



FINANCIAL PROCEDURES

Section 08 – IR35 Employment Status Check

Approving Body:	Resources and Performance Committee
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Off-Payroll Workers

8. Purpose of this policy

Aberystwyth University is legally required to apply the correct tax and National Insurance Contributions (“NIC”) treatment when engaging off payroll workers. Different tax treatments apply to different types of engagements.

The purpose of this policy is to provide guidance on the off payroll working rules including:

- employment status.
- IR35 rules to ensure that Aberystwyth University meets its legal requirements.

With changes to off payroll working from April 2021, it is important that when Aberystwyth University engages off payroll workers it is consistent in its approach, to help mitigate any potential risks.

9. Introduction

It is important that Aberystwyth University considers all off payroll engagements and ensures that it is compliant with this policy and from a tax perspective.

This policy was written based on the tax laws and proposed changes known at the time of writing, it is important to ensure that this policy is reviewed and updated each tax year or when any tax laws change.

There may be occasions when the University needs to bring in individuals to undertake work on a short-term or one-off basis (e.g., to deliver a lecture on a specific topic, contribute expertise to a particular project or undertake a service or task). This policy and procedure do not apply where it is proposed, from the outset that an individual should be engaged as a casual worker or an employee on a fixed term contract. This policy does, however, apply equally to PSCs engaged directly or, where they are engaged via an agency.

In situations where it is proposed to treat the individual as an off-payroll worker and payment in respect of services provided is to be paid against invoices, the University is required to assess firstly whether HMRC rules on off payroll working in the public sector apply or whether such individuals should properly be classed as employees. If they should be classified as employees or receiving payment in relation to “deemed employment” then income tax and national insurance will need to be deducted.

It is the responsibility of [the person commissioning the work/procurement], to ensure that the appropriate employment status is established prior to engaging an individual to undertake work for the University.

The recruiting manager must complete the HMRC Check Employment Status for Tax (CEST) on-line tool, to establish whether the individual should be treated as employed or self-employed, or the intermediaries off-payroll working rules apply.

10. Policy Statement

- a. The University must comply with tax provisions within the intermediaries’ legislation (known as IR35). These provisions provide more stringent tax requirements for individuals operating as their own intermediary. An intermediary can be:

- a worker’s own limited company – known as a Personal Service Company (PSC).
 - a partnership.
 - an individual.
- b. The legislative changes made in 2017 transferred the responsibility for determining employment status from the workers PSC to the organisation engaging their services. This legislation has been extended with effect from 6th April 2021 such that there will be additional compliance responsibilities put on the University and these are detailed in this document.
- c. The University must decide the employment status of a worker, this applies to every contract the University agrees to with an agency or worker. From 6th April 2021 the University must by law.
- pass the determination and the reasons for the determination (Status Determination Status) to the worker’s PSC and the person or organisation being contracted with.
 - make sure detailed records are maintained of all employment status determinations, including the reasons for the determination and fees paid as HMRC will expect to see these as part of any review process.
 - introduce processes to deal with any disagreements that arise from the determination. The University has 45 days to respond to any dispute in relation to status decisions. Whilst the status position is under review PAYE/NIC must continue to be accounted for if the original determination was that the engagement was inside scope of the off-payroll rules.

11. Key Principles

The aim of the policy is to.

- Provide a governance framework to ensure that the University complies with the IR35 rules regarding third party contracts for service.
- Make all staff responsible for hiring individuals on a short term or one-off basis aware of the statutory requirements and their responsibilities.
- Set out a clear business process that all members of staff responsible for hiring staff on a short term or one-off basis must follow.

Definitions

IR35 – IR35 is a piece of legislation that allows HMRC to collect an additional payment where a contractor is an employee in all but name.

PSC - A Personal Service Company (PSC) is a limited company, partnership or unincorporated company that typically has one or two directors who owns most or all the shares but can own as little as 5% of the shares. The contractor’s PSC generally supplies professional services to end user clients, either directly or via an agency. The professional services are delivered by the contractor who is also the owner and director of the business.

HMRC – Her Majesty’s Revenue and Customs

HMRC Tool - HMRC provide an online tool for checking each engagement in terms of its employment status for tax (known as CEST). The tool can be accessed via the following link:

<https://www.gov.uk/guidance/check-employment-status-for-tax>

Partnership – A partnership is an arrangement between two or more people to oversee business operations and share its profits and liabilities.

12. Process for engaging off payroll workers

Before engaging any off-payroll workers, you should ensure that the following steps have been taken:

1. You have read and understood the off payroll working policy including the FAQs.
2. You understand the facts of the engagement e.g.
 - who are you engaging with?
 - the structure of the engagement – understand all entities in the supply chain.
 - the worker’s responsibilities.
 - who decides what work needs doing?
 - who decides when, where and how the works done?
 - how the worker will be paid (but note the below checks may change this method); and
 - if the engagement includes any benefits or reimbursement for expenses.
3. You have followed any actions such as using HMRC’s CEST tool.
4. If the tests indicate that Aberystwyth University should operate PAYE/NIC on payments, please pass all relevant details to the payroll team.

You should not engage with any worker in a different manner to the outcome determined above.

Annual sample reviews

Every 12 months a 10% sample should be undertaken to cover the following matters:

1. The above process has been completed correctly and the appropriate sign offs have been completed.
2. A review of the status checks completed against the supplier payments list. No payments should be made without a completed status checker.

13. Risk

If HMRC finds that an intermediary has been incorrectly assessed the University will be fully liable for the Tax and National Insurance that this individual should have paid for the full duration of their engagement with the University, as well as liable for employers’ NIC and the Apprenticeship Levy. Additionally, the University can also be liable for a penalty, which can be as much as 100% of the Tax and NIC liability together with an interest charge for tax paid late.

A worker or agency paying the workers intermediary may disagree with the employment status determination reached by the University. The University must provide a response within 45 days of receiving notification that the worker or agency disagrees with your employment status determination

giving reasons why. Failure to respond within 45 days will result in the worker's tax and both primary and secondary National Insurance contributions becoming the responsibility of the University.

14. Corporate Criminal Offence (CCO)

By law, Aberystwyth University is required to undertake specific risk assessments in respect of the university's policies and processes in accordance with CCO legislation. Failure to ensure that Aberystwyth University has correct policies and procedures to consider whether the correct employment status has been applied to workers that have been engaged could be seen as a failure to meet Aberystwyth University's obligations under CCO.

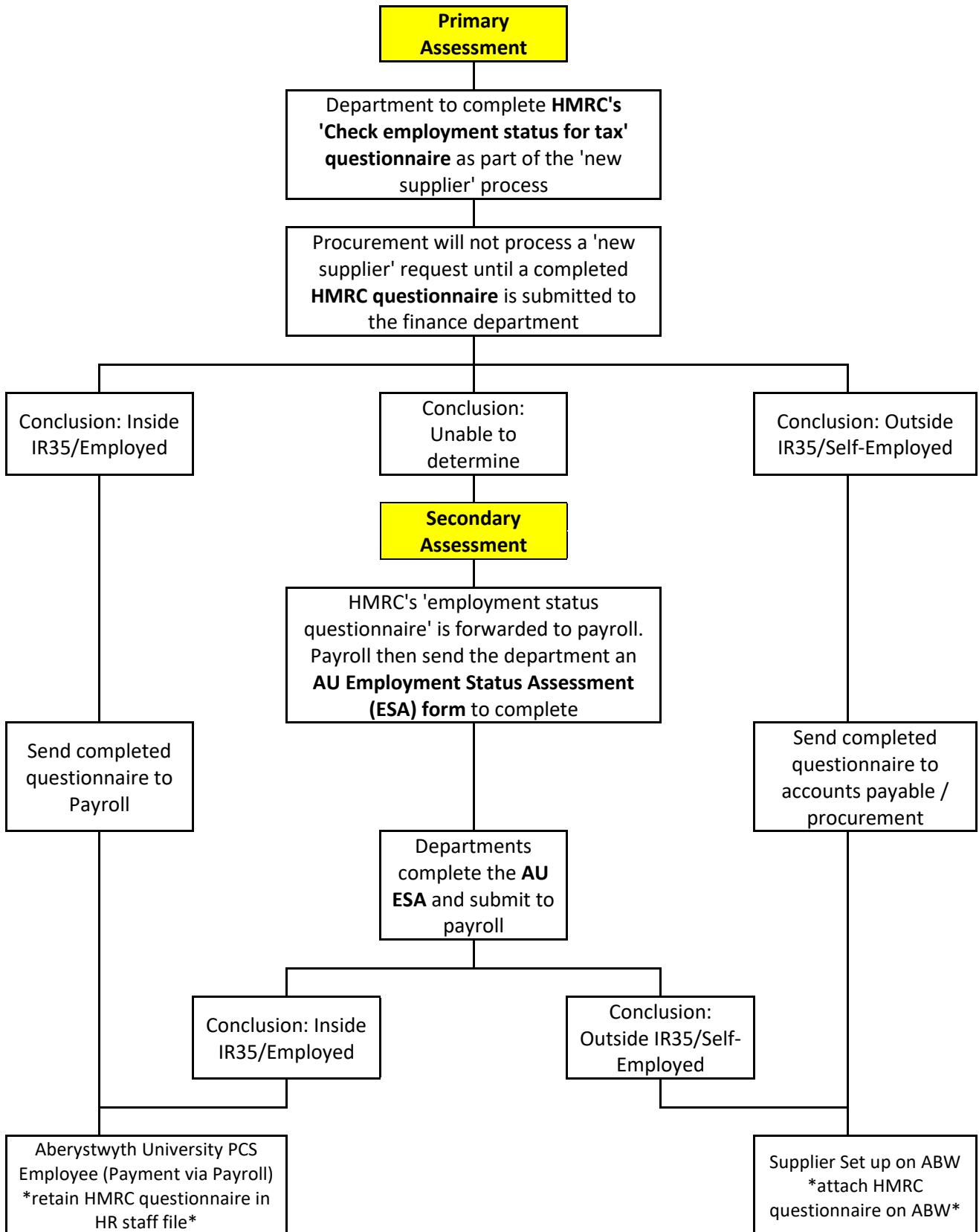
Failure to ensure consideration has been undertaken and documented could potentially leave Aberystwyth University open to prosecution under CCO regulations, which were introduced from September 2017.

Payments to Individuals, Personal Service Companies, Partnerships or Individuals through a Third Party or Agency

The University operates the following policy when checking the employment status for tax purposes of prospective work(ers):

- Departments must complete an **HMRC Employment Status Questionnaire** when engaging individuals who claim to be: Self-Employed; Personal Service Companies; Partnerships; or supplied via third parties or agencies. If required, this primary assessment will be followed by an **Employment Status Assessment form**.
- The flow chart overleaf provides details of the processes and controls in place to assess an individual's employment status.
- The finance department complete an annual review of any payments to individuals following the employment status check flowchart.
- The University has detailed [guidance](#) (refer to appendix 1) regarding special exemptions for guest speakers, lecturers, teachers and tutors, external examiners and invigilators, performing artists and other examples of Personal Service Companies.
- Please note:
 - Employment Status Submissions will be subject to routine internal compliance checks to ensure the information provided is accurate.
 - If the assessment has been manipulated to reflect an outcome that differs from operational actuality, then HMRC may reverse the assessment and the University may suffer a penalty. However, subsequent tax and NIC will need to be paid at the cost of the University rather than the individual.
 - It should also be noted that HMRC would likely view such behaviour as “deliberate”, which will result in a higher penalty level (up to 100%)

IR35/EMPLOYMENT STATUS CHECK FLOWCHART



Link to AU Website for Payment to Individuals: <https://www.aber.ac.uk/en/finance/information-for-staff/payind/>

Link to Check Employment status for tax: <https://www.tax.service.gov.uk/check-employment-status-for-tax/>

Appendices

Appendix 1 – Determining employment status - Guidance notes

Appendix 2 - Key determination Factors

Appendix 3 - Examples

Appendix 1 Determining employment status – Guidance notes

Background

On 6th April 2017, HMRC implemented a revised employment status criteria for public bodies, which includes universities. The revised criteria expanded the scope of the assessment, placing the responsibility for the assessment and the assessment outcome, firmly on the public body. Therefore, we must assess the employment status of our workers, ensuring “due process and reasonable care”. [Finance Act 2017]

Furthermore, an individual’s registered tax status with HMRC should have no bearing on any new work arrangements or engagements. This new work should be assessed for tax purposes, as per the Check Employment Status for Tax (CEST) guidelines.

In addition, the off-payroll working rules known as Intermediary Regulations (IR35), were revised to include personal service companies.

The off-payroll working rules were extended to the private sector with effect from 6th April 2021 and with this came further responsibilities for the university, which included the introduction of status determination statements and an appeal process.

Note that there are special exemptions for guest speakers, lecturers, teachers, and tutors – see 7 below – external examiners, markers, and invigilators – see 8 below and performing artists – see 9 below.

This guidance aims to help departments make the right engagement decisions when deciding on when an individual is an employee or a non-employee (i.e., a consultant/contractor/self-employed).

1. The decision-making process

Deciding about employment status is often relatively straightforward when engaging contractors as a new supplier or re-engaging with existing contractors.

Firstly, we need to consider the relationship between the individual worker and the provider of that worker as follows:

- For self-employed, the named individual invoices the University:
 - *An employment status assessment will be required.*
- For other individuals, if they own, control, or manage a personal service company, i.e., a company (limited company, partnership or otherwise), the company invoices the University:
 - *HMRC Intermediary Regulations (IR35) are relevant in such circumstances and an employment status assessment will be required.*
- For individual workers engaged through employment agencies and third parties, where the individual does not own or control the agency/third party:
 - *When engaging workers, we need to confirm that each worker is a direct employee of the employment agency or third party, i.e., that employee PAYE/NIC is being deducted from their gross wages, or the worker is engaged through an “umbrella company” which deducts PAYE/NIC from the worker. If this is the case, then the circumstances are such that an employment status assessment is NOT required.*
However, if the worker supplied is being paid by the employment agency or third party to the worker’s personal service company then IR35 applies, and an employment status assessment will be required.

Generally, an individual is probably self-employed if most of the following are true:

- they're in business for themselves, are responsible for the success or failure of their business, and can make a loss or a profit
- they can decide what work they do and when, where, or how to do it
- they can hire someone else to do the work
- they're responsible for fixing any unsatisfactory work in their own time
- their employer agrees a fixed price for their work - it doesn't depend on how long the job takes to finish
- they use their own money to buy business assets, cover running costs, and provide tools and equipment for their work
- they can work for more than one client

However, situations can arise during an employment status assessment where it becomes difficult to define employment status, or when the employment status is ambiguous. In these situations, it is possible to 'test' employment status by applying set questions to the circumstances of the engagement. While no single test exists, there are several tried and tested indicators derived from HMRC regulations and guidance, and from employment case law.

These employment tests have been incorporated into the ESA Form.

2. The Employee Status Assessment (ESA) Form

If a department's primary assessment conclusion is 'Employed' or 'Unable to Determine', they must sign and submit the ESA to Payroll for secondary assessment. Appendix 1 provides a non-exhaustive list of key attributes used by HMRC to assess employee status and the ESA considers each one through its list of questions.

In practice, where an individual is working on a self-employed basis, it is rare that all the above indicators will point to them being self-employed, and some may in fact point to employment. This is generally because the desire to protect the individual's self-employed status needs to be balanced against other competing commercial considerations.

Where secondary assessment confirms a non-employee (self-employed) Payroll forwards the ESA Form to Procurement (cc Accounts Payable), who then ensure that, where necessary, a contract for service is provided. The individual, or their personal service company, is then set up as a supplier in the Agresso (ABW) finance system as appropriate. A copy of the authorised ESA will be held on file.

3. Notification process if ESA produces result that the worker may be deemed to be an employee

Where the ESA produces a result that is confirmed on secondary assessment to be "employed/employee," then the department engaging the worker (is required to inform them of the result in writing, **before they are engaged. For those engaged via personal service companies/partnerships** this should be done by means of a status determination statement (SDS). For individuals the department must request that the worker complete the necessary Payroll Forms (Personal Details, and Tax Form) required to create a payroll record.

The worker is obliged to provide the University with the information to enable the deduction of tax and NICs from the payment.

For PSCs or partnerships, they should be entered on payroll as "deemed employees" and the OPW marker used to denote that they are not employees of the university as individuals may be. Any dispute with the assessment from the PSC/worker must be made in writing - See 5. Disputes below.

Once the worker provides Payroll with the relevant forms, the worker (or their personal service company) will be recorded as a “deemed employee”. Payroll will send the completed ESA, and details of the work being undertaken to a HR Manager. The HR Manager reviews the details of the work being done and assesses the need for a Contract of Employment. If the HR Manager determines that a contract is necessary, they will liaise with the department, who will inform the worker directly. If HR determine that a Contract of Employment is unnecessary, the HR Manager will sign off on the invoice amount as a ‘one-off’ payment, and Payroll will process as necessary, subjecting the amount to NICs and PAYE.

The department will be charged the Gross cost of the invoice plus the Employer’s NIC cost for the worker’s services. Any VAT will be paid in full.

4. Statutory employment protection for deemed employee

It should be noted that an individual's employment status for tax purposes, and status for the purposes of statutory employment protection, are separate. An individual may be classed as an employee for tax purposes, but qualification for statutory employment protection is unconnected.

5. Disputes

In the event of a dispute concerning the PSC’s/individuals’ employment status, either from within the University, in writing from an individual, or from their personal service company/agency/third party, the matter will be referred to the Finance Tax Team (taxstaff@aber.ac.uk). The Tax Team’s decision about the employment status, and type of engagement, is final.

PSCs have legislative protection, which means that any dispute must be replied to within 45 days of being received and must set out the reasons behind the application of the assessment. If the status is reconsidered, it will be necessary to issue a new SDS.

6. Off-setting tax and National Insurance contributions made by the University

If an engagement is ruled as Employed, the individual may offset any tax and/or National Insurance deductions against their self-assessment returns to avoid duplication of payment.

7. Guest lecturers, teachers, and tutors

HMRC provides specific guidance within its Employment Status Manuals (Particular Occupations – Teachers, Lecturers and Tutors) regarding the engagement of lecturers within educational establishments for short assignments. In certain circumstances, individuals may be treated as non-employees (self-employed) for tax purposes.

This HMRC provision applies only to teaching or lecturing, not other types of work. Any teaching or lecturing work that **does not** meet the criteria below will require a Guest Teacher contract, and the worker will be classed as an employee.

The criteria are as follows:

- **Prior** to giving the lecture, the individual has agreed to give it on no more than three days in three consecutive months: **or**
- The lecture is given as a public lecture. A public lecture is defined as one, which anyone can attend, is not part of a course or confined to a particular group or society.

For the word “lecture”, you can substitute, for example, “presentation”, “work-shop”, and “course delivery”.

8. External examiners, markers, and invigilators

HMRC view external examiners for first degree and higher degrees slightly differently.

- Most fees paid to external examiners are liable to tax under Schedule E as main employment income.
- According to HMRC's guidance, special arrangements for deduction of tax apply to payments made in respect of the duties of examiners, markers, invigilators where such duties are in any way connected with degree examinations. Fee payments made to examiners for first degree examinations conducted by universities are chargeable for tax as employment income, and subject to PAYE in the normal way. Examiners who fall in this category are treated as "employed".
- Payments made to external examiners engaged by universities for masters' degrees and doctorates can be treated as trade profits liable for National Insurance Contributions, but not chargeable for tax. Examiners in this category are asked if they perform this work as self-employed at the time of their appointment. If they answer in the affirmative, they are asked to provide the necessary evidence, and payment is processed by Supplier Payments as self-employed. If they do not answer the question, or respond in the negative, their payment is processed via Payroll, and tax/NI is deducted where appropriate.

9. Entertainers (theatrical performers/artists) exemption

Relevant to the Arts Centre, entertainers engaged to provide performance services under a contract for services (i.e., self-employment) are not subject to employment status assessment, providing they have already registered with HMRC as self-employed, and they are not paid a regular "salary" to perform in a series of different productions.

This would include actors, ballet dancers, opera singers, musicians, and other performing artists. In addition, this exemption also applies to stage managers, deputy stage managers and assistant stage managers who are *British Actors' Equity Association* trade union members. Stage management professionals outside the union may be subject to the same employment status assessment as other workers.

Important Note:

The above is intended to give guidance when assessing new suppliers that provide services and may not cover every scenario. Therefore, it is prudent to contact the Assistant Director of Finance if you are unsure if any of the above applies to a specific supplier or supply of services.

Appendix 2 Key determination Factors

To determine status, you must consider whether an individual is engaged under a "contract of service", or a "contract for services". The former will evidence an employment relationship, and the latter self-employment.

The following are a non-exhaustive list of factors which may be considered by HMRC, or the courts, when determining an individual's employment status. Although the tests applied by HMRC and the courts/employment tribunals are similar, there can be differences.

Factor	Self-employed	Employee
Personal service	Will provide own services, but may also sub-contract work to others, or bring in outside assistance.	Required to provide their services personally and cannot themselves employ/engage staff to support them in doing so.
Mutuality of obligation	Is free to accept or turn down work if they desire. The engager is under no obligation to offer any work, or further work.	The employer is obliged to offer work, and the employee is obliged to do as the employer requests.
Right of control	Likely to be in control of most aspects of the work done.	An employer may control what they do, how they do it and when they do it. However, a highly skilled employee may also exercise "what" and "how" as the employment demands.
Right of substitution	Is not required to carry out the services personally and has an unfettered right to appoint a substitute, and they may engage/employ staff to support them (at their own cost).	There is either no right to appoint a substitute or it is a fettered one, that is, it is subject to the organisation's approval and may only be used in limited circumstances (usually sickness or incapacity)
Provision of own equipment	Will normally supply all small tools and bring in or hire in plant.	The organisation provides the facilities and equipment required by the individual to carry out their job

Factor	Self-employed	Employee
Financial risk/ability to profit	Will quote on a job-by-job basis. May invest their own capital in the venture and incur personal liability for losses arising from their work (i.e., putting it right at their own cost)	Does not take any financial risk in working for the organisation; they are paid even if there is insufficient work for them.
Opportunity to profit	Can profit from the success of the project or assignment they have been engaged in, or from re-charging and making a profit on materials.	May only profit under a bonus or incentive scheme.
Length of engagement	Generally, a fixed-term or short-term contract.	Contract will generally be open ended after probation period (if any).
Part and parcel of the organisation	Their work brings them to the University regularly but acquires no additional responsibilities or privileges as a result. They operate independently to the organisation.	Is integrated into the organisation. They work in a similar way to other employees, have an organisation email address and/or business card and appear in official organisation charts.
Employee type benefits	Unlikely to be entitled to any type of benefits.	Part of pension scheme, enjoy canteen or sports club facilities, car parking, attends staff functions.
Right to terminate contract	If other party is in breach.	Would normally give notice under specified contract term.
Personal factors	May be engaged because of skills, reputation etc.	Personal factors may be the reason for appointment.
Mutual intention	The intention of the parties should be stated in written contract. This may not be persuasive if the parties behave differently.	If the parties intend the relationship to be one of employment it is difficult for the courts to say otherwise. In most cases the parties will have agreed written terms of employment and the employee will have enforceable rights under employment law.

Other factors - There are additional factors which may also be highly persuasive in deciding whether an individual is in business. The importance of each factor can only really be weighed up by considering the whole business in the round.

Appendix 3 Examples

Employee status

(i) Ad-hoc / Temporary Research Assistant:

- University provides tools and equipment
- Works on the University premises
- University requires work for a specific number of hours
- Paid as claimed
- Department controls direction of work

(ii) Researcher / Student Recruiter:

- University monitors quality of work
- University provides tools (including email/business card) and equipment
- Responsible to and receives direction / feedback from university employee
- Deadlines set for completion of work
- Not working on university premises
- Paid on a regular monthly basis by invoice through personal service company
- Working only for the University during a one- or two-year period
- Cannot send a substitute

(iii) Part-time Chauffeur

- University requires work at specific times/days, albeit ad-hoc
- University provides vehicle
- Paid as claimed by invoice
- Cannot send a substitute

Non-employee status

(i) External Consultant

- Uses own equipment and works only from home or their own premises
- Works for other organisations most of the time
- Not obliged to carry out the work personally but could get a substitute to undertake the work
- No regular working hours but assured up to x days per year of work
- Paid as claimed
- Not expected to undertake work on a regular basis
- Pays for own expenses (should not claim expenses from University)

(ii) Ceramics Workshop tutor at Arts Centre public exhibition/festival

- Workshop open to public to attend, i.e., “open”
- Paid as claimed by invoice

(iii) Translator

- Uses own equipment and works in the majority from home
- No regular working hours but assured up to x days per year of work
- Paid as claimed, usually per word/page, by invoice
- Not expected to undertake work on a regular basis
- Specialist project/specific deliverable