**Guidance on assessing the Employment Status of Service Providers**

**Introduction**

The University’s preferred method of appointing staff to carry out work is via direct employment on a fixed term or open-ended contract of employment. However, there may be circumstances where it is more appropriate to meet the needs of the business to engage someone on a short-term or ad hoc basis as a casual worker, or through an agency, or as a service provider.

This procedure provides guidance on determining the employment status of individuals who will be providing services to the University. The outcome should then be used to inform how the individual is engaged and paid.

**Summary of Definition of Employment status and Approval Routes for engagement and employment**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Worker type** | **Employment status** | **Payroll** | **Tax/NIC** | **Offer issued by/agreed with** |
| Employee | Employee (either fixed term or open ended) | HWU | PAYE | HR |
| Casual | Worker | HWU | PAYEInside IR35 | Hiring or Line Manager |
| Contractor (off payroll) | Self-employed | Contractor organisation or self-employed | Responsible for own Tax/NIC;Outside IR35 | Contract Manager/ Procurement |
| \*Contractor (on payroll) | Self-employed | HWU | PAYEInside IR35 | Hiring or Line Manager |
| Consultant | Self-employed | Contractor organisation or self-employed | Responsible for own Tax/NIC;Outside IR35 | RES  |
| \*\*Agency worker | Worker / could be self-employed (with relevant Agency) | Paid by relevant Agency | Paid via Agency | Agency |

\*An on-payroll contractor is not an employee and does not have employment rights, therefore annual leave/sick pay/pension scheme access does not apply.

\*\*Routine temporary staff agency engagements must receive prior approval from Vacancy Management Group (VMG). Appointments lasting longer than 12 weeks continuously entitle the worker to similar rights such as paid leave that a comparator employee would have, under the [Agency Worker Regulations](https://www.hw.ac.uk/services/human-resources/human-resources-policies.htm). Approved Temporary Staff Agencies can be found on the following websites: [APUC](http://www.apuc-scot.ac.uk/#!/contracts) and [Scottish Procurement](http://www.gov.scot/Topics/Government/Procurement/directory/ProfessionalServices/TempInterim).

Therefore, normally Agency workers are transferred to HWU employee status after 12 weeks. Hiring managers must seek approval beyond 12 weeks via the iRecruit system to transfer the worker to a HWU employee status.

**VMG Approval**

**All financial expenditure for Employee/Self-Employed Contractor/Consultant or Agency worker must be approved by VMG PRIOR to the offer of employment or engagement being made.**

**All casual worker engagements must be approved by the Head of School/Director of Service and relevant Finance Manager for budgetary purposes PRIOR to the offer of engagement being made.**

**Approval for employee vacancies**

Please raise your vacancy via the online iRecruit system. Contact HRHelp@hw.ac.uk if you need access.

**Approval for casual workers**

Please refer to guidance and statement of particulars  [Casual worker guidance.](https://www.hw.ac.uk/services/human-resources/human-resources-policies.htm)

**Approval for self-employed Contractors, Consultants or Agency workers**

Complete [CA1 form](https://www.hw.ac.uk/services/human-resources/human-resources-forms.htm) to seek VMG approval. Please complete all the details in conjunction with this guidance document and forward the completed CA1 form to HRHelp@hw.ac.uk for VMG approval. As soon as your case has been reviewed, HR will advise the outcome and next steps.

**Definition: Service Providers**

'Service Providers’ are individuals who provide their services personally, this may involve working for the University directly as a self-employed freelancer, a contractor, or via an ‘intermediary’. An intermediary is essentially a link between the University and the service provider, which includes working through your own limited company or being engaged through a partnership. These individuals usually refer to themselves as self-employed and often consultants, project managers, business analysts and other suppliers of professional services work in this way. Also the University may come across specialist lecturers who are engaged in this way.

The Intermediaries’ Legislation (also known as IR35) sets out the rules which affect tax and National Insurance contributions (NICs) when service providers are contracted to work for a client, through a third party intermediary, such as their own limited company.

***Whenever any service provider is to be engaged***, the University is legally required to determine whether or not the service provider is working, or will be working, in a manner similar to an employee. Where the University establishes that the service provider is ‘doing a similar job, in a similar manner’ to that of an employee, the University **must** calculate and deduct employee Income

Tax and NICs from the individual’s invoice prior to processing and paying it. The University will also be required to calculate employers NICs and Apprenticeship Levy and pay all these costs over to HMRC.

***Any budget holders who are engaging individuals (either directly or via an intermediary), to provide services to the University should ensure that they follow the process outlined below, prior to confirmation they will be used as a service provider and definitely before any work is carried out.***

Should HMRC judge that the University has not engaged and processed the payment for a service provider on an appropriate basis then the University will be liable for any outstanding Income Tax and NICs, both the employee’s and the employer’s elements, the Apprenticeship Levy plus applicable interest and penalties. The University could also be taken to tribunal or court by a service provider if they believe they have been classed as self-employed by the University in circumstances where they should have been treated as an employee or worker. Both employees and workers have employment rights such as paid annual leave sick leave and maternity etc. leave.

**What help can I get to determine a service provider’s Employment Status?**

To help managers and budget holders appointing service providers to determine the employment status of service providers HMRC have developed an online [Employment Status (ES) tool](https://www.tax.service.gov.uk/check-employment-status-for-tax/). Individuals, Intermediaries and agencies are also able to use the tool.

The ES tool provides HMRC’s view of the employment status of a particular contractual engagement. The tool poses a series of questions about the circumstances of the engagement, before providing an indicative determination on whether or not the contract should be classed as employed.

The tool can reach a number of outcomes:

1. The Intermediaries Legislation does not apply to this engagement
2. This engagement should be classed as self-employed for tax purposes
3. Unable to determine the tax status of this engagement
4. This engagement should be classed as employed for tax purposes

One of the most confusing questions that the ES tool will pose is:

***‘Will the worker (or their business) perform office holder duties for the end client as part of this engagement?’***
The end client referred to is the University. An office holder is typically someone who has a statutory appointment e.g. a board member or a trustee. These types of roles are not discretionary, the University is obliged to have them. An advisor to the University is a role the University may choose to have and these would not be regarded as an “office holder”. In most circumstances, the answer to this question will be 'no'.

**Process to determine the employment status of a service provider**

The process to be followed when determining the employment status of a service provider is:

* The engager (budget holder or manager) identifies a potential supplier. Before confirming any engagement, the engager should complete the [Employment Status (ES) tool](https://www.tax.service.gov.uk/check-employment-status-for-tax/). The tool features self-contained guidance; however further advice can be found in annex A at the end of this guidance or contact your local Finance Manager.
* On the “customise this result record page” complete the appropriate boxes. The output from the tool should then be saved as a PDF\**You will be asked do you want to open or save the result .pdf from tax.service.gov.uk? Click Open. Then File Save as, to the appropriate place on your server.*
* The specific outcome of the tool will determine what you need to do next:
1. **'The Intermediaries Legislation does not apply to this engagement’**

Forward the saved PDF output from the ES tool to Procurement@hw.ac.uk along with completed new supplier forms.

1. **‘The engagement should be classed as self-employed for tax purposes’**

Forward the saved PDF output from the ES tool to Procurement@hw.ac.uk along with completed new supplier forms.

1. **‘Unable to determine the tax status of this engagement’**

Further advice should be sought from your local Finance Manager, who may in turn seek further advice from Procurement, HR and Central Finance.

1. **‘This engagement should be classed as employed for tax purposes’**

If labour is being supplied through a recruitment agency, the engager should ensure that the agency are informed that the work falls within the scope of the IR35 legislation.

The worker must be paid via the HWU payroll either as a Contractor (on-payroll), [Casual worker](https://www.hw.ac.uk/services/human-resources/human-resources-policies.htm)  or as an Employee (fixed term or open ended) and a Right to Work check carried out **before the work starts**.

The engager should discuss the outcome with the service provider to ensure that they are aware of the potential impact on any payment they might receive from the University

If you are unsure whether to treat the service provider as a contractor on payroll, a casual worker or an employee, please refer to the University’s [GuidanceonEngagingCasualandAdHocHoursStaff.doc](https://www.hw.ac.uk/services/docs/GuidanceonEngagingCasualandAdHocHoursStaff.doc) and/or contact HRHelp@hw.ac.uk

For a Contractor (on-payroll) you should complete the required new starter [PS2 form](https://www.hw.ac.uk/services/human-resources/human-resources-forms.htm) and forward the PS2 form to Payrollhelp@hw.ac.uk along with the saved PDF output from the ES tool.

For a casual worker please refer to the casual worker procedure here: <https://www.hw.ac.uk/services/docs/GuidanceonEngagingCasualandAdHocHoursStaff.docr>

**If the service provider requests a written response to explain why a particular outcome was reached**

The engager, or the individual who would have been the engager, in cases where the Service Provider is not engaged) is obliged to provide a written response within 31 days.

**If no response is provided within this 31 day period, the University will become responsible for accounting for tax and NI contributions.**

The [Template Email - Notification of ES Tool Outcome](https://www.gla.ac.uk/media/media_528728_en.docx) can be used for this purpose.

**Further Information**

HRHelp@hw.ac.uk
PayrollHelp@hw.ac.uk
Procurement@hw.ac.uk

CA1 Approval Form <https://www.hw.ac.uk/services/human-resources/human-resources-forms.htm>

Casual worker guidance <https://www.hw.ac.uk/services/human-resources/human-resources-policies.htm>

[Template\_letter\_of\_engagement\_for\_Casual\_Workers\_.doc](https://www.hw.ac.uk/services/docs/Template_letter_of_engagement_for_Casual_Workers_A-Lvu6f59SpkDAyOP0_TnYsrbUNZVqfFX6hR957tF4vKE.doc)

[Employment Status (ES) tool](https://www.tax.service.gov.uk/check-employment-status-for-tax/)

[Template Email - Notification of ES Tool Outcome](https://www.gla.ac.uk/media/media_528728_en.docx)

New Starter Details form for on-payroll workers <https://www.hw.ac.uk/services/human-resources/human-resources-forms.htm>

New Supplier Forms can be obtained from Procurement@hw.ac.uk

**Annex 1**

**Employment status: Key Points to Consider**

Often the contracts with the greatest Employment Status risk are those where we are contracting with people who are or who have previously been connected with the University. Contracts with existing or former employees, retirees, former agency workers or former casual staff should all be closely scrutinised to ensure that they meet the Employment Status tests.

***Control*** – is the contractor being told that they will be directed, supervised, or controlled by the University or our representative? When a contractor is brought in to provide a service which replaces or matches work carried out by University employees or workers, the University needs to demonstrate how the working relationship between the contractor and the University differs from the relationship the University had with its employees and casual workers.

***Substitution*** – is the contractor permitted, as part of the contract, to allow someone else to complete the work or parts of work in the contractor’s place?

***Intention*** – does the contract show that the contractor and the University are independent, separate from each other and that there is no employer-employee relationship?

***Mutuality of obligation*** – any further work in addition to previous work carried out for the client, should be covered by a separate contract, terms and agreement. Is the Contractor obliged to do extra work for the University?

***Contract termination***– is the contract for a defined project? If so, the contract should end when the defined project has been completed to the University’s satisfaction. The contract covering the work should be based around a realistic and estimated timeframe in which the work can be completed.

***Financial risk*** – a contractor should be able to provide evidence of professional indemnity insurance, have a service level agreement, and agree to remedial work when needed (e.g. when caused by something the contractor hasn’t done or has completed incorrectly). Is the contractor operating a business and is supplying equivalent services for other organisations?

***Payment*** – does the agreement terms covering how the contractor is paid look and feel like those that exist between two contracting businesses or does it look and feel like a succession of pay-days? Contractors should be billed by the hour, by the day, or by the project.

***Exclusivity*** – does the University impede the contractor from working for other organisations when they like (i.e. is it a contract that requires the contractor to work for the University full-time or for an extended period of time)?

***Equipment and premises*** – ideally, the contactor should provide the equipment used on a job. The contractor should keep receipts for the equipment and demonstrate that they are in charge of the upkeep and maintenance of their equipment

***Defined provision of services*** – the contractor should know exactly what the work in the contract entails. Each part of the service provided should be described in detail, stating the desired outcome from the provision of the service.