

**OFF PAYROLL WORKING PROCEDURE**

**Overview**

1. The “Off Payroll Working Procedure” sets out the procedure that must be followed to ensure that individuals engaged by the University to provide services are properly assessed in accordance with HMRC “Off Payroll Working Rules” and the University’s “Off Payroll Working Policy” to establish their status as either workers of the University, subject to PAYE and NIC through the University’s payroll, or as suppliers of services engaged under trading terms & conditions determined under the University’s “Purchasing Policy”.

Appendix I contains a process map setting out the procedure and steps to follow and the specific roles and responsibilities of those involved in engaging individuals to provide services to the University.

2. The assessment of each individual being considered for engagement by the University must be performed and a determination made and communicated prior to the commencement of any work by the individual concerned.
3. It is imperative that the HR IR35 Team ensure that all documentation to support the decision as to how a worker should be engaged and paid is saved and stored in the IR35 Repository and that a complete record of the steps performed in each assessment, the determination outcome and the resulting action, as appropriate, to engage either as a worker or a supplier is recorded. This is to establish a complete evidence based and auditable process of the University’s decisions and actions in respect of its workers’ pay, tax and NIC’s.
4. The process to be followed is:

**Determining the worker requirements**

- i) Once the service requirements have been agreed by Heads of Department the Engaging Managers will ascertain who they wish to engage. If they are not to be engaged as a staff member, through the Request to Fill process or Associate Tutor contract, and a specific individual will be primarily responsible for carrying out the work then the off-payroll worker review process below must be followed.

**Considering the basis for engagement**

- ii) Where the services are likely to be required on a short term or ad hoc basis, the Engaging Manager will need to collate the necessary information required to enable the HR IR35 Team to consider the employment status of the off payroll worker.
- iii) An initial enquiry should be made by the Engaging Manager to determine whether the worker is working through an intermediary or as a self-employed individual.

- iv) The Engaging Manager should complete the University of Sussex Employment Status Questionnaire (“ESQ”) and seek input from the worker as required, annotating on the ESQ any information provided to support the answers being given.
- v) The ESQ is forwarded to [ir35info@sussex.ac.uk](mailto:ir35info@sussex.ac.uk). (“HR IR35 Team”)
- vi) Where the worker is providing their services through an intermediary the HR IR35 team will check Companies’ House records to ascertain if the intermediary is a PSC. The HR IR35 team will save a pdf print of any Companies’ House records. If there is no Companies’ House information found, then the HR IR35 team will undertake a web search for any information on the engaging entity and save a copy as the pdf. If there is no Companies’ House information or web presence found, then the HR IR35 team will consider what further due diligence is required prior to engaging the contractor.
- vii) The HR IR35 team will then complete the HMRC CEST assessment using the information provided in the ESQ and any additional information provided. This assessment will be saved as a pdf and stored in the IR35 Box Folder. The HR IR35 team will also update the Workbook with details of each case and provide a link to the assessment documents.

### **Communicating the determination and issuing contracts**

- viii) The HR IR35 team will send a Status Determination Statement (“SDS”) setting out the determination outcome and the reasons for the determination and a copy of the CEST, to the engaging manager, the worker and the fee payer (agent), if the University is not the fee payer.
- ix) Where the CEST determination confirms that the “Intermediaries legislation applies to this engagement”, and the worker IS NOT being engaged via an agency or umbrella body this effectively means that the worker is within the IR35 rules and the University must engage the worker as a casual worker via the casual payroll. A “Casual Workers” contract should be issued by HR to the worker.
- x) Where the CEST determination confirms that the “Intermediaries legislation applies to this engagement”, and the worker is being engaged via an agency or umbrella body, the HR IR35 team will communicate the outcome in line with (viii) (above).
- xi) Where the CEST determination confirms that the “Intermediaries legislation does not apply to this engagement”, the worker is outside of the IR35 rules and may be engaged as a supplier of services, by the engaging manager, by placing a purchase order in accordance with University’s purchasing policy.
- xii) Where the CEST determination is unable to determine the employment status of the worker i.e. an undetermined result is received. Then the HR IR35 team will need to consider this engagement further, clarify the responses given and engage with the Finance Director (or his nominee) to seek guidance or access formal tax advice where applicable.

### **Paying the worker through the payroll**

- xiii) Once the HR IR35 team have confirmed to the Engaging Manager that the worker is within the IR35 rules and may only be engaged on the payroll, the engaging manager must work with Human Resources to appoint the worker via the University’s Recruitment Procedure. The worker will be paid on the payroll with PAYE and NIC accounted for at source.

- xiv) The Engaging Manager must inform the IR35 team of the appointment of the worker so that the Workbook can be updated.
- xv) Where the worker is engaged as a casual worker any costs associated with the engagement will be charged to the engaging department.
- xvi) It is unlawful to employ somebody who does not have the appropriate Right to Work ("RTW") in the UK. Where the services to be delivered are within the IR35 Rules Human Resources must undertake RTW checks on the worker before the work commences.

#### **Paying the worker off payroll**

- xvii) Once the HR IR35 team have confirmed to the Engaging Manager that the worker is outside the IR35 rules and may be engaged as an off payroll worker, the Engaging Manager (School/Division) must raise a purchase order on the finance system for the engagement to go ahead.
- xviii) The Engaging Manager must inform the HR IR35 team of the decision to proceed and supply the Purchase Order number so that the Workbook can be updated..
- xix) The Engaging Manager must consult the IR35 team before any significant variation or material change in the nature or scope of the work or if any extension to the engagement originally agreed takes place. In such circumstances a revised ESQ and HMRC CEST assessment will need to be undertaken.
- xx) Following any such changes, a new requisition and purchase order will need to be raised by the Engaging Manager and will follow the same process as described in step (ii) above.
- xxi) No invoices will be paid unless they are supported by a valid purchase order that has been goods receipted in the Finance System.

#### **If not proceeding to engage**

- xxii) The Engaging Manager must inform the HR IR35 team if the engagement does not proceed so that the Workbook can be updated.

#### **Disputing the determination**

- xxiii) A worker may challenge the determination they receive directly with the University. and must follow the process for dealing with disputes as follows:
  1. Once HR have communicated the IR35 determination to the worker including the reasons for the determination, the worker may disagree with this determination.
  2. The worker will need to write to the University noting details of the determination they disagree with and giving reasons why they disagree with the determination.
  3. Keep copies of any records about disagreements.

4. The University will then have 45 days from the date of receiving the worker's disagreement to respond. During that time the University should continue to apply the rules in line with their original determination and engage and pay the worker on this basis.
  5. If the employment status determination has not changed, the University will have to tell the worker.
  6. If the employment status determination has changed, the University will have to tell the worker and the fee payer e.g. Agency if applicable.
5. The worker should not be engaged, offered work or permitted to commence work until the HR IR35 team has conducted the HMRC CEST check, communicated the determination outcome to the engaging manager and approval has been given for the individual to be engaged as:
- a. A supplier on an invoiced basis. following the issue of a Purchase Order; or
  - b. A worker on the payroll and subject to PAYE and NIC's.
6. Failure to follow this process is a breach of University policy and the Financial Regulations and could result in tax, penalties and legal consequences for the University. It is the responsibility of Heads of Schools and Directors of Professional Services (Budget Holders) to ensure that this process is followed diligently by all Engaging Managers within the schools and PS Divisions. Any tax and/or professional and legal costs incurred by the University for any failure to follow this process will be re-charged to the relevant schools or PS Divisions.

### **Maintaining the Workbook**

1. The HR IR35 team are the owners of the Off Payroll Workbook.
2. The Off Payroll Workbook is the consolidated record of all steps undertaken and evidence gathered in respect of each assessment of "Off Payroll Working" status.
3. The IR35 Team will follow up to ensure all actions are performed and responses received in a timely manner and recorded in the workbook with related documents stored and referenced.