

Scope: Financial Management	Effective Date: Jan 2023	Responsible Dept: Finance	Equality Analysis Undertaken:
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Guidance on Off-Payroll Working (engaging self-employed workers)

1. Introduction

This guidance is intended to support University staff to be compliant with the Off-Payroll Working Regulations (commonly known as IR35), which came into effect on 6 April 2017 and updated 6 April 2021. The intention of the Regulations is to ensure that self-employment arrangements do not disguise work arrangements that ought to be treated as employment, and thereby to ensure that HMRC receives tax and national insurance contributions for individuals.

As a general guide any work that is a) ongoing/regular; b) is delivering or supporting core teaching/activity and learning as part of the University's curriculum, and c) is paid on an hourly-rate basis is likely to constitute employment. HMRC provide a tool to make a ruling on the allowed method of payment, and this may be used to determine the outcome of any application for Off-Payroll Worker status.

Process

1. From 6 April 2017 any self-employed individual or their Company submitting an invoice to Finance must have been assessed **prior to the work taking place** in accordance with this guidance. This assessment is requested by filling out a OneUni YSJ Financials Request New Creditor online form found by navigating to My YSJ > Forms. It is important to nominate the type of Off-Payroll worker by making a selection from the drop-down list in the field AP Commercial Type. Please attach any supporting applications or other relevant details to the form, as such additional information will be used to assist in determining the worker's eligibility under IR35.

2. If this process is not followed correctly, Finance may request a Contract for Services form to be completed retrospectively and/or query invoices and supplier arrangements.
3. Finance will be unable to pay any invoices until the worker has been set up in OneUni as a creditor, or in payroll as a Deemed Worker.

2. When is self-employment appropriate?

There will be situations where it is clear that self-employment is appropriate and therefore where the regulations do not apply. This is typically where:

- The supplier operates their business as a limited company (insufficient grounds in isolation).
- The assignment or project is a distinct 'one-off' and of short duration (ie, a few hours or a few days).
- The assignment is for a longer period but the supplier is a 'highly skilled worker' where that specialism does not exist within the university (typically a schedule of work provides for payment by instalment against agreed milestones/ deliverables).
- The University exercises little or no control over how the services are performed.
- The supplier determines their own schedule and hours of work, albeit with some input from the client.
- Defective work is corrected in the suppliers' own time and at their own expense.
- The supplier may provide a substitute instead of providing the service personally.
- Payment is on a fixed fee or day rate basis.

Note: not all of the above factors have to apply in each situation.

Examples: a trainer delivering a staff development event; a management consultant; a guest speaker; an external mediator; an external counselling supervisor.

3. When is it NOT self-employment?

The following factors will typically indicate an employment arrangement:

- The relationship is ongoing (lasting for months or years) and the services are provided regularly – typically every week or every month.
- The nature of the work forms part of the employers 'core business'.

- Payment is on an hourly rate basis.
- The University controls how and when the work is undertaken.
- We employ other staff on the payroll doing broadly the same work.
- When the supplier is already a member of staff on the payroll.

Note: not all of the above factors have to apply in each situation.

Examples: Regularly delivering lectures, workshops, seminars or tutorials as part of a module/programme; undertaking work that is a core aspect of managing and/or administrating the University's business and/or complying with statutory and regulatory obligations.

Where work should be treated as employment, there are two options available to manage the relationship:

1. The supplier is placed on a casual or fixed term employment contract, or
2. The supplier remains self-employed but is treated as a '**Deemed Worker**', with their tax and national insurance deducted from their invoice total and paid on their behalf - a typical example of a deemed worker could be a Visiting Lecturer where we already have people on the payroll undertaking this type of work.

4. Ambiguity

There will be situations that are ambiguous and have features that apply to both employment and self-employment. In this situation the member of staff should contact their HR Business Partner for advice and support in assessing the status.

Additionally, a relationship may commence as a one-off or be intended as fairly infrequent, but over time may become regularised and embedded. Therefore, the status of current arrangements may need to be reviewed periodically and Finance will need to be alerted to the increased frequency of contractor usage.

Where a lack of clarity cannot be resolved the individual will be treated as a 'deemed worker'.

5. HMRC online Employment Status Service (ESS) tool

The online employment status tool can be found on the HMRC website.

The tool will on occasions give an outcome that is inconclusive, in which case we need to use our own judgment. Using the tool is not compulsory, but Finance and HROD will use the tool, where it is not immediately clear what the employment status should be.

The questions contained within the online assessment tool are based around the following relevant factors:

- What is the clients' core business and is the work 'part and parcel' of that business?
- The true intention of the parties and whether a contract exists.
- The terms of the contract.
- Is the contractor paid by the hour or by a fixed fee for the whole job or project?
- Is the contractor at financial risk in delivering the project/services and do they have to rectify defective work at their own expense and in their own time?
- Is the contractor working exclusively for one client?
- Does the contractor provide their own materials and equipment?
- Can the contractor provide a substitute to carry out work instead of providing the service personally?
- Is the project/work based on deliverables and milestones?

Note: not all of the criteria have to apply - rather it is a judgment based on the totality of the situation. If HMRC are investigating potential non-compliance with the regulations, we will need to demonstrate that reasonable care has been exercised and provide a clear audit trail determining the status of an arrangement.