

## Determination of Employment Status Guidance for Managers

### Introduction

There are occasions when the University needs to bring in individuals to undertake work on a short-term or one-off basis (e.g. to deliver a lecture on a specific topic, contribute expertise to a particular project or undertake a service or task).

This guidance does not apply where it is proposed from the outset that an individual should be engaged as a casual worker or an employee on a fixed term contract.

However, in situations where it is proposed to treat the individual as a service supplier and provide payment in respect of services provided against invoices, or through fees, this guidance must be followed.

In these circumstances, the University is required to assess firstly whether HMRC rules on off-payroll working in the public sector apply or whether such individuals should properly be classed as employees, in which case income tax and national insurance will need to be deducted. In cases where an employment relationship exists from an employment law perspective, the individual should be engaged as a casual worker or as an employee on a fixed term contract.

### Purpose

The purpose of this guidance is to:

- explain the reasons why such assessments are required
- set out the procedures which must be followed prior to engaging an individual who is working for themselves (whether directly or through an intermediary) to undertake work for the University.

Why we need to establish employment status and whether off-payroll working rules apply

- HMRC has further tightened its approach on the acceptability of engaging individuals as self-employed suppliers rather than as workers or employees. From April 2017 new HMRC rules on off-payroll working in the public sector shifted the responsibility for assessing the tax position of individuals working for themselves through intermediaries (limited companies, partnerships or Personal Service Companies, agencies) to the University.
  - HMRC is concerned that the appropriate level of income tax and National Insurance contributions (NICs) are made by both the individual and the employer and where applicable that this is collected through PAYE, which results in employer NICs also being payable.
- Failure to comply with HMRC regulations could result in the University facing a claim for underpayment of income tax, employee and employer NICs and substantial fines. In the event of HMRC imposing a claim or fine, these costs would be payable by the area engaging the individual if the procedures within this guidance have not been observed.
- In addition, the University must consider from an employment law perspective, whether an employment relationship exists and the individual could challenge that they should be given the rights of a worker (to the national living wage and statutory annual leave entitlements), or as an employee to more extensive statutory rights (such as redundancy and unfair dismissal). Managers need to be mindful that whilst the relationship may appropriately start as a supplier, there is a risk that over time it may inadvertently drift into employment relationship.
- The University must ensure that right to work checks are carried out for all who may be categorised as workers in accordance with UKVI guidance. Suppliers, including those paid via Fees or as suppliers taxed by the University (see 5.1 and 5.2) are not subject to the usual internal vacancy controls or right to work checks.
- External contractors, including self-employed individuals and personal service companies undertaking work for the University are not covered by the University's insurance in general, and, in particular, by its liability and professional indemnity insurance.

## Scope

This guidance applies where individuals undertaking work on a short-term or one-off basis for the University are working for themselves:

- they might be registered as self-employed (sole trader with a Unique taxpayer reference)
- they might be supplying services through their own limited company, personal service company (PSC) or partnership
- they might be engaged as an agency worker or through a consultancy company but supplying services through their own limited company, PSC or partnership.

Individuals holding an honorary status with the University may be assessed for any work which they are engaged to carry out on a self-employed basis that is not in any way related to their unpaid honorary position.

In some circumstances aspiring early career researchers receiving scholarships, bursaries, exhibitions and similar awards may be liable for income tax and NI. Separate guidance on the treatment and administration of these payments is attached at Appendix 1.

**This guidance does not apply where:**

- it is proposed from the outset that an individual should be engaged as a casual worker or an employee on a fixed term contract
- the contract for services is with an organisation who have the flexibility to select which of their employees they send to undertake the work and pay tax and NI on their behalf
- an individual is supplying goods rather than services
- an existing member of staff undertakes work on a self-employed basis that is not in any way related to their substantive role. They will, in accordance with the University's Financial Regulations, be paid via [Staff Fees PR5](#) and income tax and NICs will be deducted
- an external examiner/invigilator/marker/question setter is engaged. These roles are subject to HMRC guidance on 'particular occupations' – separate guidance will be available shortly
- research Volunteers, Teaching Volunteers, Lay Participants and Participants in Clinical Trials are used – see separate [guidance](#)
- a visiting lecturer who is providing occasional talks / a short series of talks on a subject about which they have specialist knowledge and which is not part of the core curriculum – see [separate guidance](#).

## Procedures (see flowchart below)

It is the responsibility of managers, with the support of their HR Partner, to ensure that the appropriate employment status is established prior to engaging an individual to undertake work for the University.

- The recruiting manager must complete the [HMRC Employment Status Service tool](#), to establish under tax law whether the individual should be treated as employed or self-employed, or the intermediaries off-payroll working rules apply.
- The outcome of the assessment must be printed off and verified by the HR Partner, who will further consider whether an [employment relationship](#) is likely to exist under employment law.

Where several individuals carry out the same work there is no need to complete a separate HMRC tool assessment for each person. However, a copy of the relevant HMRC tool outcome must be attached to a Supplier set up/reactivation form for each of the individuals concerned.

Where a supplier is engaged on different contracts within the University, if they have already been set up with a supplier account where the intermediaries' legislation applies this status will apply to all of their contracts with the University.

If the HMRC Employment Status Service tool is unable to provide a definitive outcome, the manager should contact the HMRC helpline for further advice either by phone on 0300 123 2326, or by email at [ir35@hmrc.gov.uk](mailto:ir35@hmrc.gov.uk). Until such time as an outcome is determined, any invoice payments should be either put on hold or treated as requiring PAYE deductions.

If the individual is unhappy with the outcome of the assessment they will need to contact HMRC. The manager should proceed with the engagement in accordance with our assessment outcome.

**Assessment outcome – “the individual should be treated as a worker/employed” or “the intermediaries’ legislation applies” - payments will be subject to PAYE tax and NIC deductions**

**by the University (see section 5.3 for agency workers)**

The recruiting manager and HR Partner should decide how the individual should be engaged. The options are:

- a) as a casual worker, by following [the casual procedures](#),
- b) as an employee on a fixed term contract, through the normal [recruitment procedures](#)
- c) as a supplier but with PAYE deductions, by following these steps:
  - The recruiting manager must inform the individual of the outcome of the HMRC tool assessment (a copy of the outcome may be given to the individual if requested) and inform the individual that invoice payments will be subject to PAYE tax and NICs through payroll.
  - The recruiting manager must obtain the personal details required in order to be able to process their payments. A [standard letter](#) is available. We require:
    - o Their full name, address, date of birth and National Insurance number
    - o Ideally a P45 or P60 (without this they will be taxed at the basic rate)
  - A printed copy of the HMRC tool outcome (verified by the HR Partner) together with the personal details required for payment (above) must be attached to the [Supplier set up/reactivation form](#) and submitted to [customer-suppliersetup@manchester.ac.uk](mailto:customer-suppliersetup@manchester.ac.uk).

**Assessment outcome – “the individual should be treated as self-employed” or “the intermediaries’ legislation does not apply” - payments are not subject to PAYE tax and NIC deductions by the University ( see section 5.3 for agency workers):**

- a) The recruiting manager can set the individual up as a supplier:
  - A printed copy of the HMRC tool outcome (verified by the HR Partner) must be attached to the Supplier set up/reactivation form as part of the process to create a supplier record within the Oracle Finance System. Detailed guidance on the process for setting up a supplier can be found on [StaffNet](#)
  - Alternatively if the supplier is to be paid only once and the payment is less than £5000, a printed copy of the HMRC tool outcome (verified by the HR Partner) must be attached to the [“One-off” payment form](#) and submitted to Accounts Payable.
- b) If the individual is not registered with HMRC as self-employed (i.e. they do not have a Unique taxpayer reference) they will be paid via [Fees PR7](#) and will be subject to PAYE deductions.

## **Agency workers**

There is a requirement to assess the employment status of agency workers who are supplying services through their own limited company, personal service company (PSC) or partnership.

Due to the nature of our contract with the recruitment agencies (i.e. to supply temporary workers) our assessment is that the intermediaries' legislation off-payroll working rules will apply. The recruiting manager must advise the agency of this when discussing their booking requirements.

In exceptional circumstances where there is doubt about whether the rules should apply, the recruiting manager must complete the [HMRC Employment Status Service tool](#). The outcome of the assessment must be printed off and verified by the relevant HR Partner and a copy given to the temporary recruitment agency.

It is then the responsibility of the temporary recruitment agency to ensure PAYE deductions are made. Invoices from the agency will be paid through the normal procedures.

Further details can be found on [StaffNet](#)

## **Monitoring of supplier accounts**

After 12 months all supplier accounts automatically expire. If the supplier is to be used again after this time, their status must be re-assessed by completing the [HMRC Employment Status Service tool](#) again and if appropriate their supplier account will need to be re-activated.

If at any time, a supplier's status is reassessed as that of a worker/employee, the manager with the support of their HR Partner must take action as set out in 5.1 above, to engage them appropriately and will inform the Oracle Master Data Team within Transactional Services who will close or amend their supplier record.

## **Further information**

University FAQs:

<http://www.finance.manchester.ac.uk/buyingexpenses/buyinggoodsandservices/pscs/pscs-faqs/>

Explanation of the Intermediaries legislation and the rules for off payroll working in the public sector:

<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>

Working for yourself – explains the different ways of being self employed:

<https://www.gov.uk/working-for-yourself>

Intermediaries guidance for individuals:

<https://www.gov.uk/guidance/ir35-find-out-if-it-applies>





Appendix 1

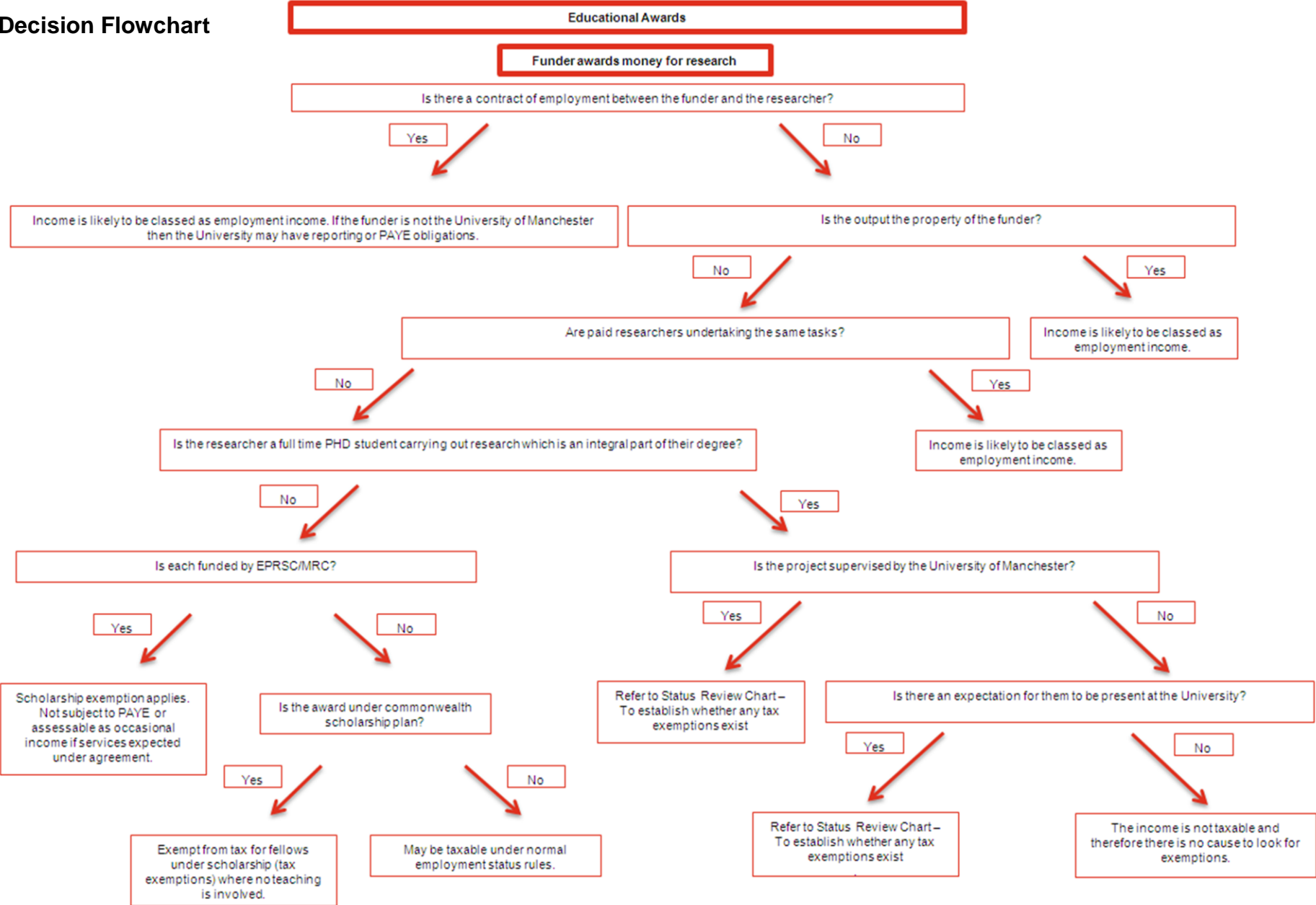
## **Guidance on the administration of payments to early career researchers who are not students**

This briefing paper is to advise on the PAYE and NIC status of payments made to individuals who are normally, but not exclusively, aspiring to be early career researchers i.e., they have completed successfully a PhD or equivalent qualification and they are not a registered student of the University of Manchester (or another educational institution in this country or overseas) but for whom funds have been provided, either from a source internal to the University or by a third party, to support the individual recipient in the early stages of their research career. In these instances it can be the case that either (a) the guidance from the external funding body is vague or ambiguous with respect to whether the payments made to individuals are taxable and / or (b) there is an expectation internally that these payments should be exempt from income tax.

The circumstances of each individual case will vary so that the first step is to determine whether there is a contract of employment – see the accompanying *Decision Flow chart* and *Status Review Flow chart*.

In all cases of this type, regardless of whether the payments are subject to income tax and NI or not, they will be administered *via* HR Services. See attached *Procedure for payment*.

**Decision Flowchart**



## Status Review Flowchart

### Status Review Flowchart – to establish whether any tax exemptions exist

#### Statement of Practice 4 1986.

Has the individual who is receiving the funding been enrolled at the educational establishment for at least one academic year and attended the course for at least twenty weeks in that academic year. Or if the course is longer the individual must attend for at least twenty weeks on average, in an academic year over the period of the course.

No

Yes

Income may be classed as employment income.

For courses commencing on or after 1 September 2007, the payments, including lodging, subsistence and travelling allowances, but excluding any tuition fees payable by the employee to the university etc, do not exceed £15480 for the academic year.

No

Yes

If the rate exceeds £15,480 HMRC may look at the arrangements in detail. This is because the level of payment exceeds what might reasonably be described as a scholarship or training allowance. However, an increase in the rate of payment over the qualifying limit, part way through a course, will not affect the exemption applying to any payments for the earlier part of the course.

This income will be exempt as it will be classed as scholarship income.

#### ITTOIA 2005 Section 776

S.776(1) No liability to income tax arises in respect of income from a scholarship held by an individual in full-time education at a university, college school or other educational establishment.  
S.776(3) In this section "scholarship" includes a bursary, exhibition or other similar educational endowment.

### Procedure for Payments

