



UNIVERSITY
OF SUSSEX

FREQUENTLY ASKED QUESTIONS

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1. POLICY GUIDANCE

Q1: WHAT IS OFF PAYROLL WORKING AND IR35?

A1: Off payroll working refers to tax legislation which requires the University to consider the employment status for any individual that we engage to personally provide services either on a short-term basis or perhaps a longer, more infrequent basis.

As a University, we often contract with individual workers in a number of different ways:

- through an agency arrangement – either as an individual worker or through a Personal Service Company (“PSC”);
- on a self employed basis;
- through a PSC; or
- through an umbrella company arrangement

IR35 refers to specific tax legislation which requires Public Bodies including Universities to review how they contract with PSCs from April 2017. The purpose of the legislation is to minimise tax avoidance and to ensure that a worker, who is broadly doing the same role as an employee pays the same level of income tax and National Insurance as any other directly employed University member of staff.

Q2: WHAT IS THE UNIVERSITY’S POLICY ON USING PERSONAL SERVICES COMPANIES?

A2: In order to ensure we meet our obligations under current tax legislation (IR35 – off payroll working rules), the University will need to assess the employment status of all workers who intend to provide their services through a PSC.

Where the worker is determined as being inside IR35 then all payments to a worker for services provided to the University’s Schools, Divisions or subsidiary companies, will be paid through the University’s casual payroll, under a casual worker’s contract of service and will be subject to PAYE and NICs at source.

Where the HR IR35 team assess the engagement and confirm that the IR35 rules do not apply then the University is able to contract directly with a PSC under an off payroll worker’s contract and payment to the PSC may be made gross.

Q3: WHERE DOES THE POLICY APPLY?

A3: The Policy applies across all Schools, Divisions and subsidiary companies of the University and to all payments made on or after 6 April 2017.

Q4: WHAT ARE THE CONSEQUENCES OF FAILING TO MAKE AN ASSESSMENT OR MAKING AN INCORRECT ASSESSMENT?

A4: HMRC can levy a range of penalties on the University, Agency or PSC, depending on how and where the failure has occurred and also has the power to seek unpaid PAYE and NIC retrospectively. It is important therefore that the University has a robust policy which is rigorously adhered to, to mitigate any tax or penalties.

Q5: CAN I CHANGE THE WAY THE DEPARTMENT ENGAGES WITH A CONTRACTOR TO MAKE THE ENGAGEMENT OUTSIDE THE SCOPE OF THE LEGISLATION (E.G. FIXED OUTPUT BASED CONTRACTS THAT ARE NOT TIME BASED)?

A5: It is important to ensure that the information provided to HR in respect of the University of Sussex Employment Status Questionnaire (ESQ) is based on the facts of the contract and the reality of the arrangement in place. Where HMRC consider that either the University or the worker has wilfully arranged the engagement such that the legislation does not apply, then the engager, the worker and the University could be considered to be facilitating tax evasion and the penalties attached to this are severe.

2. SCHOOLS/PROFESSIONAL SERVICES DIVISIONS CONSIDERATIONS

Q6: DOES THE INDIVIDUAL ENGAGED THROUGH A PSC BECOME AN EMPLOYEE? WHAT IS THE IMPACT ON THE UNIVERSITY'S HEADCOUNT?

A6: Engaging a worker through an intermediary such as a Personal Services Company (PSC), does not make them an employee and will not impact the University's headcount. If it is considered the individual when assessed falls within IR35 then they will be issued with a casual worker's contract and paid through the casual payroll subject to PAYE and NIC. They will not however, be included in the University's headcount.

Q7: WHAT COSTS WILL BE CHARGED TO MY SCHOOL / DIVISIONAL BUDGET AS A RESULT OF THIS?

A7: If it is determined that services delivered under an intermediary arrangement such as a PSC, are outside IR35, the University will not normally deduct / incur tax, national insurance contributions, pension or Apprenticeship Levy charges. If, however the HMRC CEST assessment concludes that the individual is within the IR35 rules then PAYE and NIC will need to be accounted for at source (including apprenticeship levy charges). As they are being paid through the payroll and will be entitled to holiday and sick pay, the individual may be entitled to join the University's Pension Scheme, however this will need to be monitored depending on the length of the contract and the nature of the engagement and the HR IR35 team should be consulted.

Q8: DOES IR35 AFFECT CONTRACTORS WORKING ON EXTERNALLY FUNDED RESEARCH CONTRACTS?

A8: Yes, the changes apply to all contracts, regardless of the funding source. However, complexities may arise in researcher contracts where specific consideration and advice may need to be sought. Please contact your HRBP for assistance.

Q9: IS THERE PROVISION FOR THE IMPACT OF HMRC TESTING IN RESEARCH CONTRACTS WHERE A PSC MAY BE ENGAGED TO CARRY OUT FUNDED RESEARCH?

A9: Research contracts at the University of Sussex will normally be offered on an employed (PAYE) basis. For specific questions about this, please contact Research Quality and Impact (<http://www.sussex.ac.uk/staff/research/rqi>).

3. ENGAGING CONTRACTORS

Q10: WE SOMETIMES ENGAGE WORKERS WHO MAY FALL INTO THIS OFF PAYROLL CATEGORY BUT WE ONLY USE THEM OCCASIONALLY AND ARE NOT USING THEM AT PRESENT. DO WE NEED TO REVIEW THEIR STATUS WHEN THERE IS NO CURRENT ENGAGEMENT?

A10: If there is no current engagement in place, then there is no need to assess the individuals. If the individual is re-engaged in future, then each engagement will have to be reviewed prior to any services being provided.

Q11: WHERE WE ENGAGE CONTRACTORS WHO ARE WORKING OVERSEAS, DO THE NEW RULES AFFECT THEM TOO?

A11: This is a complex area and the answer will be dependent on numerous factors, including where the work is being done (wholly or partly overseas), where the PSC is resident, where the worker is tax resident etc. Workers who provide their services overseas may need to comply with the legislation and we would ask that you contact your HRBP before proceeding with any engagement as more specialist advice may be required.

Q12: DO THE PSC REGULATIONS ALSO APPLY TO SELF-EMPLOYED CONTRACTORS (I.E. SOLE TRADERS / PEOPLE WHO HAVE NOT FORMED THEIR OWN COMPANY).

A12: Self-employed individuals who do not provide their services through a limited or intermediary company arrangement, such as a PSC, may fall outside the IR35 rules. However, their employment status will still need to be assessed as part of the off payroll working requirements. Engagers must use the University of Sussex Employment Status Questionnaire (“ESQ”) and return this to the HR IR35 team for assessment against the HMRC CEST before a conclusion that the individual falls outside the IR35 rules. If there is any doubt then the worker should be paid via Payroll.

4. PSCs AND OTHER ENGAGEMENT ARRANGEMENTS

Q13: HOW DO I DETERMINE IF A CONTRACTOR IS ENGAGED VIA A PSC?

A13: Engaging Managers will need to complete the University of Sussex Employment Status Questionnaire (“ESQ”) and return this to the HR IR35 team. The HR IR35 team will then undertake the HMRC CEST using the information provided by the School / Division. The HR IR35 team will determine the engagement status of a worker, where necessary by undertaking further checks via Companies House. They will advise the Engaging Manager and worker of the outcome of the decision.

The HR IR35 team will undertake the HMRC CEST tool for the formal assessment based on the information contained in the University of Sussex Employment Status Questionnaire (“ESQ”) and any other information requested from the School / Division – see IR35 Process and process flow chart. The CEST outcome report must include the name of the individual who is being engaged and the name of the person completing the CEST and will need to be signed / authorised by the Payroll Manager.

An IR35 outcome decision for tax purposes is not the same as a determination of employment status for employment law purposes. The worker does not become an employee of the University following an IR35 outcome decision.

Q14: WHAT IF THE PSC IS VAT REGISTERED?

A14: The University will pay VAT (if the PSC is VAT registered).

Q15: HOW IS PAYMENT MADE TO A PSC?

A15: If on completion of the HMRC CEST tool the HR IR35 team confirms that the engagement is off-payroll, then they will send the Status Determination Statement to the Engaging Manager and the worker and agency (if applicable). The Engaging Manager will send a copy of the CEST form to Accounts Payable and the School / Division. Authorisation to proceed will be signed on the form by the Payroll Manager, Iain Berry. The School / Division will need to request a Purchase Order (PO) number from Accounts Payable. Any invoices should be sent to Accounts Payable by the School / Division.

Q16: DO STUDENT LOAN DEDUCTIONS NEED TO BE TAKEN INTO ACCOUNT WITH A PSC?

A16: HMRC guidance clarifies that the University does not need to process student loan deductions on payments to PSCs.

Q17: WHERE A CONTRACTOR STATES THEY TRADE VIA AN 'UMBRELLA' COMPANY – DOES THIS MAKE THEM EXEMPT FROM THE LEGISLATION.

A17: Yes. Where the university engages a worker through an 'umbrella' company they are outside the off payroll worker rules. Instead it will be necessary to flag the umbrella engagement to the HR IR35 team who will ensure that the Umbrella is compliant for tax purposes.

Q18: DO I STILL NEED TO TAKE ACTION IF I ENGAGE THE PSC VIA AN AGENCY?

A18: Yes, it will be the University's responsibility to ascertain whether the PSC worker is within IR35 and the University's HR IR35 team will need to complete CEST and notify the Agency whether any withholding is required.

Q19: IF THE PSC REQUESTS TO MOVE TO AN EMPLOYMENT (PAYE) CONTRACT, WHAT SHOULD I ADVISE THEM?

A19: This may be possible, but it will be necessary to follow the University recruitment process and obtain approval for the appointment in the normal way by completing a Request to Fill (RTF) form.

5. DISAGREEMENTS ABOUT EMPLOYMENT STATUS

Q20: WHAT IF THE PERSON DISPUTES THE OUTCOME OF THE HMRC EMPLOYMENT STATUS CEST TOOL (E.G. IF THEIR ACCOUNTANT HAS ADVISED THEY ARE NOT COVERED BY IR35)?

A20: The University is responsible for undertaking the assessment and reaching an outcome decision. The University has a duty to follow HMRC rules and carries the liability risk if it fails to exercise reasonable care in administering the assessment and outcome evaluation. The individual, and the agency if applicable, will receive a copy of the CEST assessment together with the reasons for the determination from the University. The worker or PSC may request a review of the outcome decision. Such a review will only be considered based on new information or further evidence being provided by the manager that justifies a review of the original decision.

If the worker chooses to formally disagree with the IR35 determination they need to do this formally in writing. The University will need to undertake a review of this formal disagreement within a

period of 45 days. The decision of the University of Sussex review will be final. The University will maintain records of any disputed outcome for a period of 6 years.

Q21: IF THE PSC WILL NOT ACCEPT IR35 STATUS, HOW SHOULD WE PROCEED?

A21: The University has a duty to comply with tax legislation. If an individual will not accept the outcome from the CEST process, their options are to ask for a review of the CEST assessment or not to undertake the assignment. Such a review will only be considered based on new information or further evidence being provided by the manager that justifies a review of the original decision. The decision of any University of Sussex review will be final. The University is unable to permit the assignment to proceed if the person will not accept the IR35 CEST outcome.

6. CASUAL WORKERS

Q22: DO RIGHT TO WORK CHECKS NEED TO BE UNDERTAKEN FOR THOSE WHO ARE ASSESSED AS WITHIN THE IR35 RULES OR THOSE CLASSED AS SELF EMPLOYED

A22: It is unlawful to employ somebody who does not have the appropriate Right to Work (“RTW”) in the UK. In the event of an IR35 outcome decision that the services to be delivered are within the IR35 Rules and will be subject to PAYE deductions before payment through the casual payroll, the University will need to undertake RTW checks on the worker before work commences. In the event that an IR35 outcome is that the services are outside the IR35 rules and may be invoiced to Accounts Payable, the University will not be required to undertake RTW checks.

For further information, please contact your HR Business Partner.

Q23: IS THE PSC CONTRACTOR ELIGIBLE FOR OCCUPATIONAL HEALTH BENEFITS SUCH AS PENSIONS, PARENTAL LEAVE / PAY, HOLIDAY PAY AND SICK PAY.

A23: An individual delivering services within the IR35 rules, by way of an intermediary, such as a PSC will not be an employee of the University of Sussex and will not be eligible for employment related benefits.

Further information: <https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>