



Management CIRCULAR No.

94

January 2011
Management Circular No. 94

Glasgow City Council
Education Services
Wheatley House
25 Cochrane Street
Merchant City
GLASGOW
G1 1HL

To **All Education Services**

Payments to Visiting Artists, Consultants, Coaches etc.

EMPLOYMENT STATUS

1. Why Determine Employment Status?

- 1.1 The Council is required by HM Revenue & Customs (HMRC) to determine the employment status of those engaged to undertake work on their behalf. If this obligation is not met it creates unfairness where, for instance, two workers engaged on the same project and performing the same tasks are not paying the same tax and NICs due to the incorrect classification of one of them.
- 1.2 The facts of each individual circumstance require to be established in case of any dispute that may require to be referred to HMRC for adjudication. Recent court cases indicate there is no single satisfactory test governing the question whether a person is an employee or self-employed. As a result, Education Services adopts the use of the HMRC Employment Status Indicator (ESI) Tool. This Tool is available to view and test at the HMRC web-site at www.hmrc.gov.uk. Information extracted from this web-site has been used as the basis for this policy adopted by Glasgow City Council Education Services for the payment of consultants, individuals and visiting artists or coaches (*"the Individual"*).

2. Education Services Policy

- 2.1 **The policy for Education Services is to advise that all "self-employed" consultants, individuals, visiting artists and coaches will be paid by PAYE (e.g. payroll), with direct deductions at source for Tax and National Insurance Contributions (NIC).** The majority of such individuals are already paid in this way, thus ensuring that the Council meets its obligations to HMRC as an employer. Failure to meet these obligations can result in significant penalties being levied by HMRC.
- 2.2 It is the responsibility of the person instructing the work to be carried out (*"the Engager"*) to advise the Individual of Education Services' policy with regard to the processing of payments for services **at the point of engagement.** Four Pro-Forma are attached to capture the necessary information.

2.3 **Payments via payroll – Pro-Forma VA1 and Pro-Forma VA1a**

- 2.3.1 Pro-Forma VA1 captures the information necessary both to add a new Individual on to the payroll system (where appropriate) and to generate payment for work undertaken. Once completed by the engager, this Pro-Forma must be forwarded to Customer and Business Services, Employee Service Centre, HR Support Team, Floor 8, Nye Bevan House 1, 20 India Street, Glasgow G2 4PF for processing.
- 2.3.2 Pro-Forma VA1a must be completed by the individual **at the point of engagement** and together with Pro-Forma VA1 returned to Customer and Business Services, Employee Service Centre, HR Support Team, Floor 8, Nye Bevan House 1, 20 India Street, Glasgow G2 4PF for processing.
- 2.3.3 If the Individual is new to Glasgow City Council, they will then be advised of their Glasgow City Council SAP employee reference number which can be quoted and used to process payment for any future engagement at a Glasgow City Council educational establishment.

2.4 **Self-Employed – Pro-Forma VA2 and Pro-Forma VA2a**

- 2.4.1 Pro-Forma VA2 must be used where the Individual refuses to complete VA1 and states that they are self-employed and require to be paid without the deduction of Tax and NIC.
- 2.4.2 The questionnaire contained within Pro-Forma VA2 should be completed jointly by the Engager and the Individual and then sent to Customer and Business Services, Accounts Payable, Floor 5, Nye Bevan House 1, 20 India Street, Glasgow G2 4PF. The responses to the questionnaire will then be input to the Employment Status Indicator tool. This exercise will result in one of the following outcomes (the ESI determination):
 - a) The Individual is classed as self-employed and will be paid by submission of an invoice. All payments made in this way will be recorded and a return made to HMRC annually;
 - b) The Individual is classed as employed and any invoice submitted will be paid via Glasgow City Council payroll, with appropriate Tax and NIC deductions applied;
 - c) No determination can be made on the information provided and the case will be referred to HMRC.
- 2.4.3 Both the Individual and the Engager will be formally advised in writing of the outcome of the exercise. It should, however, be recognised that processing the information will take time and this should be factored into the payment cycle, particularly if the case requires to be referred to HMRC.
- 2.4.4 In the case of a determination of “*self-employed*”, unless fundamentally similar and within the same establishment, each engagement of a self-employed Individual will require to be assessed, and it will not be sufficient for the Individual to refer to any previous Employment Status Indicator (ESI) determination.
- 2.4.5 Written confirmation of determination of “*self-employed*” will include a Pro-Forma VA2a which must be completed by the individual and returned to Customer and Business Services, Accounts Payable, Floor 5, Nye Bevan House 1, 20 India Street, Glasgow G2 4PF before any invoice submitted by the individual will be paid.

3. **Why is it not simple to determine employed or self-employed?**

- 3.1 A worker’s employment status, e.g. whether they are employed or self-employed, is not a matter of choice. It depends upon the terms and conditions of the relevant engagement and the nature of the relationship with the person for whom the services are provided. Usually it will be easy to decide whether someone is an employee or self-employed. However, there will be many cases where it will not be so easy to decide. Where two Individuals are engaged to carry out similar work, it is possible for one to be self-employed and the other to be an employee because they have been taken on under contracts with different terms and conditions.

3.2 In order to answer the question “*employed or self-employed*” 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). For Tax and NICs purposes, there is no statutory definition of a contract of service or of a contract for services. What the parties call their relationship, or what they consider it to be, is not conclusive. It is the reality of the relationship that matters.

3.3 As a general guide as to whether a worker is an employee or self-employed, if the answer is “Yes” to all of the following questions, then the worker is probably an employee:

- Do they have to do the work themselves?
- Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- Can they work a set amount of hours?
- Can someone move them from task to task?
- Are they paid by the hour, week, or month?

3.4 If the answer is “Yes” to all of the following questions, it may mean that the worker is self-employed:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

3.5 It must be emphasised the above acts as a guide only, and all Individuals should be engaged according to the Policy detailed in Section 2 above.

4. **Employment Rights and Benefits entitlement**

4.1 The fact that a person is found to be an employee for tax and NIC purposes does not necessarily lead to the conclusion that he or she is an employee for other purposes, e.g. entitlement to Statutory Sick Pay (SSP). Information about employment rights and entitlement to benefits are available at Department for Business, Enterprise and Regulatory Reform (www.berr.gov.uk) and UK government (www.direct.gov.uk) respectively.

I hope that the above will assist in understanding the complexities of determining an employee’s employment status.

Note however that the actual engagement of consultants and/or Individuals should only be made after consulting Management Circular No. 84 – Guidance on the Use of Consultants and obtaining the appropriate approval.

Maureen McKenna
Executive Director of Education



Form VA1 Payment to an Individual

PLEASE USE BLACK INK AND BLOCK LETTERS

1	POSITION DETAILS	
	Department Education Services	Name of School/Centre
	Position Designation Payment to an Individual	

2	PERSONAL DETAILS OF INDIVIDUAL	
	Surname	Forename(s)
	Address	Phone (Home) _____ (Mobile) _____
		SAP Contract No.
		PVG Membership No. _____ Date of Issue _____
	Postcode	NOTE: The PVG MUST be with Glasgow City Council. If you have a PVG with another organisation you will still require a scheme update. Payment cannot be made until the appropriate information is provided or form is completed.
	Date of Birth	Bank/Building Society Sort Code
	National Insurance No.	Bank/Building Society Account No.

PLEASE NOTE: What we will do with your information

Glasgow City Council is registered under the Data Protection Act 1998. The Council is under an obligation to manage public funds properly. Accordingly information that you provide will be used to ensure all sums due to the Council are paid timeously, e.g. by identifying persons who are non-payers of Council Tax and to improve uptake of Benefits. The information may also be used to prevent and detect fraud. It is also possible that this information may be shared for the same purpose with public bodies, including neighbouring Councils or other organisations, which handle public funds.

The information which you provide on this form will be processed by Glasgow City Council, which is the data controller for the purposes of the Data Protection Act 1998. The personal data that you provide will be used to deal with your correspondence and to let you know what the outcome of this is. The Council will not use your personal data for any other purpose and will not disclose the personal information that you provide to any outside person or organisation except where required to do so by law or with your own consent.

3	DETAILS OF EMPLOYMENT	
	Activity Undertaken	Dates Worked

4	TO BE COMPLETED BY SCHOOL/CENTRE	
	Cost Centre	SAP Internal Order No.
	Amount to be paid to Individual	* Tax and NIC will be deducted from this sum ** Schools/Centres MUST note that the 10% commitment necessary for SEEMIS purposes must NOT be included here.

5	AUTHORISED BY	
	Individual's Signature _____	Date _____
	Head of School/Centre/Engager Signature _____	Date _____



Payment to an Individual

PLEASE USE BLACK INK AND BLOCK LETTERS

DECLARATION BY INDIVIDUAL

N.B. This form must be completed by the individual at the point of engagement and returned together with Pro-Forma VA1 to Customer and Business Services at the address shown below.

I _____ (name in **BLOCK CAPITALS**) understand and accept that I have been classified by Glasgow City Council as a casual, non-contracted visiting artist in respect of this engagement and that **appropriate rates of National Insurance and/or Income Tax will be deducted** from the total payment amount due to me as agreed between myself and Glasgow City Council in respect of this engagement.

I understand and accept that I will not at any time be entitled to claim any other benefits from Glasgow City Council as a result of this or any other future engagements of this type.

Individual's Signature _____ Date _____

Please return this declaration form along with Pro-Forma VA1 to:

Customer and Business Services
Employee Service Centre
Human Resources Support Team
PO Box 26845
GLASGOW
G2 9BA



Payment to an Individual - Self Employed

PLEASE USE BLACK INK AND BLOCK LETTERS

To be completed by those individuals who state that they are self-employed and require to be paid without the deduction of Tax and National Insurance Contributions (NIC).

1 PERSONAL DETAILS OF INDIVIDUAL	
Surname	Forename(s)
Address	Phone (Home) _____ (Mobile) _____
	SAP Contract Number
	Date of Birth
Postcode	Bank/Building Society Sort Code
National Insurance No.	Bank/Building Society Account No.
Name of Business	Unique Tax Reference No.
Name of Engager	Name of Establishment

2 TO BE COMPLETED BY THE INDIVIDUAL AND AGREED WITH THE ENGAGER	
Please state how you obtained this particular work e.g. Newspaper advertisement, approached by Glasgow City Council, tender for services	
Please state if you have ever been on Glasgow City Council's payroll and if so, what was the nature of your duties as a Glasgow City Council employee?	
Are you completing this form in relation to a future contract?	<input type="checkbox"/> YES <input type="checkbox"/> NO
What is your current employment status?	
What is your core business activity?	
Do you have a contract/written agreement with Glasgow City Council for this work? <i>If yes, please provide a copy.</i> If there is no contract/written agreement, please state the verbal agreement concerning the terms and conditions of the agreement.	<input type="checkbox"/> YES <input type="checkbox"/> NO
Under the terms of the contract, do you risk your own money when undertaking this task?	<input type="checkbox"/> YES <input type="checkbox"/> NO
If you are unable or unwilling to carry out the work personally do you have any right to send someone else to do it?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Can you be told what to do?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Can you be moved from task to task?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Can you decide how the work is done?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Are you skilled or an expert in this field of work?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Are you required to provide the major items of equipment needed to do the work apart from minor items of equipment or those tools of the trade that workers customarily provide?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Do you pay the cost of all materials and/or supplies for the work without being reimbursed? (not including minor items and consumables)	<input type="checkbox"/> YES <input type="checkbox"/> NO
Are you required to provide a motor vehicle for use at work (not including travel to and from work) which involves transporting people, equipment, materials or goods in order to do the work?	<input type="checkbox"/> YES <input type="checkbox"/> NO

Tick one of the following that best describes how your main income is made up.

- i. Regular payment based on an hourly, daily, weekly or monthly rate
- ii. Piece rate or work measure
- iii. Commission only
- iv. Commission and basic salary
- v. Fixed price
- vi. Share of profits and losses
- vii. Share of profits but not losses

If required to rectify faulty work do you do so at your own expense? YES NO

Tick what you would provide at your own expense

- i. Labour and materials
- ii. Labour only
- iii. Materials only
- iv. Neither labour nor materials
- v. Not applicable

Under the terms of the contract will you be paid for unsatisfactory work that has to be rectified at Glasgow City Council's expense? YES NO

Under the terms of the contract do you expect to be reimbursed for all expenses relating to the work, for example, travel? (not home to work) YES NO

Do you carry out the work on Glasgow City Council's premises or at a place determined by the Council? YES NO

Are you required to work a set number of hours per week? YES NO

Are you paid a fixed amount by the Council regardless of how long the work takes to complete? YES NO

Have you carried out similar work for the Council or other organisations during the last 12 months? YES NO

How many? _____

Please provide any other additional information/comments in support of any self-employed status claim.

This form when completed must be forwarded for processing without delay to Customer and Business Services, Employee Service Centre, Accounts Payable, Floor 5, Nye Bevan House 1, 20 India Street, Glasgow G2 4PF.

In determining an individual's status, the HMRC will have regard to a number of tests. If Glasgow City Council's decision is ruled to be incorrect by the HMRC then **Glasgow City Council will be held liable to account for the PAYE and NICs underpaid, possibly with interest and penalties.**

All information detailed on this form will be input into the HMRC's Employment Status Indicator tool for analysis. The ESI tool will then provide a determination as to whether the individual is self-employed or is indeed an employee of Glasgow City Council, in terms of the work being undertaken on this occasion. If no determination can be made, the case will be referred to HMRC.

The Employment Status Indicator tool can be accessed at www.direct.gov.uk

Individual's Signature _____ Date _____

Engager's Signature _____ Date _____

PLEASE NOTE: What we will do with your information

Glasgow City Council is registered under the Data Protection Act 1998. The Council is under an obligation to manage public funds properly. Accordingly information that you provide will be used to ensure all sums due to the Council are paid timeously, e.g. by identifying persons who are non-payers of Council Tax and to improve uptake of Benefits. The information may also be used to prevent and detect fraud. It is also possible that this information may be shared for the same purpose with public bodies, including neighbouring Councils or other organisations, which handle public funds.

The information which you provide on this form will be processed by Glasgow City Council, which is the data controller for the purposes of the Data Protection Act 1998. The personal data that you provide will be used to deal with your correspondence and to let you know what the outcome of this is. The Council will not use your personal data for any other purpose and will not disclose the personal information that you provide to any outside person or organisation except where required to do so by law or with your own consent.

FOR OFFICE USE ONLY	
Result of determination*	
* Where no determination can be made on the information provided the case will require to be referred to HMRC for a decision and Section 3 below must be completed.	
HMRC Reference Allocated	
Carried Out By	3 Date of Referral to HMRC
Date	Date Response Received from HMRC
Date of Formal Notification to Individual and Engager	Determination by HMRC



Payment to an Individual - Self Employed

PLEASE USE BLACK INK AND BLOCK LETTERS

DECLARATION BY INDIVIDUAL

N.B. This form must be completed by the individual and returned to Customer and Business Services at the address shown below before any invoice submitted by the individual will be paid.

Reference Number allocated by Glasgow City Council: _____

I _____ (name in BLOCK CAPITALS) have received written confirmation from Glasgow City Council that I have been classified as "self-employed" in respect of this engagement (as determined by HM Revenue & Customs Employment Status Indicator (ESI) tool).

I understand and accept that I will be entirely responsible for any payment of Income Tax and/or National Insurance that may be due to HM Revenue & Customs as a result of this or any future engagements where the above reference number is quoted on the invoice submitted for payment.

Individual's Signature _____ Date _____

Please return this declaration form to:

**Customer and Business Services
Accounts Payable, Floor 5
Nye Bevan House 1
20 India Street
GLASGOW
G2 4PF**