Determining Employment Status: Self-employed, Hourly-paid Worker or Employee?
This paper should be read in conjunction with the guidance on
https://intranet.birmingham.ac.uk/collaboration/commissioning-of-work/index.aspx

Why does it matter?
It is important to establish the nature of the employment relationship between an individual and the University as this is key to determining the employment rights to which that individual is entitled. By determining the employment status of an individual, and therefore engaging them on the correct terms, this will ensure the individual is treated appropriately.

How can I distinguish hourly-paid work from employment or being self-employed?

Employment
Typically, employment is characterised by:
1. personal service (an agreement by the employee to provide his or her own work or skill in the performance of service for the employer);
2. mutuality of obligation (the employer is required to provide work and the employee is required to do the work in return for wage or remuneration); and
3. control (i.e. the nature of the work and the way in which the employee is required to operate is delineated by the employer).

In addition to the above, there are other factors which may also be taken into account when determining whether or not someone is an employee, for example, the nature and length of the engagement. The University has applied a maximum threshold of 13 weeks service, after which it would regard any work which also meets the above three criteria, as employment. Any work that meets these criteria should therefore be managed via the main payroll.

Hourly-paid Work
Work is likely to be hourly-paid where:
1. it is of a short duration (less than 13 weeks); and
2. it is offered on an ad hoc basis – i.e., the individual has the right to accept or reject any particular assignment or piece of work offered and, likewise, the University is under no obligation to offer any work to the individual (i.e. there is no mutuality of obligation).

For example, if a manager has some work to be done and offers it to Person A, Person A is free either to accept the work or to decline it. If Person A declines the work, it may be offered to Person B, and so on until someone is found who accepts the offer. Neither Person A, nor Person B are penalised for not accepting the work. This also means that the manager is under no obligation to offer work to Person A just because last time work of that nature was available it was done by Person A. In cases where a pattern of work is established - for example, Person A always works on Tuesdays - an expectation between the parties could arise which could amount to employment. Hourly-paid work is managed via Worklink (for current University of Birmingham students) or Eploy. Both Worklink and Eploy feed into the fees payroll.

Self-Employment
An individual will be self-employed where he/she is in business on his/her own account and is neither an employee nor an hourly-paid worker. Individuals who are self-employed have fewer employment law rights and are treated differently from employees and workers for tax purposes. Factors which point to self-employed status include:

- The individual has the ability to determine when and how they work and is not under the direct supervision of the University.
The individual is not required to carry out the services personally and has an unqualified right to appoint a substitute to carry out the services in his/her place.

The individual is paid on completion of a specific task or project.

The individual is not sufficiently integrated within the University to have a defined role and does not perform services similar to or substantially the same as those performed by an employee.

The individual provides their own equipment and materials in order to perform the services.

The individual risks their own capital in the business and will be personally responsible for any losses arising from their work. They may be required to correct any unsatisfactory work in their own time and at their own expense. Conversely, they may have the opportunity to profit from the success of the project.

Typically, in the case of self-employment, the contract for the work will be through a purchase order and payment will be against an invoice which will be processed via the payments section of the Finance Office, subject to the supplier being set up on Proactis.

Continuous Employment

The term ‘continuous employment’ is used to describe the length of unbroken time that an employee has worked for an employer. Continuity of employment may be maintained across a ‘temporary cessation of work’ such as a vacation period.

For example:

1. A Small Group Teacher is employed during term time but has no work during the Christmas and Easter vacations. Even though each term is less than 13 weeks, the gap between assignments was due to a temporary cessation of work caused by the University vacation and therefore the individual could establish continuity of employment for the full academic year. Continuity of employment may also be maintained over the summer vacation if the Small Group Teacher were to be re-hired in the same role in the next academic year. This applies even if the individual were to be engaged for the second academic year in the same role but in a different College/School. It is important to remember that the University is one employer, and if Person A is hired in a role in one School/College for the Autumn Term, and then in the same capacity in a different School/College for the Spring Term, that would be likely to constitute employment, and at least the second assignment would need to be managed via the main payroll.; or

2. An individual is engaged for repeat assignments, where work of the same nature is offered to the same person, even though each assignment on its own may be less than 13 weeks. This is more likely to be continuous employment if the assignments are consecutive and where the breaks between assignments are less than 6 weeks, however there is no absolute number of weeks which can be relied upon as breaking continuous employment. Where the gap between assignments is sufficiently wide to break continuity, the work may be regarded as hourly-paid provided continuous service will be less than 13 weeks for each assignment. Consideration must always be given as to whether the gap between assignments is due to a temporary cessation of work, for example, during vacation periods, as set out in example 1 above. Where it is known from the outset that an individual will be engaged for several months, but an employer insists on a break in the middle of the assignment in order to try and break continuous employment, this is unlikely to be successful. This is because the break will amount to a ‘temporary cessation’.

As set out above, the nature of the work undertaken by an individual is also important to consider. If the nature of one short work assignment is fundamentally different from the next, it may be argued that the two assignments still constitute hourly-paid work even though the two together may last for more than 13 weeks. For example, an individual may be engaged as a teacher for 8 weeks and then as a cleaner for the 6 weeks immediately following the first assignment with both roles being managed as hourly-paid assignments.
Glossary of Terms:

**Worklink:** This is a on-campus system for University of Birmingham students who wish to make themselves available for part-time work on campus. Worklink is based in the Guild of Students.

**Eploy:** This is an on-line University system that is used to commission hourly-paid work (other than by UoB students) which is defined as being less than 13 weeks duration. This system is managed by Payroll but budget centres have the ability to set up and approve assignments, hourly-paid workers can apply for and accept assignments, it produces timesheets for payments and logs eligibility to work in the UK.

### Bank of worked examples

**Teaching:**
I need someone to deliver some teaching next year. As per the information above and in order to establish the correct commissioning route, the following questions will need to be considered.

- **What is the nature of the Work?** This will determine whether it is (a) a 3-legged Lecturer or Senior Lecturer at grade 8 or 9 or (b) a 2 legged Lecturer or Senior Lecturer at grade 8 or 9 or (c) a Teaching Fellow/Part-time Visiting Lecturer at grade 7, or, (d) a Teaching Associate/Small Group Teacher/Postgraduate Demonstrator at grade 6.
- **Is this work suitable for a student?** This will determine whether it could be undertaken by a Postgraduate Demonstrator or a Small Group Teacher who will be paid at the rate of a Teaching Associate at grade 6.
- **How long will the assignment take?** If it is for less than 13 weeks it will be seen as ‘hourly-paid work’. If it longer than 13 weeks it will be seen as ‘employment’, except where, over the duration of the assignment, it is for less than an average of 1 hour a week, in which case it will be hourly-paid.

**Example 1:** The requirement is for an UG year 2 teacher to undertake teaching and related tasks covering a member of staff who is currently on sabbatical. The duties will include preparation and delivery of teaching and marking. It is not suitable for a student because it requires a considerable amount of lecturing. The post-holder will be required to work 25% of full-time over a 9 month period.

**Outcome:** This will be considered employment and an establishment post on the main payroll is required with a post number. The vacancy will normally be advertised and will be subject to the usual recruitment and selection processes.

**Actions Required:**
1. Write a JD, using the generic JDs that are available. This will establish what grade the post is.
2. Confirm the fte, using the relevant Workload Allocation Model as a guide.
3. Submit the written case to the next appropriate approval meeting in the usual manner.

**Example 2:** The requirement is for an expert teacher to undertake some specialist teaching. The duties will include preparation and delivery of teaching but probably not marking. It is not suitable for a student because it requires specialist expertise. The post-holder will be required to work over a period of 10 weeks.

**Outcome:** This will be considered hourly-paid work and a Part Time Visiting Lecturer assignment paid at the level of grade 7 is required.

**Actions Required:**
1. Before any work commences, it will be necessary to commission the work using the Eploy system.
2. Contact your Commissioning Managers within your School to gain approval for the post.
Example 3: There is a requirement for someone to teach several small groups. The duties will be planning and delivering 10 small group teaching sessions over a period of 10 weeks. This work will be suitable for a PG student.

Outcome: This will be covered by a Small Group Teacher and considered hourly-paid work, managed through Worklink.

Actions Required:
1. Contact your Commissioning Managers within your School to gain approval for the post
2. Before any work commences, it will be necessary to commission the work using the Worklink system.
3. The fte will need to be confirmed using the relevant Workload Allocation Model as a guide.

Example 4: There is a requirement for someone to teach several small groups. The duties will be planning, delivering and following-up on 15 small group teaching sessions over a whole academic year. This work will be suitable for a PG student.

Outcome: This will be covered by a Small Group Teacher. As the work will be for an average of less than an hour per week for the duration of the contract, it will be seen as hourly-paid work, even though the duration of the contract is more than 13 weeks, managed through Worklink.

Actions Required:
1. Contact your Commissioning Managers within your School to gain approval for the post.
2. Before any work commences, it will be necessary to commission the work using the Worklink system

Example 5: This is a requirement for an expert to give a one off lecture. This will be part of an UG course but is open for everybody to attend.

Outcome: Because this is a one-off public lecture delivered by someone who is not a member of staff, it will be considered as a provision of a service and therefore the lecturer will be paid on a self-employed basis. The lecturer must be registered on Proactis as a supplier. There is no formal rate of pay for this service.

Actions Required:
1. A purchase order should be raised or a FIN105 form completed if this is a strictly one off occurrence.
2. The rate for the job should be agreed with the Lecturer.
3. The lecturer should submit an invoice for payment, if a purchase order is raised.

Research:

I need someone to help with my research. Using the information above as a guide the following questions will need to be considered in order to establish the correct commissioning route.

- **What is the nature of the Work?** This will determine whether it is (a) a Senior Research Fellow at grade 9 or (b) a Research Fellow at Grade 7 or 8; or (c) a Research Associate at grade 6, or (d) more suitable for a clerical grade Band 100 – 500.

- **Is this work suitable for a student?** If this is the case, it could be undertaken by a Student who will be commissioned via Worklink.
• *How long will the assignment take?* If it is for less than 13 weeks it will be seen as ‘hourly-paid work’. If it longer than 13 weeks it will be seen as ‘employment’, except where, over the duration of the assignment, it is for less than an average of 1 hour a week, in which case it will be hourly-paid.

**Example 6:** The PI has won a grant in which there is funding for a full time researcher for the duration of the grant which is for a 2 year period.

**Outcome:** This will be considered employment and a post on the main payroll is required with a post number. The vacancy will normally be advertised and will be subject to the usual recruitment and selection processes.

**Actions Required:**
Write a JD. This will establish what grade the post is.
Submit the written case to the next College Post Approval Group meeting for approval, via the School Operations Manager.

**Example 7:** The PI requires support in transcribing some interview tapes. This work is likely to last 2 weeks

**Outcome:** This will be considered hourly-paid work because it is less than 13 weeks duration. It could be undertaken by a student, if required.

**Actions Required:**
1. It will be necessary to put together a short JD to ascertain the grade for the work.
2. Contact your Commissioning Managers within your School to gain approval for the post.
3. Before any work commences, it will be necessary to commission the work using the Worklink system for a UoB student or the Eploy system for an external appointment.

**Example 8:** The School requires someone for a 3 week period to work as a Research Assistant for a Birmingham Policy Commission. This work is of an academic-related grade and suitable for a student. Previous Policy Commissions have required the same sort of support and the student was previously employed via Worklink.

**Outcome:** This will be considered hourly-paid work because it is less than 13 weeks duration.

**Actions Required:**
1. It will be necessary to put together a short JD to confirm the grade for the work.
2. Contact your Commissioning Managers within your School to gain approval for the post.
3. Before any work commences, it will be necessary to commission the work using Worklink for a UoB student or the Eploy system for an external appointment.

**Administrative:**
I need someone to help with an administrative (non-academic) task. Using the information above as a guide the following questions will need to be considered in order to establish the correct commissioning route.

• *What is the nature of the Work?* This will determine whether it is (a) a task suitable for an academic-related grade, or (b) more suitable for a clerical grade Band 200 – 500.
- **Is this work suitable for a student?** If this is the case, it could be undertaken by a UoB student who will be commissioned via Worklink.
- **How long will the assignment take?** If it is for less than 13 weeks it will be seen as ‘hourly-paid work’. If it longer than 13 weeks it will be seen as ‘employment’, except where, over the duration of the assignment, it is for less than an average of 1 hour a week, in which case it will be hourly-paid.

**Example 9:** There is a requirement for a Facilities Assistant to help out with low level tasks associated with an aging building together with helping set up AV equipment etc. This person will be needed during term time for 2 years. It is not intended to employ this person over the summer period when the students are not around.

**Outcome:** This will be considered employment. The cessation of work over the summer vacation will be seen as a temporary cessation. A post on the main payroll is required with a post number. The vacancy will normally be advertised and will be subject to the usual recruitment and selection processes.

**Actions Required:**
1. Write a JD. This will establish what grade the post is.
2. Submit the written case to the next College Post Approval Group meeting for approval, via the School Operations Manager.

**Example 10:** There is a desire to offer an Internship with the School. This internship will be for a period of 6 weeks and the intern will be expected to undertake a series of related tasks.

**Outcome:** Because the duration of the internship is less than 13 weeks it will be considered hourly-paid work. This internship could be taken up by a University of Birmingham student or by an external student or by someone else.

**Actions Required:**
1. Write a JD. This will establish what grade the post is.
2. Contact your Commissioning Officers within your School to gain approval for the post.
3. Advertise in the normal way, in line with the guidance document entitled ‘University internships and short term career development opportunities’.
4. If a UoB student is appointed, then the work can be commissioned via Worklink.
5. If the appointee is not a UoB student, it will be necessary to commission the work using the Eploy system before any work commences.

**Example 11:** The requirement is for a person to undertake administrative duties to provide maternity cover for 12 months. The duties will be as per a job description evaluated at Band 400. The post-holder will be required to work full-time over the 12 month period.

**Outcome:** This will be considered employment and a post number required. The vacancy will be advertised and will be subject to the usual recruitment and selection processes.

**Actions Required:**
1. Confirm maternity dates for member of staff
2. Raise AV1 for maternity cover
3. Recruit and appoint in the usual manner
Example 12: The requirement is for a student to carry out a discrete piece of marketing activity for a period of less than 13 weeks. The duties will include research, preparation of material and the compilation of a report. This activity is normally Band 400.

Outcome: This will be considered *hourly-paid work* assignment paid at the level of Band 400.

Actions Required:
1. Contact your Commissioning Managers within your Budget Centre to gain approval for the post.
2. Before any work commences, it will be necessary to commission the work using the Eploy system.
3. If you appoint a UoB student to undertake the assignment, this can be commissioned via Worklink.

Example 13: There is a requirement for an expert to give a *one off* piece of sports coaching.

Outcome: Because this is a one-off activity delivered by an individual who is not a member of staff, it will be considered as a *provision of a service* and therefore the Coach will be paid on a self-employed basis. There is no formal rate of pay for this service.

Actions Required:
1. Contact your Commissioning Managers within your Budget Centre to gain approval for the post.
2. If the supplier has formed a company which is registered on Proactis, a purchase order should be raised.
3. The rate for the job should be agreed with the Coach.
4. The Coach should submit an invoice for payment.
5. If the coach wishes to be paid as an individual, s/he should submit a claim, which would be paid via the gross payroll.

Example 14: There is a requirement for a ‘temp’ to provide temporary cover for a Band 400 secretary who is currently off sick.

Outcome: This will be considered hourly-paid work.

Actions Required:
1. Gain approval for the post in the appropriate way.
2. Contact Pertemps in the normal manner.