

University of the Highlands and Islands

Policy reference	UHI Principal's Office
Responsible committee and officer	Finance & General Purposes Committee Secretary

Use of Consultants Policy

Original author:	Fiona M Larg
Current revision author: (if applicable)	As above

Version Control

Version	Date	Author	Purpose/change	Policy review date
01	27 September 2012	Fiona M Larg	Policy established at request of F&GPC (Draft)	Sep 2013
02	26 November 2012	Fiona M Larg	HMRC guidance incorporated	Sep 2013
03				

Approval

Version	Date approved	Approving committee	Individuals/groups to be notified (if relevant)	Committee officer signature
01		Finance and General Purposes Committee	SMG (consulted 1 st October 2012)	
02				
03				
04				

Note – draft policies should take into account the views of Senior Management Group

Prior to implementation, **approval** is required from Academic Council, Finance and General Purposes Committee or Board of Governors (whichever is appropriate).

Policy Summary

Overview Why is the policy required?	Finance & General Purposes Committee wish to be assured that consultants are used only where appropriate and absolutely necessary and that controls are in place over their use.
Purpose What will it achieve?	This policy forms part of the University of the Highlands and Islands' governance arrangements.
Scope Who does it apply too?	All budget holders/managers who may wish to commission consultants
Consultation/notification Highlight plans/dates	The policy will initially be reviewed by the university's Senior Management Group prior to consideration by the Finance & General Purposes Committee.
Implementation and monitoring (including costs)	The policy will be implemented through the Senior Management Group of the University. It will be monitored on a regular basis through the Secretary and the Finance and General Purposes Committee.

1.0 Overview

Consultants are an expensive resource and should be employed only when the need has been justified. The need will be assessed on the strength of the justification statement contained in the project initiation document or business case as appropriate.

2.0 Purpose

This policy forms part of the University of the Highlands and Islands' governance arrangements. The purpose of the policy is to ensure that the engagement of consultants, interims and agency workers is to meet genuine business needs, taking into account the university's priorities and budgetary constraints.

3.0 Scope

The scope of this policy is to apply to budget holders/managers in faculties and departments of Executive Office.

4.0 Policy

The following will apply in all cases:

- Agency workers, interims and consultants will only be engaged where the role cannot be filled by internal processes
- Agency workers and interims will not be offered temporary or permanent employment without appropriate approval
- Any employee at risk, under notice of redundancy or eligible to be redeployed for whatever reason will be considered regardless of the area they are currently based in before an agency worker is engaged elsewhere in the university
- Consultants will be engaged in a manner compliant with the university's procurement procedures and delegated authorisation schedule
- Agency workers and interims will be engaged as a short term solution for no longer than 12 weeks and appointed through the HR team. Any appointment expected to be longer than 12 weeks should be referred, with appropriate justification, to the Vacancy Review Panel for approval.
- No previous employee of the university who has been made redundant whether voluntarily or compulsorily should be engaged as a consultant for a period of at least one year after they leave the employment of UHI unless there are exceptional circumstances and this appointment has been approved by the Secretary.
- If an individual is to be appointed as a consultant, verification is required that the person has other clients. If not HMRC may deem the individual to be an employee of the university in which case PAYE and NIC will require to be deducted. (see guidance attached at Appendix 1)
- An agreement covering services between UHI and the consultant is to be prepared and executed by the budget holder prior to the beginning of any service. A template for such an agreement is available from the Secretary.

4.1 Definitions

- Consultants

A consultant shall mean a person(s) or body that supplies professional, technical advice or expertise but does not include workers engaged through a recognised staff agency agreement.

- Agency Workers and Interims

Typically these people will be sourced through recruitment/employment agencies to cover short term vacancies, temporary increases in workload or where it has not been possible to fill positions through the normal university recruitment processes.

4.2 Justification for Use of Consultants

The justification for use of consultants should contain:

- The reason for the need – is it concerned with the procurement of external skills/expertise or is it to overcome a shortage of internal resource/capacity?
- Evidence that the problem is clearly defined and that the alternatives to the use of consultants has been considered
- Definition of the range of the work
- Time scales, milestones and the form of the deliverables

- Assurance that the solution will be a solution rather than the same problem in a different form or a recommendation for further work
- Apportionment of responsibilities for data collection etc
- Clear plan of how the findings are likely to be actioned.

If the need for consultancy is confirmed by the project board or business case agreed by budget holder a budget may be allocated.

A file will be created and maintained containing all documentation relating to justification for, evaluation, selection and appointment of consultants including selection criteria.

A post contract evaluation of the work should be carried out and a copy put on file.

4.3 Links with Other Policies

The Use of Consultants policy is supported by related university policies including:

- Conflict of Interest Policy
- Procurement
- Freedom of Information Policy
- Data Protection Policy
- Financial Regulations
- Insurance Policy
- HR Policy
- Retention of Documents Policy (To be finalised)

5.0 Enforcement

Failure to comply with the policy could open the university up to unnecessary risk in terms of HR processes, HRMC rules and EU procurement rules.

6.0 Roles and Responsibilities

The Secretary of the University is the policy owner and thus has overall responsibility for the creation, implementation, monitoring and review of this policy.

6.1 Role of Finance and General Purposes Committee

The Finance and General Purposes Committee is responsible for approving this policy on behalf of the Court and ensuring arrangements are in place for monitoring compliance.

6.2 Role of the Senior Management Group

- Implementing the Court's Use of Consultants policy and ensuring compliance
- Ensuring that everyone in their area of responsibility understands the policy and implements it where appropriate.

Determination of Employment Status – Guidance for Managers

1. Introduction

There are occasions when the University needs to bring in individuals to undertake work on a short-term or one-off basis (e.g. to deliver a lecture on a specific topic, contribute expertise to a particular project or undertake a service or task). In these circumstances, the University is required to ensure that the appropriate employment status is applied (i.e. employee or self-employed) in accordance with HM Revenue and Customs (HMRC) rules and, arrange payment for any services rendered through the correct route (i.e. either via payroll or via the supplier process).

This guidance sets out the procedures which must be followed in considering, establishing and documenting the appropriate relationship. **It is the responsibility of managers, with the guidance of the HR team, to establish the employment status, and appoint using the correct form of contract, prior to engaging an individual to undertake work for the University.**

2. Why we need to establish employment status – the consequences of non-compliance

- HMRC has tightened its approach on the acceptability of hiring individuals as self-employed ‘suppliers’ rather than as ‘employees’, as employer National Insurance contributions (NICs) are payable for employees but not for suppliers. Failure to comply with the HMRC regulations could result in the University facing a claim for underpayments of National Insurance contributions and substantial fines by HMRC.
- In the event of HMRC imposing a claim or fine (see above) these costs will be payable by the area engaging the individual if these procedures have not been observed.
- There is a risk of inadvertently forming an employment relationship with someone engaged as a ‘supplier’ and as such giving them a legal entitlement to service conditions and employment rights. ‘Suppliers’ are also not subject to internal vacancy controls and the usual recruitment processes and checks required of employers such as immigration checks. This also represents a significant risk.
- Self-employed and external contractors undertaking work for the University are not covered by the University’s insurance in general, and, in particular, by its liability and professional indemnity insurance.

3. What are the engagement options?

The work may be carried out under a ‘contract of service’ (i.e. by an employee or worker) or under a ‘contract for service’ (i.e. by a self-employed independent contractor).

- **Contract of service** Under a ‘contract of service’ individuals are paid through payroll and the University is responsible for operating PAYE and accounting for tax and NICs. The rate of pay is determined in accordance with the University pay and grading structure.
- **Contract for Service** A contract between the University and the individual to undertake a specific piece of work. For example a self-employed person who is neither an employee nor a worker. There is no requirement to put such a person on the payroll as payment is made on receipt of an invoice.

For short-term work the following options exist:

- Casuals are classed as workers not employees. This is the most likely type of engagement for staff undertaking short-term or one-off assignments. They do not have a contract of employment and have only limited employment rights. They are only paid for the hours they work and for accrued statutory annual leave. However, they are paid through payroll and are classed as employees for the purpose of Tax and National Insurance.

4. How to determine employment status

It is the responsibility of managers, with the guidance of the HR team, to establish the employment status prior to engaging an individual to undertake work for the University. Whether someone is employed or self-employed is not a matter of choice and is not determined by an individual being registered with HMRC as being self-employed (i.e. holding a Unique Tax Reference number). It depends on the nature of the work being undertaken. **Just because a worker is self-employed in one role does not necessarily mean s/he will be self-employed in another.**

HMRC's online Employment Status Indicator (ESI) tool (<https://esi2calculator.hmrc.gov.uk/esi/app/index.html>) should be used to determine if the 'worker' is classed as self-employed or an employee for tax purposes.

However, please note that members of staff cannot be treated as employed and self-employed by the University at the same time. Therefore, if an existing employee undertakes additional work that is not related to their employment, any payment they receive will be subject to PAYE and NI contributions.

5. Recording the decision

Managers must forward HR the completed status indicator form. This provides a judgement and can be a reference point in the event that there are any queries from the HMRC or auditors.

6. Outcome of decision

For '**employment**' status – the HR team will complete the appropriate new start forms and advise Payroll accordingly and Tax and National Insurance will be deducted.

For '**self employment**' status – the HR team will advise Accounts Payable accordingly and there will be no deduction for Tax and National Insurance. For **new suppliers** - the manager needs to complete the new supplier setup form under the normal procurement process and forward this to pecosfinance@uhi.ac.uk