

Part of the Darlington District's responsibilities as an employer is 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.

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1. Introduction

Determining whether or not an individual's payment should be subject to PAYE and NICs is a process that must be carried out in consultation with the District Lay Employment Secretary prior to a contract being issued whether written, verbal, or implied, and before any work is undertaken.

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

2. Background

When the District enters into contracts known as 'engagements' HMRC places the responsibility on the Employer 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 District on a regular, ad-hoc basis or for a lengthy period of time.

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.

Employing bodies are bound to apply UK tax law, and failure to do so can result in significant financial penalties which could amount to over 100% of any payments that have been 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 engagement is a contract of service (i.e., worker status) or under a contract for services (i.e., a self-employed independent contractor).

Given this advice, it is the Employer's responsibility to examine the relationship between the District and individuals, particularly 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 determine that the individual is *probably* a worker and would be employed by the District and be paid and taxed through the District's payroll:

- Do they have to do the work themselves?
- Can someone tell them at any time what to do, where to do the work, or when and how to do it?
- Are they required to work a set number 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 it 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 is important to note 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

UK legislation in respect of income tax, social security, employment, or discrimination can at times distinguish between types of worker by giving rights to some types and imposing duties on their engager.

It is therefore important to note that there is no single definition of 'worker' which means that each body of legislation may define 'worker' and indeed 'employee' and 'employer' in quite different ways.

The District as Employer is required to decide 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 District if the wrong type of employment status is determined.

The decision is taken in consultation with the District Lay Employment Secretary, a member of the District Lay Employment Sub-Committee, or another person authorised by the District.

5. Before engaging a consultant

It is thought that in the vast majority of cases the District 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, the District should:

- Consult with the District Lay Employment Secretary, or a member of the Lay Employment Sub-Committee, over the Terms and Schedule of Services to be carried out, ensuring the expectations of the relationship with the prospective consultant are not infringing on employment.

Prior to the start of the engagement the District should verify the self-employment status of the prospective consultant. This can be done by asking them to fill in a Self-Employment Assessment Questionnaire and to provide relevant supporting documents. A handy online tool, to check employment status for the purpose of tax and NICs, is available free to use via the gov.uk website at:

<https://www.gov.uk/guidance/check-employment-status-for-tax>

- After the prospective consultant has completed the self-employment assessment form it should be sent, with any other relevant documents, to the District Lay Employment Secretary or a member of the District Lay Employment Sub-Committee to ensure correct status.
- After the self-employed status has been confirmed a copy of the draft Consultancy Agreement with the Terms and Schedule of Services should be sent to the District Lay Employment Secretary or a member of the District Lay Employment Sub-Committee.
- Completion of the self-employment questionnaire is a mandatory requirement of HMRC. Without it being completed and outcomes recorded, no payments should be made.
- 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 and audit trails

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

7. Written consultancy agreements

Districts who are using contractors must not rely on a simple verbal agreement and they should ensure that a written consultancy agreement is in place with a self-employed individual.

8. Advice

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