**Guidance on Hiring Self- employed Consultants**

**1. Introduction**

As part of responsibilities as an employer Church/Circuit/District other employing body is required to ensure that payments to individuals who provide a service to them are treated appropriately in respect of personal tax and National Insurance (NI) deductions.

Determining whether or not an individual’s payment should be subject to PAYE (Pay As You Earn) personal tax and NI deductions must be carried out in consultation with the Lay Employment Secretary/member of the Lay Employment Sub-Committee prior to any contracts being issued whether they are written, verbal or implied and before any work is undertaken.

The following HMRC guidelines are intended to provide support and advice to those who are responsible for resourcing in determining the employment status of current and future workers providing services to Church/Circuit/District and to assist in developing good practice and minimising the risk of contravening HMRC regulations.

**2. Background**

When the Church/Circuit/District enters into contracts known as ‘engagements’, HMRC places the responsibility on the employer (Church/Circuit/District) to decide whether the engagement is one of employment (where the individual would become an employee of and be paid, and have tax and NI deducted, through payroll) or self-employment.

It is often difficult to make a judgement whether someone should be treated as being employed or self-employed where that individual may have been working for the Church/Circuit/District on a regular, ad-hoc basis or for a lengthy period of time.

One of the key indicators that we should treat individual consultants as not being self employed is where an individual does a similar job to other [employed] staff members, and/or is paid a fixed hourly or daily rate for services. HMRC periodically request details of payments made to individuals, and may also review such payments as part of a wider PAYE review.  In light of this, the university operates strict procedures for new suppliers who are self-employed individuals.

In line with the HMRC guidelines employers cannot rely on an individual simply telling them whether they are self-employed or not. Employers need to determine this based upon a number of objective factors within the terms and conditions of the agreement between the employer and the worker.

**All employing bodies are bound to apply UK tax law, and failure to do so can damage their reputation, and also result in significant financial penalties (these could amount to more than 100% of any payments made to self employed individuals who should have been treated as employees.**

**3. Determining employment status**

HMRC publishes guidance for employers to assist in determining whether the nature of the engagement is a contract of service (worker) or under a contract for services (Self-Employed independent contractor).

Given this HMRC advice, it is employer’s responsibility to examine the real nature of the relationship between Church/Circuit/District and individuals especially in terms of what the parties call their relationship, or what they consider it to be.

As a general guide, if the answer is ‘YES’ to **all** of the following questions, then HMRC would determine that the individual is *probably* a worker and would be employed by the Church/Circuit/District and be paid and taxed through Church/Circuit/District’s payroll:

* Do they have to do the work themselves?
* Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
* Are they required to work a set amount of hours?
* Can someone move them from task to task?
* Are they paid by the hour, week or month?
* Can they receive overtime pay or bonus payments?

If the answer is ‘NO’ to the questions above but ‘YES’ to the following questions, it **usually** means that individual is self-employed:

* Can they hire someone to do the work or engage helpers at their own expense?
* Do they risk their own money?
* Do they provide the main items of equipment they need to do their job, not just the small tools that many workers can provide themselves?
* Do they agree to do a job for a fixed price regardless of how long the job may take?
* Can they decide what work to do, how and when to do the work and where to provide the service?

If the answer is ‘YES’ to the second set of questions above, then the provider of the service is able to satisfy HMRC rules that they can be treated as being self-employed for the service that they are providing.

It should be noted that a person who is categorised as self-employed doing one type of work should not automatically be treated as self-employed for all types of work that they undertake.

The link to HMRC employment status guidelines for employed or self employed is:

<https://www.gov.uk/government/collections/employed-or-self-employed>

**4. Types of work to consider that will determine the individual’s engagement**

The UK’s legislation in respect of income tax, social security, employment or discrimination sometimes distinguishes between certain types of worker by giving rights to some types and imposing duties on their engager (e.g. their employer). There is also no single definition of ‘worker’ which means that each body of legislation may define ‘worker’ and indeed ‘employee’ and ‘employer’ in quite different ways.

Church/Circuit/District as Employer is required to make a decision based on the facts of each particular engagement. This procedure is designed to ensure that those responsible for recruiting make the correct decision and so minimise the risk to the Church/Circuit/District if the wrong type of employment status is determined (the penalty would be that we would be liable for any tax and NI due on the payments made without recourse on the individual).

The decision is taken in consultation with the Lay Employment Secretary, a member of the Lay Employment Sub-Committee, or another person authorisedby the Church Council/ Circuit Meeting/ Managing Trustees of the XYZ District/Other Employing Body.

**5. Before engaging a consultant**

It is thought that in the vast majority of cases, Churches/Circuits/Districts will be appointing staff as employees via the usual recruitment processes, to be paid via the payroll. However, on occasions when they decide to engage a self-employed consultant, Churches/Circuits/Districts should:

1. Consult with the District Lay Employment Secretary, or a member of the Lay Employment Sub-Committee, or over the Terms/Schedule of Services to be carried out by a Consultant, ensure the expectations of the relationship with the Consultant are not infringing on employment.
2. Prior to start of the engagement **verify the Self-Employment status of the** prospective consultant. This can be done e.g. by asking them to fill in aSelf- Employment Assessment Questionnaireand to provide relevant supporting documents. Sample of the Self-Employment Assessment Form, content of which is**based on HMRC’s**online assessment toolkit is available from the downloadable templates section of the Lay Employment Resource website.

The HMRC Check Employment Status for Tax (CEST) on-line tool to check the employment status for the purposes of tax and NICs is available on the Government website: [www.gov.uk/guidance/check-employment-status-for-tax](http://www.gov.uk/guidance/check-employment-status-for-tax) .

1. After the prospective consultant has filled the Self Employment Assessment Form, you should send it together with any other documents to theDistrict Lay Employment Secretary or a member of the Lay Employment Sub-Committee for them to ensure correct status;
2. After the self-employed status has been confirmed please send a draft of the Consultancy Agreement with the Terms/Schedule of Servicesto the District Lay Employment Secretary or a member of the Lay Employment Sub-Committee.

Completion of the Self-Employment questionnaire is a mandatory requirement of HMRC; without it being completed and the outcome recorded, no payments should be made to the individual.

If the individual is deemed to be an **employee**, they must be paid via payroll and will be subject to statutory deductions as appropriate

Invoices should **not** be authorised for payment unless the signed Self-Employment status has been confirmed, or if the Self–Employment questionnaire form does not indicate self-employment.

**6. HMRC enquiries or audit of Church/Circuit/District**

It is very important that Church/Circuit/District is able to show an accurate audit trail in the event of a HMRC enquiry or audit concerning decisions made as to whether an individual was self-employed or not.

**7. Written consultancy agreements not verbal**

Churches/Circuits/Districts who are using contractors should ensure a written consultancy agreement is in place with a self-employed individual/consultant and must **not** rely on a simple verbal agreement.

**8. Advice**

If in any doubt about an individual’s employment status, please contact District Lay Employment Secretary or a member of the Lay Employment Sub-Committee.

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