

# **AGENCY AND SELF-EMPLOYED WORKERS POLICY**

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## PURPOSE AND SCOPE

Monmouthshire County Council recognises its responsibilities to provide job opportunities to internal and external applicants on a fair, consistent and equitable basis. However, in certain circumstances the Council may need to engage agency workers or self-employed worker to comply with statutory responsibilities and to meet the demands of the service.

It is the policy of the Council that an agency worker will only be used when there is a sound financial and business need to do so. It is accepted in principle that the employment of agency workers should only be used for short term cover, up to 6 weeks. This policy and procedure provides a framework for managers to use when they have a short-term or business need to engage the use of external agency workers or self-employed workers. Agency workers on assignment with the Council are not employees of Monmouthshire County Council they remain the employee of the supplying agency.

The Council wants to limit the use of agency workers in order to protect the employment of existing staff and to manage costs. Where there is a specific requirement to engage agency workers for short term cover, this will be based on the following reasons: emergency cover, last minute sickness, business continuity or specialist skills and recruitment and retention difficulties in the short term. It is not envisaged that a business need for the engagement of agency workers would include examples such as cover for pre-arranged leave or long-term sickness. Schools should refer to the Welsh Government Guidance 'Effective management of school workforce attendance (217/2017).

A worker's employment status i.e. whether they are employed or self-employed is not a matter of choice. We categorise people into employed or self-employed status according to the terms of engagement. HMRC have strict conditions for determining whether someone is employed or self-employed and MCC has to comply with these. All workers - whether they are employees, agency or self-employed are covered by the Equality Act 2010 and the Employment Rights Act 1996 and the Agency Worker Regulations 2010 and HRMC Legislation April 2017 (IR35)

In its application, this policy seeks to ensure that there is no discrimination against employees either directly or indirectly on grounds prohibited by the Equality Act 2010 which covers age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation This policy is inclusive of partners of the opposite or same sex.

## AGENCY WORKER REGULATIONS 2010

The Agency Worker's Regulations that came into effect in October 2011 state that they should have the right to equal basic employment conditions with comparable employees and establishes the principle of 'equal treatment' between agency workers and employees. The agency worker will either have a contract for service or a contract of employment with the Agency who finds them work. It requires that the agency worker be given the same entitlement as employees to basic working conditions such as pay, working hours and holidays. These entitlements are provided by the Agency as they are the "employer".

## AGENCY WORKER'S RIGHTS

Under Regulation 6 of the Agency Workers Regulations, after a qualifying period of 12 weeks in a given assignment, agency workers are entitled to equal treatment in relation to pay and relevant terms and conditions of employment. Monmouthshire County Council will seek to achieve this through the review of the Request to Hire an Agency or self-employed Worker pro-forma following a 12-week period of continuation of work. Equal treatment means employers must allow agency workers;

- Access to the same pay as a comparable worker doing broadly similar work the pay will include annual increments, holiday pay and overtime allowances after a qualifying period of 12 weeks
- Access to training after 12 weeks
- Access to the same holidays, working time, overtime, breaks and rest periods as permanent workers after 12 weeks
- Equal access to collective facilities from Day 1
- Access to information about internal vacancies to give them the same opportunity as other workers to find permanent employment from Day 1
- Equal access to on-site facilities such as child-care, canteen facilities and transport services from Day 1

Agency workers are **not** privy to equal treatment in respect of:

- Access to the Local Government Pension Scheme
- Occupational sick pay (but may be entitled to SSP from the agency)
- Redundancy pay (but may be entitled to redundancy from the agency)
- Maternity/paternity rights (but may be entitled to SMP/maternity allowance from the agency)
- Bonus
- Non-cash awards
- Advances in pay or loans
- Additional discretionary and non-contractual payments

## SELF-EMPLOYED WORKERS

To meet the requirements of employment and tax law, as well as safeguard Monmouthshire's position as an employer, we expect most individuals to be employed as 'employees' on a contract of employment and paid via our payroll systems with tax and National Insurance deducted at source.

In some circumstances, MCC may need to engage self-employed workers for specific pieces of work e.g. an independent review. This relationship between MCC and the individual will not be an employment relationship but will be a 'contract for services' (i.e. a self-employed worker).

The law on self-employment is complex and the consequences of wrongly treating someone as self-employed when they should be employees can be significant. HM Revenue and Customs (HMRC) may reclaim tax and national insurance contributions together with interest and penalties from the employer and there are a wide range of employment rights which may need to be compensated (including the right to paid holidays, notice, redundancy payments and not to be unfairly dismissed).

From 6<sup>th</sup> April 2017, HMRC introduced new legislation for self-employed workers working in the public sector, more commonly known as IR35.

When Monmouthshire County Council engages a contractor to provide a service, through what is known as a Personal Service Company (PSC) e.g. a limited company, it is Monmouthshire County Council's responsibility to determine whether the engagement is in or out of scope of the new rules. The Council is required to notify the contractor of its decision before the start of the contract.

If it transpires that the contractor is deemed to be in scope of the new rules i.e. an employee then it is the responsibility of the Council to deduct payroll taxes and National Insurance contributions from their invoices.

These changes affect both contractors we directly engage with and those who come to us via an agency. If you have or intend to have any such arrangements in your business area. Here is what you need to do:

- Check that any agency workers are paid directly by the Agency that employs them. If the worker is invoicing the Agency then it is likely that they will be in scope of the new legislation.
- Review the arrangements with your current Personal Service Companies using the HMRC employment status tool found in this <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

- Notify the Financial System Support Team via this email: [creditors@monmouthshire.gov.uk](mailto:creditors@monmouthshire.gov.uk) of these results.

Anyone who engages self-employed workers are required to:-

- Consider why all alternatives to using self-employed workers are not available or appropriate.
- Gain approval from the Head of Service before engaging (not applicable to schools)
- Check that the status should be 'self-employed' via the HMRC website <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup> using the tool to establish the employment relationship.
- Record the reference number supplied if the relationship is confirmed as self-employed.
- Consider the scope, the requirements and the duration of the work to be done.
- Identify and agree the appropriate rates to be paid
- Ensure that the relevant chief officer has been informed and agreement is confirmed before proceeding (not applicable to schools).
- Ensure all necessary self-employed status is obtained and held on file
- Ensure that all necessary checks associated with the work are processed and evidenced e.g. Identity, Right to Work in the UK, Professional Registration, DBS, Health.
- Ensure a signed agreement is in place that details all agreed terms
- Complete the record of engagement of a Self-employed form (appendix 2).
- If not self-employed consult with People Services to ensure the correct employment status is applied

Appendix 1 has a useful series of Questions and Answers, which will help you to establish if someone is self-employed or employed.

## **ENGAGEMENT OF AGENCY WORKERS /SUPPLY STAFF**

Where ever possible temporary staff should be engaged directly via MCC payroll. Where an additional need for resource has been identified, managers/Head-teachers should explore all opportunities of using existing staff resource within the Council or recruit directly via temporary contracts of employment. Should the engagement of an agency worker be required, corporate line managers should complete the Request for Agency Workers form to seek Head of Service approval. For schools, it is recommended that a regular report on the engagement of agency workers is provided to the Governors Finance Sub-Committee for information.

Within schools and services, Head-teachers and line managers are responsible for the engagement of Agency workers/supply staff. Managers must keep records to record the

rationale for using agency workers and managers and Head-teachers must monitor and review usage and costs on a timely basis.

Agency workers are not covered by MCC's Recruitment and Selection policy. Head-teachers/managers should not use Agency workers to circumvent this policy. Agency staff should only be used if there is sufficient provision in the staffing budget to avoid service delivery being affected. In no circumstances should agency workers be used when a team has a full and available complement of staff.

## WHY USE AN AGENCY WORKER?

It may be possible, subject to necessary approval processes, to engage agency workers in the following circumstances:

- To provide cover for short-term, unforeseen and/or unexpected staff shortages
- To provide specialist skills which are not able to be sourced from within the council
- To assist during periods of peak workload
- To undertake a short-term project or task
- To provide services for a specific service or to meet a specific need, where for organisational reasons, such use is approved

However, when determining whether it is appropriate to engage an agency worker, Head-teachers/managers should give consideration to the following:

- The duration of the assignment
- Whether 'acting up' or a secondment would be more appropriate
- The urgency with which the post must be filled
- Value for money and budgetary implications

Agency workers must not be used to cover a permanent or fixed term vacancy. MCC is an equal opportunities employer and all such vacancies must be advertised. Vacancies which have been held and not advertised for any reason must not be filled through the use of agency workers.

Managers must submit a request to engage agency worker in writing (see form in appendices) and send to their Head of Service, this must include the following details:-;

- The reasons why an Agency worker is needed and why the work is unable to be completed internally
- What the implications will be for the Council in performance and monetary terms if an agency work is not used

- How long the assignment will last including intended end date
- The budgetary cost of using an agency workers

It will be the sole decision of the Head of Service following consultation with HR and Finance as to whether or not an agency worker can be engaged within the Council.

Managers (corporately) must obtain external agency staff via the nominated provider and advice should be sought from Procurement if considering using another provider. Evidence that managers have tried to source from nominated agencies should be produced before using another provider. However, other/alternative providers may be used for teachers sourced directly by individual schools.

## OUR RESPONSIBILITIES UNDER THE REGULATIONS

The provisions apply to all agency workers but **do not apply** to the following:

- Those who are genuinely self-employed (e.g. sole traders). To qualify for this an individual will have to satisfy HMRC guidelines
- Those who work through their own service company who are genuinely in business of their own account (e.g. limited companies)
- Those employed under managed-service contracts (e.g. a service contracted out by the council e.g. a cleaning company for office/school cleaning)

## STARTING THE ASSIGNMENT

Once the approval has been provided for the Agency or Self Employed Worker, the Head-teacher/Manager will contact the nominated provider and request a worker to be supplied as per the requirements of the contract. The hiring manager should undertake a recruitment and selection process before engagement. It is the hiring manager's responsibility to ensure that agency is fully briefed on the Councils requirements for the role.

## SAFER RECRUITMENT CHECKS REQUIRED PRE START-UP

The supplier is responsible for carrying out all checks and references. However, it is the responsibility of the hiring manager/HT to ensure all safer recruitment checks have been undertaken, including evidence of Right to Work in the UK, satisfactory references, and where relevant DBS checks and EWC and SCW registration checks (where applicable) on the first day/prior to the individual starting work. For Managers, the Agency request form (see appendix 2) must be completed.



## FIRST DAY OF ASSIGNMENT

On the first day of an assignment, managers must carry out an induction with the agency worker and ensure that on day one employment rights are discussed. It is the Managers /Head-teachers responsibility to ensure that a proper induction process has been undertaken. (Head-teachers/Managers should refer to the Agency Induction checklist see appendix 4 ).

## DURING THE ASSIGNMENT

### **Safety, health and wellbeing responsibilities**

The responsibilities managers and head-teachers have for the health and safety of their employees applies equally to agency workers. Managers/Head-teachers have an obligation to manage the implications of any health and safety issues which may arise whilst an agency worker is on assignment at the Council. Particular attention should be given to induction of new staff and risk assessments.

### **Working hours and rest breaks**

Monmouthshire County Council's standard working hours are set out in relevant terms and conditions of employment. Managers/Head-teachers should ensure that the hours worked by agency workers are in accordance with these standards.

All agency workers have to abide by the Council's Policies and should be directed to the People Services page on the intranet in order for them to read them. However, if policies need to be invoked e.g. disciplinary, the individual would be subject to the nominated agency staff supplier's procedures.

It is the appointing line manager's responsibility to ensure that the agency worker meets all qualifying conditions and that the worker has access to all policies and procedures of MCC.

## ENDING THE ASSIGNMENT

The manager and Head of Service/Head-teacher should be aware of the intended duration of the agency workers employment in the Council. Two weeks before the end date, they must re-evaluate the agency workers position and consider if there is a 'need' for the assignment to continue. If there is a clear service and business need for the arrangement to continue then the manager will need re-approval from the Head of Service using the forms contained within the appendices to this policy. Therefore, the Head-teacher/manger must ensure they have continuing budgetary permission from Finance.

## POLICY MONITORING

The Council will monitor the application of this policy and has discretion to review it at any time through the appropriate consultation mechanisms. Responsibility for the implementation, monitoring and development of this policy lies with the Head of People Services. Day to day operation of the policy is the responsibility of line managers, Heads of Service and Head-teachers, who will ensure that this policy is adhered to.

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## APPENDIX 1 Q&A

### **How to establish Employed or Self-Employed?**

HMRC publish guidance to assist in determining whether the nature of the engagement is a contract of service (worker) or under a contract for services (self-employed, independent contractor). It is necessary to examine the real nature of the relationship before agreeing to the engagement. <http://www.hmrc.gov.uk/calcs/esi.htm>

Please save a copy of this once you have completed it in order to prove engagement status. If it is established that they are self-employed then there will be a reference. Record the reference on the pro-forma.

### **Can someone who is already employed by Monmouthshire have a contract to offer services under the self-employed status?**

It is highly unlikely that HMRC will accept that an individual who is employed by Monmouthshire can also act as a self-employed consultant supplying services to Monmouthshire. In most cases, where such additional work is approved any additional payment will be paid through the payroll system and be subject to statutory deductions. Managers/Head-teachers should seek advice from the People Services Team before offering additional work to full-time staff.

### **What documentation is required for Self-Employed Consultants?**

When the Head of Service is satisfied that the nature of the engagement is one of a contract for services and where the supplier is registered with HMRC as self-employed, there should be a written agreement between Monmouthshire (signed by the Head of Service) and the self-employed supplier, specifying the service to be provided and the fee. (See model contract, which has been worded to minimise the possibility that HMRC or a Tribunal/Court may construe it as a contract of employment).

### **Why do we have to keep the paperwork described above?**

HMRC can inspect Monmouthshire's records of payments to self-employed providers to ensure that they are genuinely contracts for services. Services should retain records of all such engagements as HMRC may request to see these. Where the arrangement is with a company, the same standard contract for services should be used.

### **How do we pay for the services of a self-employed worker?**

The self-employed worker will have to submit itemised invoices for payment on completion of the work and payment will only be made to the account of the supplier named on the contract. Payments will be made through the Agresso system. Invoices should be submitted each month. All procurement rules will apply. Members of staff should not be directly involved in decision-making in cases where work is offered to their former colleagues, close friends or family. Where this is not possible, because they have lead responsibility for the

service/ project, they should ensure that a Chief Officer is involved in the decision-making progress. All staff/workers should be aware of the content of the Code of Conduct Policy and responsibilities around disclosure of interests.

**What records should be kept?**

The manager/Head-teacher should retain securely records of engagement of agency and/or self-employed workers along with completed copies of all relevant documentation as required in this policy.

**Why do we have to carry out a Right to Work Checks for self-employed?**

The UK Border Agency suggests that employers might wish to consider undertaking right to work checks for individuals engaged on a self-employed basis. To minimise risk, Managers and Head-teachers must undertake Right to Work checks on agency and self-employed consultants as well as all other employees.

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## APPENDIX 2. FORM - REQUEST FOR AGENCY OR SELF EMPLOYED WORKER – not applicable for schools

**The line manager must complete and obtain Head of Service approval before engaging an Agency or Self Employed worker for MCC.**

Line Manager :	
Service/ Directorate :	
Title of post being covered (post number):	
Length of assignment:	
Reasons why Agency or self - employed worker is needed:	
Implications for MCC if Agency/Self Employed worker not engaged:	
Hourly/weekly fees:	
Overall Cost:	
Start date:	
Projected end date:	
Has budgetary permission been given to engage agency/self-employed worker?	YES <input type="checkbox"/> NO <input type="checkbox"/>
<b>To be completed by Finance</b>	
I confirm that the above named officer has been given budgetary permission to engage an Agency or Self-Employed Worker as specified above	
Signed:	
Name (Block Capitals):	
Date:	
<b>To be completed by relevant Head of Service</b>	
I give permission for an agency/self-employed worker to be engaged in accordance with the above information	
Signed:	
Name (Block Capitals):	
Date:	

<b><u>REVIEW DATE:</u></b>	
<b><u>HEAD OF SERVICE APPROVAL</u></b> <b><u>(signature):</u></b>	
<b><u>DATE:</u></b>	

### **REVIEW DATE - REQUIREMENT FOR USE OF AGENCY /SELF-EMPLOYED WORKER**

Line Managers **must** re-evaluate the requirement for the agency/self-employed worker position and consider if there is a 'need' for the assignment to continue **two weeks** before the **intended end date**.

If there is a clear service and business need for the arrangement to continue then the line manager will need approval from the Head of Service.

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## APPENDIX 3. FORM - RECORD OF ENGAGEMENT OF AN AGENCY, OR SELF-EMPLOYED WORKER

The line manager/Head-teacher to complete and retain a copy of the form and all relevant documents before the agency or self-employed worker starts work for MCC.

Name of Team Manager /HT:	
Team (Directorate)/School:	
Name of agency /or name of company under which self-employed operates:	
Name of agency worker/self-employed worker:	
Title of post being covered (post number):	
EWC/SCW registration number (if needed)	
DBS certificate number: (if needed)	
DBS issue date: (if needed)	
Hourly/weekly fees agreed:	
Start date:	
Projected end date:	
REVIEW DATE:	
HMRC reference tool number (for self –employed worker)	
<b>Manager/Head-teacher to retain a copy of this completed form along with photocopies of the following <u>original</u> documents - before the commencement of work:</b>	
Right-to-work checks:	
Qualification certificate (eg QTS):	
Birth certificate:	
Passport / Driving licence (photograph):	
VAT registration (self-employed worker):	
Certificate of Incorporation (self-employed worker):	

Employment history:	
Next of kin information:	
References:	

The Line Manager/Head-teacher must collect this information from the employing agency / self-employed worker. Retention – Records must be retained for 6 years if the worker has worked with adults. If the worker has worked with children, records must be kept for 80 years after the worker leaves MCC.

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## APPENDIX 4. INDUCTION CHECKLIST FOR AGENCY/ SUPPLY STAFF/SELF-EMPLOYED WORKERS

**Name of Directorate / Service Area / School**

***A manager /Head-teacher may wish to share this checklist with the Agency so that this information can be provided before start-up.***

Name of Directorate /Service Area/School induction and understand what is expected of me. This is to confirm that I have received an IT induction and I have also read/ will read by the end of the day the following policies (**insert as required**):

MCC's Code of Conduct Policy

Safeguarding Policy

Following this I will receive an 'on the job' induction/training which will also cover the elements to working in my specific team.

### **Data Protection**

I confirm I have watched the GDPR awareness video on the HUB/viewed the GDPR policy at my school. I have seen the data protection policy on the HUB/at school and will attend the mandatory training during my booking with MCC (if available).

### **Safeguarding Training**

I confirm that I have watched the safeguarding awareness video and I have read the Safeguarding Policy on the HUB/ at school. I am booked onto MCC's Level 1 training / or have done MCC's safeguarding training recently and have a certificate. I understand what my actions are in relation to a safeguarding matter.

In my school, I know who the designated Safeguarding Officer is.

### **VAWDASV**

I will complete the group 1 on line e-learning within my first 4 week in post.

### **Health & Safety/Well being**

The fire drill/evacuation point and first aid kit have been explained. I know where the H&S policies are located on the HUB/within the SCHOOL and I know how to report an incident / accident.

I know the hours I am expected to work. I know who the designated First-Aiders are.

## Equipment

I have been issued :-

- Lap Top
- Mobile Phone (if required)

## SCHOOLS:

On Day 1

- Report to the Cover Officer
- Collect laptop
- Know the timings of the day (be provided with a copy of the timetable/class list)
- Know who the Safeguarding Officer is
- Know who the First-Aider is
- Know who the behaviour point of contact is
- Know where the fire exits are located
- Know the map of the school (rooms – eg staff room)
- Be provided with key school policies such as Behaviour Policy, Safeguarding Policy, assessment & marking policies/practice of the school

I (please print name)..... confirm that I have received an induction into \_\_\_\_\_ (Name of service area/school) from \_\_\_\_\_ and I agree to abide by the policies referred to. I also understand my responsibility relating to confidential data.

I know where all the policies on the HUB are located for the DIRECTORATE/SERVICE AREA/ where the SCHOOL policies are located. I know where the MCC corporate policies are located and can access them when required.

LEAVER Checklist: When I finish my booking with MCC, I agree to return on my last day: my laptop, phone, swipe (access)/ID card and any notes, reference material and equipment which I have used or that has been given to me during the course of my work.

SIGNED.....

NAME (Please print) ..... DATE.....

## VERSION CONTROL

<b>Title</b>	Agency and Self-Employed Workers Policy
<b>Owner</b>	People Services HR
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