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Off Payroll Working Procedure

Introduction and Aim

In April 2017, the Government introduced revised rules in relation to compliance with tax regulations relating to the taxation of off-payroll workers (“IR35”) through certain types of intermediary (broadly companies and partnerships/LLPs in which the worker has a material interest. These changes widened the responsibilities of the Cardiff and Vale University Health Board (the UHB) and now impact on any person who is carrying out work and is being paid through any of the following arrangements:

- A self-employed worker (paid gross);
- An agency;
- Personal Service Company (PSC);
- A Partnership

The above arrangements are collectively known as “Off Payroll Working”.

The changes to the rules in April 2017 were introduced as a result of perceived widespread non-compliance amongst off-payroll workers providing services via intermediaries.

As part of the legislation, the UHB has the responsibility to make the decision on whether or not the relationship between itself and an individual operating as a sole trader or as a Personal Service Company or through a partnership constitutes employment or not and, as a result, also makes the UHB responsible for deducting the right tax and national insurance contributions as a result of such relationships.

Engaging workers through an intermediary, changes the nature of the relationship from one of an employer/employee to a contractual relationship and presents a significant risk to the Health Board including:

- Potential breach of employment tax regulations, which can lead to financial penalties being imposed on the UHB
- Reputational risk of being deemed to condone potential tax avoidance schemes
- Non-compliance with prevailing procurement legislation
- Lack of assurance that all necessary documents are in place for an individual employed through an intermediary e.g. professional registration and relevant background checks

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In addition to the individual contractors, the legislation places an obligation on the UHB to undertake an assessment of the tasks/duties undertaken by any 'Interims' recruited via an Agency or Agency Workers via the online HMRC Check Employment Status for Tax Test.

If the assessment indicates that the engagement should be classed as employed for tax purposes, the UHB has to write to the provider/umbrella company/agency to remind them of their obligations under the Off-Payroll legislation and for them to deduct tax and National Insurance from any payments.

The Health Board is committed to ensuring that it is compliant with its duty in relation to payment of remuneration and deduction of taxation and national insurance as required by law. It is also committed to full compliance with prevailing procurement law and its internal procurement procedures when placing business with suppliers. The Procedure sets out the process for engaging workers under IR35 rules established in the Income Tax (Earnings & Pensions) Act 2003 (ITEPA).

Objectives

The purpose of this document is to outline the UHB's responsibilities for engaging off-payroll workers to ensure:

- Compliance with HMRC legislation
- That employment status is established for all workers

This Procedure will provide guidance to the Health Board in identifying and correctly accounting for off-payroll workers to avoid non-compliance with Her Majesty's Revenue and Customs (HMRC) rules. The rules are encapsulated in IR35 as established in the Income Tax (Earnings & Pensions) Act 2003. They are in place to ensure that: "where an individual would have been an employee if they were providing their services directly, they pay broadly the same tax and National Insurance Contributions (NICs) as an employee".

Scope

This Procedure relates to workers who carry out work for the Health Board but are not employed by the Health Board, (broadly speaking, those individuals for whom we receive invoices for their services). It also relates to all staff engaged through an agency or other labour provider, where the agency/labour provider has itself engaged the worker via an intermediary. The Health Board is responsible for establishing the employment status of all workers.

There are some exemptions to the HMRC rules, but these are specific.

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Note: An Office Holder (a role that is generally one which exists independently of the person fulfilling the role and would exist even if someone is not engaged to fill it) as defined by HMRC is always taxed as an employee.

Establishing employment status of sole traders supplied through an agency remains the responsibility of the agency. The Procedure relates to self-employed workers and sole traders under the basic employment status obligations that apply to the UHB.

The Procedure does not relate to staff who have an employment contract, or to ad-hoc workers e.g. bank staff engaged via 'terms of engagement' and subject to tax and National Insurance deducted under the Pay As You Earn system (PAYE). It does not apply to suppliers who are genuinely self-employed.

Equality and Health Impact Assessment	A standalone Equality and Health Impact Assessment has not been completed as this Procedure has been written to support the implementation of the Recruitment and Selection Policy. The EHIA completed for the policy found here to be positive impact.
Documents to read alongside this Procedure	Recruitment and Selection Policy Recruitment and Selection Procedure
Accountable Executive or Clinical Board Director	Executive Director of People and Culture
Author(s)	Head of People Assurance and Experience

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If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Governance Directorate](#).

Summary of reviews/amendments			
Version Number	Date Review Approved	Date Published	Summary of Amendments
2	27.09.2023	13.10.2023	New Procedure (n.b. numbered as version 2 as internal guidance with the same name was previously issued to Clinical Boards)

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1. Roles and Responsibilities

As a public body, the Health Board must decide in all cases where a worker is paid through an intermediary whether HMRC off-payroll working rules apply. They must also tell the worker, agency or other provider in writing, through a “Status Determination Statement” (SDS), that they apply. This must be done before the contract or work starts whichever is later.

The Health Board also has an obligation to have a dispute resolution process in place.

Where the off-payroll working rules apply the Health Board must ensure that Tax and National Insurance will be deducted from the VAT-exclusive invoice value paid to the intermediary. Deductions must be paid over to HMRC, within the timescales as set out by HMRC.

1.1 Engaging (Recruiting) Managers

It is primarily the responsibility of the person engaging or recruiting a worker to ensure that the law is complied with. All engaging managers (usually the appointing officer) must establish whether the off-payroll working rules apply when engaging workers outside of the Payroll system.

Any staff not employed must be assessed individually. The manager must follow either the usual recruitment and selection policy/process or this procurement process.

Engaging managers have a responsibility to:

- Carry out an employment status check jointly with the Head of People Assurance & Experience and the Assistant Director of Finance (Financial Accounts and Services) or their nominated deputy with reference to the worker’s contract and working arrangements
- Use the HMRC ‘[Check Employment Status](#)’ online assessment for all individuals not directly employed
- Forward a copy of all documentation relating to the assessment to the Assistant Director of Finance (Financial Accounts and Services) to allow inspection by HMRC in the event of a tax inspection
- Ensure that the resulting outcome is not contrived to arrive at a desired outcome
- Seek relevant advice from People and Culture, Procurement and/or Finance business partner in all cases

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Before seeking advice, the engaging manager must ensure that all relevant information is available [See 7.3].

In all cases where an individual is engaged outside of the payroll system (including through an agency), the Procurement Department must be contacted for advice on procurement requirements and thresholds.

1.2 Medical Resourcing & Systems Staff

Medical Resourcing & Systems staff may only engage off payroll workers through an agency. Workers supplied by an agency, but paid through an intermediary must be assessed for employment status. If there is any doubt, People & Culture and/or Finance and/or Procurement, must be contacted for advice. The Procurement Department must be contacted for advice on procurement requirements and thresholds.

1.3 Accounts Payable Staff

NWSSP Accounts Payable staff must be aware of the Off Payroll rules. Staff must decline any payment requests (e.g. invoice) if there is no specific contract for services (e.g. purchase order).

1.4 Finance

Corporate Finance must ensure that off payroll payments are recorded for mandatory annual disclosure to Welsh Government, and for inspection by HMRC where required.

Corporate Finance must regularly analyse the ledger for suppliers which may have the characteristics of an intermediary.

Clinical Board Heads of Finance and their staff must be aware of the rules relating to off payroll workers and support engaging managers in obtaining the relevant advice.

1.5 People & Culture

People Assurance and Experience staff will ensure that this Procedure is available to managers in the Health Board and to NHS Wales Shared Services Partnership (NWSSP) payroll services, recruitment services and to any departments involved in engaging medical or other staff.

The People & Culture staff must be aware of the rules relating to off payroll workers and support engaging managers in obtaining the relevant advice.

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A copy of each employment assessment outcome, along with any supporting evidence (e.g. the contract, evidence of discussions with the worker and engaging manager etc.), must be saved within the People Assurance and Experience team.

1.6 NWSSP Procurement Department

Procurement must ensure that the relevant contracting and procurement advice is given to engaging managers for off-payroll engagements. A list of framework agencies must be maintained, and all new framework agencies must be contacted annually (in writing) to ensure that they are compliant with the HMRC rules.

Procurement staff must be aware of the HMRC rules relating to off-payroll workers.

1.7 NWSSP Payroll Services

Payroll services must ensure that staff have full knowledge of this Procedure to enable them to provide the appropriate advice, should enquiries arise.

When informed by the engaging manager, payroll services must enrol individuals assessed as holding employment status for tax purposes onto payroll on the IR 35 element. The individuals must be clearly and easily identifiable.

They must make the appropriate level of deductions for Tax and NI and prepare relevant information to enable pay over of deductions to HMRC.

1.8 Audit Committee

The Audit Committee will receive assurance of compliance with the off payroll working rules through regular reports of all engagements which require the HMRC Employment Status Test to be undertaken.

2 Process

2.1 Testing for Employment Status

When an (off payroll) individual is required, a test for employment status must always be carried out using the HMRC online tool. The test for employment status must be carried out jointly between the engaging or engaging manager,

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the Head of People Assurance & Experience and the Assistant Director of Finance (Financial Accounts and Services) or their nominated deputy.

A record of the outcome must be kept for reference and HMRC inspection regardless of the result. The HMRC tool can be accessed by clicking on the following link: [Check Employment Status](#). This is an important step and must be carried out before the individual is engaged.

If it is determined that the rules apply, and Tax and NI must be deducted (calculated by UHB's payroll provider in accordance with HMRC PAYE rules), both the individual and the intermediary must be informed of the decision immediately in writing. This must be done before the contract or work starts whichever is later.

If the off payroll rules are not complied with the Health Board will incur financial penalties in the following circumstances:

- If an individual who has been assessed by the Health Board as 'not employed' is then assessed by HMRC to hold employment status
- If the Health Board fails to test employment status and a worker is later assessed by HMRC to hold employment status. In such cases, the Health Board risks liability for the full cost of the employee's tax and NI contribution plus any penalty levied by HMRC

Penalties for not following the rules would only be avoided if the Health Board can evidence to HMRC that it had taken "reasonable care" in assessing the worker's status.

Employment status must be assessed by the Health Board for each role, however where groups of workers carry out largely the same function, it may be appropriate to carry out a 'mass' assessment. However, if an individual requests to be tested for employment status, the Health Board is obliged to carry out a test for employment status.

Any decision made on specific employees/groups of employees, must be reconsidered if any changes are made to the practices of the engagement. If any changes are made, the employment status check online tool must be used again.

2.2 Using the HMRC Employment Status Tool

To enable HMRC employment status assessments to be carried out before the contract or work starts, the engaging manager must know the following details before contacting the Head of People Assurance & Experience/ Assistant Director of Finance (Financial Accounts and Services):

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- Contract of engagement
- The worker's responsibilities
- Who decides what work needs doing
- Who decides when, where and how the work's done
- How the worker will be paid
- If the engagement includes any benefits or reimbursement for expenses

The tool is designed to assess a number of factors, including:

- Control – right to control what the worker has to do, where it has to be done, when it has to be done and how it has to be done
- Personal services – Mutuality of obligation (i.e. the UHB is obliged to pay the worker and the worker is obliged to provide work or a skill rather than send a substitute)

The tool is intended to help an employer to ascertain whether the worker is an employee, for whom statutory deductions must be made. HMRC will honour the results of the test providing that that the information is accurate. It is vital that the answers provided reflect the written contract and how the working arrangement operates in practice. Any deviations from the contract will supersede the written contract for status determination. A record of all employee status checks, along with any supporting evidence, must be kept by corporate finance for inspection by HMRC, if needed.

If results are achieved through contrived arrangements to get a particular outcome, this would be treated as evidence of deliberate non-compliance and will attract higher penalties.

If an agency provides the UHB with a worker who is a sole trader, i.e. there is no intermediary it is the responsibility of the Agency to assess employment status.

2.3 When to use the HMRC Employment Status Tool

The first step must always be to understand the relationship between the organisation and the worker.

It is important to note that when directly engaging a self-employed person or sole trader, employment status must always be checked.

The Health Board must establish whether there is an intermediary. This can be:

- A company
- A partnership

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- Other labour provider

Directly engaged off-payroll individuals must always be assessed under the IR35 rules

If none of the above apply, they may be exempt from the legislation. In any case the engaging manager must always seek advice from one of the departments below:

- People Assurance and Experience
- Finance.
- Procurement.

2.4 Procedure following HMRC Employment Assessment

2.4.1 Workers engaged through an intermediary via an Agency or Other Labour Provider

If an agency or any other labour provider supplies an individual or group of individuals assessed to hold employment status through an intermediary, the UHB must confirm that they (the provider) deduct Tax and National Insurance as if they (the worker) were an employee.

The UHB should pay the supplier invoice for providing the worker according to the contract with them.

The engaging manager must always check with procurement that:

- The agency or labour provider is on a procurement framework
- If the agency or labour provider is not on a procurement framework, procurement must inform both the individual and intermediary in writing confirming the employment status of the worker before the contract or work starts.

2.4.2 Individuals assessed as employed for tax purposes

In cases where we pay an intermediary, but the individual is deemed as having employment status for tax purposes, they must be enrolled through payroll. All payment requests must be submitted to payroll (this will often be in the format of an invoice) electronically, providing them with all relevant information. Payroll will make the necessary deductions and supply the appropriate information to enable pay over of deductions to HMRC.

2.4.3 Sole Traders

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If a sole trader is providing their services directly to the UHB as an individual, an employment status check must always be carried out. If the HMRC tool returns a result of employed, they must also be enrolled on the payroll system and relevant deductions made.

2.4.4 Inconclusive Assessments

If the HMRC employment status tool returns an inconclusive result, the Head of People Assurance & Experience manager and Assistant Director of Finance (Financial Accounts and Services) or their nominated deputy must undertake an in house employment status assessment. Where an inconclusive result has been returned, the Health Board will usually contact the HMRC Helpline to discuss the outcome and make the decision regarding the employment status.

If the in-house assessment returns a self-employed status, all relevant documentation must be retained along with reasons for conclusions regarding employment status as evidence (e.g. contracts and correspondence with the individual or intermediary), in the event that HMRC make inquiries.