

Versions 2 and 3 published for editorial changes only.

Part-145 – Maintenance Staff Employment Status

This Information Notice contains information that is for guidance and/or awareness.

Recipients are asked to ensure that this Information Notice is copied to all members of their staff who may have an interest in the information (including any 'in-house' or contracted maintenance organisations and relevant outside contractors).

Applicability:	
Aerodromes:	Not primarily affected
Air Traffic:	Not primarily affected
Airspace:	Not primarily affected
Airworthiness:	Part-145 Organisations
Flight Operations:	Not primarily affected
Licensed/Unlicensed Personnel:	Not primarily affected

1 Introduction

- 1.1 The use of zero hours contracts, contracts where the individual is only paid for the hours worked, and/or where the hours to be worked are not explicitly specified, as well as indirect engagement of workers through an agency or a personal service company has grown substantially in the UK over the last few years. It is seen as a useful employment method for Part-145 organisations to fill shortfalls in manning levels, and thus reduce the need for full time employees. However, the Acceptable Means of Compliance (AMC) material for UK Part-145 does not consider the status of workers engaged on zero hours contracts or indirectly through other working arrangements. AMC to 145.A.30(d) explains the need for an organisation to directly employ at least half of its staff to ensure organisational stability. It uses the terms employed and contracted to distinguish between staff directly employed by the organisation and staff who are engaged indirectly through a third party, possibly on a temporary basis.
- 1.2 It is important to note that the terms employee or employed are not used consistently throughout UK legislation, and different statutory provisions have alternative definitions for these terms. These variations are material as they give rise to different rights and obligations.
- 1.3 This document provides guidance and is intended to enable Part-145 organisations to establish the status of staff engaged on zero hours contracts and engaged indirectly in respect of Part-145.A30(d) for manpower planning purposes.

2 Employment status

- 2.1 The CAA recognises that Part-145 organisations may wish to take on staff using zero hours contracts or indirectly through an agency or a personal service company. Part 145 approved organisations need to demonstrate to the CAA that they meet the requirements of UK Part-145 and that their workforce is qualified, competent and capable of completing the tasks described in the scope of work.
- 2.2 In order to satisfy the provisions for organisational stability in accordance with AMC to 145.A.30(d), the CAA's interpretation is that Part-145 organisations are required to retain their capability, as it is defined in the scope of work which constitutes the approval, without relying on assistance from outside the organisation.
- 2.3 The status of zero-hours staff, staff engaged through an agency or a personal service company for the purpose of Part-145.A.30(d) will not be determinative of their status or rights under UK employment legislation. Separate guidance is provided by the UK Government on their website (<https://www.gov.uk/employment-status/overview>) that will assist Part-145 organisations to establish the employment rights of their workers, and whether they can be defined as an employee for UK employment legislation purposes.
- 2.4 The AMC to Part-145.A.30(d) identifies two categories of staff, employed and contracted. Those on zero hours contracts, engaged through an agency or a personal service company must be correctly assigned to one of the two categories. The CAA has developed the following guidance based on the House of Commons Briefing Paper on Zero-Hours Contracts, published on 17 August 2018 (<http://researchbriefings.files.parliament.uk/documents/SN06553/SN06553.pdf>).
- 2.5 In general, where the contract is formed between the Part-145 organisation and a third party, such as an agency or a personal service company, these individuals will be defined as a contractor under Part-145.A.30(d), regardless of their status under UK employment law, subject to paragraph 2.6.
- 2.6 Where there is a direct contractual relationship between the individual and the Part-145 organisation, including zero hours contracts, two key principles need to be satisfied to determine if these individuals are an employee. For the purposes of Part-145.A.30(d) only, an individual who is described in paragraph 2.5 above may fall within the scope of this paragraph if the following two key principles are established:
 - i) In all cases, the individual is required to report for work when requested, thus preserving the **mutuality of obligation** principle where the employee is obliged to work and the employer is obliged to provide work and pay for it; and
 - ii) If (i) is satisfied, then the **reality of the agreement** between the organisation and the individual needs to be examined to establish that:
 - a) there is a **stable pattern of regular work** which is **regularly accepted**, that is supported by the man-hour plan and does not give rise to gaps in the continuity of employment, the reality of the agreement between the individual and the Part-145 organisation will be considered to be one of employment. Individuals meeting these criteria will be defined as an employee under Part-145.A.30(d), regardless of their status under UK employment law.
 - b) Conversely, where it is established that there are **gaps in the continuity of**

employment, other than related to time taken off for holidays or sickness, and the gaps are directly dependent on irregular and unpredictable work flow, the reality of the agreement will be considered to be as one of provision for service. These individuals will be defined as a contractor under Part-145.A.30(d), irrespective of their status under UK employment law.

3 Additional provisions

- 3.1 A Part-145 organisation (approved or applying for approval) shall have sufficient staff to plan, perform, supervise, inspect and quality monitor the organisation in accordance with its approval. This means that it must employ or contract sufficient competent staff to fulfil the envisaged man-hour plan, of which not less than half must be employed to ensure stability.
- 3.2 The Part-145 organisation must demonstrate that it provides continuation training plus any specialist training to all its employees, and can demonstrate it has directly established the competence of all staff.
- 3.3 The Part-145 organisation must establish the competence of contracted staff prior to the planned work commencing.
- 3.4 A failure to comply with any of the requirements above will be considered to be a failure of the organisation to fulfil its obligations under UK Part-145. Findings of the appropriate level will be raised in accordance with Part-145.A.95. Where this impacts on the capability of the organisation to perform its approved scope of work the CAA may decide to suspend, limit or revoke the affected parts of the approval.

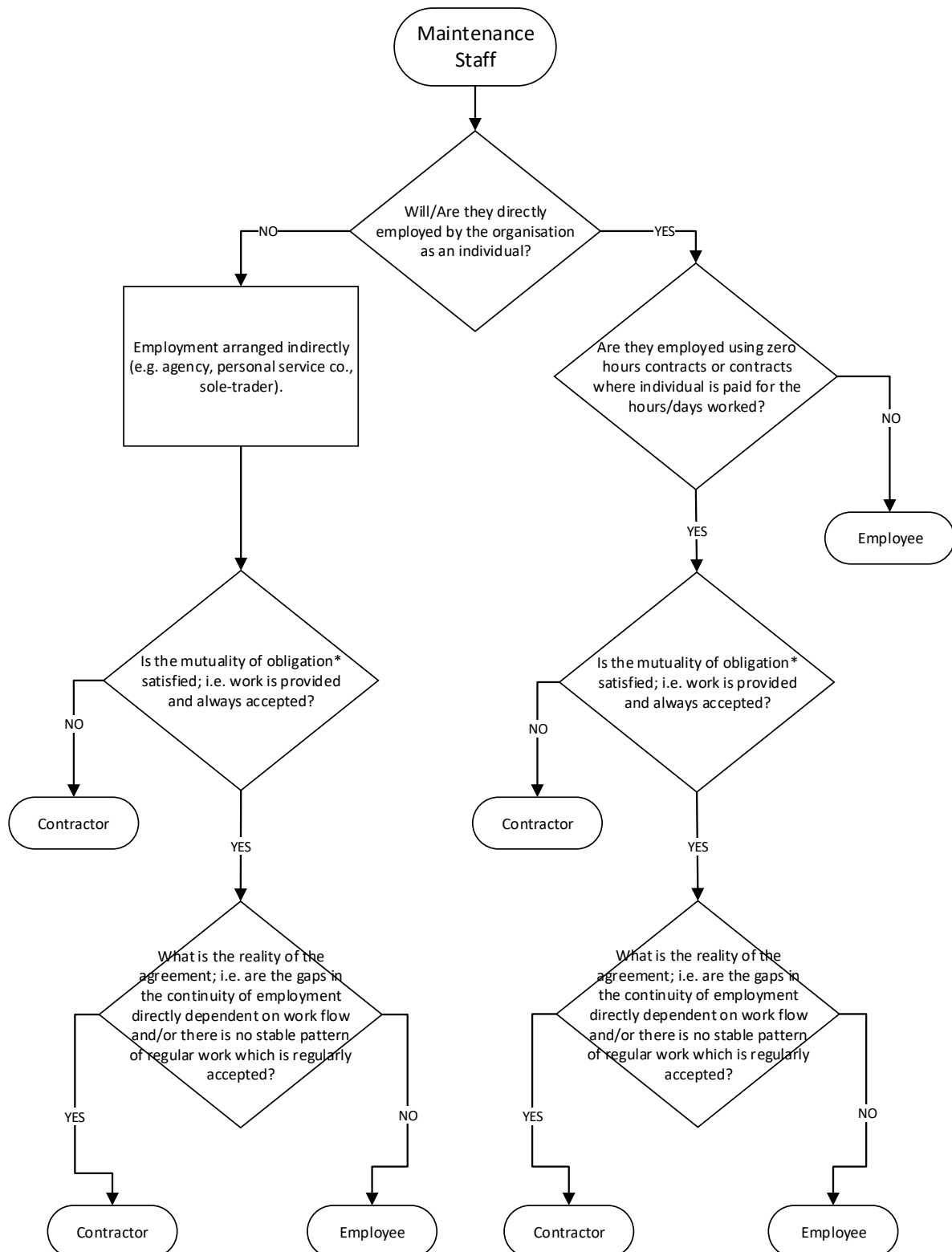
4 Queries

- 4.1 Any queries or requests for further guidance as a result of this communication should be addressed to SafetyPublicationsTeam@caa.co.uk

5 Cancellation

- 5.1 This Information Notice will remain in force until further notice.

Categorisation of maintenance staff employment status for the purpose of Part-145 Flowchart



* Mutuality of obligation means the employee is obliged to work and the employer is obliged to provide work and pay for it