

# COMMON ROLES GUIDANCE

Common HE Roles and Standard Tax Treatment

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## Background

The purpose of this ‘common roles’ guidance is to help simplify the decision process in terms of the employment status of certain roles which are common throughout the higher education sector. This guidance is for BUFDG members only and has been drafted by Caroline Jones, BUFDG Employment Taxes Specialist and Rebecca Seeley Harris, who works closely with BUFDG and has specialised in employment status for many years. We have included references to HMRC’s Employment Status Manual throughout this guidance.

**The document has been seen by and discussed with HMRC. BUFDG has confirmed to HMRC that publication of this document for HEIs is for guidance only. It has been designed to provide an additional tool to help HEIs determine the status of those they engage, either directly or via an intermediary. It cannot be used to replace HMRC views. HMRC has stated that where specific guidance is provided in its manuals, that guidance will take precedence.**

**Individual universities may already have status agreements with HMRC, based on their specific terms of engagement with particular individuals. Where that is the case, this guidance does not replace such agreements. Additionally, this guidance does not preclude HEIs seeking their own agreements with HMRC, in the future.**

The roles that are listed in this document cannot be comprehensive and as a result it has been limited to the most common roles, based on discussions with a number of members for whose input we are grateful. If individual universities have their own agreements with HMRC, based on their specific terms of engagement with particular individuals, or in future would wish to pursue such agreements; that would be a matter for the universities concerned and this guidance should not preclude or replace such agreements.

Although this document has been well researched it is for general guidance and information only and cannot be relied upon to support a legal or tax decision. BUFDG members are advised to seek independent legal or tax advice if they have a specific query.

[HMRC’s own on-line employment status tool, Check Employment Status for Tax \(CEST\)](#) can also be used to determine the employment status of individuals engaged by universities, as can the [BUFDG Employment Status Tool](#).

## How to use this document

1. Find the role in the A-Z Contents (above).
2. Read the role description and consider whether this fits the specific role in your institution, if so consider the “usual treatment” for tax and NIC purposes.
3. If the description does not meet the specific role at your institution consider where the differences lie and how this may impact on the status of the individual.

If you use this document in conjunction with CEST remember that HMRC has said that the CEST decision can be relied upon, provided the correct information has been input.

## Roles and Status

Employment status is a grey area and, as such, although a role may start out as off-payroll because it is ad hoc and sporadic in nature, over a number of years it may turn into a role that should be paid via payroll. It would be wise, therefore, to do an annual check of off-payroll individuals to make sure that your university is still compliant.

This guide is based on employment status for tax purposes. We have not looked at the issue of employment status for employment rights purposes but, it is important to consider the position of the limb 'b' worker which we have done below.

### A-Z

#### Academic programme or course developer

These roles relate to the process of designing or updating a programme in terms of structure e.g. how many modules, module credit ratings and identification and description of module and programme learning outcomes.

Typically, this would require a formal programme approval or a re-approval process to be enacted and, because of this, it is likely that this would be on-payroll.

**Usual treatment for tax purposes:**

**On payroll**

#### Academic programme or course content developer

Writing the content that sits within a module, or module authoring, such as study guides, written material and PowerPoint presentations, etc. Detailed specification is provided to the content developer. How the task is undertaken to produce an output based on that specification, however, is for the developer to decide.

If this work is outsourced to an individual because of their expertise, then it is likely that it would be off-payroll.

**Usual treatment for tax purposes:**

**Off payroll**

## Dyslexia Assessors

The individual carries out an assessment of students and is paid a set-rate per assessment. This would be a series of one-off or ad hoc engagements and, therefore, self-employed.

**In the event that the assessor is used regularly by the university, it may be worth considering putting the assessor on payroll.**

**Usual treatment for tax purposes:**

**Off payroll**

## Examiners

### External First degree and below

Examiners may have various other titles, for example moderator, chief examiner, or assistant examiner. Most fees paid by examining bodies are chargeable to income tax as employment income. There are special arrangements for deduction of income tax on PAYE which apply also to payments made in respect of the duties of examiners, markers, invigilators and question setters.

[A list of examining boards and universities to which these special arrangements apply can be seen in the HMRC PAYE Operation Manual at PAYE 70245.](#)

For NICs purposes only payments are treated as self-employed if the examiner is engaged to set questions or tests for any examination and the whole of the work is performed under a contract for services in less than 12 months. Taxpayers should be advised to record the amount of the examiners' fees in the 'additional information' section of the [self-assessment] return.

**Usual treatment for tax purposes:**

**Income Tax - On payroll**

**NICs – Off payroll**

## External Masters and PhD/DPhil

[Payments made to external examiners engaged by universities for masters' degrees and doctorates generally fall to be treated as trade profits with liability for Class 2/4 NICs.](#) In general, this applies to both taught and research degrees as the examiner is an external assessor.

**Usual treatment for tax purposes:**

**Off payroll**

## Experts by experience

Engaged by the University to provide ad hoc input to discussions with students and input to course material, etc. These would usually be engaged on an ad hoc basis and be paid off-payroll.

**Usual treatment for tax purposes:**

**Off payroll**

## Interview / expert panel members

The panel member would be engaged by the University to sit on an interview panel or expert panel. They would ordinarily be paid by the hour on an ad hoc basis.

**Usual treatment for tax purposes:**

**Off payroll**

## Industry expert

Treatment will be similar to that for occasional lecturer, as seen below.

**Usual treatment for tax purposes:**

**Off payroll**

## Instructors

Sports coaches or gym or fitness class instructors. Where the individual is engaged by the university to run a regular class or coach a university team using the university premises and does not work for anyone else, they will be on payroll.

**Usual treatment for tax purposes:**

**On payroll**

If the instructor hires the facilities at the university and is paid by the students directly, so they are taking the financial risk if no one turns up for the class and they still have to pay for the room hire, then they are likely to be self-employed.

**Usual treatment for tax purposes:**

**Off payroll**

## Lecturers

### Full time lecturer

#### [CVCP Guidance](#)

A full-time lecturer will normally be an employee. This follows from the terms and conditions of engagement which usually include some or all of the following features that point towards employment.

- Payment of a salary
- paid holidays and sick leave
- availability of pension scheme membership
- no financial risk for the lecturer
- control (or right of control) over matters such as conduct and discipline, hours of attendance, where and when lectures are given and, possibly, detailed control over what is taught (for example, course to follow a set syllabus), etc.

**Usual treatment for tax purposes:**

**On payroll**

### Part time lecturer

#### [CVCP Guidance](#)

A part-time lecturer whose engagement covers a complete academic term or longer and who has similar terms and conditions to a full-time lecturer is likely to be an employee. But someone who is taken on for a whole academic term or year but only for, say, two or three hours a week and on different terms and conditions to full-time lecturers, is more likely to fall within the guidance given for occasional lecturers below.

**Usual treatment for tax purposes:**

**On payroll**



## Visiting lecturer

### [CVCP Guidance](#)

A visiting lecturer who gives a one-off talk or short series of talks on a subject about which he or she has **specialist knowledge**, and which is not part of the **core curriculum** will normally be engaged on rather different terms and conditions and is likely to be self-employed.

**Usual treatment for tax purposes:**

**Off payroll**

## Occasional lecturer

### [CVCP Guidance](#)

Sometimes lecturers are engaged on a less formal basis to give, for example, a series of lectures on a particular topic. They are the group whose employment status for tax purposes is often the most difficult to decide. In each case, it is necessary to consider all the circumstances, including:

#### (a) The terms and conditions of the engagement:

- Control (or right of control) over conduct and discipline, hours of attendance, where and when lectures are given, course content, etc. (Generally, the more extensive control the more indicative it is of employment). For example, a lecturer required to teach in accordance with a set syllabus would be more indicative of employment than if the lecturer was engaged to talk about a specific subject but was left to determine the content of the lecture.
- Whether the individual must undertake the lecturing personally or whether a substitute can be sent. (On the lecturer's part, to send a substitute is a strong pointer towards self-employment although the absence of such a right is not a particularly strong indicator the other way.)
- Who is to supply the equipment necessary (where the contractual terms require the lecturer to supply his own equipment [for example, overhead projector and handouts] at his own expense this would point towards self-employment)?
- Whether any financial risk attaches to the engagement (financial risk would be a pointer towards self-employment - but most engagements will lack any element of financial risk).

#### (b) Factors personal to the lecturer:

The following factors point towards self-employment. But they are only relevant where both university and lecturer intend that the terms of the engagement amount to self-employment:

- Many short-term lecturing engagements with different institutions.

- A business approach to obtaining and organising his/her engagements and expenditure in this area of a type not normally associated with employment (for example, provision of office accommodation, office equipment, etc).
- Self-employment in a related full-time (or substantial) profession or business where occasional lectures are regarded as part of the individual's profession or business.

**(c) The intention of the parties to the contract:**

- A university that wishes to take on an occasional lecturer as an employee has that right. Where a contract, freely signed by both parties, specifically states that the engagement amounts to a contract of service (employment) - and the terms and conditions are consistent with that - then that will conclude the matter.
- Where a review of other factors indicates that the engagement is on the borderline between employment and self-employment, a common intention expressed in the contract, whether for employment or self-employment, will decide the issue.

**Usual treatment for tax purposes:**

**Off payroll**

## Musicians

Musicians are traditionally considered to be self-employed but may also be employed depending on the circumstances. Some musicians, however, work under a contract provided by the Musicians' Union. This type of contract has been specifically agreed and includes clauses that may lead you to believe that the musician is employed this may not, however, be the case. You will need to look at the working practices to establish the employment status of each individual.

**The musician may be employed if they are required to perform in a series of different productions over a period of time for regular pay.** The difference may also be whether they are paid regularly by the university or paid by the student, to be a music tutor for example.

**Usual treatment for tax purposes:**

**Off payroll**

## Performance Actors

Actors, dancers, role-players, writers, authors, poets and other performance artists. [These individuals may be engaged under either a contract of employment or a contract for services. There are a number of standard contracts which are issued in the industry including the Musicians Union and the British Actors' Equity Association.](#)

The unions have secured a package of measures designed to protect their members but, these features are more commonly found in an employee or worker contract. So, a review of the contract might lead you to the conclusion that the individual is engaged under a contract of employment, but this may not be the case. If the contract has provisions for a ‘worker’, the individual may still be taxed as self-employed.

In 1993, two actors appealed to the Special Commissioners and successfully argued that their income from a standard Equity contract was trading income.

**Usual treatment for tax purposes:**

**Off payroll**

## Scholarships & bursaries

### Student Scholarship

#### **Payments made to students in full-time education:**

Scholarship income is not necessarily chargeable to tax, so it is necessary first to establish what type of income it is. If the income is considered to be taxable then there is an exempting clause in Section 776 (3) IT(TOI)A 2005. This section provides that income from a scholarship shall be exempt from income tax and disregarded for all income tax purposes if the holder of the scholarship is receiving full-time instruction at a university, college, school or other educational establishment.

#### **Payments made by employers to employees in full-time attendance at university:**

[Bursaries and Scholarships paid to student employees up to the value of £15,480 pa. HMRC guidance is that these payments are not subject to tax.](#) It is possible to pay more than the limit, but clearance must be sought from HMRC before payment is made. If there is anything other than a minor element of teaching/demonstrating performed as part of the arrangements, it may be that all or part of the “bursary” and/or any extra sums additional to the bursary should be subject to payroll deductions.

**Usual treatment for tax purposes:**

**Exempt**

## Research grants or fellowships

Research awards or fellowships are sometimes offered to qualified individuals who have normally completed their post-graduate training, to enable them to undertake a specific research project over a fixed period. As there is usually no question of full-time instruction, the scholarship exemption under Section 776 does not apply.

Whether there is a charge to tax for the payments that are made will depend on the particular facts. Firstly, it is advisable to check whether there is a contract of any kind. There is unlikely to be a contract of employment but, there may be a contract to provide services, for example, to research a particular project in return for a fee. The liability would, therefore, be under the Miscellaneous Income rules.

Employment status may be an issue for researchers both for tax and for employment rights. It is important to get a clear understanding of the nature of the researcher’s relationship with the host university as the first step towards deciding on liability to income tax and NICs.

If a university payroll department asks whether payments to a researcher should be subjected to PAYE, the issue of status should be considered as a starting point. It may be necessary to separate out elements of payments that come from different sources within the university institution. Some may be earnings, and some may not.

For employment rights the research may be considered to be a limb b worker under certain circumstances. This is being tested in the tribunal at present (2019).

## Research awards from the EU

[Awards to researchers by the European Union, contrary to popular belief, are not exempt from income tax in the UK.](#) There is no wholesale exemption and each case must be taken on its facts. Researchers may fall into one of the following categories:

- Students - in receipt of scholarship or similar income (see scholarships above).
- Employees - in receipt of salary or wages from the university that employs them.
- Self-employed professionals

It is possible that the income may be mixed in nature, an example would be post graduate students in receipt of scholarship payments who are also employed on a part-time by the university to supervise undergraduates, give lectures or assist on research projects.

[You should consider employment status using HMRC’s Check Employment Status for Tax tool or CEST.](#)

It may be necessary to separate out elements of payments that come from different sources within the university as some may be earnings for PAYE purposes and some may not.

**Usual treatment for tax purposes:**

**Mixed**

## Honoraria

A true honorarium is generally a payment received by an office holder. It may only be a token payment rather than a commercial fee, but it is clearly a payment which results from holding the

office and, therefore, should be taxable. Such payments are earnings for the purposes of section 3(1) SSCBA 1992 and will be liable for Class 1 NICs.

Employers may sometimes give ex gratia payments, similar to honoraria, to employees to recognise the fact that they have been involved in certain activities not arising from their employment, and that, in relation to those activities, they will not receive any other form of reward. There will be a liability for Class 1 NICs in these circumstances because the payment will derive from the employment and will therefore be earnings for the purposes of NICs.

**Usual treatment for tax purposes:**

**On payroll**

## Simulated patients

Simulated patients are individuals, usually volunteers or actors, who are used to 'act' as patients for the purposes of training, assessment or examinations.

If an actor is used as a simulated patient, you should follow the same rules as the Performance Actors above. In general, the simulated patient will be self-employed if they are engaged direct by the university. If the actor is engaged through an agency, the agency rules in s.44 Income Tax (Earnings and Pensions) Act 2003 may apply. Equally, the actor may be deemed an 'excluded service', which means that the agency rules would not apply, and they can be treated as self-employed.

For simulated patients who are volunteers, they will not ordinarily be paid for their services, but they may have their expenses reimbursed or be given a nominal sum to cover expenses.

**Usual treatment for tax purposes:**

**Off payroll**

## Research volunteers, lay participants and participants in clinical trials

[In 2004, the British Universities Finance Directors' Group \(BUFDG\) agreed the following principles and procedures with the then Inland Revenue:](#)

As long as the individual is only paid a small sum to cover out of pocket expenses and compensation for time spent, HMRC agree there will be no tax or NICs liability arising on the individual. This is with the proviso that the sums do no more than reimburse the individual's reasonable costs of participating in the trial or research, including costs of travel and subsistence.

Should the sum exceed reasonable expenses, HMRC reserve the right to treat the chargeable tax to Miscellaneous Income. This potentially gives rise to a personal tax liability of the individual which should be notified to HMRC under self-assessment.

There is no recommended or set amount for what constitutes “reasonable expenses”.

**Usual treatment for tax purposes:**

**Off payroll**

### University staff

Some of the volunteers may be members of staff of the university, but their participation in the research is not part of their duties of employment and they do it in their own time and are under no obligation to take part.

**Usual treatment for tax purposes:**

**Off payroll**

### Visiting Academic

A visiting academic is ordinarily someone who has a contract of employment with another university in a distinguished position and will be at the visiting university for a limited time and will be returning to their own institution upon completion of the visit.

Usually, the visiting academic will be in receipt of a grant which is distributed by the university. How the grant is distributed will determine the correct tax treatment. The grant could be distributed as a reimbursement for receipted expenses and this is generally allowable. If the grant is distributed for a payment of additional fees or as a lump sum, for example, the university may need to establish the employment status of the payee.

If the visiting academic is from overseas, the university will need to establish what type of income the lump sum falls under, as it is not being paid on receipted expenses. It is unlikely to be employment income but, it may be trading income or miscellaneous income. It would be unwise to make a lump sum payment without proof of a Double Taxation Agreement and possibly authority from HMRC.

**Usual treatment for tax purposes:**

**On payroll**

## Roles that are not university specific

### Agency worker

An agency worker or sometimes labelled ‘temp’, is an individual who should be employed by the temporary employment agency on PAYE. This does not refer to an individual who works through an agency using their own limited company and is not employed by the agency. The university will need to check that the worker is paid on payroll by the agency before paying off payroll.

The agency worker is protected by the [Agency Workers Regulations 2010](#). There are certain rules which the university should make sure they are aware of when working with agency workers. There is no exemption specifically for limited company contractors but, the regulations exclude those who are ‘in business on their own account’ or genuinely self-employed.

**Usual treatment for tax purposes:**

**Off payroll**

### Construction Industry Scheme (CIS)

[The regulations provide that "a payment under a construction contract is not a contract payment if the payment is made by any body of persons or trust established for charitable purposes only"](#). This takes payments by charities outside the scope of CIS. It should be noted, however, that where the university is the sub-contractor it may be inside the scope of CIS.

**Usual treatment for tax purposes:**

**Off payroll**

### Consultant: Ltd or PSC

[The definition of consultant here includes any individual supplying their services through a limited company, also known as a personal service company or PSC or through a partnership.](#) This definition excludes a self-employed consultant, which will be dealt with separately.

As of April 2017, the public sector has to operate the off-payroll in the public sector rules. These rules mean that the university has to assess the employment status of the PSC for tax purposes. [The university will need to consider the factors used to establish whether a PSC is employed or self-employed and is advised to use HMRC’s Check Employment Status for Tax or CEST service online.](#)

The liability for the deduction of tax where the PSC is assessed as inside the off-payroll rules as a ‘deemed’ employee lies with the ‘fee-payer’. If the university has contracted with the PSC direct, then they will be the fee-payer and liable to deduct tax. If the university has contracted with another party to supply the services of the PSC, then it maybe that that party will become the fee-payer. These rules are very specific so, further advice should be sought. [The rules are also currently under consultation so may change as of April 2020.](#)

**Usual treatment for tax purposes:**

**On payroll if inside the off-payroll rules**

## Consultant: self-employed

The self-employed consultant usually provides their services as a ‘sole trader’ and not through a corporate vehicle such as a limited company. The tax liability for a self-employed consultant, in the event of a re-classification to employee, would then be on the university as the perceived employer.

One question that is usually asked of a self-employed consultant is whether they are in “business on their own account” or not. Establishing whether the consultant is employed or self-employed is done by using the employment status case law and factors such as control, substitution and mutuality of obligation.

This is, however, only if the self-employed consultant is contracting direct with the university. If the self-employed consultant is provided via an agency, the agency tax legislation will apply. Under this legislation, the test is one of supervision, direction and control and not the full employment status test.

**Usual treatment for tax purposes:**

**Off payroll**

## Office-holder

The payments to the holder of an office are automatically chargeable as employment income and generally there will also be a liability for Class 1 NICs. It is not necessary to show that an office-holder works under a contract of employment or service.

[There is no statutory definition of the word ‘office’. It has been judicially defined as a ‘permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders.’](#)



The **IR35** legislation now specifically includes office-holders. So, the IR35 rules apply where an intermediary is appointed as a corporate office-holder and provides the worker to perform the duties of that office and the worker's personal services are required.

There is a common misconception that non-executive directors or NEDs can be self-employed. This is incorrect as a non-executive director, as well as an executive director, is an office-holder.

**Usual treatment for tax purposes:**

**On payroll**

### Proof-readers/editors

If the proof-reading or editing is being outsourced to an individual or specialist company on an ad hoc basis, it is likely that it will be off-payroll.

**Usual treatment for tax purposes:**

**Off payroll**

### Translators/interpreters

If the translation is being outsourced to an individual or specialist company on an ad hoc basis, it is likely that it will be off-payroll.

**Usual treatment for tax purposes:**

**Off payroll**

## Appendix 1- Committee of Vice Chancellors and Principals (CVCP) guidance

Guidance was issued to the universities in March 1996 by the Committee of Vice Chancellors and Principals (CVCP) concerning the employment status of lecturers and the tax treatment of expense payments made to employed lecturers. The CVCP notes have been approved by HMRC and should be followed when dealing with the affairs of both universities and, where appropriate, lecturers.

The guidance has been prepared in consultation with HMRC and is based on the law in force at 6 April 1996. It has no binding force and does not affect the right of appeal on any point concerning liability to tax. The guidance is contained in [ESM 4504 - Particular occupations: teachers, lecturers and tutors - Committee of Vice Chancellors and Principals \(CVCP\) guidance](#)

These notes apply only to lecturers. The tax treatment of external examiners engaged by universities is currently under review by the CVCP and HMRC. In the meantime, examiners up to and including first degree level should be treated as employees of the university. Tax should be deducted from fees paid to employed examiners whereas their reimbursed expenses may normally be paid gross, including payments for travel from home.

In this guide, the guidance from CVCP is shown alongside the relevant entry. The CVCP guidance is still valid and should be followed where appropriate.

Unless otherwise stated, the tax treatment of the individual is for both income tax and National Insurance Contributions.

## Appendix 2 – The limb ‘b’ worker

For tax purposes, there are only two classifications of individual: employed or self-employed. For employment rights purposes, however, there are three classifications of individual: employed, self-employed or the so-called limb ‘b’ worker.

The limb ‘b’ worker has basic employment rights including Day One Rights but, is ordinarily taxed as self-employed. Recent case law has found in favour of the worker and this usually results in the worker receiving holiday pay and national minimum wage, where appropriate. These cases, however, can cause tax issues and are something that universities need to be aware of.

In the event that the university has a claim for worker status, the tax implications may arise from the payments that are made following either a settlement or a successful tribunal claim. It is also possible that the government will legislate to change the tax status of the worker, at some point in the future, it has been something that has been considered by HM Treasury in recent years.