## **Employment Service Status (ESS) Check**

## **QUESTIONNAIRE TO CHECK EMPLOYMENT STATUS FOR TAX & NIC PURPOSES**

# Information about IR35 legislation

This questionnaire is to help determine whether a particular engagement falls within or outside the intermediaries legislation (known as IR35). This then indicates whether the worker or intermediary (e.g. Personal Service Company or partnership) may be paid gross OR whether the worker or intermediary should be paid through University payroll with payments subject to Tax, Employee and Employer National Insurance Contributions (NIC).

The information given in this form will be used to populate HMRC’s Employment Status Service (“ESS”) online tool to obtain HMRC’s view on whether the [IR35](https://www.gov.uk/guidance/ir35-find-out-if-it-applies) rules apply to a particular engagement, and therefore whether a worker should pay tax and NIC [through PAYE](https://www.gov.uk/employment-status/selfemployed-contractor) for an engagement.

This questionnaire and its outcome will form part of the evidence we may need for HMRC audit, to demonstrate that due consideration has been given to the employment status of workers providing services to the University through intermediaries.

**Failure to provide accurate information could potentially lead to the University becoming liable for unpaid tax, National Insurance, financial penalties and reputational damage.**

# Guidance

1. The following questionnaire and associated ESS check should be completed **BEFORE** any engagement or payment is agreed with a worker.
2. Engagers are responsible for ensuring services are procured in line with University Procurement regulations and processes. Contact Procurement if you need advice regarding the Procurement process or guidance on the appropriateness of engagement.
3. The questionnaire should be completed by any engagers planning to use an individual or Personal Service Company (PSC) to undertake work on a self-employed basis. *If it is intended to engage the person as a short-term employee/worker then this ESS check is not required.*
4. The information provided in this questionnaire **MUST** be a true reflection of the terms of the engagement. Please answer all questions accurately in line with the anticipated working practices of the engagement. **To do otherwise** **will leave the University at risk of HMRC non-compliance with associated fines and reputational damage.**
5. A new questionnaire **must** be completed for each engagement, including instances where an engagement is being extended. Previous outcomes are not relevant for new engagements.
6. This document must be retained by the Faculty/Service for audit purposes for 4 years plus the current tax year from completion of work, along with other documents relating to the ESS determination.
7. Send this completed form to your Faculty HR Officer, as soon as possible before the start of any engagement. A copy of the outcome should be attached to the relevant payment form.

**The engager should take responsibility for completing the following questionnaire, as they will have the most accurate understanding of the activity required, when it takes place, how it is done, what control the University has, how much independence and responsibility the worker has, and how it is proposed to pay for the work. The engager may need to contact the worker for some of the information.**

# Engager Details

|  |  |  |  |
| --- | --- | --- | --- |
| Engager Name: | Debby Williams | Date: | 08/09/2020 |
| Faculty/Service: | Medicine | Department: | LIHS |
| Email: | d.williams@leeds.acuk | Telephone: |  |
| School/Institute contact(s) for queries:As above |
| Email: |  | Telephone: |  |
|  |  |  |  |

# Supplier/Worker/Company Information

|  |
| --- |
| Name of Worker/Company  |
| Email address: |  |
| Telephone(s): |  |
| Address: |  |
|  |  |
| Engagement Details |

|  |
| --- |
| Description of the activity / services the worker is to provide to the University through their company or partnership:Provision of teaching as an external lecturer for the Doctorate in Clinical Psychology programme. NB all teaching is now online so the session was completed online through the University from a private address. |
| Start date and expected end date of the engagement?One-off session on 08/10/2020.  |
| How does the worker provide their services to the University? [ ]  As a limited company [ ]  As a partnership [ ]  Through another individual (not an agency) [ ]  As a sole trader  |
| **About substitutes and helpers** |
| 1. *Only complete this question IF the work has already started:*

**During the engagement has the worker's business arranged for someone else to do the work instead?**  This means someone who:* Was equally skilled, qualified, security cleared and able to perform the worker's duties
* Was not interviewed by the University before they started (except for any verification checks)
* Hasn’t been regularly engaged by the University
* Did do all of the worker's tasks for that period of time
* Was substituted because the worker was unwilling but not unable to do the work

[ ]  Yes – and the University agreed[ ]  Yes – but the University didn’t agree[ ]  No – it has not happened.*Comments:* |
| 1. **If the worker’s business sent someone else to do the work (a substitute) and they met all of the necessary criteria, would the University ever reject them?**

The criteria would include someone who:* Is equally skilled, qualified, security cleared and able to perform the worker's duties
* Won't be interviewed by the University before they start (except for any verification checks)
* Isn't regularly engaged by the University
* Will do all of the worker's tasks for that period of time
* Will be substituted because the worker is unwilling but not unable to do the work

[ ]  Yes – the University has the right to reject a substitute for any reason, including if it would negatively impact the work[ ]  No – the University would always accept a substitute who met this criteria*Comments:* |
| 1. **Would the worker's business pay the person who did the work instead of them?**

[ ]  Yes [ ]  No *Comments:* |
| 1. **Has the worker’s business needed to pay a helper to do a significant amount of the work?**

*(A helper is someone who does some of the worker's job for or with them*.)Eg: if a lecturer was hired to write and deliver a study module:* A researcher hired to source information could be classed as doing a significant amount of the lecturer's work;
* A company the lecturer pays to print and bind materials for the module would not be classed as doing a significant amount of the work

[ ]  Yes [ ]  No *Comments:* |
| **About the working arrangements**  |
| 1. **Can the University move the worker to a different task or project than they originally agreed to do?**

 [ ]  Yes – but only with the worker’s agreement [ ]  Yes – without the worker’s agreement (if the worker doesn’t want to change task or project,  the University would no longer engage them) [ ]  No – that would need to be arranged under a new contract or formal agreement*Comments:* |
| 1. **Once the worker starts, does the University decide how the work is done?**

This includes the need to follow the University’s specific procedures, processes or guidelines but doesn't include following statutory requirements like health and safety. [ ]  Yes – the University decides how the work needs to be done without input from the worker [ ]  No – the worker decides how the work needs to be done without input from the University [ ]  No – the University can’t decide how the work needs to be done because it’s a highly skilled role [ ]  Partly – the worker and other people employed or engaged by the University agree how the work needs to be done.*Comments:* |
| 1. **Does the University decide the schedule of working hours?**

 [ ]  Yes – the University decides the worker’s schedule [ ]  No – the worker decides their own schedule [ ]  Partly – the worker and the University agree a schedule [ ]  Not applicable – no schedule needed as long as the worker meets any agreed deadlines*Comments:* |
| 1. **Can the worker choose where they work?**

[ ]  Yes – the worker decides[ ]  No – the University decides[ ]  No – the task determines the work location[ ]  Partly - some work has to be done in an agreed location and some can be done wherever the worker chooses*Comments:* |
| **About the worker’s financial risk** |
| 1. **What does the worker have to provide for this engagement that they can't claim as an expense from the University or, if applicable, an agency?**

These are things that:* the worker has to provide to complete this specific engagement
* aren't provided by the University
* could place the worker at financial risk if the cost isn’t regained

 *(Does not include expenses incurred by being based away from home for the engagement.)***Select all / any that apply:**[ ]  Materials – items that form a lasting part of the work, or an item bought for the work and left behind when the worker leaves (not including stationery, and most likely to be relevant to substantial purchases)[ ] Equipment – including heavy machinery, industrial vehicles or high-cost specialist equipment,  but not including phones, tablets or laptops[ ]  Vehicle – including purchase, fuel and all running costs (used for work tasks, not commuting)[ ]  Other expenses – including significant travel and subsistence expenses (not including commuting) or the cost of a business premises outside of the home[ ]  Not relevant*Comments:* |
| 1. **What is the main way that the worker is paid for this engagement?**

[ ]  An hourly, daily or weekly rate[ ]  A fixed price for a specific piece of work[ ]  An amount based on how much work is completed[ ]  A percentage of the sales the worker makes[ ]  A percentage of the University’s profits or savings*Comments:* |
| 1. **If the University isn't satisfied with the work, does the worker need to put it right at their own cost?**

[ ]  Yes – the worker would have to put it right without an additional charge, and would incur significant additional expenses or material costs. [ ]  Yes - the worker would have to put it right without additional charge, but would not incur any costs. [ ]  No – the worker would put it right in their usual hours at the usual rate of pay, or for a further fee. [ ]  No, the worker can’t put it right as the work is time-specific or for a single event [ ]  No, they would not need to put it right *Comments:* |
| **About the worker’s integration into the University** |
| 1. **Is the worker entitled to *any* of the following benefits from the University?** (Ignore any benefits provided by a third-party or agency.)
* Sick pay
* Holiday pay
* A workplace pension
* Maternity/paternity pay
* Other employee benefits (provide details)

 [ ]  Yes [ ]  No *Comments:* |
| 1. **Is the worker responsible for *any* of the following duties for the University?**
* Hiring workers
* Dismissing workers
* Delivering appraisals
* Deciding how much to pay someone
* Other line management duties (please provide details if applicable)

 [ ]  Yes [ ]  No *Comments:* |
| 1. **Does the worker interact with the University’s students, or any third parties as part of their work? These are people who use or are affected by the services provided. *This does not include the worker's colleagues or other employees.***

 [ ]  Yes [ ]  No *Comments: It is a teaching session so there is interaction with the students* |
| 1. **When the worker interacts with the University’s students, customers, clients, audience or users, how do they identify themselves?**

[ ]  They work for the University[ ]  They’re an independent worker acting on behalf of the University[ ]  They work for their own business*Comments:* |
| Please provide any other information you consider is relevant for the purposes of determining the employment status of this individual in this particular engagement: |
| ***By signing below, I certify that all information contained in this document is true and correct to the best of my knowledge.*** |
| Signed:Debby Williams | Date:08.09.2020 |
| PRINT NAME:Deborah Williams |  |

***Please send the completed ESS checklist to the relevant Faculty HR Officer for your School / Institute:***

LIBACS & LIME: Laura Dowling;

LICAP: Sharon Pinder;

LICAMM, LICTR, LIHS: Nuala Tyrer;

LIRMM & DENTISTRY: James Willmoth;

NIHR CRN CC & Psychology: Angie Chatham / Louise Rigby;

HEALTHCARE & FACULTY OFFICES: Alyson Lee;

FBS: Caroline Foote

# ESS Assessment Use only

|  |  |  |  |
| --- | --- | --- | --- |
| Date Received: |  | ESS date completed: |  |
| ESS completed by: |  | ESS Outcome: |  |

**Definitions**

* **Limited company** – the generally accepted definition of a personal service company is a limited company that typically has a sole director, the contractor, who owns most or all of the shares.
* **Partnership** – a partnership is defined as two or more persons in business with a view to making profits. In a partnership, the partner provides the capital and share the responsibility of running the business on agreement between its members.
* **Through another individual** – such as an agency.
* **A sole trader** – runs their own business as an individual and are self-employed. They must be registered as self-employed with HMRC.