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A1: Off payroll working refers to tax legislation which requires the University to consider the employment status for any individual that we engage to personally provide services either on a short-term basis or perhaps a longer, more infrequent basis.

As a University, we often contract with individual workers in a number of different ways:

- through an agency arrangement – either as an individual worker or through a Personal Service Company (“PSC”);
- on a self employed basis;
- through a PSC; or
- through an umbrella company arrangement

IR35 refers to specific tax legislation which requires Public Bodies including Universities to review how they contract with PSCs from April 2017. The purpose of the legislation is to minimise tax avoidance and to ensure that a worker, who is broadly doing the same role as an employee pays the same level of income tax and National Insurance as any other directly employed University member of staff.

: In order to ensure we meet our obligations under current tax legislation (IR35 – off payroll working rules), the University will need to assess the employment status of all workers who intend to provide their services through a PSC.

Where the worker is determined as being inside IR35 then all payments to a worker for services provided to the University’s Schools, Divisions or subsidiary companies, will be paid through the University’s casual payroll, under a casual worker’s contract of service and will be subject to PAYE and NICs at source.

Where the HR IR35 team assess the engagement and confirm that the IR35 rules do not apply then the University is able to contract directly with a PSC under an off payroll worker’s contract and payment to the PSC may be made gross.

: The Policy applies across all Schools, Divisions and subsidiary companies of the University and to all payments made on or after 6 April 2017.

: HMRC can levy a range of penalties on the University, Agency or PSC, depending on how and where the failure has occurred and also has the power to seek unpaid PAYE and NIC retrospectively. It is important therefore that the University has a robust policy which is rigorously adhered to, to mitigate any tax or penalties.

: It is important to ensure that the information provided to HR in respect of the University of Sussex Employment Status Questionnaire (ESQ) is based on the facts of the contract and the reality of the arrangement in place. Where HMRC consider that either the University or the worker has wilfully arranged the engagement such that the legislation does not apply, then the engager, the worker and the University could be considered to be facilitating tax evasion and the penalties attached to this are severe.

: If there is no current engagement in place, then there is no need to assess the individuals. If the individual is re-engaged in future, then each engagement will have to be reviewed prior to any services being provided.

: This is a complex area and the answer will be dependent on numerous factors, including where the work is being done (wholly or partly overseas), where the PSC is resident, where the worker is tax resident etc. Workers who provide their services overseas may need to comply with the legislation and we would ask that you contact your HRBP before proceeding with any engagement as more specialist advice may be required.

Self-employed individuals who do not provide their services through a limited or intermediary company arrangement, such as a PSC, may fall outside the IR35 rules. However, their employment status will still need to be assessed as part of the off payroll working requirements. Engagers must use the University of Sussex Employment Status Questionnaire ("ESQ") and return this to the HR IR35 team for assessment against the HMRC CEST before a conclusion that the individual falls outside the IR35 rules. If there is any doubt then the worker should be paid via Payroll.

: Engaging Managers will need to complete the University of Sussex Employment Status Questionnaire ("ESQ") and return this to the HR IR35 team. The HR IR35 team will then undertake the HMRC CEST using the information provided by the School / Division. The HR IR35 team will determine the engagement status of a worker, where necessary by undertaking further checks via Companies House. They will advise the Engaging Manager and worker of the outcome of the decision.

The HR IR35 team will undertake the HMRC CEST tool for the formal assessment based on the information contained in the University of Sussex Employment Status Questionnaire ("ESQ") and any other information requested from the School / Division – see IR35 Process and process flow chart. The CEST outcome report must include the name of the individual who is being engaged and the name of the person completing the CEST and will need to be signed / authorised by the Payroll Manager.

An IR35 outcome decision for tax purposes is not the same as a determination of employment status



period of 45 days. The decision of the University of Sussex review will be final. The University will maintain records of any disputed outcome for a period of 6 years.

: The University has a duty to comply with tax legislation. If an individual will not accept the outcome from the CEST process, their options are to ask for a review of the CEST assessment or not to undertake the assignment. Such a review will only be considered based on new information or further evidence being provided by the manager that justifies a review of the original decision. The decision of any University of Sussex review will be final. The University is unable to permit the assignment to proceed if the person will not accept the IR35 CEST outcome.