**Section 2 – Employment**

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Introduction

This section will help you ensure you are equipped and have met your legal responsibilities with regard to employing someone. Whether you are employing just one person or many, it is important you have the relevant documentation, policies and procedures in place.

Documentation

It is essential that you and your employees have the relevant paperwork to ensure you comply with employment legislation. Where a written contract does not exist the employee is protected by statutory legislation. However you should ensure that proper terms and conditions of employment are set out in writing. Doing so will offer protection to the employee, but also you as the employer.

There can be many types of paid workers involved in parish life, including PCC employees, self-employed people and individuals who can help out on a casual basis. It’s not always easy to know whether someone is employed or self-employed or is a volunteer, and what action you need to take. However, it is your responsibility as an employer to verify the correct employment status of each of your workers.

A PCC needs to ask the following questions in determining a person’s employment status for tax purposes.

1. Is there a contract?

A contract is an agreement between parties, which may be written, oral or implied or a combination of these. There are three main elements of a contract of service (employment) or for services (self-employment):

* an offer of work and an acceptance of this offer
* the intention to enter into legal relations
* consideration (usually – but not always – payment in return for the services provided).

1. If there is a contract, is the worker an employee or are they self-employed?

There is no single test which will provide an answer to this question. All the circumstances of the arrangement need to be taken into account. As a general guide, the HMRC guidance suggests that if the answer to all the following questions is ‘Yes’, the worker is probably an employee.

* Does the worker have to do the work personally?
* Can someone else tell the worker what to do and when, where or how to do it, and move him or her from task to task?
* Does he or she work set hours?
* Is he or she paid by the hour, week or month?
* Is he or she entitled to overtime or bonus payments?

On the other hand, if the answer is ‘Yes’ to the following set of questions, it will usually mean that the worker is self-employed.

* Can the worker hire someone else to do the work or engage helpers at his or her own expense?
* Can the worker decide what work to do, and when, where or how to do it?
* Does the worker risk his or her own money?
* Does the worker provide the equipment needed to do the job?
* Does the worker agree to do a job for a fixed price, regardless of how long it may take?
* Does the worker regularly work for a number of different people?
* Does the worker have to correct unsatisfactory work in his or her own time and at his or her own expense?

Further useful information available on the following link: <http://www.parishresources.org.uk/people/paye/>

**Contract of Employment**

A contract of employment is an agreement between an employer and employee which is legally binding. The term is defined by the Employment Rights Act 1996 as a contract of service or apprenticeship.

Any employee who has been employed for one month or more has the statutory right to a written statement of particulars of employment. However it is best practice to provide this prior to their start date, and ask for a copy to be signed and returned before their first day at work. This way you know everything is agreed and in order before they start, and the employee is also clear on the terms under which they accept the appointment.

Employment contracts consist of a mixture of Express and Implied terms:

* Express terms: those that are actually stated in writing and which must meet minimum legal standards in many areas, such as the right to paid holidays and the right to rest breaks.
* Implied terms: those that are not necessarily written down but still apply. For example, a duty of mutual trust and confidence between the employer and employee.

Legally, there are minimum terms that need to either be included in a basic contract or another document. As a parish you should plan in advance as to what terms you plan to offer your employee. If you employ more than one person, these terms should be kept as consistent as possible.

**Fixed term contracts of employment**

You may want to use a fixed-term contract for a number of different reasons, including:

• To cover maternity leave

• To cover long-term sick leave

• Where there is a specific project where particular skills are required

Fixed-term employees have the right not to be treated any less favourably than comparable permanent employees. Therefore they are entitled to the same equivalent benefits. Normally the only difference in the written contract would be in relation to an end date (and any notice required etc) and perhaps a pro-rata holiday allowance and salary.

It is important that fixed term contracts explain whether notice to end the contract is required or not and whether it can be ended because of a specific event, for example, because of a withdrawal of funding from an outside party.

Where a fixed-term employee’s contract is terminated, this amounts to a statutory dismissal, even if this is at the expiry of the fixed term. Therefore, where they have more than 2 years’ employment, they will have the right to claim unfair dismissal. This means that a standard redundancy procedure should be followed.

Any fixed-term employees who have been on successive fixed-term contracts will automatically become permanent employees after four years.

**Statement of Terms and Conditions**

The following information should be included within the written statement of terms (supplementary information can also be provided within a staff handbook):

(See Appendix 1 – Template Statement of Terms)

* Name of employer
* Name of employee
* Date when employment began
* Date when continuous employment began
* Scale or rate of salary (or pay) or the method of calculating pay (perhaps if hourly paid)
* Intervals at which remuneration will be paid
* Details relating to hours of work (which will include normal hours of work)
* Holiday entitlement (with details regarding accruing holiday pay, for example on termination of employment)
* Job title or brief job description (although the full list of duties is not appropriate as it is better if these are not contractual)
* Normal place of work
* Terms relating to sickness absence and sick pay
* Details of pension and pension scheme
* Period of notice which each party must give to terminate the employment
* The termination date of a fixed term contract or the likely length of a temporary contract
* Details of any collective agreements which may affect the terms and conditions of the employment
* Details of the disciplinary and grievance policy and procedures, including details of the name of the person(s) to whom the employee can raise a grievance or appeal if they are dissatisfied with any disciplinary decision

Further information about statutory entitlements and best practice with regard to the above employment terms are contained within this guide.

There should be two copies of the contract or Statement of Terms provided, each signed by the employer and the employee. Following the employees signature, one copy should be retained by you and the employee retains the other. Usually these contracts are sent out to prospective employees as part of their offer, and are therefore accompanied by an offer letter.

The offer letter provides an opportunity to confirm details and provide information such as arrangements for their first day, who they should report to, what they should bring etc. (See Appendix 2 – Template offer letter) You may also wish to include a personal details form asking for any information you need for their employment which you may not already have from the recruitment stage, such as NI number, date of birth and bank details (See Appendix 3 – Template Personal details form)

**Variations to the Contract of Employment**

Any changes to the contract should be made with the agreement of both the employer and employee and any changes confirmed in writing to the employee. I would also recommend as best practice to provide 2 copies of such letters so that the employee can sign and return one to you which can be place alongside the original contract as a variation to terms (See Appendix 4 – Template Contract Variation letter) The example used in the template is for a change of hours, but can be altered to reflect other contractual changes.

**Self-employed contracts for services**

(See Appendix 5 – Template Contract for Services)

If an individual is identified as being self-employed, it is always a good idea to provide a contract for services in writing.

We recommend that you ensure the following is in place at the point of signing:

* Commencement date and duration of agreement-clear parameters should be given
* Purpose of the agreement- a scope of the work required
* Fees- is it a one off fee or hourly?
* The ability to provide a substitute in the event that the individual is not available
* Confidentiality and data protection rights
* Publication of material- who owns the rights? Normally this would be the PCC
* Insurance and liability- the individual should have their own public liability insurance
* Termination clause

Try to avoid employment phrases such as ‘line management’, ‘salary’ or ‘Job Description’.

Remember: The HMRC may want to look at both the written contract and your working relationship with the individual. It is therefore necessary to ensure that regular reviews take place so that the documentation reflects the true situation.

**Organists / Director of Music**

It is common for parishes to use a self-employed contract for services for organists, however please carefully consider whether this is the most appropriate form of contract to use, the HMRC or an employment tribunal are likely to use the same employment indicators for determining employment status, listed earlier in this document.

**Staff Handbook**

(See Appendix 6 – Template Staff Handbook)

Whether you have just a handful of employees, or a whole legion of them, you will need to have a way of communicating to your staff, some general information of standard practice and various policies and procedure. The best way to do this would be to produce a Staff handbook, which is accessible to all staff,

A Staff Handbook provides a good record of decisions that have been taken on a variety of staffing issues, such as sick pay, holiday etc. and gives staff one document they can refer the majority of their employment related questions to.

Suggested inclusions to consider for your handbook:

* Background information: brief description of activities; an organisation chart etc.
* Internal policies: health and safety, equal opportunities etc. Basically, any policy that you find yourself having to write for employees can be included.
* Amenities: floor plan or map; public transport; parking etc.

Try to keep the information simple and easy to read, and illustrate wherever possible with chart or diagrams. It is usually a long document; therefore you should include an index.

Employment Terms

Here is some useful information you need to know about the various employment terms contained within the Statement of Terms.

**Probationary Period**

It is common for the first weeks or months of the employment to be regarded as a probationary period. The length of the probationary period will be detailed in the Statement of Terms and will typically be three or six months depending on the type of position. Usually, the more senior the position, the longer the probationary period.

The contract will usually state a reduced period of notice within the probationary period; often this will be one or two weeks.

The purpose of the probationary period is to ensure both the employer and employee are happy with the appointment. It is important during the probation that the employee and line manager meet regularly and performance is monitored. Usually through a series of goals or targets set during their first few months of employment. Conversations around these targets should be documented and recorded. It is also important to raise any concerns with the employees performance as soon as possible, and explain the required level of performance, giving them opportunity to make improvements, these conversations should also be recorded on the employees file.

In the event that the employee’s performance remains unsatisfactory by the end of the probationary period, the employee’s contract may be terminated. Prior to termination an evaluation meeting should take place and the issues with their performance discussed. Normal disciplinary code of practice applies, including the right to be accompanied to the meeting and the right of appeal.

Where there are no issues and the employment is confirmed to permanent, this should be confirmed to the employee in writing.

It is important to remember that the probationary period in the contract serves more to set an expectation of how performance will be monitored and that should the employee not be suitable, their employment could be terminated. However the process is not contractual and normal disciplinary /capability process should be followed, albeit a shorter version due to the length of service.

**Pay**

When considering the pay you intend to offer for a post, it’s important to consider the following;

* Is the level of pay sufficient to attract suitable candidates
* Is the level of pay and room for growth suitable to retain good employees
* Does the level of pay accurately reflect and reward employees for their loyalty, effort and experience
* Is the level of pay comparable with similar roles

Where funding has been obtained for a particular post, you will need to consider the cost of the appointment over the period of the project to ensure you have sufficient funds. On top of basic salary costs, you will need to think about; future cost of living increases, training, equipment, expenses, employers National Insurance, pension costs and provision for redundancy payments if applicable.

Whilst the National Minimum Wage is a legal requirement, we endeavour to pay UK Living Wage, please see both pay scales below.

* UK Living wage - £9.50 per hour (£10.85 in London)

National Minimum Wage rates:

* 23 years and over - £8.91 per hour
* 21 to 22 year olds - £8.36 per hour
* 18 to 20 year olds - £6.56 per hour
* 16 to 17 year olds - £4.62 per hour
* Apprentice rate - £4.30 per hour

\*Figures correct as at April 2021

Please see separate Payroll guidance for further information on pay.

**Holiday Entitlement**

It is important that if you havemore than one employee, that you have a consistent and fair way of allocating holiday entitlements for both full time and part time employees.

Statutory holiday entitlements under the Working Time Regulations state that all employees are entitled to a minimum of 5.6 weeks holiday which may include bank holidays (8 per year), some employers provide these in addition to their holiday entitlement.

For a full time employee working 5 days per week, this equates to 28 days per year. To calculate a part time holiday entitlement you need to multiply 5.6 weeks by the number of days or hours they work which will give you the minimum number of days or hours holiday they are entitled to.

You may offer more than the statutory minimum, or you may opt for a holiday entitlement which increases with length of service.

Employees may be allowed to carry over holiday into a new holiday year providing they have taken their minimum entitlement. If you do not offer anything more than the minimum entitlement, you may need to be clear about a ‘use it or lose it’ policy to encourage employees to take all of their entitlement.

You may want to make certain restrictions on the time at which holiday is taken depending on busy or quiet periods. For example; children’s workers may need to take their holiday outside of term time only. Or if you close the office at certain times, such as Christmas, you make need to specify the number of days employees will need to retain for these days.

It is a good idea to have a holiday booking process with a process for authorising so that certain employee’s holidays do not conflict, and so you have a clear picture of staffing levels and outstanding holiday balances throughout the year.

Setting out these holiday rules in a policy or handbook will help prevent confusion and help you to remain as consistent as possible.

**Pension Arrangements**

Since October 2012 the legislation on pension has changed. Every UK employer has been assigned a staging date upon which the legislation will apply to them, all organisations will need to be compliant by October 2017. To find out your staging date, go to The Pensions Regulator website.

<http://www.thepensionsregulator.gov.uk/>

When you reach your staging date you will need to ensure that you have a pension scheme available and that you automatically enrol all eligible employees.

If you already have a pension scheme in place, you will still need to take action from your staging date therefore please see the separate guidance on Auto Enrolment.

(See Appendix 7 – Auto Enrolment guide)

**Expenses**

An agreement should be made with the employee, or a policy set out in the staff handbook in advance so that it is clear what expenses will be paid. Reimbursement should be subject to the completion of an Expense Claim Form with receipts attached so you have records in the event of an audit.

Mileage expenses should be paid at the statutory rate of 45p per mile for the first 10,000 miles.

**Notice Periods**

Often notice period will begin at one calendar month, some employers choose to increase this with length of service up to a maximum of 12 weeks. Most employers will not require more than 3 months’ notice, other than for very senior director level positions.

The notice period you decide upon will be given on either side, which means that the employee must give you this notice if they resign but you as the employer must also give this notice should you need to terminate the employee’s contract for any reason other than gross misconduct.

Paying People

**PAYE obligations**

As soon as you employ someone, you will need to register with the HMRC as an employer if the following applies:

* the employee already has another job or they are receiving a state, company or private pension
* you’re paying them at or above the National Insurance Lower Earnings limit (LEL) (For 2021/22 this is £120 per week), or above the PAYE threshold (which is higher than the LEL).
* you’re providing them with employee benefits

If you decide to run your own payroll function you will have a number of legal obligations to comply with:

**Pay as You Earn (PAYE) and Real Time Information (RTI)**

As an employer you have a mandatory requirement to submit employee payroll information, including payments and deductions to HMRC each month on or before the day they are paid, this is known as Real Time Information or RTI.

If you have payroll software, this should generate the reports you need to submit payroll information online. Alternatively you can use the HMRC’s basic PAYE tools, available here; <https://www.gov.uk/basic-paye-tools>

Please see the below link for the Parish Resources website for more information:  
<http://www.parishresources.org.uk/people/paye/>

**What else is involved in operating a PAYE system?**

* calculating and deducting PAYE Income Tax from an employee’s pay
* deducting employee’s National Insurance Contributions (NICs) from payments of earnings you make to your employees
* paying employer’s NICs on those earnings to HMRC
* recording the above deductions on the employee’s P11 Deductions Working Sheet or equivalent record
* showing the deductions of tax and employee NICs as separate items on the employee’s pay slip
* You have to pay all of these deductions to HMRC within set time limits.

**Pay As You Earn tax (PAYE)**

Tax is cumulative, so a lot depends on where you are in the tax year as to how much to deduct. There are three rates of tax: basic (20%) and higher (40%) and additional (45%). However the average PCC will not employ anyone earning enough to be taxed at the higher rates.

For the tax year 2021/2022, earnings between £1,041 per month and £3,141 per month are taxed at the basic rate of 20% on the earnings that are over the threshold, and earnings above that should be taxed at a rate of 40%.

Example PAYE tax rates and bands:

Tax rate for employees earning

less than £242 per week: 0%

Tax rate for employees earning

between £243 and £725 per week: 20%

Tax rate for employees earning

over £726 per week: 40%

Tax rate for employees earning

over £2,885 per week: 45%

Example:

An employee earns over the PAYE threshold of £240 per week (£1,041 per month), therefore is liable to pay tax on earnings at the basic rate of 20%. If you have a software package it will do all the calculations for you, but to help you see what would be deducted, the table below shows the calculations. The calculations for this employee’s PAYE, assuming earnings of £280 per week, are as follows:

£280 - £242 = £38 x 20% = £7.60

Weekly earnings PAYE threshold Taxable pay Basic rate Amount payable

For more information on rates and thresholds go to:

[Rates and thresholds for employers 2021 to 2022 - GOV.UK (www.gov.uk)](https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2021-to-2022)

**National Insurance Contribution (NIC’s)**

Employees whose earnings fall beneath the LEL do not need to pay NIC. For employees on a band A NI category, NI is paid at a rate of 12% (on weekly earnings over the NICs LEL of £120) from the employee, plus 13.8% on employee’s earnings over the NI Threshold from the employer (currently £170 per week). Your software package should calculate the amounts to be deducted and paid over to HMRC.

**Category A** **NI LEL figures**

LEL for employee’s contribution: £120 (week) £520 (month) £6,240 (year)

Amount above that deducted at 12%

LEL for employer’s contribution: £170 (week) £736 (month) £8,840 (year)

Amount above that deducted at: 13.8%

There are various NI categories, however category A, is likely to be the most common you will see in parishes, for further information on NI thresholds and categories please visit: <https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2020-to-2021>

This example shows how it is calculated and is based on an employee who earns £280 per week on a band A NI category:

Employee contribution Employer contribution

£280 - £120 = £160 x 12% £280 - £170 = £110 x 13.8%

= £19.20 = £15.18

If your employee is above retirement age, they should provide you with a Certificate of Age Exception, which states that they are no longer liable to pay NIC (band C NI category). You will still have to pay the employer’s share of NICs for them however. If the employee in the above example were in this position, the PCC would only pay £15.18 NIC for her job each week.

When you employ somebody, you should ask for their National Insurance number, which you should enter on any communication with the Inland Revenue about that employee. This number will give them the information they need to check that the employee is paying the correct rate of NICs, and will allow them to register the person’s payments.

**Statutory Sick Pay**

For employees who earn £120 per week or more, you will have to pay statutory sick pay (SSP). This is the minimum level of payment you should make to an employee who is off work through illness, however, you may offer enhanced sick pay benefit.

You must pay SSP to employees who cannot work because of illness or disablement for four or more days in a row. The first 3 qualifying days are called ‘waiting days’.

The weekly rate for Statutory Sick Pay (SSP) is £96.35 per week. It is payable for the days an employee normally works in a week – these are called qualifying days. An employee is entitled to receive SSP for a maximum of 28 weeks in any one period of sickness, or linked periods of sickness. A linked period of sickness is where the gap between individual periods of sickness is less than 8 weeks. You must deduct income tax and NICs where appropriate.

There is a useful calculator available at: <https://www.gov.uk/employers-sick-pay/eligibility-and-form-ssp1>

**Statutory maternity, paternity and adoption pay**

An individual who becomes a parent, including through adoption, may be entitled to statutory maternity, paternity or adoption pay.

To qualify for any of these payments, the individual must be employed by you. Please see separate policy guidance on Family leave contained within the Section 3 – Policies and Procedures.

**Benefits in Kind**

Not all benefits are taxable, and some taxable benefits are treated differently from others.

* Some benefits, such as living accommodation, are taxable whenever they are provided to an employee.
* Other benefits, such as cars and medical insurance, are taxable only if they are provided to employees earning at a rate of £8,500 a year or more.
* Non-taxable benefits include drinks and refreshments at work

If you provide a taxable benefit to an employee there are ways to report it to the HMRC. For more information go to: <https://www.gov.uk/employer-reporting-expenses-benefits/reporting-and-paying>

**Payslips**

You must provide your employees with a pay statement for each pay period detailing what they have been paid for, any deductions made, including tax and NI.

Useful Links

The ACAS employment advice website:

<http://www.acas.org.uk/index.aspx?articleid=1461>

Government website where you can find out information on statutory entitlements:

<https://www.gov.uk/>

Tax office online employer services:

<https://www.gov.uk/log-in-register-hmrc-online-services/sign-in>

Church of England parish resources with advice on paying people:

<http://www.parishresources.org.uk/people/paye/>

Useful Contacts

ACAS helpline - 0300 123 1100

(Free impartial advice for employers and employees)

HMRC employer helpline - 0300 200 3200

(Advice on PAYE, RTI, SSP, SMP, SPP)

Natasha Clement - 01634 560000

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