



BRITISH ARCHAEOLOGICAL JOBS RESOURCE

BAJR

:: Employed or Self-Employed in Archaeology
(Guidance notes for Employers and Casual Workers)

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Are you Employed or Self-Employed?

There has been a tradition in some areas of the United Kingdom, especially Scotland, for archaeologists to work as self employed individuals. Some commercial companies that have grown up in these areas have continued this tradition; others have turned against this practice.

Individuals acting in a self-employed manner submit invoices on completion of work (or perhaps more frequently) and are paid gross of Tax and National Insurance. The individual must manage their own tax returns, prepare accounts and complete self-assessment tax forms. Employees have tax and national insurance removed at source, by their employers, and they should have: contracts of employment; leave entitlement; and other benefits.



But who can choose between these two states of work? Would the Inland Revenue agree you are truly self-employed or could they assess you as being employed, with the companies perpetuating a tax and National Insurance avoidance scheme? What are the relevant benefits of the different states, if you are in a position to choose?



A simple test

The Inland Revenue has often circulated a simple test, below, to offer a coarse gauge as to whether you are acting as an employee or as self-employed:

Employee

If you can answer 'Yes' to all of the following questions, you are probably an employee.

- Do you have to do the work yourself?
- Can someone tell you at any time what to do, where to carry out the work or when and how to do it?
- Do you work a set amount of hours?
- Can someone move you from task to task?
- Are you paid by the hour, week, or month?
- Can you get overtime pay or bonus payment?

Self-employed

If you can answer 'Yes' to all of the following questions, it will usually mean you are self-employed.

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



Archaeologists; which are they likely to be



Having undertaken the quick Inland Revenue check above, it is a rare field archaeologist who can credibly claim to be self-employed. A field archaeologist who is told what to do on-site by a supervisor; or a supervisor who is instructed by a site director cannot under the simple Inland Revenue be self-employed. If they are paid and registered as self-employed they are probably in breach of Inland Revenue regulations.

An archaeologist who could operate as self-employed would be expected to tender for whole contracts and then manage the work themselves. Freelance specialists (artefacts, illustrators, osteologists etc) are potentially the best example of this. They agree a product (the report), a timetable for the works and a fee with their client. After this they go away and undertake the work as they see fit, within the constraints of their contract. On submission of the report they also submit their invoice. A clear self-employed process. While this is possibly true for field staff, it is probably exceptional.



Why do companies do this?

Companies may use allegedly self-employed field staff because of inertia; while individual archaeologists may be used to claiming to be self-employed and object to being employees. Alternatively companies may be doing this because they are attempting to avoid:

- paying employers contribution on National Insurance;
- carrying the administrative cost of running PAYE schemes;
- having to pay staff promptly (invoices can be deferred from payment for 30 days);
- allowing archaeologists to be covered by contracts of employment;
- allowing archaeologists to gain employment benefits (leave; benefits; job security etc);
- allowing access to pension schemes (stakeholder schemes etc);
- providing insurance cover for archaeologists (employers insurance cover employees not self-employed).

The apparent benefit to the self-employed archaeologist is the higher day rate than that which employees may receive; although the gained monies are dwarfed by the passed on hazards and liabilities. Most significant is that the company and individual, in the case of field archaeologists, are most probably acting in breach of Inland Revenue regulations.



Company liabilities

Any company using self-employed field staff (who are not truly self-employed) are carrying a serious tax and National Insurance liability should they be investigated by the Inland Revenue and found out.

In addition they are in danger of being taken to industrial tribunal by former or current 'self-employed' staff who could reasonably claim that they are in fact employees and entitled to the consequent benefits. This is most likely to be tested in the event of accidents or injuries where Employers Liability insurance would not cover the supposed self-employed staff and the injured individual would have to test their effective employment status through a tribunal to gain access to the protection of the company insurance provision.

Self-employed liabilities

By being registered as self-employed the individual takes on board the responsibility for tax and national insurance payments, record keeping and financial management. Financial management should include laying monies aside for payments and coping with cashflow problems while waiting for invoices to be met and when not working (inc. holidays).

The self-employed are also responsible for supplying themselves all equipment and paying for adequate insurance provision for them to work (both in case of them injuring themselves or causing injury to others).

Benefits of short-term employees

The abandonment of self-employed status for field archaeologist in those companies that still abuse the system will not result in a raft of well paid, secure, permanent posts. However, there are a range of benefits that will progressively accrue to the individuals (if avoiding the wrath of the Inland Revenue is not sufficient). The critical advantages of being a short-term employee are:

- a full and proper tax record is established through the respective PAYE schemes;
- full National Insurance contributions, including employers contributions, are made that provide for greater benefit entitlement;
- access to entitlements (sick pay, annual leave, public holidays, maternity leave etc) where posts survive for long enough;
- coverage by company insurances;
- responsibility for equipment (especially PPE) falling on company.

The life of short-term employees is not a sea of joy; but this style of work has established employment law protecting them and is a stepping stone to better working and employment conditions.



What should you do?

You should run through the quick test from the Inland Revenue:

If you are happy you comply with the self-employed status ensure you maintain clear records that you are working in this manner. Manage your paperwork to keep details of contracts agreed and show that you act in an independent manner.

If you think you are an employee discuss this with your 'employer' and potentially the Inland Revenue.

DO NOT accept excuses that this is how it is or everyone else wants it like this. You must comply with the law; as must the employer. The issue of being an employee is also a matter of great importance for your personal safety and financial integrity.



All employers run some form of PAYE system which they could expand to cover you; they are simply excluding you for their corporate benefit. Ultimately if your employer or prospective employer threatens to remove the offer of work you need to consider whether you value work that is paid in an illegal manner and which attempts to exclude you from insurance cover should you be injured at work (or make you personally liable should a colleague or member of the public be injured inadvertently through your actions). It's not worth it. Insist on staying within the law; a company that cannot keep to employment law is also less likely to hold to professional standards.



Further guidance

For a fuller and definitive explanation of self-employed or employed status please refer to the Inland Revenue guide: IR56 - Employed or self-employed? A guide to employment status for tax and National Insurance contributions.

This is available on the web at: <http://www.inlandrevenue.gov.uk/pdfs/ir56.htm>

Inland Revenue Enquiry Centres

<http://www.inlandrevenue.gov.uk/enq/index.htm>

Legal Advice, and Legal Services for Small Businesses

<http://www.lawontheweb.co.uk/basics/business.htm#Employing%20Staff>

Citizens Advice Bureau – Advice on Holidays and Holiday Pay

http://www.adviceguide.org.uk/holidays_and_holiday_pay.pdf

Citizens Advice Bureau – Basic Rights at Work

http://www.adviceguide.org.uk/nm/index/life/employment/basic_rights_at_work.htm

Citizens Advice Bureau – Contracts of Employment

http://www.adviceguide.org.uk/nm/index/life/employment/employment_status_and_contracts_of_employment.htm

Payrate calculator.. (enter details and find out if you are being paid correctly)

<http://www.nwpayroll.com/ibankacs/payratecalc.html>

ThePayrollSite.co.uk (one of many companies that will help calculate your PAYE from a little as £5 per month) <http://www.thepayrollsite.co.uk>

We do not endorse this company and only show it here as an example of what is available

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