

NOVEMBER 2020

Extension of the Off-Payroll Rules

into the Private Sector

Status Determination Statements (SDS)

The off-payroll rules carry a requirement for a Status Determination Statement (SDS) for all engagements where the services are provided by an individual working through an intermediary such as a Personal Service Company.

This fact sheet provides guidance to Hirers on what your obligations are when confirming the status decisions of your current and future assignments.

What is an SDS?

The SDS is a statement that confirms the status decision made on an engagement and the rationale behind that decision.

Who is it shared with?

The SDS should be shared with all parties in the labour supply chain. The SDS should be generated by the Client and shared with the contractor and the next party in the supply chain, usually the entity that placed the contractor with you and who will act as Fee Payer (Recruitment Agency).

Who will need an SDS?

Any new Personal Service Company you engage with OR any Personal Service Company that you are currently engaged with will require an SDS confirming whether the engagement falls Inside/Outside IR35 and therefore Employed/ Self Employed for tax purposes.

Do I need to provide an SDS for workers who I deem to be Inside IR35?

Yes, under the off-payroll rules you have a responsibility for taking reasonable care in assessing each assignment. It is therefore important that we hold information from you for all workers which confirms and details the outcome you have arrived at.

When do I need to provide an SDS?

All current roles who already have workers deployed and who are expected to be engaged beyond 5th April 2021 will be required to have an SDS. We require all clients to provide us with an SDS as soon as possible and in advance of 1st March 2021. This will ensure that all current workers deemed Inside IR35 are provided with new engagements that correctly reflect their employment status for tax purposes in time for 6th April 2021.

For new engagements, an SDS should be given at the point of role instruction or at the latest, point of contract offer BEFORE the assignment commences. An Agency/ Fee Payer will not be able to deduct employment taxes until an SDS has been provided to the Worker and Agency.

Does the legislation detail what it should cover?

No, but as a guideline the SDS should be in writing and should include the following:

- Company Name
- Contract Start Date
- Contract End Date

- Job title/ Role
- Agency
- Candidate Name (for current workers)
- Date SDS completed
- Completed by
- Finding of the determination
- Reasoned argument for why you have arrived at the determination outcome
- Process to appeal the determination outcome

It is also acceptable to provide a copy of the CEST determination, which can be printed or saved as a PDF from the site and sent to the Worker and Agency.



What argument can I give to confirm how I have arrived at a determination?

There are no hard and fast rules for what to include in your rationale. However, given your obligations to show reasonable care in making a status decision, we would advise that your SDS covers the following:

Degree of Control - how will the role be controlled; will there be any monitoring or supervision in place; is the worker given free reign to apply his method of working?

Financial risk - where does the risk of failure lie for delivering the work? Will there be an expectation for the worker to correct defective work at their own cost?

Part and Parcel - will the contractor be integrated into workforce; enjoy perks, learning and development opportunities, attendance at company and staff social events.

Mutuality of Obligation - will there be an obligation to be offered work/accept further work if requirement arises?

Equipment and Tools - will this be provided to the Contractor or are they expected to use their own?

Specialist skills - do you have any employees who could undertake the services or are you required to bring in the specialist skills to meet the demands of your requirement/project?

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Alternative - would a substitute be acceptable to your business and is the worker able to engage a substitute or have they engaged a substitute in practice.

What do I do if the Agency and/or Worker disagrees with the outcome?

You will be required to set up a status disagreement process to help resolve disagreements about the status decision reached. The contractor or the Agency/ Fee Payer will be able to make representations to you if they feel the SDS is incorrect. You are obligated to respond to those representations within 45 days. You can respond in 2 ways:

- a) Inform the Contractor or Agency that you have considered the representations and decided that the SDS is in fact correct and give reasons for that decision OR
- b) Give a new SDS containing a different conclusion that the previous SDS is withdrawn.

If you do not respond within 45 days, the end client will be deemed to be the fee payer and will be made responsible for paying all employment taxes.

How often do I need to provide an SDS?

There are no clear rules on this but we would suggest that a new assessment is undertaken if anything changes in an assignment, which could affect the determination for the role. Similarly, we would suggest that you agree the frequency of revisiting all Status Determination Statements for any longer term assignments. Revisiting reviews will enable you to ensure that the working practices accurately reflect the determination you made at the outset of the assignment.

Who can help me with further guidance on this note?

The Rules for off-payroll working from 6th April 2021 can be found here: <https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020/rules-for-off-payroll-working-from-april-2020>

For a copy of our Hirer's Guide to the off-payroll rules, please visit our website or Staffing 360 Solutions Compliance and Operations Senior VP, Allison Drake - **Allison.drake@staffing360solutions.com** who will also be happy to support you with any further queries.

Status Determination Statement Example

Company Details:

Company Name:

Completed By:

Job Title:

The Assignment:

Contract Role:

Assignment Start Date:

Assignment End Date:

Agency (if applicable):

Contractor (if applicable):

Date Completed:

Finding:

We believe that this engagement falls Inside/Outside IR35 and therefore treated as Employed/Self-Employed for tax purposes, for the following reasons:

Enter the reasons you arrived at the decision.

This Determination was produced using:

HMRC's CEST tool/ Independent Assessment tool/ In house review/Other

Right to challenge:

Workers and/or the Agency have a right to challenge the process or the outcome. There may be a valid case in providing further evidence as part of the assessment. We will provide a response within 45 days of receiving notification that the worker or Agency disagrees with our employment status determination.