

Defining Employment Status

This guidance aims to help departments make the right engagement decisions when deciding on when an individual is an employee or a non-employee (i.e. a consultant/contractor).

The Decision-Making Process

Making a decision about employment status is often relatively straightforward when engaging contractors and when engaging employees through the standard recruitment process. However, in some cases employment status is more difficult to define and in particular where engaging individuals who may wish to be deemed as having non-employment status e.g. self-employed status.

In these cases, or when any ambiguity exists about employment status, it is possible to 'test' employment status by applying set questions to the circumstances of the engagement. While no single test exists, there are a number of tried and tested indicators derived from HMRC regulations and guidance and from employment case law.

The Non-Employee Status Application Form

These employment tests have been incorporated into the non-employment status application form. Departments must complete the form and submit it to Human Resources Employment Support Services team at hr@nottingham.ac.uk for secondary assessment and authorisation where they intend to engage with a self employed individual.

Determining an individual's relationship with the University is complex and is achieved by considering a number of factors. This form provides an assessment of employment status using guidance from HM Revenue & Customs and legally defined employment status tests. This form should be completed where it is felt that the working arrangements will be for services through non-employment/self-employed status. The decision on which employment group an individual falls into will depend on the relationship between the individual and the University and is supported by a number of tests.

HR will forward the non-employment status application form to Payroll, were it has been identified that a commercial arrangement is required or where there is doubt over the outcome. Payroll will make a final assessment relating to the appropriate status of the engagement. Were non-employment status is confirmed, Payroll will return to Human Resources Employment Support Services for processing with Procurement, where a contract for service will be provided the individual is set up as a supplier in the Agresso finance system as appropriate.

Avoiding the Need for Tendering (Single Action Waiver)

In cases where an individual is considered to be a consultant or contractor and has unique skills and knowledge or a unique service to offer, Procurement may apply what is termed a Single Action Waiver. This avoids the requirement for a consultant/contractor to go through the full tendering process.

The Requirement to Tender for a Contract for Service (Single Action Waiver)

Where there is more than one provider (individual or company) who could provide the proposed service to the required level of competency, it will be necessary to tender the requirement in order to demonstrate achievement of Value for Money. However, where an individual/company is considered to be a consultant or contractor that has unique skills or a unique service to offer, Procurement will permit the use of a Single Action Waiver, effectively

negating the usual requirement to tender.

Disputes

In the event of a dispute concerning an individual's employment status, the matter will be referred to Payroll. The decision by Payroll about employment status (and therein type of engagement) is final.

Off-Setting Tax and National Insurance Contributions made by the University

If an individual has tax and National Insurance contributions deducted by the University because they are engaged through the normal payroll system, the individual can still off-set these deductions against their self-assessment returns to avoid duplication of payment.

Examples

Employee Status

The following cases are illustrative of examples of using the non-employment status form and the following people were considered to be employees or casual workers:

(i) Temporary Research Assistant:

- University provides tools and equipment
- Works on the University premises
- Required to work for a specific number of hours
- Paid as claimed
- Department controls direction of work

(ii) Temporary Teaching Assistant:

- University monitors quality of work
- Provides tools and equipment
- Responsible to and receives direction/feedback from a University employee
- Deadlines set for completion of work
- Paid on a regular monthly basis
- Working only for the University during a one year period
- Teaching part of the core curriculum

Non-Employee Status

The following cases are illustrative of examples of using the non-employment status form and the following people are considered to be non-employees:

(i) External Consultant

- Uses own equipment and works only from home or their own premises
- Works for other organisations most of the time
- Not obliged to carry out the work personally, but could get a substitute to undertake the work
- No regular working hours but assured up to x days per year of work
- Paid as claimed
- Not expected to undertake work on a regular basis
- Pays for own expenses (should not claim expenses from University)

(ii) Special Guest Speaker/Visiting Lecturer

- Invited from another University to give a one hour public lecture
- The lecture does not form part of the core curriculum and is open to the public
- Works on University premises and uses University equipment
- University specifies the broad topic of the lecture, but the speaker decides the content or detail
- Paid a one-off fee and may claim expenses for travel and refreshment