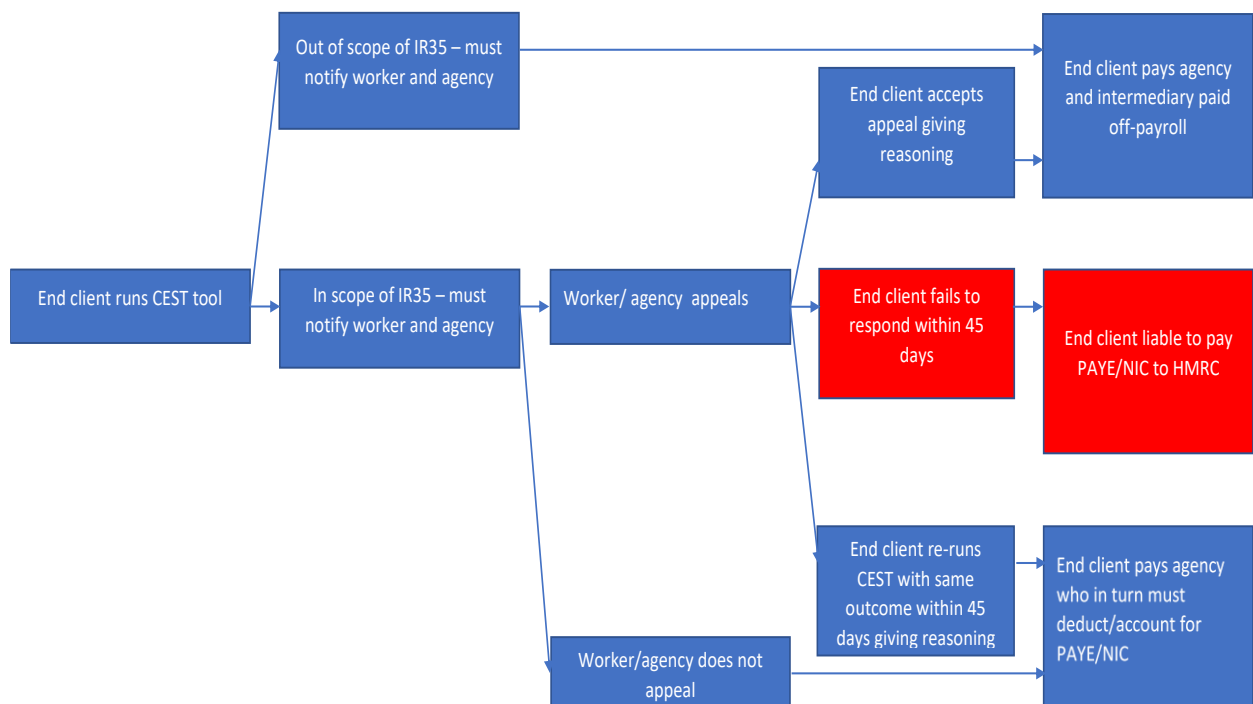
## Appendix 2 – Engaging an intermediary/worker through an agency

### Flowchart of responsibilities and dealing with disputes

#### Scenario One – The Trust engages the intermediary directly

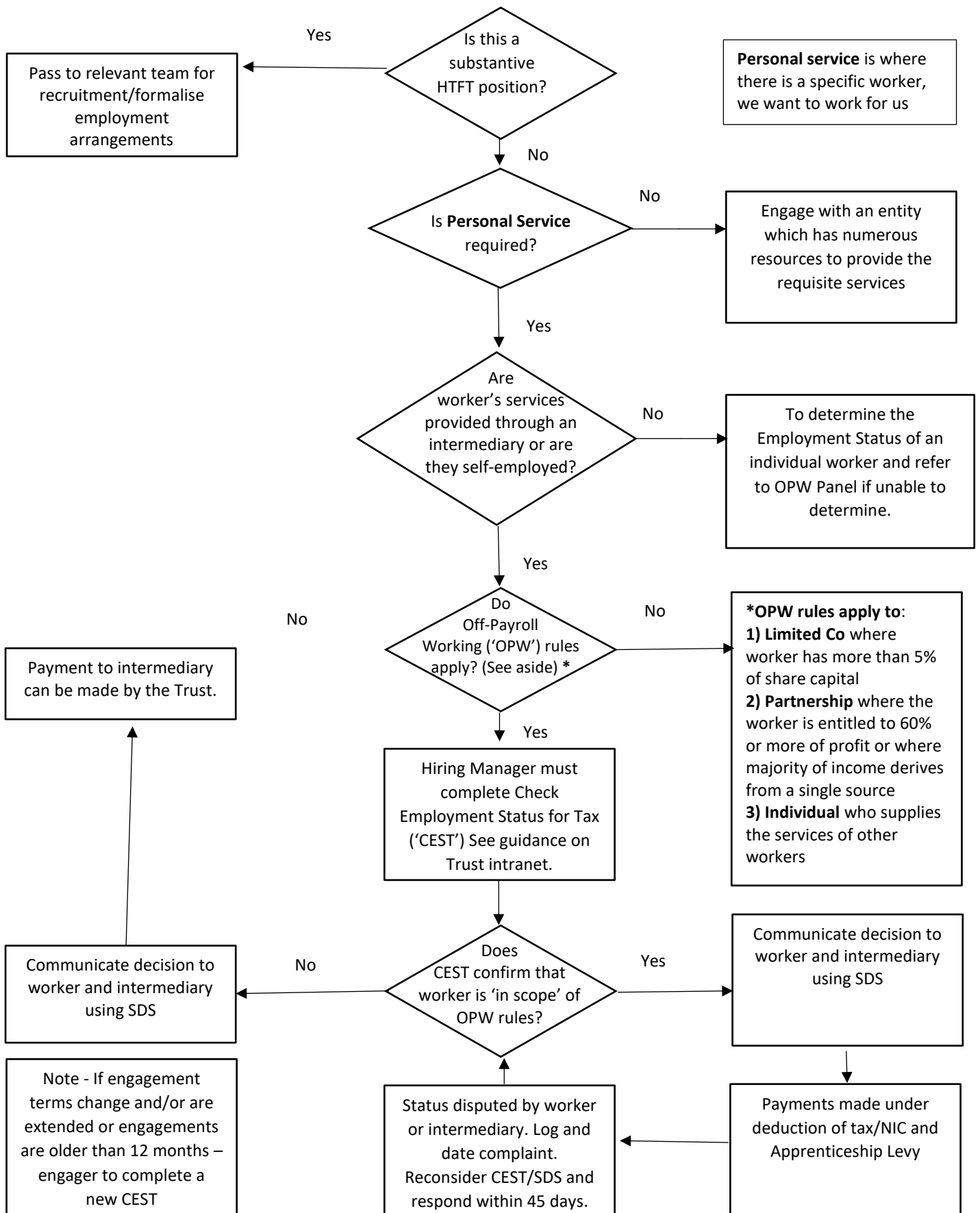


#### Scenario Two – The Trust engages the intermediary via an agency



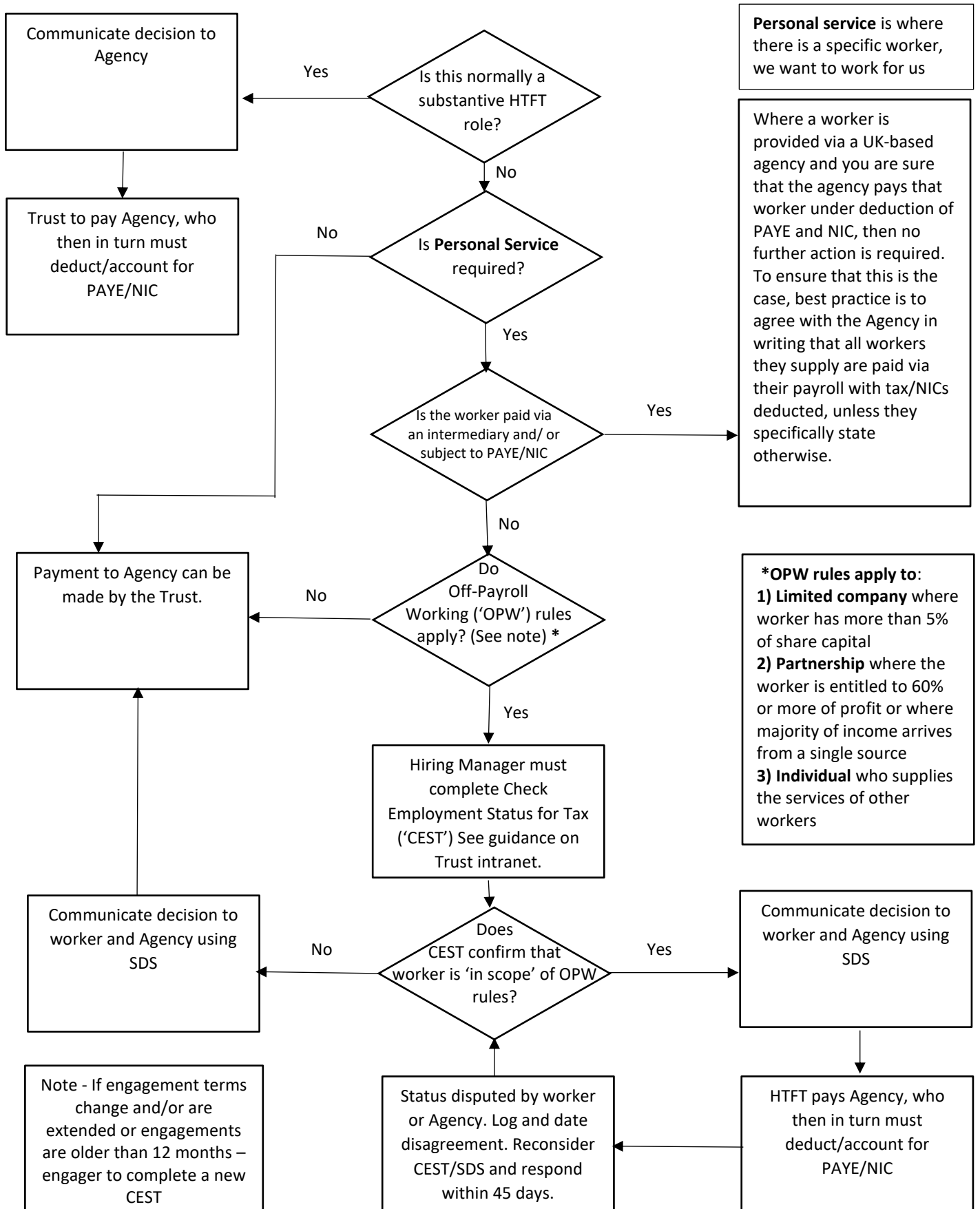
# Appendix 3 – Direct Engagement of a Worker (without the use of an agency)

## Step by Step Approach



# Appendix 4 – Engagement via an Agency

## Step by Step Approach



## **Appendix 5 – Worker/ Intermediary Information Required**

In certain circumstances, HMRC may need to contact the worker/ the intermediary direct regarding their tax records.

Therefore, the Trust will be required by HMRC to gather all the below information from each worker and their intermediary (where relevant) prior to the engagement commencing:

- the worker's name and address
- the worker's date of birth
- the worker's National Insurance Number (NINO)
- the intermediary's name and address
- the intermediary's VAT Registration Number (VRN) or Company Registration Number (CRN)

## **Appendix 6 – Useful contacts**

### **Professional Leads off payroll working/ IR35**

For advice and guidance or advice on applying this guidance please contact those named below:

Karen Towse – Financial Controller  
Iain Omand – Deputy Director of Finance

### **Off Payroll Worker Review panel (OPW Panel)**

In the first instance please contact Lucy McRae, Personal Assistant to the Director of Finance.  
Alternative contacts Karen Towse (Financial Controller) and Iain Omand (Deputy Director of Finance)

### **Flexible Workforce Team**

Graham Hickson – Flexible Workforce Team Manager

### **IR35 trained engaging Managers**

*Iain Omand – Deputy Director of Finance*