

Policy Schedule

Policy title	Policy on Off Payroll Working
Date approved	December 2019
Approving Body	University Executive Group
Last review date	October 2023
Revision history	Version 4
Next review date	The policy will be reviewed after the first year of use and thereafter 3 yearly or on an ad-hoc basis in response to relevant regulatory change.
Related policies, guidelines and procedures	Financial Regulations Off payroll working procedure
Policy Owner	R A Spencer Director of Finance
Policy Lead/Author	Assistant Director of Finance (Finance and Corporate Services)

Further information can be obtained by contacting the HR IR35 team:
ir35info@sussex.ac.uk

IR35: Countering Avoidance in the Provision of Personal Services:
<https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>

Understanding off-payroll working (IR35)
<https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>

Document Control					
Document No	1	Version	4	Date Issued	October 2023
Author	C McLaughlin	Reviewed by	ARC	Department	Finance

OFF-PAYROLL WORKING POLICY

1. OVERVIEW AND PURPOSE

- 1.1 The Off-Payroll Working Policy (the policy) sets out the rules and procedures to ensure that an individual providing services to the University, who works like an employee, is identified as a worker of the University and is subject to PAYE and NIC through the University's payroll (or via Reed Managed Services if a temporary worker).
- 1.2 The University engages individuals from time to time to deliver services which meet the needs of the Institution. The policy sets out rules to establish when an individual must be engaged as a worker on the University's payroll (or via Reed Managed Services if a temporary worker), and when they may be engaged as a supplier under a service contract.
- 1.3 The policy sets out the specific responsibilities to Heads of School and Directors of Professional Services (Budget Holders), Engaging Managers, the Director of Finance and the HR IR35 team.
- 1.4 The policy must be followed to ensure the University meets its tax and legal obligations when engaging workers.
- 1.5 In addition to this policy document, the University has issued a process document and a process map which clearly sets out the steps that must be followed, and specific roles and responsibilities for all individuals involved in the process of engaging workers and contractors as well as Budget Holders.

2. SCOPE

- 2.1 This Policy applies across all of the University, without exception, including all Schools, Divisions and subsidiary undertakings.
- 2.2 Exceptionally if the Governing Body of a subsidiary undertaking deems this policy not fit for the purposes of the subsidiary due to its specific circumstances and/or obligations then it may seek approval from the University's Council of an alternative policy. If an alternative policy is not approved this policy applies to the subsidiary undertaking.
- 2.3 The policy applies to all individuals providing services or being considered as a provider of services to the University. The IR35 assessment and rules apply when the worker provides services to the University either directly as a worker or through an intermediary, which could be a limited company arrangement i.e. Personal Service Company "PSC" or through an agency arrangement where PAYE and NICs are not being applied by the agency on the payment to the worker.
- 2.4 Current employees or employees who have recently ceased employment with the University who undertake work for the University outside their normal role will not normally be covered by this Policy as all earnings will be considered part of their University employment, and will be subject to PAYE and NICs withholding through the payroll. In cases where the work in question is significantly different to the work of employment the employment status will be considered taking into account all the facts and circumstances.

3. RESPONSIBILITIES

3.1 Head of Schools "HOS" and Directors of Professional Services "DOPS"

Document Control					
Document No	1	Version	4	Date Issued	October 2023
Author	C McLaughlin	Reviewed by	ARC	Department	Finance

- 3.1.1 HOS and DOPS as Budget holders under the Financial Regulations are responsible for ensuring that the off-payroll working policy and process is being adhered to within Schools and Professional Services Divisions.
- 3.1.2 **Budget Holders** are responsible for ensuring that Engaging Managers and any other members of staff involved in the procurement of services follow the off-payroll working policy and process and liaise with HR IR35 team appropriately to manage and comply with the tax and legal obligations of the University.
- 3.2 **Engaging Managers (i.e. people who are commissioning work from individuals outside the University)**
- 3.2.1 Engaging Managers must follow the off-payroll working policy and process.
- 3.2.2 The Engaging Manager is responsible for ensuring that they notify the HR IR35 team when they are seeking to procure the services of a worker, fully complete the University’s Employment Status Questionnaire (“ESQ”) form, and forward this to the HR IR35 team (ir35info@sussex.ac.uk), together with all relevant information, SoW/contracts, and website addresses in support of the submission. A Decision will be communicated by the HR IR35 team to the worker (or in cases where an individual is represented by an agent, the agent) and the engaging manager. The engaging manager and worker (or agency) will agree whether to take forward the engagement.
- 3.2.3 If the engaging manager and worker wish to proceed and the worker falls within IR35 legislation the engaging manager must liaise with HR to put the worker on the University’s payroll (or via Reed Managed Services if a temporary worker), in accordance with existing staff policy and procedure. No work should be undertaken or will be authorised until an IR35 outcome has been concluded, a decision communicated to the worker and, where applicable, any other employment related steps are completed such as “right to work” checks.
- 3.2.4 Engaging Managers are reminded that where a worker falls within the IR35 legislation, it is unlawful to employ them where the appropriate Right to Work (“RTW”) in the UK checks have not been completed. In the event of an IR35 outcome decision that the services to be delivered are within the IR35 Rules and will be subject to tax/NIC deductions before payment, in line with the School/Departmental RTW check processes, the Engaging Manager will need to ensure that RTW checks on the worker have been conducted before work commences. Engaging managers should contact their HR Business Partner for advice on work related compliance obligations. Temporary workers engaged by Reed Managed Services will be subject to RTW checks by Reed Managed Services.
- 3.2.5 On receipt of a Status Determination Statement (“SDS”) from the HR IR35 Team which confirms that the worker is not considered to be within the intermediaries legislation and the University is able to engage with the worker “off-payroll”, the Engaging Manager will need to raise a Purchase Order and attach the CEST and SDS as proof that the appropriate checks have been carried out. They will also inform the HR IR35 team of the Purchase Order number.

The University’s Purchasing Policy and associated guidance can be found here:

<http://www.sussex.ac.uk/finance/how/purchasing>

This Purchase Order number must be sent to the HR IR35 team.

3.3 **Director of Human Resources and Human Resources IR35 team**

Document Control					
Document No	1	Version	4	Date Issued	October 2023
Author	C McLaughlin	Reviewed by	ARC	Department	Finance

3.3.1 The IR35 status check is the responsibility of the Director of Human Resources and will be performed by the HR IR35 team who will complete the HMRC Check Employment Status for Tax (CEST) test from information provided on the completed ESQ and, where appropriate, consult with the engaging manager and worker.

The IR35 Team will undertake due diligence to assist in the determination of the worker’s status.

3.3.2 Once a determination has been made, the HR IR35 team will issue a formal Status Determination Statement (SDS) which sets out the CEST decision and reasons for the decision to both the worker (or agent) and the engaging manager.

3.3.3 A request for a review of any CEST decision will only be permitted where the Engaging Manager is able to provide further information which is likely to have a bearing on the outcome already reached. Any review of the original decision based on new/additional information will be the responsibility of the Director of Finance (or Delegate) and the decision will be final with no right of appeal.

3.3.4 The HR IR35 team will build and maintain a process to ensure that they regularly review ongoing contractor engagements every six months to ensure that the CEST determination is still correct and there have not been any significant variations in how the services are being delivered. The HR IR35 team will contact the Engaging Manager at this time and may require further information to enable a CEST determination review.

3.3.5 The HR IR35 team will keep a workbook of all cases referred, the decisions arrived at and the outcome of the review (including whether staff have been engaged or not and under which arrangement) and, in the case of gross payments via invoice, they will retain the Purchase Order numbers.

4. POLICY

4.1 This Policy applies across all the University, without exception, including all Schools, Divisions and subsidiaries when considering and seeking to engage workers to provide services to the University outside a directly employed University relationship.

4.2 The University is committed to meeting all IR35 compliance obligations in respect of workers it engages whether on or off payroll.

4.3 An off-payroll worker could be either a self-employed worker engaged directly by the University; an agency worker or an intermediary which in this context is typically someone working as a sub-contractor, or a sole trader/partnership who provides their services to the University through their own limited company, often known as a personal service company (“PSC”).

4.4 Where the University (or Reed Managed Service) engages the worker indirectly through an agency the agency, as the fee payer, is responsible for operating the rules and collecting and paying the relevant tax and NICs. However, the responsibility of assessing the employment status of the “off-payroll agency worker” lies with the University and the engaging manager must therefore complete an ESQ and notify the HR IR35 Team in accordance with para 3.2.2 above. The HR IR35 Team will inform the engaging manager and the worker whether PAYE and NICs should be accounted for on payments to workers providing their services through an intermediary. The engaging manager must then liaise with the Procurement team to ensure that the agency are notified of their responsibility to account for PAYE and NICs. The above rules will not apply to workers provided through an agency where the workers are employees of the agency and not supplied through the worker’s own company.

Document Control					
Document No	1	Version	4	Date Issued	October 2023
Author	C McLaughlin	Reviewed by	ARC	Department	Finance

- 4.5 Where the University (or Reed Managed Service) engages directly with the individual worker or the intermediary, the University (or Reed Managed Service) will be responsible for operating the off-payroll working rules and then collecting and paying the relevant tax and NICs through the Payroll Real Time Information (RTI) system and deducting the relevant tax and NICs. An audit trail of all decisions and notifications will need to be retained as part of the workbook.
- 4.6 In order to ensure we meet our statutory obligations under tax legislation (and the IR35 off-payroll working rules which came into effect from April 2017 for the University), the University will need to assess the worker’s employment status using HMRC’s online CEST tool. Where the off-payroll working rules apply we will only engage the worker as a fixed term casual worker contract, and subject to successful RTW checks. As such, the worker will be processed via the University’s payroll. This means any payments made to the worker will be subject to PAYE and national insurance deductions.
- 4.7 Where the CEST assessment confirms that the off-payroll working rules do not apply, then the worker or the intermediary may be engaged as a contractor by obtaining a University purchase order in accordance with the University’s Purchasing Policy and attaching the SDS to the purchase order. The Engaging Manager must supply the purchase order number to the HR IR35 team to update the workbook.

5. DISAGREEMENT WITH THE CEST DETERMINATION

- 5.1 In the event of a disagreement with the outcome of the CEST determination by the worker an appeal can be submitted to the HR IR35 team in writing.
- 5.2 A written appeal must be received by the HR IR35 team before the final payment is received for the work undertaken. An appeal which is not in writing or not received before the final payment will not be considered.
- 5.3 The University will respond in writing within 45 days of receiving an appeal and will continue to apply the original determination until a revised status is determined.
- 5.4 The HR IR35 team will review the original findings and take into account any new information when reviewing the dispute. Their findings will be subject to a final review and approval by the Director of Finance or delegate, whose decision will be final with no appeal. Once the determination is complete, they will notify the worker of the outcome. Where the determination changes, the HR IR35 team will notify both the fee payer and the worker. If the determination does not change the HR IR35 team will only need to notify the worker.

6. ROLES-BASED STATUS DETERMINATION

- 6.1 The University operates a roles-based status determination process whereby individuals can be engaged under pre-defined roles which meet specific criteria, which have been evaluated by the University, and their status pre-determined as off-payroll. An example of such a role is an examiner for postgraduate research students.
- 6.2 A list of “off-payroll roles” is maintained by the Finance Tax Team. Listed roles will typically be among those which are treated as off-payroll under custom and practice in the HE sector and accepted as such by HMRC.

Document Control					
Document No	1	Version	4	Date Issued	October 2023
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- 6.3 Each role must be defined with reference to the type of work and the way work will be performed, which is set out in detail in the “Role Based Worker Status Determination Procedure”, and based on specific criteria.
- 6.4 A CEST status determination must be performed by the Finance Tax Team to confirm the status of a defined role is off-payroll. Each role is approved by the Assistant Director of Finance (Corporate Services).
- 6.5 Under the roles-based status determination process an engaging manager must check that the proposed appointment of an individual is consistent with an approved defined role and the specific criteria.
- 6.6 All appointments to approved roles must be documented and reported to the HR IR35 team for entry to the central register. A CEST determination will not be performed for each individual appointment.
- 6.7 An engaging manager may engage an individual as a supplier of services to be paid without deduction of tax where they have checked and confirmed the appointment is to a listed role, which meets the specific criteria.
- 6.8 Engaging managers must complete the University’s on-line IR35 training before they can appoint to an approved listed role.

7. CONTRACTED OUT SERVICES

7.1 A distinction should be made between an organisation that provides the University with services, and one that provides people direct to the University. The former is a supplier of services, to be engaged by Procurement, and is outside the IR35 process. The latter, i.e. a company that provides people to the University, should be referred to the HR IR35 team for an IR35 CEST determination. A tax compliance risk arises for the University when it has relationships with consultancy businesses where such organisations do not deduct income tax under PAYE or NIC’s from the earnings of the consultants who are not employed by the named consultancy business. HMRC’s “off-payroll working rules” (IR35) require the University to:

- Make such PAYE and NIC deductions where consultants are deemed to be workers of the University; or
- Notify an intermediary of its responsibility to make deductions when the intermediary is the “fee payer”; or
- Receive assurance that the consultant’s fees are remitted to an umbrella company where deduction of tax and NIC’s takes place (confirmation of deduction in writing by the Umbrella Company is required).

7.2 In the case of certain consultancy businesses, a “statement of work” sets out the service obligations of the service provider as well as the stage payments to be made at each service milestone. There may be no contract in place but the contention is that the relevant consultancy business provides business services to the University because it has intellectual capital which it draws upon when delivering services to its clients. This intellectual capital allows the consultancy business to exercise management control over their consultant’s work and to ensure its quality. Some consultancy companies, such as recruitment and human resourcing businesses, do not have this intellectual capital and therefore are not providing business services to the University, but simply introducing skilled consultants in return for a fee, similar

Document Control					
Document No	1	Version	4	Date Issued	October 2023
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to an agency arrangement. In such cases, the consultants deployed would be the principal suppliers of the service to the University and as such subject to an IR35 CEST (Check Employment Status for Tax) determination.

7.3 The substance and practical arrangements in place for delivering services must include the following in order for a business to be considered the principal supplier of consultancy services and the contract outside the scope of IR35. If any of the following conditions are not in place the consultant must be referred to the HR IR35 team for check employment status for tax (CEST) IR35 determination.

- There must be a contract for the delivery of services to the University.
- The contract must be between the principal service provider and the University.
- The principal service provider must not be a personal service company.
- The principal service provider must exercise management control over the individuals deployed to deliver the services. This must be evidenced in practice and not be only contractual.
- The principal service provider must perform quality control over the work performed by the individuals deployed to deliver the services. This must be evidenced in practice and required in contract.
- The principal service provider is responsible for the delivery of services set out in the statement of work or other schedule of services under the contract and must be actively engaged in monitoring the delivery of the specified services. Active engagement should be evidenced.
- The principal service provider must identify a person or persons to be responsible for the contract and the delivery of services, the quality control and management of the deployed individual/(s).
- The principal service provider must be responsible for identifying and deploying individual/(s) to deliver the services on behalf of the service provider under the contract. The University will be interested in assessing the competence, skills, experience and strength in depth of the delivery team and this should be a core part of the tendering process and evaluated for each competing bid.
- The individuals deployed to deliver the services must be in receipt of some admin, IT and other forms of support from the principal service provider. E.g. Business and admin services, systems, software and/or equipment provided by the service provider.
- The individuals deployed must not use University business and admin systems, services, software and equipment. It is acceptable to make hot desk facilities available for attendance on University business premises.
- The individuals deployed must not be under the management and supervision of the University. Neither should quality control primarily be in the hands of the University.
- There should be a clear escalation mechanism should delivery of services be unsatisfactory, substandard, untimely, of poor quality or behaviour and conduct of deployed individuals be unacceptable. While this might in the first instance be with the individual deployed to deliver the work it must provide for escalation to the responsible person identified under bullet six above as responsible for the management of deployed individuals.
- The service provider must be required to substitute any individual deployed to deliver the services and be capable of doing so (assurance that substitution is a reasonable expectation must be received and evidence based before entering into a contract).
- While the University should retain a right under contract to reject any deployed individual on grounds of misconduct or poor behaviour, it should deal with non-delivery or substandard quality delivery via the escalation mechanism in bullet 10 above. While this ultimately might lead to a change to the individual/(s) deployed services this would be the decision of the service provider.

Document Control					
Document No	1	Version	4	Date Issued	October 2023
Author	C McLaughlin	Reviewed by	ARC	Department	Finance

7.4 It is important that the actual practical approach to the management and delivery of services as it happens is recorded and evidenced. For example, a record of quality control review for a service output performed by the service provider over output created by the delivery team OR a sign off meeting of a service milestone held between the responsible person from the service provider and the University's responsible manager. For the purposes of off-payroll working rules (IR35) it is not sufficient to rely on arrangements set out in contract and/or in other associated process or working arrangement documents alone. There must be substantiating evidence that all points in paragraph 7.3 above are being operated in practice.

8. REPORTING TO AUDIT AND RISK COMMITTEE

8.1 An annual activity report will be provided to the Audit and Risk Committee by the Director of Human Resources or their nominee on the number of off-payroll status determinations and appointments, including those made under the roles-based status determination procedure categorised into the type of work/services provided.

9. GLOSSARY OF TERMS

9.1 **Definitions** - The following definitions relate to this policy only and may not be the same definitions that apply to other policies or be the legal definitions.

9.2 **Agency** means a business that provides workers to the University. The Agency may engage the workers directly or via another agency or limited company.

9.3 **Casual Worker's contract** means the contract that is issued to workers who fall with the Intermediaries/off-payroll legislation and will be engaged and paid through Reed.

9.4 **CEST** means HMRC's Check Employment Status for Tax tool. This is used to determine a worker's employment status.

9.5 **Contractor** means an individual who works for themselves and chooses how, where and when they work. They can also choose which jobs they accept based on their preferences. A contractor may choose to work via an agency arrangement or a personal service company or even as a self-employed worker.

9.6 **Consultancy Business** means any company that contracts with the University to provide services or personnel.

9.7 **Dispute** means a disagreement between the worker and the University, usually where the worker disagrees with the CEST determination.

9.8 **Employee** means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment. (Employees are also workers).

9.9 **Engaging Manager** means the individual within the school or department who is responsible for engaging the worker.

9.10 **ESQ** means the Employment Status Questionnaire which is the University's version of the CEST tool.

9.11 **Fee Payer** means the University, Umbrella Body or Agency who pays the PSC.

Document Control					
Document No	1	Version	4	Date Issued	October 2023
Author	C McLaughlin	Reviewed by	ARC	Department	Finance

- 9.12 **IR35** - Tax legislation which applies where workers provide their services to a client through an intermediary.
- 9.13 **HR IR35 Team** means the University’s Human Resource department responsible for undertaking employment tax status reviews of all workers who are seeking to be engaged by the University outside of the main payroll.
- 9.14 **Intermediary** means an agency or limited company arrangement through which a worker is engaged.
- 9.15 **Intermediaries Legislation** means HMRC’s off payroll working rules which can apply if a worker provides services via an intermediary.
- 9.16 **IR35 Repository Box** means the online folder where all off-payroll worker documentation is stored and all decision making is evidenced.
- 9.17 **Off-Payroll Workers contract** means the contract that is issued to workers/limited companies who are outside the intermediaries legislation.
- 9.18 **Personal Service Company** means a limited Company which is owned and run (usually) by one individual.
- 9.19 **Policy** means this off-payroll working policy
- 9.20 **RTW** means the Right to Work checks that the University must carry out to check an individual is allowed to work for them in the UK before engaging them.
- 9.21 **Self Employed** means an individual working directly for the University under a contract for services.
- 9.22 **Status Determination Statement** means the statement that is required by legislation to be shared with the worker and the fee payer showing the determination outcome of the CEST test.
- 9.23 **University** means the University of Sussex.
- 9.24 **Worker** means an individual who has entered into or works under a contract of employment or any other contract (whether express or implied) whereby they undertake to do or perform personally any work or services for another party who is not a client or customer of any profession or business undertaking carried on by the individual.

10. LEGISLATION AND GOOD PRACTICE

10.1 Income Tax (Earnings and Pensions) Act 2003:

- Chapter 7 Part 2
- Chapter 8 Part 2
- Chapter 9 Part 2
- Chapter 10 Part 2

10.2 Social Security Contributions (Intermediaries) Regulations 2000 – Statutory Instrument 2000 No 727.

Document Control					
Document No	1	Version	4	Date Issued	October 2023
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POLICY DETAILS

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Policy owner:	Director of Finance
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Document Control					
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