

Entertainment Industry

It is important to note that there are specific employment status rules for performers & artists, you should be familiar with who falls into this category when engaging an individual/individuals.

This guidance [<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4121>] will assist you when making a determination, however, it should not be read in isolation and further guidance [<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0500>] can be found at gov.uk.

Please note that this guidance only refers to the entertainment industry such as:

- theatrical performers
- singers
- dancers and musicians

All of which perform live in theatre, opera, dance, circus, film, TV, radio or other digital media formats. It does not apply to TV or Radio presenters or other types of artist.

Whether an individual is employed or self-employed depends upon the nature of the relationship with the person for whom the services are provided which is then considered in the context of the performer's other engagements and overall 'business'. To decide whether someone is employed or self-employed you have to obtain all of the relevant facts relating not only to the particular engagement but also to the performer's wider business and then interpret those facts in the light of relevant case law.

Factors to consider

1. Pattern of work

- A number of separate engagements which may be consecutive or concurrent. For example, a role-player moving between corporate engagements or an actor who appears in a number of different productions through the year and/or;
- A number of different engagers e.g. a theatre producer, a TV production company, a film studio, a commercial company for corporate training events.

- May have periods of unemployment between engagements. During these periods the individual may be undertaking activities relevant to the occupation such as learning lines, updating skills, preparing for auditions, networking and so on.

2. Building a business

- The performer takes steps to build a business, incurring the costs of maintaining a business structure, beyond attending rehearsals and performances. The more steps the performer makes the more compelling this will be.
- Examples of business costs could include the use of an accountant, an agent, membership of Equity or other representative bodies, use of a casting directory, professional training, networking, obtaining insurance and conducting research. The examples are illustrative and should not be used as a tick list. None are determinative of status on their own

3. Control

- In the context of performers, it is important to distinguish between the content of the performance, e.g. script or musical score, which the performer is unlikely to be able to control, as opposed to their artistic interpretation of that content, i.e. how it is performed. The service provided by an actor or other performer is the interpretation of content which is set by another.
- It is important to note that where and when a performance takes place is usually determined by factors external to the relationship between the actor/performer and the engager and are not generally indicative of control, e.g. the theatrical production to be performed and its location and timing are fixed. A performer will, however, have control over where, when and how they do their preparatory work.

4. Substantial costs

- Performers may incur substantial costs in preparing and attending multiple auditions; or in purchasing professional self-taping equipment or services, without any guarantee of obtaining additional work. This creates a real risk of incurring a financial loss.
- The nature of the industry, the short-term duration of many roles and the need to continually seek additional work highlights the precarious position a worker can find themselves in, for example when a show closes unexpectedly before the end of a run. They may also incur opportunity costs e.g. where filming overruns, meaning that the actor is not free to take up other work; or reputational risk e.g. if the show is unsuccessful; or receives negative reviews; or their performance is poorly received.
- Longer term sickness absence may also result in substantial financial loss because the individual is unable to satisfy existing commitments, audition for subsequent roles, and develop, maintain or enhance their professional profile, leading to them potentially being overlooked for roles and sacrificing income where earlier costs have already been incurred.

5. Substitution

- Substitution clauses are highly unusual in this industry.
- If the performer has an unfettered right to send a substitute or deputy in their place at short notice, who is booked and paid by the performer this is indicative of self-employment.
- However, that, whilst musicians are often able to send a substitute, in the way described in this paragraph, most entertainers are engaged because of their individual attributes and/or suitability for a

role and, therefore, most engagements will not permit substitution. In these cases, the absence of a substitution clause is not determinative, and status must be determined by reference to other factors.

6. Equipment

- The performer provides their own equipment, which is both significant and fundamental to their role. Although this may be the case for many musicians and for some more specialist performing roles such as magicians or some circus performers, in the case of performers such as actors, there will usually be no equipment which they are expected to provide, so the absence of this factor will not be determinative of status. General guidance on equipment [<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm0540>].

Most actors and other performers are self-employed. It is possible however for them to be employed, if the factors described as indicative of self-employment are largely absent or reversed in the engagement you are considering.

A performer may be an employee for the purposes of a specific engagement, regardless of the fact that they are normally self-employed in respect of other engagements. That is why it is important to consider the written contract, the actual arrangements and the overall picture.

None of these factors are determinative of status in themselves. It is not, therefore, just a question of undertaking the mechanical exercise of running through items on a checklist to see whether they are present or not. All relevant factors relating to the way an individual is contracted should be considered including e.g. the length of engagement under the same contract. The right approach to assessing employment status is then to stand back and look at the picture as a whole to see if the overall effect is that of a person in business on his or her own account.

Detailed guidance can also be found in ESM4100 - Particular occupations: entertainment industry [<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4100>].