

University of Worcester Employment Status Guidance

The following guidance is designed to be used by HR, Schools and Departments to indicate whether an **individual** who is carrying out work for the University is an employee or self-employed, and whether payments to him/her should be made via payroll. The guidance also covers the situation where services are being provided through an intermediary company such as a Personal Services Company (usually set up as Limited Companies), or a recruitment agency.

These rules only apply where we are using the services of individuals and do NOT apply to commercial companies. One of the more complicated situations is where individuals are trading their services through Limited Companies, where they are in fact the sole Director (or maybe one of only a few Directors – usually the others are family members). Where this is the case, the company is classified as a Personal Services Company (PSC) and we do need to carry out the off-payroll assessment.

The University needs to evidence the fact that it has considered this issue to HMRC when taking on employees, workers or consultants, therefore, please review this guidance and complete the required checks before instructing any individuals to carry out work.

Please note that our aim of this process is to ensure that the position of the University is protected. The retrospective application of tax, NI and penalties can be costly from both a financial and staff time perspective.

More information can be found in the BUFDG link below, but basically the University and all subsidiary companies will need to demonstrate that consideration has been given to whether a supplier of services should be paid on or off payroll. The risk areas are where the predominant supply is one of services, such as consultants, IT service providers (such as web designers), educational services, teaching, course design, marketing, advertising, etc.

<https://www.bufdg.ac.uk/resources/News/View?g=5cb48018-162c-4a0c-ae55-c44c9edad1f6&t=New%20and%20improved%20CEST%20%E2%80%93%20now%20with%20added%20guidance!>

HMRC provide an online tool to determine whether an individual is employed or self-employed for tax purposes and also whether Off-Payroll working rules do or don't apply where services are being provided through intermediary companies. Provided that it has been completed accurately, HMRC will stand by the outcome of the tool. The link to HMRC's form is below – it is commonly known as the “check-employment-status-for-tax” tool or “CEST”. The University should have been using this tool for some time now, so this may not be new to you.

<https://www.tax.service.gov.uk/check-employment-status-for-tax/what-do-you-want-to-find-out>

The University, as the hirer, is responsible for carrying out these assessments, however, we also need to give the individual the opportunity to disagree with the answers we have given in the assessment or dispute the outcome. Therefore, where CEST assessments are being carried out the following process should be followed:

- The CEST should be completed and a copy should be saved.
- The individual should be notified that a decision has been reached by sending them a copy of the completed form. In instances where the CEST result is either 'Self-Employed for Tax purposes' or 'Off-Payroll Working rules do NOT apply' then the following wording can be used in the email to the individual:

The University of Worcester has completed HMRC's check-employment-status-for-tax tool (or CEST) with regard to the engagement with you (copy attached). This email forms the Status Determination Statement that we are required to send to you. We believe that, following completion of the CEST, we are not

responsible for the deduction of payroll taxes. If you disagree with any of the answers we have given in the assessment please let me know and if appropriate we will complete a new assessment.

A lot of these rules came into force for public sector bodies back in 2017, at which point some guidance was issued to staff, however, we never embedded any control processes to ensure the assessments were being carried out. That has now changed, and we have now configured certain set-up elements within the finance system to enable us to have an appropriate oversight and control of certain transactions. These control processes now include the following:

- All suppliers now have a supplier type. These include charity, external examiner, school, self-employed/ sole trader, Limited Company, Limited Company (PSC) student, supplier, visiting lecturer etc. The supplier type of 'supplier' is just for commercial suppliers. Having these classification means we have now been able to implement control processes based on the supplier types.
- Where a supplier type is self-employer/ sole trader or Limited Company (PSC), all payments **MUST** go via the PO route, where a CEST assessment will be required and will need to be attached to each requisition request. The procurement team are unable to approve requisitions where the relevant CEST form has not been attached. These supplier types will no longer be able to be paid using the non-commercial payments template.
- The non-commercial payments template should only be used to process payments where it has been agreed that a PO is not required i.e. mentors, external examiners, visiting lecturers, students etc.
- The £1K or 3 payments rule continues to apply to visiting lecturers, external examiners, mentors & also the new category of public participation involvement (PPI) volunteers. These supplier types are only used for payments to individuals and **SHOULD NOT** be used where we are paying any type of company. Where this rule has been exceeded, or is going to be exceeded, a CEST assessment should be completed. If the result is '*Self-Employed for Tax purposes*', then the individual can continue to be paid in the same manner, but we need to attach the CEST outcome to the supplier record as evidence that we have done the assessment. Therefore, in these instances please forward the CEST document to procurement asking them to attach it to the supplier record. If the outcome is '*Employed for Tax purposes*', then please contact either Michelle Howarth (Head of Financial Accounting) or Michelle Lewis (Payroll & Benefits Manager) and we will assist with the process from there.

Where CEST assessments are required, if you are unsure of what to do then please contact Michelle Howarth or Michelle Lewis as we are happy to complete the assessments with you. We will not be able to complete them for you but can guide and advise you through the form. If you have instances where you have a large number of the same type of supplier relationship, and therefore the answers in the CEST assessment are all likely to be the same, please contact me and we can agree a process whereby we MAY be able to do one CEST to cover them all, however this is very much dependant on case-by-case basis.

Use of Recruitment Agencies

If you are using recruitment agencies to provide staff then the University has a responsibility, as the end Client, to ensure that the off-payroll working rules are being applied by that agency. Therefore, if you are using recruitment agencies, which are not part of the contracts organised by HR, then you will need to confirm with the agency that they are in fact the individual's employer for payroll tax purposes. This can be in a simple email format which can then be attached to the requisition request.

Summary of employment relationship determining factors

Contractors/self employed/company	Employees	Workers
<ul style="list-style-type: none"> • Engaged under a contract for services. • May be able to provide a substitute worker. • Can decline work. • Specific assignments and projects for a fixed fee. • Provides service but remains independent. • Is liable for financial risk and for correcting any unsatisfactory work in their own time and at their own expense. • Provides public liability insurance. • The contract for services may include terms of disengagement but the individual or company are not covered by statutory employment rights. • Self-employed status does not always mean that the work can be carried out on a self employed basis, e.g. teaching (see below) 	<ul style="list-style-type: none"> • Works for an employer under a contract of employment. • Works under the control of a supervisor or manager. • Mutuality of obligation. • the employer is obliged to offer work. • the employee is obliged to carry out work personally. • Work is defined in a job description. • Work is carried out on University or associated premises. • Equipment is provided. • Employee has statutory employment rights and is protected by legal provisions, e.g. payment of wages, dismissal, redundancy etc 	<ul style="list-style-type: none"> • Hybrid category between employee and self-employed. • Works under a contract for services. • Employer has no obligation to offer work. • Worker does not have to accept work when offered. • If work is accepted worker is obliged to carry out the work personally, i.e. cannot offer a substitute worker. • Limited employment rights, e.g. Working Time Regulations, holiday pay, minimum wage

The below sets out some of the regular types of work which individuals provide to the University and identifies the methods for which payments should be made. This along with the above information should help you determine what type of arrangement you need to set-up.

<i>Are we paying...</i>	<i>Comment/Conditions</i>	<i>Result</i>
An individual who is an Hourly Paid Lecturer	Contract of employment will be in place, hourly rate agreed, individual will be paid for tuition, course preparation and marking.	Goes through payroll.
An individual who is a Visiting Speaker	<p>Individual will come in to perform a lecture or similar activity. Hourly rate paid will cover preparation. Lecturer will not be expected to mark papers.</p> <p>Whether the individual is employed or not will depend on number of times we use the individual. A session is defined as up to one day teaching the same group of students. This category does NOT cover payments to any type of company.</p> <p>The individual needs to have his/her own Professional Indemnity Insurance and Public Liability Insurance in place.</p>	If the University as a whole is likely to use them for more than 3 sessions per annum or make payments over £1,000 per annum, then a CEST assessment is required in order to determine their employment status.
An individual who is a Student of the University	Contract of employment will be in place, hourly rate agreed (e.g. student ambassadors)	Goes through payroll.
An individual who is a First Degree Examiner (incl. markers, invigilators and question setters)		Goes through payroll – HMRC ruling in place. Non-negotiable.
An individual who is a Masters or Doctorate Examiner (incl. markers, invigilators and question setters)		Can be paid via the accounts payable route using the non-commercial payment template. (Please note that if the individual is already on the payroll as an existing employee then any payments will be made via payroll.)
An individual who is a Volunteer	The individual attends the University to take part in a research project or give their views on/experience of issues. The individual is given a small sum to compensate them for their time and travel costs.	HMRC agree that the amounts paid are unlikely to fall within the definition of earnings. These individuals should be set up as Public Participation Involvement Volunteers on the procurement system and can be paid using the non-commercial template. (please note the 3 payments of £1K rules applies)

<p>An individual who is already on the payroll</p>		<p>Goes through payroll.</p>
<p>A Limited Company (PSC)</p>	<p>If the company has been defined as a Personal Services Company then a CEST assessment is required and all payments MUST be processed via the Procurement PO process.</p>	<p>Will depend on the CEST result. Further guidance is given above.</p>
<p>Agency Worker</p>	<p>Will depend on agreement with the agency. You must have adhered to the University's Procurement and tendering process.</p>	<p>The individual is usually an employee of the agency and therefore the University will make payment to the agency via the PO process. (Please see above guidance regarding obtaining confirmation that the individual is in fact an employee of the agency)</p>
<p>Individual on a limited time contract (fixed term)</p>	<p>The individual might have been recruited via an employment agency (and the University has paid a finder's fee) or The University recruits direct.</p>	<p>Goes through payroll.</p>