

Supervision, Direction or Control.

Definition of Supervision, Direction and Control for employment status purposes.

This guidance supports HMRC's response to the Public Consultation and is provided to explain and demonstrate (through examples provided) when the manner in which a person provides their services is subject to (or to a right of) supervision, direction or control by any person. This is a qualifying condition which must be satisfied before the provisions of the agency legislation can apply.

When dealing with employment status cases the courts have considered control in the broadest sense and in each case the employment status has been determined on the facts of the case presented to the court. HMRC has accepted the courts' interpretations over the years and we base our understanding of what constitutes "control" for the purposes of employment status, on the findings of the courts.

Ready Mixed Concrete (South East) Ltd V Minister of Pensions and National Insurance [1968] 2QB497 (ESM7030). It was the first case to place the importance of "control" when determining employment status. It remains a leading authority when determining employment status and is frequently referred to by the courts. Extract from Page 515C of the Judgement.

*"A contract of service exists if these three conditions are fulfilled. (i) the servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master (ii) **He agrees, expressly or impliedly that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.** (iii) The other provisions of the contract are consistent with its being a contract of service."*

When HMRC are considering if the provisions of the agency legislation apply to a persons job, we are looking at whether or not that person has the freedom to choose how they do their work, or instead, does someone have the power or authority over the worker to dictate how the work is done, by imposing control over them, subjecting them to supervision or giving them directions. For the purposes of the agency legislation HMRC consider supervision, direction and control are best defined as follows:-

Supervision is someone overseeing a person doing work, to ensure that person is doing the work they are required to do and it is being done correctly to the required standard. Supervision can also involve helping the person where appropriate in order to develop their skills and knowledge.

Direction is someone making a person do is/her work in a certain way by providing them with instructions, guidance or advice as to how the work must be done. Someone providing direction will often coordinate the how the work is done, as it is being undertaken.

Control is someone dictating what work a person does and how they go about doing that work. Control also includes someone having the power to move the person from one job to another.

Applying Supervision, direction or control to the agency legislation.

- **The worker is subject to supervision, direction or control.**

As was the position prior to 01/04/2014, the agency legislation may apply whenever a worker is subjected to supervision, direction or control over the manner in which the services are provided. Anyone can exert that supervision, direction or control over the worker, not just the person(s) the worker has been supplied to work for. So, for example:- if a construction company engages a Project Manager on a genuinely self employed basis to oversee a construction build and that Project Manager exerts supervision, direction or control over an agency worker, then that would be sufficient for the agency legislation to apply to that worker. See [\(ESM2005\)](#).

This is supported by the case of **Autoclenz Ltd V Belcher and others** [\(ESM7310\)](#). Autoclenz Ltd provided car cleaning services to motor retailers and auctioneers. Twenty valeters engaged by Autoclenz Ltd who had supplied to British Car Auctions took Autoclenz to an Employment Tribunal (ET) claiming national minimum wage (NMW) entitlement. The ET found the valeters were workers which entitled them to statutory rights. The case was appealed to Employment Appeal Tribunal, the Court of Appeal and the Supreme Court. The Supreme Court found that the ET was entitled to hold that the claimants were workers because they were working under contracts of employment. The “control” imposed upon the valeters played an important part in the courts findings that they were workers who had statutory rights. This is demonstrated at the following paragraphs from the Courts Judgements.

Paragraph 35 of the Employment Tribunal Judgement. *“They are subject to the direction and control of the respondent’s employees on site. The claimants have no say in the terms upon which they perform work, the contracts which are placed before them are devised entirely by the respondent and the services they provide are subject to a detailed specification.”*

Paragraph 24 of the Court of Appeal Judgement. *“The practical arrangements were as follows. Valeters were organised into teams of four, one of whom acted as a leader. Each team worked on a batch of six vehicles at a time. The process of cleaning and their materials and methods to be used were strictly controlled by Autoclenz, pursuant to the contractual requirements of its customer, BCA.”*

Paragraph 13 of the Supreme Court Judgement. *“The vehicles were required to be cleaned in accordance with a detailed specification set by BCA.....”*

- **The worker is subject to a “right” of supervision, direction or control.**

The agency legislation can also apply if anyone has a “right” to subject the worker to supervision, direction and control; even if in practice that “right” has not been exercised. That right may exist by virtue of the clauses within the contracts of the

respective parties to the arrangement (ie:- employment business/worker contract or employment business/end client contract). This factor is supported by the following cases:-

Talentcore Ltd (t/a Team Spirits) and the Commissioners for Her Majesty's Revenue & Customs. Talentcore Ltd supplied consultants to cosmetics companies to promote their products within the Duty Free Shops at airports, operated by World Duty Free. The First Tier Tribunal (FTT) Judge found that whilst there was little or no supervision, direction or control being exercised, **if** a manager from the Cosmetics Company or World Duty Free were present they would have had a right to supervise, direct or control the consultants in a similar way as they would the regular retail staff (who were employees). The case was appealed to the Upper Tier Tribunal (UTT) which found that there was no error of principle in the FTT's approach. **(ESM7315).**

Serpol Ltd v Revenue & Customs [2011] UKFTT 174 (TC. It was a finding of fact by the Court that Serpol Ltd supplied mainly former police officers to the Bedfordshire Police Force, to undertake various work in a number of roles. The Tribunal correctly identified the agency legislation dictated that supervision, direction and control need not be exercised in practice (but someone must have the right to do so) and applied this principle to the evidence presented. The tribunal found a "right" of control existed over those persons supplied as Disclosure Officers, Exhibit Officers and Indexers and the Scenes of Crime Officers. Evidence to support this was at clause 3 of the agency contract gave the client (in this case Bedfordshire Police) the right to ensure "that the job was completed in accordance with his wishes and in the time stated by him if specified." This was supported by a representative from Bedfordshire Police's having confirmed that whilst these persons were all experienced retired Police Officers who needed little supervision, nevertheless he believed that Bedfordshire Police had the **right** to control or direct the manner in which the work was completed.

Contained below are fictional examples which have been provided to explain when:-

- (i) the worker has been subjected to supervision, direction or control
- (ii) the worker has not been subjected to supervision direction or control, but there was a right to subject the worker to supervision, direction or control
- (iii) the worker has not been subject to supervision, direction or control and there was no right to subject the worker to supervision, direction or control.

In all of the examples that follow, (numbered 1-12) the individual only has a contract with an employment business and themselves, under which they provide their services to end clients. They do not enter into a contract with any of the end clients and they are not providing their services through a personal service company, a managed service company or an umbrella company.

The first four examples provide two scenario's for the same individual. One scenario demonstrates when they are subject to (or to a right of) supervision, direction or control and the other scenario demonstrates when they are not.

(1) IT Consultant.

Paul is a skilled IT Consultant who specialises in designing, building and implementing websites for businesses. He obtains his work via an employment business which finds him jobs with clients. A retail clothing company ask the employment business to provide an IT specialist for a two week engagement, to do some internet based IT work. The employment business contact Paul and as he wishes to take the engagement, arrangements are made for Paul to attend an interview with he client.

Scenario 1.

Paul attends the interview where he meets the company directors who tell Paul they want him to design, build and place onto the internet, a new website for their business which will advertise and sell their products online. Discussions are held during which time Paul shows the directors his portfolio and websites he has previously created. The directors are impressed and Paul is offered the engagement, which he accepts. The Directors then tell Paul he has a completely free role to design and build the website as he sees fit without anyone being able to intervene to instruct Paul what the website must look like or how it must be created. The only specific requirement placed on Paul is that the new website is completed, placed on line and activated before his engagement ends.

At his own choice Paul works alone and decides to do some of the design work at home and some at the company's premises, where he is provided with a desk and PC, but completely left alone to get on with and complete his work. Although the company have not asked for weekly progress reports, out of courtesy Paul decides to provide them (as this is how he normally works for his customers). Paul works alone throughout without any intervention whatsoever from the client and finishes designing the website on the eleventh day. Paul places the website online on day twelve and then tells the client he will be monitoring the website's performance for the remaining two days of his engagement to make sure it functions correctly. The website works correctly and on day fourteen Paul's engagement ends.

In this scenario from the very outset Paul has been told he would be given complete freedom to decide and control how he would provide his services, without anyone being able to intervene to dictate what Paul had to do and how he must do it - and this is what happened in practice. Paul has not been subjected to (or to a right of) any supervision, direction or control as to the manner in which he provided his services during his arrangement. The agency legislation does not apply to this scenario.

Scenario 2.

Having been told by the employment business the engagement is for one week (Monday to Saturday), Paul attends an interview with the Managing Director (MD) who tells Paul they require an IT specialist for one week (5 days) to assist the Company's IT Team with various IT work; which will be arranged and overseen by the company's IT Manager. Paul is told the IT Manager will be deciding what jobs Paul will do, telling Paul how they must be done and throughout he will be supervising Paul and instructing him as to the order in which the jobs should be done, which may change at short notice. Paul is informed IT Manager will be managing Paul and the other IT workers to make sure the work assigned to them is done to the required specification..

On his first day Paul is based at the company's trading address. The IT Manager gives Paul his first job which is to update the company's website to display new retail products. The IT Manager gives Paul detailed information on those products, which includes photographs, descriptions and prices. Paul is then shown how the products must be displayed on the company's website. The IT Manager oversees Paul doing this work, making sure that Paul displays the new products correctly and the photographs and product descriptions are legible. The IT Manager tells Paul to shorten some product descriptions and delete discontinued items from the website. This task takes three days to complete during which time the IT Manager monitors Paul's progress throughout to ensure Paul's work is completed correctly and on time.

On the fourth day Paul accompanies the IT Manager at the company's Head Office to help him gather figures on product sales over the last 6 months. Paul is told to access the company's database where he is to extract the figures for all product sales and list them on a specific spreadsheet provided in order of what products have sold the most. The IT Manager watches Paul compile the data to ensure it is done correctly and then checks Paul's completed spreadsheet for accuracy. This work takes Paul two days after which his contract to work for this client has been completed.

In this scenario the Company have made it clear to Paul the IT Manager would have a right to give Paul directions and supervision as to how he must do his work. In addition the IT Manager would have the right to control how Paul did his work by dictating how it must be done. From the very outset of this arrangement Paul has been subject to a right of supervision, direction or control as to the manner in which he did his work and even if that "right" not been implemented in practice (which in this case it was) the existence of that right of supervision direction or control as to the manner in which Paul provided his services is sufficient for the agency legislation to apply to this scenario, provided the other conditions of the legislation are also met.

(2) Professional Chef.

Imran is a qualified chef who has a number of years experience working in restaurants. He obtains his work via an employment business which finds him jobs with clients. A High Street restaurant asks the employment business to supply them with a qualified chef with experience of working in a professional restaurant to provide one month's cover for an absent chef. The employment business contact Imran about the position and arrange for him to visit the restaurant, to be interviewed by the proprietor, (who is also the Head Chef).

Scenario 1.

Imran is offered the engagement and he accepts.

Imran attends the restaurant on his first day and meets the proprietor and is presented with a copy of the restaurant's current menu, containing specialist dishes the proprietor has created herself. Imran is told he must be able to prepare and cook those dishes in the same way and to the same standard as the restaurants other chefs and throughout his engagement he must comply with the mandatory food hygiene standards.

Imran first task is to watch the proprietor demonstrate how she makes her specialist dishes, copying her as she goes along, to ensure he learns how to prepare the dishes as required. Throughout Imran's engagement the proprietor dictates how Imran will undertake his various duties. This includes telling Imran what dishes he must prepare, the way they must be prepared and what specific ingredients he must use. Over the next month the proprietor watches over Imran and the other chefs during their work, to ensure they are preparing and cooking the dishes correctly and on time, stepping in to provide guidance and assistance where necessary. The proprietor also provides Imran with other jobs to do in addition to preparing meals. This includes helping with the checking and ordering of new stock from the suppliers and unloading, recording and storing those supplies upon delivery. Imran completes his work for this client at the end of the month.

In this scenario Imran has been subject to supervision direction and control as to the manner in which he provides his services. The proprietor has told Imran what specific work he must do and how that work must be done, directing Imran in his work throughout. The proprietor also supervised operations in the kitchen to make sure Paul and the other chefs were doing their work in the way the proprietor required (ie:- preparing dishes in a specific way). Imran has no control over the manner in which he provided his services, as this was all dictated by the proprietor.

The agency legislation applies to this scenario, provided the other conditions of the legislation are also met.

We can see from this particular example that Imran was required to comply with food hygiene standards. HMRC do not consider that factor alone demonstrates the worker being subject to (or to a right of) supervision, direction or control as to the manner in which they provide their services for the purpose of the agency legislation, as this is a mandatory requirement for all persons working in food preparation (regardless of their employment status).

Scenario 2.

Imran visits the restaurant and meets the proprietor. They discuss Imran's extensive experience as per his CV. Imran gives a short demonstration of his skills and satisfied that Imran is the correct man for the job the proprietor offers the engagement to Imran and he accepts. The proprietor tells Imran that she normally runs the restaurant herself, cooking the meals with her two catering assistants, but she is having a break for the next month and she wants Imran to step in and cover for her, using the catering assistants as Imran chooses. The proprietor presents Imran with a copy of the restaurant's current menu and tells Imran she is happy for Imran to prepare the meals in his own way, using whatever ingredients he chooses and if Imran wants to introduce a couple of his own dishes then that is fine, provided the proprietor can sample them beforehand. Imran decides to add two of his signature dishes to the menu. He cooks each dish for the proprietor, who approves them and then leaves Imran alone to work in the kitchen without any interference whatsoever and goes on holiday. Imran has complete control of the kitchen and the catering assistants working alongside him. Imran completes his one month engagement for this client.

In this scenario, whilst Imran is preparing dishes that are largely dictated by the restaurant's menu, he is free to prepare those dishes and his own creations as he sees

fit, without interference from anyone. Whilst the proprietor wanted to taste Imran's signature dishes before allowing him to make them, this is not an example of the proprietor exercising any supervision, direction or control. The proprietor was simply ensuring the food was to the required standard in order to protect the restaurant's reputation. Imran is not supervised, directed or controlled by anyone during the time he provides his services, nor does anyone have a right to supervise, direct or control how Imran provides his services. The Agency legislation will not apply to this scenario.

(3) HGV Driver.

Harry is a qualified HGV Driver who holds a Category C&E licence. A furniture manufacturing company in Manchester contacts the employment business and asks them to supply a fully qualified HGV driver to their factory, to make a delivery of furniture to a customer. The engagement is for one day only. The employment business contacts Harry who is offered the engagement and told to report to the factory at 8.00am the following Monday.

Scenario 1

Harry arrives at the furniture factory as instructed and meets the distribution manager, who shows Harry the HGV he will be driving. Harry is told he is to deliver an order of furniture to a customer in Edinburgh that same day and it is up to Harry to decide how he will make the delivery in that he can choose his delivery route. The only requirements placed on Harry are that he takes the mandatory rest breaks applicable to a HGV driver, completes the delivery before the customer's shop closes at 5.00PM and the phone's the Managing Director afterwards to confirm the delivery is complete. Harry is given the customer's address and the furniture company's staff then load all of the furniture onto the HGV. Harry chooses the route he will take and sets off on his delivery. He arrives at the customer's address at 3.30PM. The customer unloads the furniture from the HGV while Harry telephone's the Managing Director to advise the delivery has been completed. Harry returns the HGV to the client and after the client has checked the HGV and confirmed all is in order, Harry's engagement for that client has now ended.

In this scenario, Harry has not been subject to (or to a right of) any form of supervision as to the manner in which he provided his services. Nobody was present to supervise or direct him whilst he made the delivery, nor was anyone doing this from afar. The only form of direction Harry received was being told where to make the delivery; it did not extend to telling Harry the manner in which he must make that delivery. Harry was not subject to (or to a right of) control from anybody as to the manner in which he provided his services. He had the freedom to choose how he would make the delivery himself without anyone telling him (or having a right to tell him) how he must do it.

Being told he must take rest breaks is a mandatory regulation for health and safety purposes and is recorded on tachographs regardless as to whether the worker is employed or self-employed.. HMRC does not regard telling a person they must abide by such mandatory regulations will result in that person being subject to (or to a right of) supervision, direction or control as to the manner in which they provide their services.

The Agency legislation will not apply in this scenario.

Scenario 2.

Harry arrives at the client's furniture factory and meets with the Distribution Manager, who shows Harry the Company HGV that he will be driving. Harry is then told he is to deliver furniture to customers in Sheffield, Birmingham, Nottingham and Liverpool that same day. Harry is told he must call the Distribution Manager after each delivery and report back to the factory when all deliveries are complete, when he must submit the relevant paperwork. Harry's delivery schedule and route are pre-determined by the client, which dictates the order of the deliveries & states Harry must take the appropriate rest breaks. The Distribution Manager tells Harry he must supervise the loading and unloading of his HGV, making sure all items on the delivery note are loaded and safely secured before transit. Harry must also ensure the customers sign the delivery orders to confirm the receipt of their goods. Harry is also told he must check and sign a declaration that his HGV is in roadworthy condition before starting his deliveries. Harry is also told he must follow the traffic reports and if he encounters any disruptions he must call them, as the client may need to change the order of deliveries and decide what alternative route Harry must take. The client contacts Harry every 2 hours to establish his progress and make sure the deliveries are being made in the specified order.

Harry commences the deliveries when travelling to his first delivery the client contacts Harry and tells him the order of deliveries has been changed and that he is to change his scheduled second delivery to the last delivery of the day. Harry completes all deliveries as dictated; he obtains the required customer signatures for all deliveries received and reports back to the factory afterwards, where he submits his completed paperwork. Harry's engagement with that client is now complete.

In this scenario the client has given Harry direction as to how he must do his work by stipulating the order of deliveries and changing that order of deliveries. Harry has also been subject to control as to the manner in which he did his work in that he was required to complete and submit paperwork, supervise the loading and unloading and report back to the client when each delivery was made. Harry had no freedom to choose how the job would be done, this was all dictated to him and he had specific procedures he must follow throughout. Harry was also supervised throughout by the client telephoning him every 2 hours to establish his progress and ensure he was providing his services in the manner required. In this scenario Harry has been subject to supervision, direction and control as to the manner in which he provided his services. The agency legislation will apply here, provided the other conditions of the legislation are also met.

(4) Joiner/Carpenter.

John is a joiner and carpenter who usually works on small scale construction jobs. John obtains his work through an employment business which finds him regular work with clients. A construction company contact the employment business at short notice and ask for a joiner/carpenter to assist them for two weeks on a refurbishment contract they are undertaking on the interior of a church. The employment business contact John who accepts the assignment. John is told to arrive on site at 9.00am the following Monday.

Scenario 1

In this scenario John was told the project's work entailed installing washroom and kitchen facilities in the church and the work that he wanted John to do initially was to build an oak panelled door for the washroom and then hang it in place. John was shown the architect's plan and he confirmed he was able to build the door; hence he was given the engagement.

John turns up for work on his first day and meets the project manager who gives John the design specifications for the door and then tells John he is free to build the door whichever way he chooses and John will have no interference from anyone. It is entirely up to John to decide how and where he will build the door (ie:- on site or at home in his workshop). The project manager tells John his only requirements are that the door is built to specification and hung in place within the next fourteen days of John's engagement and that John contacts the project manager if there are any problems/delays.

John decides to work from his own workshop at home and starts building the door. He makes swift progress and the door is completed and ready to be hung in place by day thirteen. John hangs the door in place by lunchtime on day fourteen. Pleased with his work the project manager asks John if he would mind laying some new wood flooring in the church for the remainder of his last day on the job. John is told that if he is willing to do this work he will be finishing off the flooring which another worker had almost completed and as with his previous work, he will be left to get on with this work without involvement from anyone. John agreed to lay the flooring and is shown where the floorboards are stored and where the flooring is to be laid. He is then left to complete laying the flooring without anyone overseeing him work or providing him with instructions and he completes this job after two hours. Having told the Project Manager the flooring is now laid, John then leaves the site to go home. His work on this contract has now ended.

In this scenario it was made clear to John at the very outset that he was required to build and hang a door in place which must be done within the next two weeks. He was then left to get on with building the door as he saw fit, in the knowledge that nobody would be overseeing him or stepping in to dictate how John made and hung the door in place. John was not subject to (or to a right of) supervision, direction or control as to the manner in which he did this particular work.

Having built and hung the door in place the Project Manager then asked John if he would mind doing some additional work, laying flooring on his last day. He was made aware from the outset that nobody would (or would have a right to) subject him to supervision, direction or control as to how he laid the flooring. The agency legislation will not therefore apply to this scenario.

Scenario 2

John attends work on site on his first day and meets the Project Manager who tells him he will be working alongside the company's team of three joiners, whose Supervisor/Foreman is Alan. John is told he will be required to do various joinery work, which Alan will organise and oversee being done.

The first job Alan gives John is laying some new wooden flooring. Alan shows John how the flooring must be laid and checks on his and the other workers progress throughout the morning. By lunchtime the serving counter for the new kitchen area arrives on site. Alan tells John to leave the flooring for the time being and assist the other joiners in fitting and securing the kitchen counter in place, a job which Alan controls and oversees being done throughout. Once this job is complete Alan tells John to continue laying the flooring, which he does for the next four days. Alan regularly comes over to check John's progress and inspect his work.

On the fifth day Alan tells John he is to remove some old wood panelling on the back wall of the church and replace it with new panelling. Alan shows John where the panels are stored and demonstrates how to remove the existing panels and fit the new panels. John is left to do this job which he completes in three days with Alan regularly checking his progress throughout and providing guidance. On the eighth day Alan tells John he wants him to hang the door on the newly installed washroom. John is very experienced at hanging doors and is left to get on with this job without any involvement or supervision from anyone. Once this job is complete John is then told he is to help the two other joiners build and fit some new wooden steps leading up to the Altar. John is given some timber and told to cut it to specific dimensions. Alan returns after one hour to check on progress. Alan decides the steps require some wooden trim fitted around the first step and tells John to fit this once all of the steps are in place. On the ninth day Alan tells John he is to collect some additional timber he has ordered from the suppliers and then report back to Alan when he arrives back on site. John collects the timber and on his return Alan shows John where he must unload and store it. On his tenth and last day John finishes off fitting the new flooring after which work on this contract is now complete.

At the very outset of his engagement and throughout John was told he would be moved from job to job and Alan would be controlling what work Alan did and how he did that work, via providing directions and supervising throughout. John never had the freedom to choose what work he did, when he did that work, how he did that work or where he did that work; this was all dictated by Alan. John performed the work that Alan gave him and throughout Alan would generally oversee John do that work, checking on his progress, just as Alan did with the other joiners to ensure the work was being done to correctly and to the required standard. Although John received no supervision, direction or control from Alan when hanging the washroom door in place, by having overall responsibility for the standard of John's work Alan would have had a "right" to supervise, direct or control how John hung the washroom door and Alan would have exercised that right had he felt the need.

Looking at John's engagement in the whole, he was subject to a right of supervision direction and control as to the manner in which he provided his services and that alone is sufficient for the agency legislation to apply, provided of course the other conditions of the legislation are also met.

The remaining eight examples cover just one scenario for each individual and explain why in each scenario, the person is (or is not) subject to (or to a right of) supervision, direction or control.

(5) Supermarket delivery driver (for online grocery orders).

Graham works as a driver and is willing to undertake various types of driving work. He has registered with an employment business that provides him with regular work. A supermarket contacts the employment business and asks them to supply a suitably qualified driver for a six month engagement, delivering customers online grocery orders to their homes. The employment business contact Graham and is offered the engagement which he accepts.

Graham turns up for work on his first day and meets the supervisor responsible for coordinating and overseeing the making up of all home deliveries. Graham is provided with an identification card, a polo shirt and a jacket, all of which have the supermarkets logo emblazoned across the front. Graham is told he must wear both items at all times and always be smartly dressed as he is representing the supermarket. Graham is shown the delivery van he will be driving and is told he is responsible for driving it safely and responsibly and making sure it is refuelled, clean and tidy and well looked after. Graham is told his duties which entail compiling customer orders with fragile items always placed on top, which are then placed in crates that are stacked in order on the shelves inside his delivery van. Graham will then make his deliveries in accordance with a schedule he is given each day that contains the names and addresses of all customers and the specified times when each customers delivery can be made. Should Graham ever get delayed during his deliveries, he must telephone the next customer on his delivery schedule to tell them when he expects to be there. Graham is told he must take care when loading and unloading customer orders, as they can be heavy and will often contain fragile or perishable items. In the event that any item gets broken, the customer must be told and provided with a telephone number to ring in order to get a replacement item delivered. Graham must be polite and courteous to customers at all times and must cater to their needs which may require carrying customers orders into their homes. Graham is also told he will also be required to work in the store when not making deliveries and the supervisor will assign him that particular work and instruct Graham how it must be done.

Graham completes his six month engagement which has largely entailed making up customer orders which he then loaded onto his van and delivered. Often when Graham had fewer deliveries to make, he worked in the supermarket alongside the other in- store workers, undertaking various duties as instructed. This work has entailed working alongside the supermarkets retail staff stocking shelves in a particular order, removing out of date items, placing advertisement notices for special offers as directed and checking the fruit/vegetable aisles to remove damaged items or spillages.

From the start of his engagement Graham has been subject to control as to the manner in which he provided his services. He was required to be professional and smartly dressed in the company attire and he had no leeway to choose how he would do his work, as this was all dictated by the client. Graham's delivery route was pre planned for him. He was required to compile the customer orders as per the instructions in place (fragile items on top), load them onto the van in a specific way and deliver them in the order dictated by his delivery schedule and report any delays to customers. Also, the work he did in the supermarket was controlled and directed by the supervisor and Graham had no freedom to choose how he did that work. Although

Graham was not supervised when he made his deliveries, he was supervised whilst performing other duties in the supermarket.

The fact that Graham had to look after the vehicle and refuel it is not an example of Graham being subject to control, as this would be a mandatory requirement for all persons, regardless of their employment status. However, for the other reasons mentioned above, Graham has been subject to supervision, direction and control as to the manner in which he provided his services and therefore the agency legislation will apply to this scenario, provided the other conditions of the legislation are also met.

(6) Security Officer.

Rob is an experienced Security Officer who holds a regulatory Frontline SIA Licence and has largely provided his services at construction sites and corporate events. Rob uses an employment business to get him work, as this provides him with regular and varied work with numerous end clients. A major construction company has commenced building a brand new housing development of fifty houses. Work has started on the site, a perimeter fence has been installed and materials are starting to be delivered. The security company engaged to provide on site security contact the employment business and ask them to supply them with an experienced Frontline SIA licensed Security Officer who is prepared to work alternative night & day shifts alongside four existing security personnel on site for the next twenty weeks. The employment business contact Rob who is offered the engagement which he accepts.

Rob attends the construction site on his first day and meets with the Head of Security, who gives Rob his security pass, a hard hat and a high visibility jacket emblazoned with the security company's name. Rob is provided with a shift rota containing the day/night shifts he will be working. He is told he must sign in and out every time he enters or leaves the site and follow the required Health & Safety procedures. Rob is told he will mainly operate from the security cabin at the site entrance, where he must politely greet all authorised persons entering and leaving the site, ensuring all security procedures are carried out; including vehicle and personnel searches with the appropriate paperwork being completed. Rob must also do frequent daytime patrols and inspections on site at his discretion, provided the timings vary each day and the main site entrance remains staffed by Security Staff at all times. Rob is also told he may be instructed to do additional "ad hoc" duties, or change the way he does his standard duties, should the needs arise. During the evening shifts Alan must regularly patrol the site to make sure the site entrance and perimeter fence remain intact and nothing has been disturbed. Alan must also monitor the CCTV cameras from the security cabin and he must report all security breaches immediately, following the standard procedures in place.

Rob provided his services to the end client for the full twenty weeks, working alongside other security officers. He only carried out the standard duties as originally advised and those duties did not change in any way. There were no security breaches to report throughout the twenty weeks. Being an experienced security officer Rob did not need anyone oversee how he did his work. Nor did he need anyone to tell him each day what duties must be done, how they must be done and in what order. Whilst Rob had to follow procedures governing signing in/out when arriving/departing the site and also follow Health & Safety procedures (which could have played a part in

dictating how he did his work), these are mandatory requirements for both employed and self employed persons and are not a determining factor when deciding a worker's employment status.

It could therefore appear at first sight that Rob was not subjected to any supervision, direction or control as to the manner in which he did his job. However, that was not in fact the case. Whilst he was not supervised by anyone during his engagement and being an experienced Security Officer, did not require anyone to give him directions as to how he did his job- as this was dictated by the nature of the job- nevertheless Rob did not have any freedom to choose how he did all of his duties. He could not choose how to do the security checks, how to record site arrivals/departures and how he would report any security breaches. Instead he had to follow procedures in place which dictated how this work was to be done. Rob was therefore subjected to control by the end client when doing this work. That is sufficient to make the agency legislation apply to Rob's arrangement, provided the other conditions of the legislation are also met.

Also, whilst Rob was told he may be instructed to do additional "ad hoc" duties or change the way he did his standard duties and this did not actually happen, it still demonstrates that someone had a right to step in and control what work Rob did and how he did his work.

(9) Locum Pharmacist.

Sarah is a fully qualified pharmacist who for the last 5 years, has preferred to work as a locum, as it offers her regular work, flexibility and various locations to work on short engagements. Sarah obtains all of her work through an employment agency.

The employment agency contact Sarah to advise there is a vacancy available to work in a privately run pharmacy/shop in a small market town. It is to provide cover whilst the proprietor/pharmacist is on holiday for three weeks. Sarah is given the proprietors contact details and they meet to discuss the engagement. The proprietor tells Sarah she would be working in the pharmacy at the rear of the shop and will be dispensing prescriptions to customers and giving them advice when approached. The shop also has two sales assistants who will deal with sales, distribute prescriptions to the customers and assist Sarah as necessary. It is agreed Sarah will take the engagement.

Sarah sets to work on her first day and for the next three weeks she dispenses prescriptions and gives out general advice to customers when they ask to speak to a pharmacist. Sarah also monitors the stock levels of the medicines and instructs the sales staff to order new stocks where appropriate. Sarah completes her work at this pharmacy after the three weeks are over.

During her engagement Sarah was not subject to any supervision or direction from anyone as to the manner in which she provided her services, nor did anyone have a "right" to supervise or direct her in her work, as she was fully qualified and very experienced in her field. Sarah did not need anyone to control how she did her work, nor did this happen. Sarah was only ever accompanied in the pharmacy by the two sales assistants, neither of whom was qualified to oversee and instruct Sarah in her work. Being an experienced pharmacist Sarah knew exactly how to dispense prescriptions to customers without needing any intervention of anyone, and she did

this as she saw fit, ensuring customer needs were met. The agency legislation will not apply to this scenario.

However, had Sarah's arrangement been different - whereby she had been brought in to assist the proprietor/chief pharmacist to dispense prescriptions and Sarah had also been told she might also be required to work alongside the sales staff in the shop serving customers, stocking shelves and ordering stock as instructed- then, as would have been the case with the sales assistants, the proprietor would have had a right to subject Sarah to supervision, direction or control as to the manner in which she provided her services.

(7) Care Worker.

Claire is a qualified care worker whose work consists of undertaking general household duties for elderly persons in their own homes and ensuring they are properly cared for. Claire has done this type of work for many years, which she obtains via an employment business, which provides her with regular offers of work which she can accept or decline.

An independent Care Provider contacts Claire's employment business and asks them to supply a qualified and experienced care worker for the next three months, to visit numerous elderly clients. Claire is offered the engagement. She is given her identification badge to show to the customers she will be visiting and is told she will start work on the following Monday, before which she will be e-mailed a list containing the names and addresses of the customers she will be visiting and the scheduled time slots for each visit.

The schedule dictated the duration of each home visit is set at one hour per customer, although this is flexible, depending each customers needs. The Care Provider tells Claire the only requirements they are placing upon her are that (1) she is polite and courteous to the customers (2) she contacts them should she have any concerns for a customer's welfare, (3) she completes all of the visits contained on her daily schedule and (4) should any of those visits over run by more than twenty minutes, she phones the Care Provider so they can tell the remaining customers Claire is running late.

Claire commences her engagement and visits the customers in accordance with her schedule of visits. Being vastly experienced in domestic cleaning, Claire does not need to be told how to do her work by anyone and there is no intention that anybody will be present to supervise her or direct her in her work- and this never happens. Claire is efficient in her work and tends to each customers general needs in accordance with their individual requirements, cleaning and tidying their homes as required and then departing to visit the next customer on her schedule. Claire never gets contacted by the Care Provider whilst out on visits, nor does Claire or the Care Provider ever expect there will be any need to contact Claire. Claire completes her engagement after the three months.

In this scenario, Claire is fully skilled in her work and does not require anyone to tell her what duties she must perform and how they should be done. The Care Provider does not dictate how Claire does her work; neither do they change the order in which she visits the customers (except in emergencies). Claire does not have to report back to the Care Provider after each visit, as she is trusted to complete each visit as per her

schedule. Claire is not subject to (or to a right of) supervision, direction or control as to the manner in which she provides her services by anyone when she does her work. Whilst Claire may have her own set order in which she usually does her cleaning duties, she is adaptable and can change that order if the customer asks her to. In this case this does not amount to Claire being subject to control. The Agency Legislation will not apply here.

(8) Market Researcher.

Sally undertakes work in market research. This normally involves her providing her services to various businesses or organisations by working on the high street in various city centres, during which time she asks passers by general questions on a wide range of subjects, recording their answers which she then sends to her client for analysis. Sally provides her services to her various clients via an employment business that finds her regular work.

A medical research organisation contact Sally's employment agency and ask them to supply two market researchers for three days work, which will entail approaching passers by in Newcastle City Centre and asking them various lifestyle related questions. Sally is offered the engagement and she accepts.

Sally meets with the medical research organisation who tells her the work will entail asking members of the general public specific questions about their lifestyle contained upon a questionnaire, upon which she will record their answers. She will be given three hundred questionnaires to be completed over the next three days and is free to work her chosen hours, provided all of the questionnaires are completed. Sally will be working alongside another market researcher, who will be doing exactly the same work as Sally.

Sally is then given an identification badge that shows she is representing the medical research company. She is also handed a "details of engagement" document containing the medical research organisations requirements when Sally undertakes the work. This is not a contractual document. It states that Sally must stick to a specific script each time when approaching the public, which explains the purpose of the research, why their input is sought and how their information provided will be used. Sally must be smartly dressed and must always display her identification badge. She must be polite and courteous and she must respect anyone's wishes not to participate. She must ask all of the questions in the specific order contained on the questionnaire. She must also ensure a broad range of people complete the questionnaires (all ages, male/female, people from different ethnic origins etc), to ensure the information obtained is a proportionate representation of the general public.

Sally sets to work at 9.00am on her first day and manages to get 120 questionnaires completed before she calls it a day and returns home at 4.00pm. She then starts work at 10.00am the following day and manages to get another 135 questionnaires completed before calling it a day and returning home at 3.00pm. Having already obtained 255 completed questionnaires Sally decides to have a shorter day on her third and last day. She starts work at 10.00am and by 12.00am she has managed to secure all 300 completed questionnaires. She then mails them to the medical research organisation in the mailbag they provided. Her work on this engagement is now over.

In this scenario Sally has not been subject to any supervision nor was there any provision in place whereby someone could supervise Sally. Whilst she worked alongside another market researcher, that person was hired to do the same job as Sally and would not have been in a position to supervise her. However, the medical research company did give Sally directions and controlled how she must do the work, by dictating she must approach a broad range of people, she must approach them in a specific way, she must provide them with specific information about the research and stick to asking specific questions in order, as contained upon the questionnaires. She did not therefore have any freedom to choose how she did the work as this was all dictated for her. Sally was therefore subjected to direction and control as to the manner in which she provided her services.

HMRC consider a comparison can be made between this case and the case of **Autoclenz V Belcher (ESM7310)** whereby the worker was subject to supervision, direction or control - as they were required to undertake their work as dictated by the requirements of the client (in that case British Car Auctions

(10) Operative at Recycling Plant.

Lukasz has experience in working on production lines at various factories and has registered with an employment business which brings him regular work. The employment business contact Lukasz to tell him a recycling plant has provided them details of an eight month engagement for an operative to work at the recycling plant, which will entail sorting out household recyclables being delivered on site. Lukasz is keen to take the job and is provided with the contact details for the plant's Production Manager, whom Lukasz telephones. They discuss the vacancy and agree that Lukasz will take the engagement. The Production tells Lukasz to report to him at 9.00am the following Monday.

Lukasz turns up for work as arranged and meets with the Production Manager who has responsibility for overseeing the work done by all staff at the recycling plant. He tells Lukasz that he will mainly be working at pace on a moving conveyor belt, where he will be picking out various recyclables and placing them in separate chutes which transport the items into separate skips for cardboard, glass bottles, hard plastics, metal tins and paper to be recycled. He will also be required to do other work as directed. Lukasz is given protective clothing, eyewear and gloves after which the production manager gives Lukasz a Health and Safety briefing and then demonstrates how the conveyor belt work is to be done within health and safety requirements. Lukasz is then told to take his place alongside the conveyor belt where he then works for the first three months during which time the production manager periodically checks on his progress, to make sure he is working to speed and placing the items in the correct chutes. The production manager also gives him other ad hoc duties during this time such as helping colleagues sort out those recyclables on the floor area which are too large to fit on the conveyor belt. From the third month onwards Lukasz work on the conveyor belt diminishes as he is given other duties instead. At the start of month five, being suitably qualified Lukasz is tasked with driving a fork lift truck to transport baled waste around the site and help to arrange the skip removals and deliveries. This particular work takes up all of his time in the remaining months of his arrangement. By month six the production manager no longer feels the need to move Lukasz around from one job to another, or organise how Lukasz did his work and supervise him throughout. This was because he considers Lukasz was now

sufficiently skilled and experienced to identify what items required transporting without needing anyone to direct him or oversee him do this work. Lukasz is left to get on with his work as he sees fit for the remaining months of his engagement.

At the very outset of Lukasz engagement the production manager controlled what work Lukasz did and how that work was to be done. Lukasz could not decide how he would do the work himself. It had to be done in a particular way, as demonstrated and dictated by the production manager. This continued right up to month six, after which Lukasz duties changed. However, at the time his duties were changed Lukasz was never told he had the freedom to choose how he did his work. As was the case with all other workers at the plant, the production manager retained a right of control over Lukasz throughout his entire arrangement. Though this never happened in practice, the production manager could easily have moved Lukasz back onto working on the conveyor belt if the need arose.

From the outset of his engagement Lukasz was supervised in his work by the production manager. Whilst this supervision diminished and effectively ended from month six onwards, nevertheless the production manager retained the right to supervise Lukasz and direct him to undertake other duties should the need have arisen (eg:- to cover for absent staff). The client's right of supervision, direction or control as to the manner in which Lukasz provided his services, remained throughout his entire arrangement.. The agency legislation will apply to this scenario provided all of the other conditions of the legislation are also met.

(11) Drama Teacher.

Frances is a qualified drama/music teacher with many years experience in teaching drama to children of all ages. Previously Frances has worked in schools on permanent contracts but she now prefers to work on an ad hoc basis, providing her services at her discretion. Frances uses an employment business to obtain work.

A local authority contacts the employment business and asks them to supply an experienced drama teacher to work on a temporary contract of ten weeks in a local primary school. The job entails running an after school drama club. The employment business contact Frances about the engagement and she is offered the engagement subject to references being provided and a CRB check.

Frances arrives at the school and meets the Head Mistress who tells her she wants someone who is enthusiastic, inspiring and disciplined that enjoys working with children to run after school drama workshops, teaching the children acting skills with the emphasis being on "fun." The workshops will run for 1½ hours each Tuesday from 3.30 PM until 5.00PM, term time. Whilst Frances is told she has complete freedom to decide how to run the workshops, the Headmistress tells her it would be nice if, at the end of the ten weeks, the children could put on a performance for the school to demonstrate the skills they have learned from the workshops. Frances tells the Headmistress she is also a skilled music teacher and proposes to teach both acting and singing during the workshops focusing on the children presenting a short musical at the end.

The workshops run for the full ten weeks, during which time Frances is accompanied throughout by one of the school's teaching assistants. The teaching assistant actively

participates in the workshops, but throughout Frances has complete control, deciding what the children will do during each workshop. During the workshops the children are taught acting, singing, applying stage make up, plus theatre/circus skills. At the end of the ten weeks the children successfully present a short musical to the school. Frances work is now complete and her engagement ends.

In this example, Frances has not been subject to (or to a right of) any form of supervision or direction as to the manner in which she provided her services. Although she was accompanied by a teaching assistant throughout, that person merely took part in the workshops, helping out Frances as required. The teaching assistant was not present in a supervisory capacity nor did she have any input in directing Frances or dictating what work Frances did and how she did that work. Whilst the Headmistress said she would like the children to be able to put on a short stage performance, this was not a stipulated requirement it was a personal preference. Throughout her arrangement Frances was able to choose what teaching she delivered and how it would be done. Nobody controlled how Frances would provide her services.

The agency legislation will not apply in this scenario. However, had Frances been required to follow a curriculum or other stipulated requirements which dictated how she would provide her services; then the agency legislation would have applied to Frances arrangement, provided the other conditions of the legislation were also met.

(12) Product Demonstrator.

Patricia is an experienced product demonstrator who is experienced in doing product demonstrations for numerous clients, having promoted products such as kitchenware, hardware, technology and childrens toys. Patricia obtains work through an employment business that specialises in product demonstrators.

A department store takes delivery of a stock of new food blenders from a leading kitchenware manufacturer and is keen to do promotions of this new product to generate sales. They decide to engage a product demonstrator to provide “in store” demonstrations over four consecutive weekends, Saturday & Sunday. The department store contact Patricia’s employment business and ask them to supply an experienced product demonstrator. The employment business contact Patricia who agrees to accept the engagement.

Patricia arrives for work on her first day meets Alice, the sales supervisor for the kitchen ware department, who tells Patricia exactly what work she wants her to do. It will entail doing product demonstrations throughout the day to show how the blender can be used. As the promotional offer includes a free recipe book for making smoothie drinks with each purchase, Patricia will be required to make smoothie drinks for customer sampling from the recipe book from various fruits she will source from the stores greengrocery department. Alice tells Patricia she must be smartly dressed and will be provided with one of the stores uniform blouses which she must wear. Patricia is also required to (1) present herself in a polite and positive way to the customers, (2) stick to the provided script when talking about the product during demonstrations, (3) be sufficiently knowledgeable about the product to answer customer questions, (4) be punctual to ensure demonstrations run to the stores

specified timings (5) make a varied selection of smoothies, ensuring sufficient fruit is at hand and (6) make sure the equipment is cleaned between demonstrations. Alice also tells Patricia three sales assistants will be present on the shop floor but if they are exceptionally busy Patricia may need to help them out between her demonstrations by handling general sales through the till and retrieving items from the stockroom, as coordinated and instructed by Alice.

Patricia delivers her product demonstrations as required; sticking to the store's specified timings throughout. Throughout she is not required to handle any customer sales or retrieve any items from the stockroom, she simply does her demonstrations and completes her engagement at the end of the fourth weekend.

In this example Patricia has not been subject to any supervision or direction whilst undertaking her demonstrations. The store's requirements were stated by Alice at the outset and being an experienced demonstrator, Patricia was then left to perform her demonstrations as she saw fit, aware that that nobody would be watching over her or directing her as to how to do that particular work. However, Patricia was subject to control as to how she performed the demonstrations because she was required to be suitably dressed, follow a specific script, make sure she was sufficiently knowledgeable on the product to answer customer questions, stick to scheduled timings, prepare different types of smoothies for customer consumption from a particular recipe book, regularly clean the equipment and ensure she had sufficient fruit on hand to work with.

Aside from being subject to control, Patricia was also subject to a **right of supervision** direction and control as to the manner in which she provided her services, because Alice was in a position to control how she provided her services had she been required to handle till sales and retrieve items from the stockroom, even though this did not actually occur in practice. In this respect HMRC considers this example has distinct similarities to the case **Talentcore Ltd (ESM7315)** with regards to a right of supervision, direction or control existing.

That right of supervision, direction or control as to the manner in which the services were provided and the actual control that was imposed upon Patricia when she did her demonstrations, are each in their own right sufficient for the agency legislation to apply, provided of course the other conditions of the legislation are also met.