
**Assessing Employment Status Policy and Guidelines
(ESI HMRC)**

Report by Chief Financial Officer and Chief HR Officer

Executive Committee

9th June 2015

1 PURPOSE AND SUMMARY

- 1.1 **The Assessing Employment Status Policy and associated procedural guidelines have been developed in response to an HMRC review during 2014.**
- 1.2 The objective of the Policy is to achieve best practice and compliance, ensuring that all self-employed individuals engaged by the Council are appropriately assessed as per HMRC guidelines.
- 1.3 The review determined a number of incorrect employment status determinations. As a result additional income tax and national insurance contributions will be sought from the Council, additionally a monetary penalty is likely to be applied (the value of which is yet to be determined).

2 RECOMMENDATIONS

- 2.1 **It is recommended that the Executive Committee:**
 - (a) **Approves the attached Assessing Employment status Policy and Guidelines.**

3 BACKGROUND

- 3.1 It is a legal requirement for the Council to ensure the correct employment status is determined when someone is engaged to carry out a specific piece of work (e.g. a one off piece of work rather than full-time employment).
- 3.2 It is important to correctly determine an individual's employment status to ensure the correct tax and National Insurance contributions (NICs) are deducted and subsequently paid to HMRC.
- 3.3 Whether someone is employed or self-employed is dependent on the specific terms and conditions of the relevant engagement.
- 3.4 These terms can be input to an online tool provided by HMRC to confirm the appropriate status of the individual.
- 3.5 HMRC review an organisation's approach to assessment to ensure compliance with the Employment Status regulations.
- 3.6 Following a compliance review by HMRC the Council's assessment method has been reconsidered and the existing replaced with comprehensive guidance. This new policy and associated procedures will apply to all staff that engage or employ individuals who are not agency staff appointments.

4 2014 HMRC REVIEW OF THE COUNCIL

- 4.1 An HMRC review during 2014 identified deficiencies in the procedures used when engaging self-employed individuals and the absence of any formal policy on the assessment approach.
- 4.2 HMRC considered the employment status of a sample of 12 individuals (Appendix 1 provides details of the types of roles these individuals held) and following a detailed review identified that seven of these individuals had been incorrectly assessed as self-employed rather than employees.
- 4.3 HMRC have considered the facts and representations provided and have advised that the Council did not correctly apply PAYE and Class 1 National Insurance (NI) contribution deductions in relation to the incorrectly assessed individuals. External advisors (BDO UK) have supported the Council throughout the compliance review.
- 4.4 Following this outcome, additional tax and class 1 NI contributions will be sought by HMRC in relation to tax years 2008/09 to 2013/14. The gross amount calculated (excluding interest and prior to off-setting any taxes already paid by the individuals concerned) is £49,728.28.
- 4.5 In addition, the Council is likely to be liable to a monetary penalty as well as interest. The value of the penalty and the interest has yet to be determined by HMRC.
- 4.6 The development and adoption of appropriate policy and process will demonstrate the Council's compliance with HMRC legal regulations and may mitigate the extent of the penalty.

5 ASSESSING EMPLOYMENT STATUS POLICY AND GUIDELINES

- 5.1 In order to address the deficiencies identified by the HMRC review and to mitigate against any future incorrect employment status assessments, the Assessing Employment Status Policy and Guidelines (the Policy) contained in Appendix 2a has been developed. Appendix 2b clearly lays out the process journey to determine employment status.

- 5.2 The objective of the Policy is to achieve compliance and best practice, ensuring that all individuals engaged by the Council are properly assessed through an employment status procedure which considers the HMRC Employment Status Indicator (ESI) guidelines as set out on their website at www.hmrc.gov.uk/employment-status.
- 5.3 The Policy requires ownership of the ESI process to be with Procurement & Payment Services (PPS).
- 5.4 The Policy states that no Council Officer may engage any self-employed individual without the correct procedure being followed.
- 5.5 Procurement and Payment Services will undertake a review and report to the Chief Executive, Depute Chief Executives and Service Directors any existing individuals who require assessment to mitigate any risk to the Council if audited by HMRC.
- 5.6 The rollout of the policy will be via a series of presentations to Departmental and Service Management Teams. Following these presentations, template materials will be available through the Council Intranet and a SB Learn module will be provided as support to all employing (engaging) Council Officers.
- 5.7 The HR Shared Services Team will ensure that all relevant Council Officers have access to the ESI training module. Compliance will be monitored by Procurement and Payment and Payment Services by measuring the total number of completed SB Learn trainees as a percentage of the relevant Council Officer target audience.

6 IMPLICATIONS

6.1 Financial

The introduction of a robust corporate policy and procedure to ensure compliance will mitigate any future additional costs to the Council resulting from the wrong treatment of an individual's employment status.

6.2 Risk and Mitigations

The risk of the Council being non-compliant with HMRC legislation will be mitigated by implementation of the proposed policy and procedures.

6.3 Equalities

An Equalities Impact Assessment has been carried out on this proposal and no adverse equality implications have been identified.

6.4 Acting Sustainably

This policy makes provision for sustainability by being fully compliant with HMRC legislation.

6.5 Carbon Management

This policy has no adverse impact on carbon management.

6.6 Rural Proofing

This policy will have no adverse effect on the local dimension or rural proofing.

6.7 Changes to Scheme of Administration or Scheme of Delegation

There are no anticipated changes to be made to the Scheme of Administration or the Scheme of Delegation.

7 CONSULTATION

- 7.1 The Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council have been consulted and comments received have been incorporated into the final report.
- 7.2 The Policy and Guidelines have been developed by the Procurement and Payment Services Team in collaboration with Human Resources and have been reviewed and agreed by Legal Services.

Approved by

David Robertson
Chief Financial Officer

Signature

Clair Hepburn
Chief Officer HR

Signature

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