Policy Schedule

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<tr>
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<th>Policy on Off Payroll Working</th>
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<tr>
<td>Date approved</td>
<td>December 2019</td>
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<td>Approving Body</td>
<td>University Executive Group</td>
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<td>Last review date</td>
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<td>Revision history</td>
<td>Version 1</td>
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<td>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.</td>
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| 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
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.

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, 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 Schools and Directors of Professional Services (Budget Holders), Engaging Managers, the Director of Human Resources and 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 responsibility for all individuals involved in the process of engaging workers and contractors as well as Budget Holders.

1.6 Frequently asked questions

2. SCOPE

2.1 This Policy applies across all the University, without exception, including all Schools, Divisions and subsidiary undertakings.

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.

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.

3. RESPONSIBILITIES

3.1 Head of Schools “HOS” and Directors of Professional Services “DOPS”
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.

3.2.1 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.

3.3 Engaging Managers (i.e. people who are commissioning work from individuals outside the University)

3.3.1 Engaging Managers must follow the off payroll working policy and process.

3.3.2 The Engaging Manager is responsible for ensuring that they notify HR IR35 team when they are seeking to procure the services of a worker and fully complete the University’s Employment Status Questionnaire (“ESQ”) form and forward this to the HR IR35 team ir35info@sussex.ac.uk. 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.

3.3.3 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 assignment in place on the University main payroll in accordance with existing recruitment 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, the necessary RTW checks undertaken.

3.3.4 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 process the Engaging Manager will need to ensure that RTW checks on the worker have been conducted before work commences.

3.3.5 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.
3.4 **Director of Human Resources and Human Resources IR35 team**

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

The IR35 Team may have to undertake due diligence to assist in the determination of the workers status.

3.4.2 Once a determination has been made the HR IR35 team will need to 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.

3.4.3 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 Human Resources (or Delegate) and the decision will be final with no right of appeal.

3.4.4 The HR IR35 team will build 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.

3.4.5 The HR IR35 team will keep a Workbook of all cases referred, the decisions arrived at and the outcome of 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 the highest standards when engaging workers both on and 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 subcontractor, 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 engages the worker indirectly through an agency the agency, as the fee payer is responsible for operating the new 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 3.3.2 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
engage with procurement to ensure that the agency are notified of their responsibility to account for PAYE and NIC’s. 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.

4.5 Where the University engages directly with the individual worker or the intermediary, the University will be responsible for operating the off payroll working rules and then collecting and paying the relevant tax and NICs through the Real Time Information (RTI) system and deduct the relevant tax and NICs.

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 and where the off payroll working rules apply we will only engage the worker as a fixed term casual worker contract. As such the worker will be processed via the casual payroll. This means any payments made to the worker will be subject to income tax and national insurance deductions via the casual payroll.

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 of the outcome of the CEST determination by the worker the University will have up to 45 days to respond to any written disagreement letter from the worker.

5.2 During this time the University will need to continue to apply the original determination.

5.3 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 by the Director of HR (or delegate). Once the determination is complete, they will notify the worker of the outcome. Where the determination changes, the HR IR35 team will need to 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. GLOSSARY OF TERMS

6.1 Definitions

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

6.1.2 Casual Payroll means the University’s separate payroll for short term or casual employees. All payments to workers through the casual payroll are subject to PAYE and NIC.

6.1.3 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 the casual payroll.
6.1.4 **CEST** means HMRC’s Check Employment Status for Tax tool. This is used to determine a worker’s employment status.

6.1.5 **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.

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

6.1.7 **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).

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

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

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

6.1.11 **IR35** - Tax legislation which applies where workers provide their services to a client through an intermediary.

6.1.12 **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.

6.1.13 **Intermediary** means an agency or limited company arrangement through which a worker is engaged.

6.1.14 **Intermediaries Legislation** means HMRC’s off payroll working rules which can apply if a worker provides services via an intermediary.

6.1.15 **IR35 Repository Box** means the online folder where all off payroll worker documentation is stored and all decision making is evidenced.

6.1.16 **Off Payroll Workers contract** means the contract that is issued to workers/limited companies who are outside the intermediaries legislation.

6.1.17 **Personal Service Company** means a limited Company which is owned and run (usually) by one individual.

6.1.18 **Policy** means this off payroll working policy.

6.1.19 **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.
6.1.20 **Self Employed** means an individual working directly for the University under a contract for services.

6.1.21 **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.

6.1.22 **University** means the University of Sussex.

6.1.23 **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.

7. **LEGISLATION AND GOOD PRACTICE**

7.1 Income Tax (Earnings and Pensions) Act 2003:
- Chapter 7 Part 2
- Chapter 8 Part 2
- Chapter 9 Part 2
- Chapter 10 Part 2


**NOTE: SUPPORTING DOCUMENTS**

- University of Sussex Employment Status Questionnaire
- University of Sussex off payroll process guidance
- Frequently asked questions