

Employment Status

Financial Procedures Manual – Chapter 5a

Version History

Version number	Issue date	Comments
3.0	Feb 17	Rewritten to reflect the introduction of new Off-Payroll Worker Legislation affecting payments made after 6 th April 2017
3.1	Mar 17	<ul style="list-style-type: none"> - Added link to UPS4 form on page 7 and into Appendix A - Changed 'modified payroll' to 'University Payment System' in section 3.11 - Corrected indentation on bullet points in section 1.1 - Added further information regarding UPS4 into appendix A. Due to added information the table is now split between two pages.
3.2	Aug 17	<ul style="list-style-type: none"> - Updated UPS 4 section of Appendix: Partnerships changed to LLPs 'outlines' changed to 'outlined'

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1. Payment for services

1.1 Purpose

This guidance applies to situations where it is proposed that payment will be made in respect of services provided by an individual against invoices through UFS. The purpose of this guidance is to set out:

- Why it is important to determine correctly whether payments for services provided by individuals engaged by the University may be paid against invoices through UFS (self-employment, limited companies, partnerships or via agencies); or must be paid through payroll (employment, workers, off payroll workers).
- The University procedures for making this determination;
- The factors which influence the decision on employment status.

Where it is proposed from the outset that an individual be retained as an employee or paid as a worker through the University Payment System (UPS), you do not need to read this guidance.

Further information is available on the HR website regarding recruitment of:

- employees
<http://www.hrsystems.admin.cam.ac.uk/systems/systems-overview/web-recruitment-system>
- workers
<http://www.hrsystems.admin.cam.ac.uk/systems/systems-overview/university-payment-system-ups>

NB: *Up until 2016 these guidelines only applied to individuals. However, the introduction of new off-payroll worker legislation means that payments to Limited Companies, Partnerships or Agencies are now also affected.*

1.2 Who needs to read this guidance?

Anyone involved in any of the stages of contracting for the provision of any kind of personal service(s) (outside of the normal recruitment procedures for employees or workers). This includes identifying the need to contract with someone to provide services, interviewing/tendering, or making the payments, Departmental Administrators, Finance or HR Staff.

1.3 Risks

Payments for services against receipt of an invoice (whether from a self-employed individual, a limited company, a partnership or an employment agency) are in principle taxed differently from those made to employees or workers, as payments to employees or workers are subject to Pay as You Earn (PAYE) and National Insurance Contributions (NICs).

In recent years there has been an increasing use by the private and public sector of contractors, who have provided services either as self-employed individuals or through limited companies (so-called Personal Service Companies or PSCs). HM Revenue and Customs (HMRC) have been concerned that self-employment and PSCs have been used to avoid PAYE and NICs and have focused their attention on this area. The Government are introducing new Off-Payroll Worker Legislation (affecting any payments made after 6th April 2017), which tighten the rules further.

The aim of the Off-Payroll Worker Legislation and existing rules around self-employment is to try to ensure that where services are provided to public bodies by individuals (either directly or through a limited company, partnership or agency) and those individuals would be treated by HMRC as “deemed employees” for tax purposes (under the principles discussed in more detail below) then payments for those services must be subjected to PAYE and NICs. The University has the burden of making the decision whether someone should be treated as a deemed employee for tax purposes. Being treated as a deemed employee does not mean that the individual becomes an employee of the University.

The cost to the University of making an incorrect decision on whether someone is a deemed employee can be up to 56.3% (2017/2018) more than the amount already paid in respect of the services. Thus a payment of £10,000 for services provided can at a later date attract additional tax, NIC and Apprenticeship Levy costs of £5,630 plus interest and penalties. This may arise after the original budget has been spent or a research grant closed, and may cover a period of several years. It is therefore critical for the University to establish the correct tax treatment before the services have been provided.

1.4 Importance of compliance

When the University pays a sum of money for service(s), consideration must be given to whether the Off-Payroll Worker rules allow those payments to be made gross or whether there is deemed employment for tax purposes. In the case of the latter, PAYE and NICs will need to be deducted (note that if NICs are due then there is an additional cost to the University as Employers’ Contributions at 13.8% and the Apprenticeship Levy¹ at 0.5% will also be payable).

1.4.1 Deemed employment

Deemed employment status is not a matter of choice, it cannot simply be decided that someone is not an employee for tax purposes because **the individual** wishes to be paid gross or that **the University** wishes to pay them that way. It is not conclusive to just call or consider someone self-employed or to interpose a limited company, partnership or agency between the University and the individual; it is the reality of the relationship between the University and the individual that matters. There is no statutory definition of ‘deemed employment’ or ‘self-employment’ and each case has to be looked at as a whole with all the factors considered. However, it is the University’s responsibility (**not** the individual’s) to determine the correct status properly. If the correct status is not applied the University will be liable for any unpaid taxes and NICs, which could also result in a liability to pay penalties and interest.

1.4.2 If not deemed employment

It is worth bearing in mind that just because a person is not a deemed employee for the purposes of one contract, it doesn’t necessarily mean that all their contracts will follow suit. The individual can still be considered ‘deemed employed’ for the purposes of another contract with the University at the same time.

¹ Apprenticeship Levy – “The Apprenticeship Levy will be a levy on UK employers to fund new apprenticeships. In England, control of apprenticeship funding will be put in the hands of employers through the Digital Apprenticeship Service. The levy will be charged at a rate of 0.5% of an employer’s payroll. Each employer will receive an allowance of £15,000 to offset against their levy payment. It will be introduced in April 2017.”
<https://www.gov.uk/government/publications/apprenticeship-levy/apprenticeship-levy>

It is also possible that an individual who is properly considered not to be a deemed employee when they begin providing services to the University may over time become increasingly integrated into the University to the extent that their status may change to that of a deemed employee. It is therefore important that:

- (a) contractors and service providers are not treated as members of staff (e.g. not issued with a University Card, not given the title of a University Office, not managed through normal disciplinary or grievance procedures in the Staff Handbook); and
- (b) if their working with the University lasts for a prolonged period (e.g. more than one year) that it is reassessed to see if they should be paid through the payroll in future.

1.4.3 Contracts for services

Where there is a relationship between a service provider and the University for providing service(s) there should always be a valid written contract in place. Where the engaging Department does not intend to make payment through the payroll, a contract **for** services is required.

A model contract is available from Procurement Services but, for very short low value engagements (up to £3,000 in total) a letter detailing the work to be done, timescale and amount to be paid will be sufficient.

Model contracts and letters are available from the Finance Division website at
<http://www.admin.cam.ac.uk/offices/finance/forms/>.

2. University procedure

2.1 Obtaining clearance from the Tax Team

The engagement and payment for services where the engaging department does not propose to make payment through payroll must be cleared by the Tax Team.

To obtain clearance, an online FD3 form must be completed which the Tax Team will review in line with the factors outlined in section 3 to determine whether there is a 'deemed employment' status

Unless further information is required or the case needs to be referred to HMRC, a decision will be given within 10 working days of receipt.

The online FD3 form can be found on the Finance Division web page at
<http://www.finance.admin.cam.ac.uk/finance-staff/tax/fd3-employment-status-referral-form>.

If it is decided that this would be a 'deemed employment' then payment is likely to be made via the UPS system. Individuals may be classed as workers and paid via a UPS2 form whilst Off-payroll workers engaged through Limited Companies, Partnerships or Agencies would be paid via the submission of a UPS4 form.

The UPS4 form can be found on the Human Resources Division web page at
<http://www.hr.admin.cam.ac.uk/forms/ups4-payroll-workers-claim-form>.

If not classed as 'deemed employment' then the Tax Team will issue you with a Tax Clearance Number and the supplier can be paid gross via UFS on an invoice basis. However, please bear in mind the compliance issues outlined in para 1.4 regarding the ongoing relationship.

2.2 Exceptions

There are certain transactions that may be an exception to the rules about "deemed employment". These are summarised below but please see the following paragraphs for details of conditions that apply to each.

<p>The University Payment System (UPS) was introduced in April 2012 to facilitate payments for these services where they meet the specified tests.</p> <p>Full details on the UPS system http://www.hrsystems.admin.cam.ac.uk/systems/systems-overview/university-payment-system-ups</p> <p>See Appendix A for a summary of forms</p>	<ul style="list-style-type: none"> • Short-term academic tasks: lecturing; teaching; conducting supervisions and higher degree examining. • Workers • Demonstrators • Bursaries and studentships

<p>The following categories of transactions may be entered onto UFS without obtaining clearance from the Tax Team.</p>	<ul style="list-style-type: none"> • Payments of grants and field trip expenses to students. • Re-imbursement of expenses (subject to certain criteria) to Visiting Academics who receive no other payment. • Volunteers for payment of expenses or honoraria which fall within specific criteria. • Job applicants for reimbursement of expenses for attending interview(s).
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2.3 Short-term academic tasks

There are certain exceptions to the rules about “deemed employment” where people are being retained to undertake very short term academic tasks. These can be paid through the UPS using a UPS1 form as ‘automatic self-employed’ without the need to seek clearance from the Tax Team.

The Services	ONLY payments for the following services can be paid through the UPS using a UPS1 form, limited to fees for: <ul style="list-style-type: none"> • Lecturing • Teaching • Conducting Supervisions • Higher degree Examining*
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The Test	The individual must meet the following test: They must be lecturing, teaching or conducting supervisions for not more than 5 sessions per term AND not exceeding 14 sessions in a year.
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Definition of a session: Where an individual is teaching the same subject to the same group of students but cannot be longer than a day.

***Higher Degree examining and supervising:** has no limit on the number of sessions and should always be paid through the UPS using a UPS1 form.

A UPS1 form can be downloaded at
<http://www.hr.admin.cam.ac.uk/forms/ups1-self-employed-payment-claim-form>

2.3.1 Workers and demonstrating

Payments for demonstrating should always be paid through payroll and will always be taxable. A UPS2 form should be used for these payments..

A UPS2 form should always be used where the department engages a worker.

A UPS2 form can be downloaded at
<http://www.hr.admin.cam.ac.uk/forms/ups2-worker-agreement-payment-claim-form>

Information on the definition of a worker can be found at
http://www.hrsystems.admin.cam.ac.uk/files/ups_guidance_post_rti.pdf
Alternatively, speak to your School HR Contact

2.3.2 Where the tests are not met

Any individual who does not meet this test may be a worker or an employee: you should consult your School HR contact.

To find your HR contact go to <http://www.hr.admin.cam.ac.uk/contact-us>

If an individual cannot be paid through the UPS system and it is believed that there is a case for self-employment an FD3 should be submitted.

2.3.3 Agreed self-employment

If, on the basis of the evidence provided, it is agreed that payment without accounting for PAYE and NICs is appropriate, a clearance number will be given. This can then be quoted when requesting that the service provider is set up as a supplier or if a payment is subsequently queried.

A Tax Clearance Number (TCN) is issued for a specific contract/ assignment / piece of work etc. A service provider who has been given a clearance will have an expiry date. The supplier on UFS will also have an 'end date' to reflect the limit of tenure.

Clearance should be sought at the earliest possible opportunity and certainly in advance of issuing a contract (or purchase order), receiving an invoice or the services being provided.

Service providers cannot be set up as suppliers on UFS without a clearance number and existing suppliers may be deactivated or payments suspended until status is established.

2.4 Payments to students

Payments to students for grants and field trip expenses may be entered onto UFS without obtaining clearance from the Tax Team. Bursaries and studentships should ideally be paid through payroll using a UPS3 form though in practice they are unlikely to be taxable.

UPS3 form can be downloaded at
<http://www.hr.admin.cam.ac.uk/forms/ups3-student-maintenance-claim-form>

2.5 Volunteer payments

In the course of undertaking research, particularly social science or medical research, volunteers are required to take part in tests, submit to measurements or be

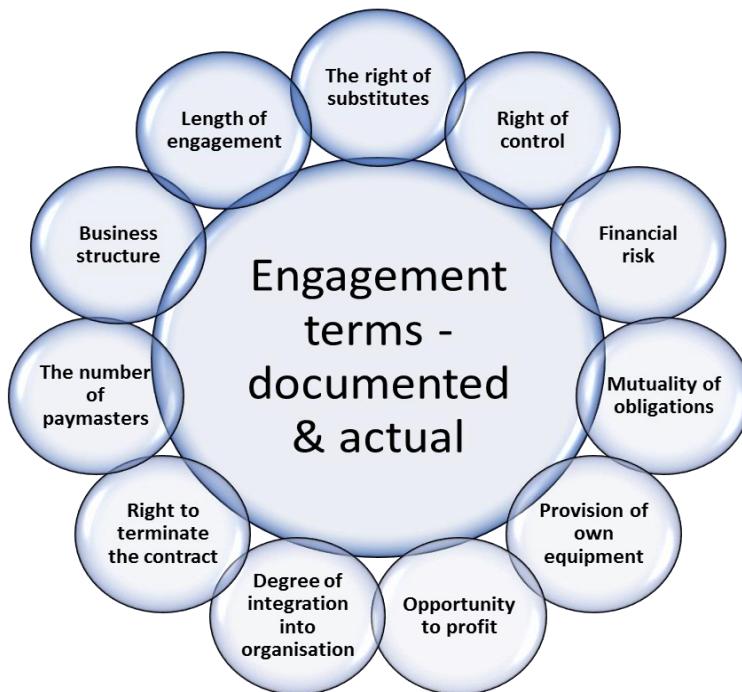
interviewed. They are usually paid a *small sum to cover out of pocket expenses and as compensation for the time spent*. Some of the volunteers may be members of staff of the University, but their participation in the research is not part of their duties of employment and they do it in their own time and are under no obligation to take part.

Closely related to the above is the use of 'lay' people or 'users' in research. Here the people in question are invited to attend meetings to give their views on various matters to inform the research process and direction. Often they will be former or current patients, representatives of particular groups such as retired people, or representatives from charities. Payment is made to them for their participation in the meetings.

In the circumstances above, HMRC agree that the amounts paid to those concerned are unlikely to fall within the definition of earnings for PAYE or NI purposes. No employment relationship exists and as such PAYE and NICs would be inappropriate. **However, should the sums paid exceed 'reasonable expenses' then the payment may be regarded as being taxable. If in doubt, please contact the Tax Team.**

3. Factors in determining deemed employment status

The following factors are considered when determining the correct status. They follow the principles used in determining actual employment status, but here are applied to determine whether an individual will be a “**deemed employee**” for tax purposes



3.1 The right to substitution (personal service)

A service provider can be treated as a deemed employee if they are obliged to provide their own work and skills. If the service provider is completely free (has the right) to subcontract the work to another party of entirely their own choosing and pay the other person from their own pocket then that the service provider may not be treated as a deemed employee. However, the absence of the right to provide a substitute in their absence does not necessarily mean that the service provider is a deemed employee.

3.2 Right of control over the service provider

This is not necessarily the same as supervision. The University may have the right to exert control over a service provider but in reality little real supervision may take place. Does the right to control the service provider exist in any of the four following areas?

- Control over **what** work is done
- Control over **where** the work is done
- Control over **when** the work is done
- Control over **how** the work is done

The more control that exists the more likely it is that this person is a deemed University employee.

Experts

In the case of experts it may be difficult to state that the University has control over someone where there is no question of the University being able to tell the expert how to do their job. In these cases the right of control may not be relevant and the rest of the circumstances should be considered when making a decision about the service provider's status.

3.3 Financial risk to the service provider

If a service provider has to incur necessary, significant, financial risk in order to perform their duties then the service provider is less likely to be a deemed employee. An example of this could be if the service provider undertakes work for a fixed price (rather than a price for the amount of time spent) and it is not absolutely certain how long the work will take.

An example of this would be if the service provider has quoted £10,000 on the expectation that it will take 2 weeks to complete the task but it actually takes 3 weeks (costing the individual £12,000) the University still pays £10,000.

Another measure of financial risk stems from the provision of major equipment. If a service provider is required to and **does in practice**, provide major pieces of equipment which are fundamental requirements of their duties, then financial risk arises from acquisition, maintenance and replacement of the equipment. This does not include any small tools that a worker may normally provide for themselves e.g. tradesmen who often provide their own hand tools (usually through preference). Laptops would not normally be considered as major pieces of equipment.

Again, each of these types of cases should really be viewed on its own merits.

3.4 Mutuality of obligation

Mutuality of obligation implies an employment relationship where an engager is under an obligation to provide work and the worker is under a similar obligation to accept and perform the work which was provided.

On the other hand, if a worker is not a deemed employee, he/she has no guarantee for work to be provided and even if work is offered the service provider is under no legal obligation to accept the work offered.

The indication of any mutual obligation is usually evident in any service contract between the parties.

3.5 Provision of own equipment

When HMRC considers whether a service provider is a deemed employee, they will look at who provides the tools for the job contracted.

Normally, an employer is responsible for providing equipment to their employees. An employer will provide the facilities and equipment: computer, a microscope, stationery, etc. required for an employee to do their job.

A self-employed service provider will normally be responsible for providing their own tools and equipment to enable him/her to undertake the work offered.

3.6 Opportunity to profit

A service provider who is self-employed tends to organise his/her own work as effectively as possible to reduce his/her overheads to increase the profit. This individual is usually paid for the job, quotes a fixed fee and he/she may well be able to complete the job ahead of schedule or at a lower cost than originally envisaged.

An employee is usually paid a fixed salary or wage on a regular payment date or for a regular period regardless of performance targets.

3.7 Degree of integration into the organisation

Another important indicator to consider in relation to deemed employment status is to establish whether a service provider is a ‘part and parcel’ of the engager’s organisation. The greater an individual’s integration within the organisation, the more likely the worker will be a deemed employee of that organisation.

For example, an employee will normally have his / her own desk, a designated computer, an organisation’s e-mail address, a land line phone number, his / her own stationary, he/she may wear organisation’s uniform, drive a company vehicle, carry a company business card, and represent the organisation in the meetings, seminars or conferences. Also an employee has access to facilities such as the staff cafe, and access to the employer’s premises (often by means of the security pass), and will be allowed to join company pension schemes, receive invitations to staff functions such as Christmas parties and perhaps have a car parking space.

In contrast a self-employed individual will not be as integrated into an engager’s organisation, will not have a desk or a computer or access to the organisation’s premises without prior appointment and will not have the “employee type” benefits such as those described above.

3.8 Right to terminate the contract

An employee usually has a right to give a specified period of notice in order to terminate his/her contract of employment.

On the other hand a contract for the service provider who is not an employee will usually end on the completion of the particular task.

3.9 The number of paymasters

An employee usually has only one paymaster, while a service provider who is not an employee typically performs services for several different businesses, and so tends to get payments from more than one organisation.

3.10 Business structure

If there is evidence of some kind of business structure, this can be a useful factor in deciding a service provider’s employment status. Some questions to ask could be:

- Is the service provider registered for VAT?
- Do they operate a business bank account?
- Do they have the expense of running an office?
- Do they advertise for work eg. do they have an internet site and do they in practice provide (substantial) services to other clients?

Whilst a 'yes' to any of the above questions alone could not determine a service provider's status, the answers would help to form an overall picture.

3.11 Length of engagement

When a service provider performs duties on a strictly one-off basis and the relationship between the service provider and the University is very short, it may be appropriate to treat them as not deemed employees. In the case of a visiting lecturer who is only committed to **three** days or less in **three consecutive** months, then on that basis alone for those duties only it may be possible to pay the individual gross, but payment should still be through the University Payment System.

3.12 Deemed employment status uncertain?

If you are engaging someone to provide services personally either directly or through a company, partnership or agency then please fill in the online FD3 giving as much information as possible.

You will be given a unique reference number and a clearance number if self-employment is agreed. If a decision is not clear the tax team will help you to assess the circumstances and will forward the case details to the HMRC for a ruling. Queries regarding employment status should be directed to the Tax Team and not to Payroll until further notice.

Employment status queries	Contact the Tax Team	Email: selfemploymentstatus@admin.cam.ac.uk Telephone: Inga Skeberdyte on 39661 Vladka Mikulski on 30891
If the service provider is an individual and under the tests above a deemed employee.	Contact HR	To discuss whether the person can be taken on as a temporary or permanent member of staff, or a worker, paid through the UPS. To find the HR contact for your School use the search facility at: http://www.hr.admin.cam.ac.uk/contact-us
Queries on Contractual matters	Contact Legal Services Office	Helen Jackson and Joanna Cheffins are the Heads of the Legal Services Office Email: HeadofLegal@admin.cam.ac.uk Telephone: Legal Services Office Administrator 64900

4. Other considerations

4.1 Insurance

If an individual service provider has deemed employee status with the University then they are automatically covered by University insurance policies. However, if we are paying an individual service provider gross on a self-employed basis then it is very important that they have appropriate insurances in place.

We would normally expect a self-employed service provider to have:

- a) Professional Indemnity Insurance; and
- b) Public Liability Insurance.

If the self-employed service provider does not have this insurance cover then the University could potentially be at risk. Therefore, insurance is an area that must be considered carefully when determining employment status.

If you have any queries regarding the individual and their insurance position or if the circumstances are not straightforward then please contact the **Insurance Team as soon as possible**.

Email
Telephone

Gillian Armstrong on Gillian.Armstrong@admin.cam.ac.uk
the Insurance Office on 32216 or 39659

4.2 Quotations/tendering for contracts for services

The University's Financial Regulations set out thresholds for obtaining competitive quotes/tendering. These competition procedures are applicable unless a dispensation has been granted in accordance with Schedule 1.

Total Value (before VAT)	Procedure for inviting offers		
	Framework contracts	Market Place	Other purchases
<£1000		Only the price from the Marketplace is required	Written price confirmation
£1,000- £25,000	Follow procedures recommended by Procurement Services for the contract.		Three written quotes
>£25,000 – £50,000		Three written quotes or three written proposals, depending on complexity, risk and value of the purchase (see the guidance in Procurement Procedures).	
>£50,000		Three tender submissions	
>£100,000		Procurement Services must be consulted /involved and agree the most appropriate procurement method.	
EU Thresholds currently (updated biennially) as at January 2016			
>£164,176 (goods & services) >£4,104,394 (works)		EU Tenders managed through Procurement Services	

Procurement Services	Provide further information, guidance and standard forms at http://www.admin.cam.ac.uk/offices/purchasing/ Telephone: 65100 or 64328
Procurement Procedures	are available at http://www.finance.admin.cam.ac.uk/policy-and-procedures/financial-procedures/chapter-4-procurement-procedures

4.3 Pensioners

Is the service provider being hired a University Pensioner?

There are often problems with attempting to re-employ someone who has retired and has received payment from one of the University Pension Schemes. Occasionally, people try to avoid these problems by paying the individuals via an invoice instead of through payroll.

The same deemed employment status tests apply to the reality of the relationship between the Pensioner and the University, as between any other service provider and the University. The Pensioner cannot be considered self-employed just because it is easier to do so or it represents the wishes of the Pensioner. This does not mean that a Pensioner cannot be considered self-employed if the circumstances show that is the true nature of the relationship.

If deemed employee status is confirmed a contract must not be signed and your School HR Team should be consulted. They have a range of contract templates available for use and can advise appropriately.

If you are considering the hire or employment of a University Pension Scheme Pensioner advice **MUST** be sought from the Pensions Administration Section.

Pensions Administration	Email pensiononline@admin.cam.ac.uk
School HR Teams	To find the HR contact for your School go online and use the search facility at: http://www.hr.admin.cam.ac.uk/contact-us

Appendix A : UPS Summary

		UPS 1	UPS 2
		'Automatic self-employed' without the need to seek clearance from the Tax Team	
Payment for / to		<ul style="list-style-type: none"> • Lecturing • Teaching • Conducting Supervisions • Higher degree Examining 	<ul style="list-style-type: none"> • Workers • Demonstrators
Conditions and further guidance		<p>The individual must meet the following test:</p> <p>They must be lecturing, teaching, or conducting supervisions for not more than 5 sessions per term AND not exceeding 14 sessions in a year.</p> <p><i>Definition of a session - where an individual is teaching the same subject to the same group of students but cannot be longer than a day.</i></p> <p>Any individual who does not meet this test may be a worker or an employee: you should consult your School HR contact in these circumstances.</p>	<p>Payments for demonstrating should always be paid through UPS 2 (via the link below) and will always be taxable.</p> <p>Information on the definition of a worker can be found at http://www.hrsystems.admin.cam.ac.uk/files/ups_guidance_post_rti.pdf</p> <p>Alternatively, speak to your School HR Contact.</p>
NB: Higher Degree examining and supervising has no limit on the number of sessions and should always be paid through the UPS using a UPS1 form.			
Tax treatment		Service provider is responsible for accounting to HMRC for own income tax and national insurance contributions (NICs).	PAYE and NICs is deducted at source.
Form can be downloaded :		http://www.hr.admin.cam.ac.uk/forms/ups1-self-employed-payment-claim-form	http://www.hr.admin.cam.ac.uk/forms/ups2-worker-agreement-payment-claim-form

	UPS 3	UPS 4
Payment for / to	Students	Off-payroll workers engaged through Limited companies, LLPs or agencies.
Conditions and further guidance	Students who are being paid a maintenance grant, bursary and field trip expenses. If students are being paid for work, e.g. demonstrating, they will be classified as a 'worker' and should be paid through UPS2.	<ol style="list-style-type: none"> 1. Determining whether an engagement is in scope of the Off-Payroll Worker Legislation; 2. If it is, the following factors are considered when determining the correct status: <ul style="list-style-type: none"> - The right of substitutes - Right of control over the service provider - Financial risk to the service provider - Mutuality of obligations - Provision of own equipment - Opportunity to profit - Degree of integration into organisation - Right to terminate the contract - The number of paymasters - Business structure - length of engagement <p>(Further details outlined in section 3.)</p>
Tax treatment	No PAYE and NICs are deducted. However, should the sums paid exceed 'reasonable expenses' then the payment may be regarded as being taxable. If in doubt, please contact the Tax Team.	PAYE and NICs are deducted at source on deemed employee earnings, which will be invoiced amounts less VAT, materials and expenses.
Form can be downloaded at	http://www.hr.admin.cam.ac.uk/forms/ups3-student-maintenance-claim-form	http://www.hr.admin.cam.ac.uk/forms/ups4-payroll-workers-claim-form