

HMRC has now provided the following additional guidance for public sector bodies:

Employment Status Digital Service – Guidance for Public Bodies

The new digital employment status service 'Check my Employment Status' was launched in public beta on 2 March 2017 as planned.

The service was developed with stakeholders and extensively tested. HMRC is continuing to build in improvements in response to user and stakeholder feedback.

We have identified some common themes from early feedback on the service where users have told us they would welcome further information. This guidance provides additional clarity and will improve consistency for public bodies using the new service.

When operating the off-payroll rules public bodies are required to satisfy themselves of the answers to these questions to ensure they provide the correct view on whether the off-payroll rules apply.

Substitution

Would the end client accept the worker's business sending someone else to do this work instead?

This question asks whether a worker, who provides personal services through their own company, can send a substitute to do the work instead, and whether the public sector body would accept that substitute. It is not enough for there to be a clause to be included in contracts, it must reflect the reality of the working arrangements.

If the end-client (public sector body) will accept the substitute worker without question (other than assurance that the substitute worker is properly qualified and has the right security clearance) then the worker has an unlimited right of substitution.

If the end-client will not allow a worker to provide a substitute, there is no right of substitution. If the end-client places conditions on accepting the substitute or retains the decision on whether a substitute is acceptable then the worker's rights of substitution are limited (fettered).

The substitute must be identified and sent by the worker or their company.

Where workers are provided through an employment agency and that agency selects workers for the end-client the engagement of each worker should be treated as a separate engagement. A new engagement will not constitute a substitution.

If you are using the digital service as the end-client and an employment agency is involved you should consider the questions and answers in relation to the individual worker and not the agency who supplies them. You would not normally expect to answer this question 'yes' purely as a result of an agency providing an alternative worker.

You would also typically expect the worker, through their own company, to be responsible for remunerating the substitute worker for their services, not the PSB or the agency.

Office holders – what are they?

Is the worker or their business an office holder for the client?

Office holders will always be within the off-payroll rules. An office is defined as a permanent, substantive position which has an existence independent from the person who fills it, and which goes on to be filled in succession by other people.

There is further guidance here:

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2500>

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm3268>

Helpers

Has the worker's business needed to pay a helper to do a significant amount of the work?

We have had feedback that some public sector bodies are treating the issues of substitution and using a helper in a similar way. There is a clear difference between what a helper might do (as described in the example of a university lecturer in the body of the question on the digital service) and providing a fully qualified substitute. A helper would only be expected to undertake some of the worker's job for them. We typically differentiate a helper as assisting with the delivery of the contracted work whereas a substitute will deliver the contracted task(s) *instead* of the worker.

Provision of equipment

What items does the worker have to buy for this engagement that they can't claim as an expense from the end-client or agency?

The purpose of this question is to establish the level of financial risk for the worker. These must be items that you require the worker to provide for the particular engagement, it is not enough for the worker to choose to update this equipment where there is no requirement to do so. It's also important to remember that financial risk is only one part of the overall picture, whilst the need to provide a piece of equipment may be indicative of some financial risk it is not conclusive on its own for determining status.

Dealing in particular with 'equipment', this needs to be significant for the role - you would not expect the purchase of a laptop to represent a significant piece of equipment. We will be updating the guidance in the digital service to confirm this.

Any significant expenditure on specialised software that the individual needs to buy for the specific role would represent some financial risk and should be reflected in answering the questions in the service, the equipment must be necessary for a significant aspect of the role. The question to consider as a public body is, are we expecting this individual to take any significant financial risk with the requirements we have set out for this role.

Working practices

If the end client isn't satisfied with the worker's output, when would the worker have to put it right?

Customer feedback is that additional context would be helpful to complete this question. It may be easier to understand this question if you consider in the context of a larger project rather than what might happen on a daily basis.

This question is also about financial risk and whether the worker is expected to continue to work to deliver outcomes or objectives, and may have to sacrifice other work as a result. We understand this may be complicated in longer supply chains. Where this is the case it should be about your expectations of the individual worker.

If you have any questions on the above, please get in touch with your hub contact.