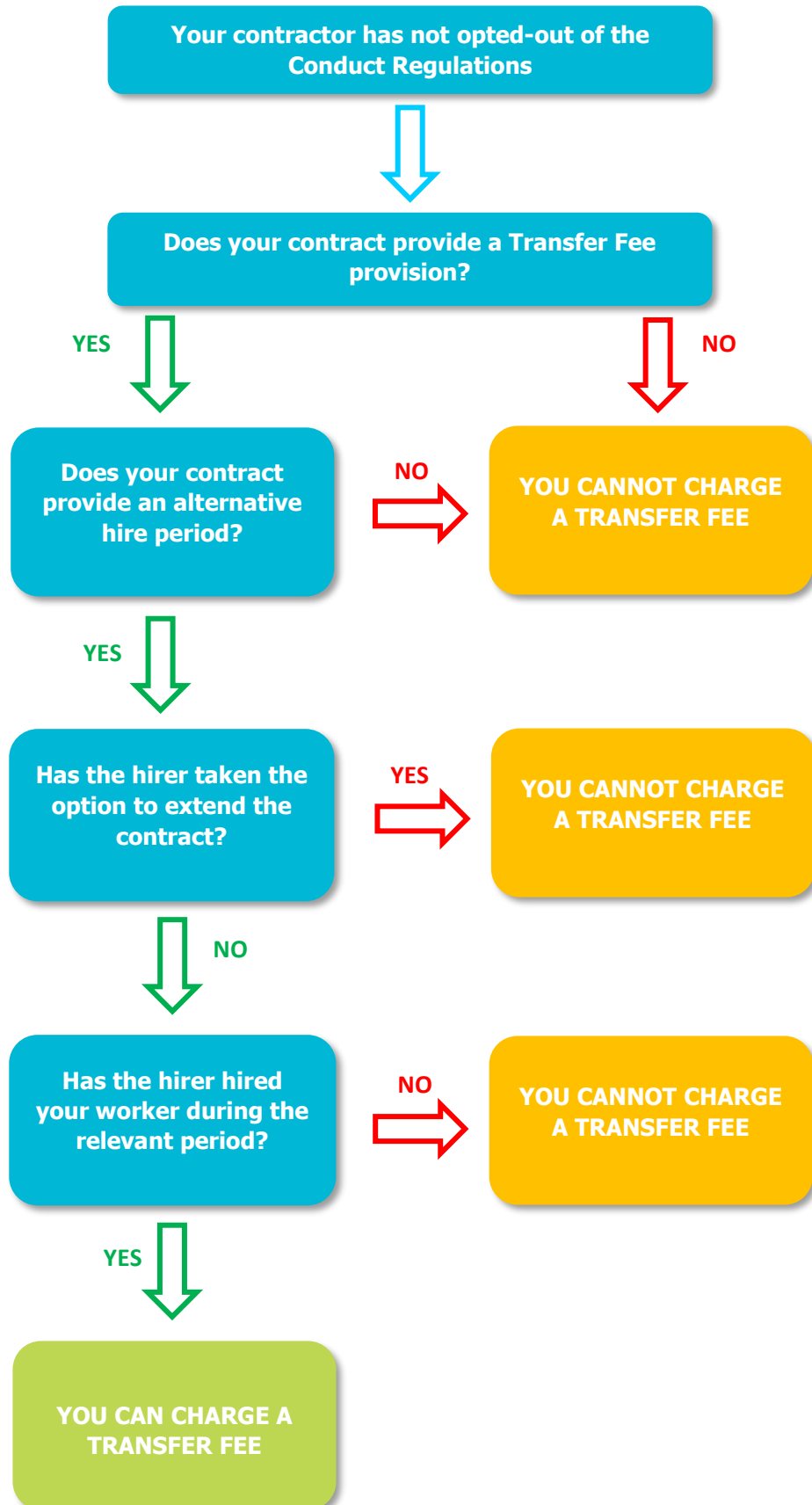


APSCo Flowchart

Can you charge a Transfer fee?

Option 1: The contractor has not opted-out

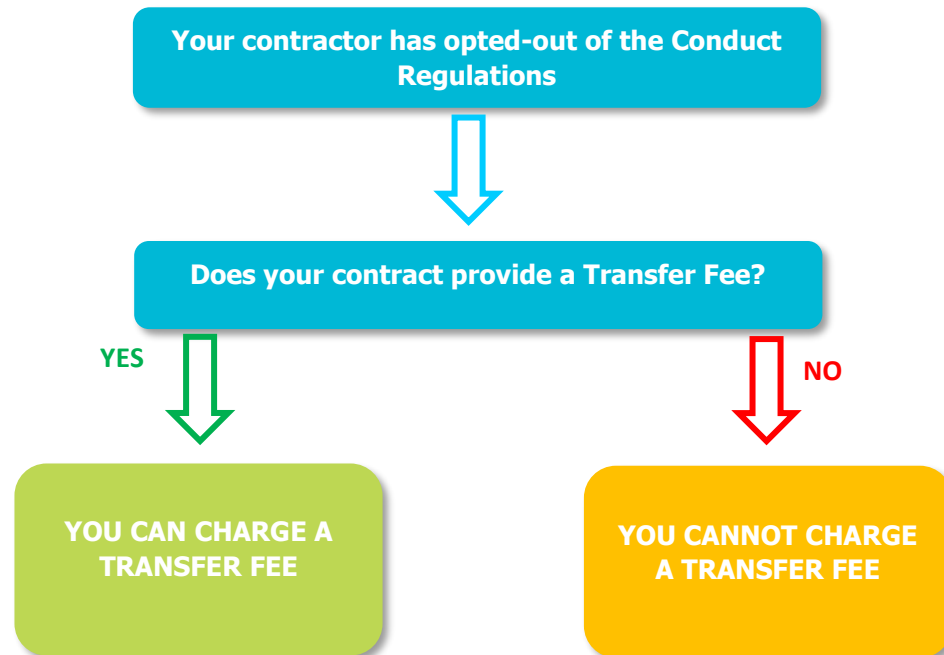
UPDATED May 2024



APSCo Flowchart

Can you charge a Transfer fee?

Option 2: The contractor has opted-out



Guidance on Transfer Fee

Understanding the Transfer fee rules

The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (also known as Conduct Regulations or Conduct Regs) came into force in April 2004.

Regulation 10 of the Conduct Regulations sets out the circumstances in which a transfer fee may be charged.

The Conduct Regulations define the **Transfer fee** as *any payment in connection with the work-seeker taking up employment with the hirer or in connection with the work-seeker working for the hirer pursuant to being supplied by another employment business.*

What type of Transfer fee can you negotiate

- Temp to perm: when the hirer offers permanent work to a temporary worker you have provided.
- Temp to temp: when the hirer moves from you to another employment business and takes the temporary worker with them to the new employment business.
- Temp to third party: when the temporary worker has been introduced to another employment business or client (for example, the CV has been passed by hirer A to hirer B).

APSCo Flowchart

Can you charge a Transfer fee?

The conditions are the same as for temp to perm fees, except you do not have to offer the hirer a choice between the transfer fee and a contract extension with a temp to third party fee (see below *Extended Hire Period*).

You cannot charge a transfer fee in any other situation. Hirers can recover any money paid for fees that are against the rules.

When can you charge a Transfer fee

Recruitment businesses must include a transfer fee provision in their contract with the hirer in order to be able to charge a transfer fee. If no transfer fee is mentioned in the contract, no transfer fee is due.

If the temporary worker has opted out of the Conduct Regulations, the transfer fee can be freely negotiated with the hirer (for example take the form of a percentage based on the annual remuneration of the temporary worker or a fixed amount negotiated between the parties)

If the temporary worker had not opted out prior to the start of the assignment, or if the opt-out is not valid, the provisions of your contract must give the hirer the option to extend the temporary workers assignment (also called an ***Extended Hire Period*** or ***Alternative Hire Period***). The Extended Hire Period can be freely negotiated between the recruitment business and the hirer; however the supply terms cannot be worse than the one agreed for the initial assignment (for example: you cannot increase the rate).

If the hirer takes this option, no transfer fee will be due after the Extended Hire Period ends.

If the hirer refuses to extend the temporary worker's assignment and hire them during the Relevant Period, the hirer will owe the recruitment business a transfer fee. The **Relevant Period** is a period of 8 weeks from the end of the assignment or 14 weeks from the start of the assignment, if that's later, during which the hirer cannot hire the temporary worker without paying a transfer fee.

[Under Regulation 10 \(6\) of the Conduct Regulations](#), if the worker had more than one assignment with the hirer, and where a gap of more than 42 days exists between both assignments, the later assignment will be used to calculate the "Relevant period" of either 14 weeks or 8 weeks.

Transfer fee provisions

Ensure that your contract includes a transfer fee clause as the right to transfer fees is not automatic. APSCo contract templates provide members with Transfer fee clauses adapted to both situations where the worker has or has not opted out. Clause 8 is applicable when your worker has opted out, whereas clause 9 is applicable when they have not.

Our contract templates can be accessed [here](#).

APSCo Flowchart

Can you charge a Transfer fee?

How can we ensure the opt-out is valid?

For an opt-out to be valid, the opt-out form must be dated before the start date of the assignment. The opt-out should be in a writing, clearly stating that, as provided for under [Regulation 32.9 of the Conduct Regulations](#), the workers are giving notice that they wish to opt out.

The opt-out must also be signed twice - once on behalf of the limited company, and once by the individual who will be doing the work. Even if these are the same person, the document should be signed on behalf of both parties.

Once the form has been signed, the recruitment firm must inform the client of the opt-out in writing before the start date of the assignment.

Please note that note that the following workers cannot opt out of the conduct regulations:

- PAYE contractors,
- Workers who are working or attending anyone under the age of 18, or who by reason of age, infirmity, or any other circumstance, is in need of care or attention ([Regulation 32\(12\)](#)). This would mainly concern workers working in regulated sectors such as Education, Social Work, and Health Care.

APSCo has a model opt-out document for members' use, which can be accessed through our website [here](#) as well as guidance to ensure the opt-out process is respected, which can be accessed [here](#).

Please contact legalhelpdesk@apsco.org should you have further queries in relation to opting out of the Conduct Regulations.