

Self-employed Contractors

1. Purpose

The purpose of this guidance is to inform managers on the employment of self-employed contractors within the Forestry Commission. This guidance replaces the information previously held in Personnel Memorandum 15 (PM15).

Additional guidance on this topic is available from the [HMRC website](#) or from the [HR Policy Team](#).

2. Difference between employment and self-employment

Employment status is not a matter of choice. Parties can not simply decide to treat working arrangements as either self-employment or employment. It is necessary to determine whether the person works under a contract of service (employees) or under a contract for services (self-employed, independent contractor).

2.1 Common indicators of employment

- The employer has the right to control what the worker has to do – where, when and how it is done even if the employer rarely uses that control.
- The worker supplies only his or her own small tools.
- The worker does not risk his or her own money and there is no possibility that he or she will suffer a financial loss.
- The worker has no business organisation, for example yard, stock, materials, or workers.
- The worker is paid by the hour, week or month.

2.2 Common indicators of self-employment

- Within an overall deadline, the worker has the right to decide how and when the work will be done.
- The worker supplies materials, plant or heavy equipment for the job.
- The worker bids for the job and will bear the additional cost if his or her bid is too low.
- The worker has the right to hire other people who answer to him or her and are paid by him or her to do the job.

- The worker is paid an agreed amount for the job regardless of how long it takes.

3. Factors to determine employment status

Recent court cases have demonstrated that there is no single satisfactory test to determine if an individual is an employee or self-employed. A range of factors need to be considered and situations reviewed on a case by case basis. The following factors are not an exhaustive list but they do include the most important ones.

3.1 Mutual obligation

The minimum obligations that are necessary for a contract of service (employee) are the obligation on the part of the worker to give a personal service and the obligation on the part of the FC to pay the worker for that service. The FC would also be obliged to provide work for the duration of the contract during agreed working hours.

3.2 Personal service

A condition of a contract of service (employee) is that the worker is required to provide his or her services personally. If the worker and the FC understand that a suitably qualified or skilled person can (or must) be provided by the worker in his or her own absence the situation is very likely to be self-employment.

The requirement for personal service does not necessarily mean that the worker is an employee as the requirement can apply in situations of employment and self-employment (see below for information on substitution).

3.3 Right of control

The employee must be subject to a certain degree of control by the FC although the control need not be exercised – it is the right of control that matters. The FC may control how a worker performs his or her services, what tasks are performed, when and, or where they must be performed.

The fact that a worker may be told how to perform duties will usually be seen as a strong pointer to employment but where the worker is an expert in their area the absence of this aspect of control would not impact their employment status.

An employee will usually be expected to work set hours each day or week but may be permitted to work flexible hours and at the FC's premises. The self-employed person is more likely to have the freedom to do work when and where he or she wants.

3.4 Right of substitution and engagement of helpers

Some contracts give the worker a right to send a replacement or engage a helper. Where the worker has to pay that person this would be regarded as an indicator of self-employment. The degree to which it points to self-employment would depend on the particular circumstances of the case. Relevant considerations would include whether the FC reserved the right to reject a substitute and where the right was exercised on a regular basis.

3.5 Provision of own equipment

A self-employed contractor generally provides whatever equipment is needed to do the job. If you engage workers to operate equipment or plant that you have hired from another source, it is more likely that the worker will be regarded as an employee. This factor will be very important in the case of driver operators of heavy plant, such as JCBs, lorries etc.

3.6 Financial risk

Individuals who risk their own money, for example, buying assets needed for the job and bearing the running costs and paying for overheads and large quantities of materials, are almost certainly self-employed. Employees are not usually expected to risk their own capital. Self-employed workers may also be required to rectify unsatisfactory work in their own time and for no additional reward.

Financial risk could also take the form of quoting a fixed price for a job, with the consequent risk of bearing the additional cost if the job overruns. The risk of making a loss, or a profit, is a very strong indicator of self-employment.

3.7 Mutual intention

The intention of both parties can be decisive where the factors pointing to employment and to self-employment are evenly balanced. But a stated intention for self-employment will not matter if the facts clearly point to employment.

4. Summary

Whether a worker is an employee or self-employed depends on a range of factors. It is a matter of evaluating the whole situation to assess if the overall effect is a person working in a self-employed capacity or a person working as an employee in the FC.

Appendix 1

The Multiple Test

There is no single test for distinguishing between employed and self-employed however, The Multiple Test can be used to assist managers considering when to hire a self-employed contractor.

When using The Multiple Test it is important to recognise that no one question on its own will give a clear indication of status. Not all questions have equal weight or importance and it is the full picture that is considered not the number of Yes or No answers.

- Is the worker under the control of the person to whom he/she is supplying the services, e.g. in such matters as how, when and where the work is carried out?
(Yes = potential employee)
- Does the individual hire his/her own helpers?
(Yes = contractor)
- What degree of financial risk does the individual take?
(Predominant Yes = contractor)
- What degree of responsibility for investment and management does the individual have?
(Transparent evidence = contractor)
- Does the individual have the possibility of profiting from sound management in the performance of this task?
(Yes = contractor)
- Is there mutual obligation, i.e. the company is obliged to give work, and is the individual obliged to carry it out?
(Yes = employee)
- Is it necessary for the work to be done regularly and, possibly, within a certain time limit?
(Either)
- Does the individual work under the direction of the company's management?
(Yes = potential employee)

- Has the relationship between the parties endured for a substantial time?
(Either)
- Does the company provide the tools and equipment necessary to do the work?
(Yes = potential employee)
- Does the company deduct Pay As You Earn (PAYE) and National Insurance Contributions (NICs) from the payments to the person?
(Yes = employee)
- Does the individual have to ask management for time off?
(Yes = employee)
- Does the individual work for more than one company or employer?
(Either)
- Does the individual receive holiday pay, commission, sick pay, etc from the employer?
(Yes = employee)
- Does the individual invoice the company for work he/she has done?
(Yes = potential contractor)
- Is the individual registered for Value Added Tax (VAT)?
(Yes = contractor)
- Does the individual have their own Liability Insurance that indemnifies the FC against any claims of loss, injury or damage occasioned by their act or default?
(Yes = contractor)
- Is the individual registered with the HMRC as self-employed?
(Yes = potential contractor)