

## Guidance for Determining Employment Status for Taxation Purposes including Part-Time Lecturers/Teachers/Trainers

*(This guideline supersedes guideline 15- 2019/2020 Taxation of Part Time Teachers/Trainers/Tutors/Lecturers)*

### 1. Introduction

The Revenue Commissioners have updated their [Guidelines for Determining Employment Status for Taxation Purposes](#). This update introduces a five-step decision-making framework to assess an individual's employment status for tax purposes.

Boards of management hiring workers should apply this framework to determine whether the contract is:

**A contract of service (where the worker is an employee), or  
A contract for service (where the worker is self-employed).**

### 2. Board of Management Responsibilities

When engaging someone to undertake work, school management have a responsibility to determine whether the individual is engaged under a contract of service i.e. as an employee or engaged under a contract for service i.e. as a self-employed individual. A worker's employment status for taxation purposes is not a matter of choice - it depends on the terms and conditions of the role and the practical working arrangements between the school and the worker. While it is usually clear whether an individual is employed or self-employed, it may not always be obvious.

This is an important determination as payments to an employee must be put through the payroll, whereas self-employed individuals file their own tax returns.

If someone is incorrectly treated as self-employed and Revenue disagree, the school could be liable to pay any taxes that Revenue deem should have been deducted.

While it is usually clear whether someone is employed through a 'contract of service' or self-employed through a 'contract for service', it has not always been immediately obvious and it has led to confusion in relation to their employment status. There is no single, clear legal definition of the terms 'employed' or 'self-employed' in Irish or EU law.

Revenue have set out guidelines for Determining Employment Status for Taxation Purposes. These guidelines lay out a decision-making framework. The decision-making framework consists of five questions that the school should use to resolve the question of whether a contract is one of service (employee) or for service (self-employed).

### **3. Decision making framework**

Revenue's five-step framework should be applied to each engagement to determine the taxation status of each worker/service provider. The first three questions are to be viewed as a filter. If any of these are answered negatively, there cannot be a contract of employment. If the first three questions are answered affirmatively, questions four and five must then be considered to determine if a contract of employment exists.

The decision-making framework consists of five questions as follows:

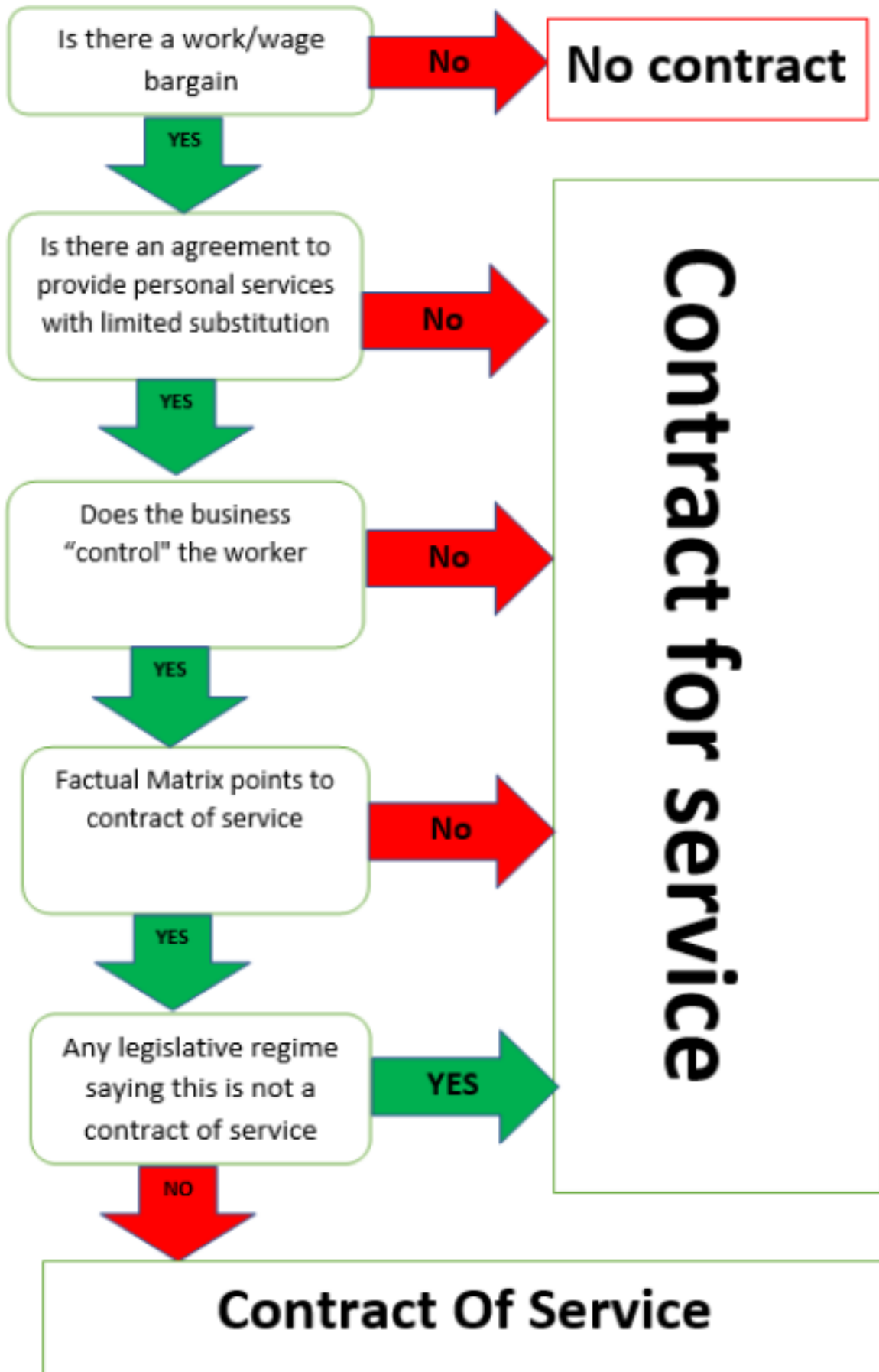
- 1)** Does the contract involve the exchange of wage or other remuneration for work?  
This is more commonly known as the 'Work/Wage bargain' and is explained in more detail in Section 3.2.
- 2)** If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party, to the employer?  
This is more commonly known as 'Personal Service' and is explained in more detail in Section 3.2.
- 3)** If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?  
'Control' is explained in more detail in Section 3.2.
- 4)** If these three requirements are met, the decision maker must then determine whether the terms of the contract between the employer and worker interpreted in the light of the admissible factual matrix, and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.  
'All the circumstances of the employment' is explained in more detail in Section 3.2.
- 5)** Finally, it should be determined whether there is anything in the particular legislative regime under consideration that require the court to adjust or supplement any of the foregoing.  
'The Legislative Context' is explained in more detail in Section 3.2.

**The Decision Tree on the next page provides a visual representation of how the framework should be applied.**

We have created a form for internal use to assist with assessing if an engagement is a contract for service i.e. self-employed or contract of service i.e. employment contract.

**See Appendix 1.**

### 3.1 Decision Tree



### 3.2 Five-Question Decision

The five-question decision making framework is expanded on below. As detailed above, questions one to three must be answered 'yes' for there to be a contract of employment, with questions four and five then considered.

***Q1. Does the contract involve the exchange of wage or other remuneration for work?***

More commonly known as the work/wage bargain, is the person getting payment for work carried out, if no, it is not a contract of employment. If yes, move onto question 2.

***Q2. If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party, to the employer?***

This is more commonly known as 'Personal Service' or 'substitution test'. Does the individual have to carry out the work themselves or can they appoint someone else to carry out the work?

If they do not have to carry out the work themselves or have discretion to appoint someone else to carry out the work, then the answer to this question is no, it is not a personal service and therefore not an employment contract.

If they are obliged to carry out the work themselves, then the answer is yes, and we need to move onto question 3.

***Q3. If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?***

Control refers to the ability, authority, or right of a business to exercise control over a worker concerning what work should be done, and how, when and where it should be done.

Where the employer exercises sufficient control, the employer has a significant degree of control over what work is done, how it is performed, when, and where. The worker is required to follow instructions and is supervised.

Where the individual has autonomy over how they perform the work and they are free to choose their methods, schedule, and location without significant oversight, the employer does not exercise sufficient control to make the agreement one of an employment contract.

For example, Andrew, an actor, was engaged to provide a workshop to transition year students in a secondary school. He provides his own material, his own insurance, can send a substitute to perform these duties and informs the school of the rates and his availability. He is free to take up similar work at the same time with other businesses. The workshops are carried out during school hours and given the nature of the work, the workshop has to be carried out in the school premises, however Andrew is not directed by the school as to what work should be done, or how it should be done, therefore he is deemed not to be under the control of the board and therefore is not an employee.

In another example, Ronan is a psychologist with his own practice. A local charity engages him to provide workshops to their managers. He remains free to manage his other clients, and the timing and numbers of charity workshops are agreed with him in advance. He invoices the charity for the workshops and is paid by the charity on an hourly basis. He attends the premises of the charity to provide the workshops.

The charity is deemed to exercise sufficient control to make this an employment contract as Ronan is advised on what to include in the sessions, the location of the sessions is set by the Charity and the date is agreed with Ronan, and the charity decide who will attend. The control test is met as the only thing Ronan has control over is his method of delivery as is usual for a skilled worker.

If the answer is no, the employer does not exercise sufficient control, then it is not a contract of employment. If the answer is yes, the employer exercises sufficient control, move on to question 4.

***Q4. If these three requirements are met, the decision maker must then determine whether the terms of the contract between the employer and worker interpreted in the light of the admissible factual matrix, and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer?***

The employer must then look at the facts of the engagement and whether they point to a contract of employment or not.

i. What does the contract say?

ii. What do the actual facts say?

#### **Indicators of Employment:**

*Mutuality of Obligation:* The employer is obliged to offer work, and the individual is obliged to accept and perform the work.

*Integration:* The individual is a core part of the organisation. Their work is integral to the business, and they participate in its structure, possibly taking part in staff meetings and using the employer's resources.

*Exclusive Service:* The individual typically works only for one employer or for a limited number of employers.

*Provision of Tools:* The employer provides tools, equipment, and other resources necessary for the work.

*Economic Reality:* The individual typically receives a fixed wage or salary, with little or no risk of financial loss. They may also receive employment benefits such as paid holidays or sick leave.

*Fixed Hours:* The individual works fixed hours or is expected to be available for work during set times.

*Payment Structure:* Payment is usually made at regular intervals, such as weekly or monthly.

*Employee Benefits:* The individual is entitled to benefits such as pension contributions, paid holidays, and sick pay.

### **Indicators of Self-Employment:**

*Mutuality of Obligation:* There is no ongoing obligation on either party. The individual is engaged for a specific task or project, and once completed, the relationship ends unless a new agreement is made.

*Integration:* The individual runs an independent business and provides services to the organisation as an external provider. They remain distinct from the employer's operational structure.

*Economic Reality:* The person bears financial risk, covering their expenses and having the potential to make a profit or incur a loss. They often provide their own tools and materials and may hire others to assist in the work.

*Multiple Clients:* The individual works for multiple clients and offers services to a range of organisations.

*Provision of Equipment:* The individual provides their own tools, equipment, and materials for the job.

*Flexibility in Hours:* The individual has the flexibility to determine their own hours and work schedule.

*Invoice-Based Payment:* Payment is often made on a per-job or per-project basis, with the individual raising invoices for the work completed.

**Q5. Finally, it should be determined whether there is anything in the particular legislative regime under consideration that require the court to adjust or supplement any of the foregoing.**

This means are there any laws that say this is not an employment contract?

If the answer is yes there is legislation saying it is not a contract of employment, then it should be treated as a contract for service.

## 4. Taxation of payments

Where it has been decided an individual is employed under a contract of service (employee) including those engaged as an occasional or 'once off' lecturer/teacher/trainer, any payments made should be paid net of statutory deductions for income tax, USC and PRSI under the PAYE system and processed through the school payroll package.

Where, having applied the five-step framework an individual is considered to be engaged under a contract for service (i.e. self-employed) for taxation purposes, the individual is a chargeable person for income tax purposes and is obliged to file income tax returns and discharge his or her own income tax liabilities under the self-assessment system in accordance with Part 41A of the Taxes Consolidation Act, 1997.

The individual should provide a proper invoice:

Any invoice submitted for payment must include the following:

- Business Name and Address
- Customer Name and Address
- Invoice Date
- Invoice Number
- Details of Products / Services being billed for
- VAT or Tax reference number (for amounts of €7 or more)

It is advised, that where school management are still in doubt after going through the questions above, as to whether the individual is to be deemed as employed or self-employed, that the individual is treated as an employee and payment processed through the schools' payroll system.

## 5. References

This guideline is based on Revenue Tax and Duty Manuals [Part 05-01-30 Revenue Guidelines for Determining Employment](#) and [Part 05-01-11 Part-Time Lecturers/Teachers/Trainers](#)

*Further information or clarification on any of the issues raised in this guideline can be obtained from the FSSU.*

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13<sup>th</sup> November 2024

## Appendix 1

### *Form to assess employment status (internal use only)*

Question			
1.	Is the individual receiving payment for work carried out?	Yes: Move to Q2	No: Not an employment contract
2.	Does the individual have to carry out the work themselves (i.e. can't appoint someone else to carry out the work)?	Yes: Move to Q3	No: Not an employment contract
3.	Does the school control the worker? e.g. What, how, when & where work is carried out?	Yes: Move to Q4	No: Not an employment contract
4.	Do the facts of the engagement point to it being a contract of employment?  The following factors should be examined to assess if this is an employment or not. If more factors are indicating it is an employment contract, the answer is yes, if more factors are ticked off for the individual being self-employed, then the answer is no.	Yes: Move to Q5	No: Not an employment contract
	<p><b>Factors indicating an employment contract:</b></p> <ul style="list-style-type: none"> <li>• Worker is under the control of another person who directs them as to how, when and where the work is to be carried out (very important)</li> <li>• Supplies labour only</li> <li>• Receives a fixed hourly/weekly/monthly wage</li> <li>• Cannot subcontract the work</li> <li>• Does not supply materials for the job</li> <li>• Does not provide equipment other than the small tools of the trade</li> <li>• Is not exposed to personal financial risk in carrying out the work</li> </ul>		



	<ul style="list-style-type: none"> <li>• Does not assume any responsibility for investment and management in the business</li> <li>• Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements</li> <li>• Works set hours or a given number of hours per week or month</li> <li>• Works for one person or for one business</li> <li>• Receives expense payments to cover subsistence and/or travel expenses</li> <li>• Is entitled to sick pay or extra pay for overtime</li> <li>• Is obliged to perform work on a regular basis that the employer is obliged to offer to them (this is known as 'mutuality of obligation')</li> </ul>		
	<p><b>Factors that determine someone self-employed (contract for service):</b></p> <ul style="list-style-type: none"> <li>• Owns their own business</li> <li>• Is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract</li> <li>• Assumes responsibility for the investment and management of the enterprise</li> <li>• Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks</li> <li>• Has control over what is done, how it is done, when and where it is done and whether he or she does it personally</li> <li>• Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken</li> <li>• Can provide the same services to more than one person or business at the same time</li> <li>• Provides the materials for the job</li> </ul>		

	<ul style="list-style-type: none"> <li>• Provides equipment and machinery necessary for the job, other than the small tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account</li> <li>• Has a fixed place of business where materials, equipment etc. can be stored</li> <li>• Costs and agrees a price for the job</li> <li>• Provides his or her own insurance cover e.g. public liability cover, etc.</li> <li>• Controls the hours of work in fulfilling the job obligations</li> <li>• Is not obliged to take on specific work offered to them</li> <li>• Is registered for self-assessment tax returns or VAT</li> </ul>		
<b>5.</b>	Are there any laws saying it is not an employment contract?	<i>Yes:</i> Not an employment contract	<i>No:</i> This is a contract of employment and payments should be processed through payroll

It is advised, that where school management are still in doubt after going through the questions above, as to whether the individual is to be deemed as employed or self-employed, that the individual is treated as an employee and payment processed through the schools' payroll system.

## **Treoir chun Stádas Fostaíochta a Thabhairt le Fios chun Críocha Cánachais, lena n-áirítear Léachtóirí/Múinteoirí/Oiliúnóirí Páirtaimseartha**

*(Gabhann an treoirlíne seo in ionad treoirlíne 15-2019/2020  
Cánacha do Mhúinteoirí/Oiliúnóirí/Theagascóirí/Léachtóirí Páirtaimseartha)*

### **1. Réamhrá**

Tá [Treoirlínte chun Stádas Fostaíochta a Chinneadh chun críocha Cánachais](#) nuashonraithe ag na Coimisinéirí Ioncaim. Tugann an nuashonrú seo creat cinnteoireachta cúig chéim isteach chun stádas fostaíochta duine a mheasúnú chun críocha cánachais. Ba cheart do bhoird bhainistíochta a fhostaíonn oibrithe an creat seo a chur i bhfeidhm chun a thabhairt le fios cé acu seo a leanas a bhaineann leis an gconradh:

**Conradh seirbhíse (i gcás gur fostaí é an t-oibrí), nó  
Conradh i gcomhair seirbhíse (i gcás go bhfuil an t-oibrí féinfhostaithe)**

### **2. Freagrachtaí an Bhoird Bainistíochta**

Agus duine á fhostú chun obair a dhéanamh, tá freagracht ar bhainistíocht na scoile a thabhairt le fios an bhfuil an duine fostaíthe faoi chonradh seirbhíse, i.e mar fhostaí, nó fostaíthe faoi chonradh i gcomhair seirbhíse, i.e mar dhuine féinfhostaithe. Ní ábhar roghnach é stádas fostaíochta oibrí chun críocha cánachais – braitheann sé ar théarmaí agus ar choinníollacha an ról agus ar na socruithe praiticiúla oibre idir an scoil agus an t-oibrí. Cé gurb iondúil mbíonn sé soiléir cé acu atá duine fostaíthe nó féinfhostaithe, is féidir nach mbeidh sé soiléir i gcónaí.

Is cinneadh tábhachtach é seo mar ní mór íocaíochtaí le fostaí a chur tríd an bpárolla, ach cuireann daoine féinfhostaithe a dtuairisceáin chánach isteach iad féin.

Má chaitear le duine mar dhuine féinfhostaithe go mícheart agus má easaontaíonn na Coimisinéirí Ioncaim, is féidir go mbeidh an scoil faoi dhliteanas aon chánacha a mheasann na Coimisinéirí Ioncaim a bhí in-asbhainte a íoc.

Cé gurb iondúil go mbíonn sé soiléir cé acu atá duine fostaíthe trí ‘chonradh seirbhíse’ nó féinfhostaithe trí ‘chonradh i gcomhair seirbhíse’, ní raibh sé i gcónaí soiléir láithreach, rud a chruthaigh mearbhall maidir le stádas fostaíochta. Níl aon sainmhíniú dlíthiúil soiléir amháin ar na téarmaí ‘fostaíthe’ nó ‘féinfhostaithe’ i ndlí na hÉireann ná i ndlí an AE.

Tá Treoiríníte chun Stádas Fostaíochta a Dhéanamh Amach chun Críocha Cánachais leagtha amach ag na Coimisinéirí Ioncaim.

Leagann na treoiríníte seo creat cinnteoireachta amach. Tá cúig cheist sa chreat cinnteoireachta ba cheart don scoil a úsáid chun an cheist a réiteach maidir le cé acu atá conradh seirbhíse (fostaí) nó conradh i gcomhair seirbhíse (féinfhostaithe) i gceist.

### 3. Creat Cinnteoireachta

Ba cheart creat cúig chéim na gCoimisinéirí Ioncaim a chur i bhfeidhm ar gach fostaíocht chun stádas cánachais gach oibrí/soláthraí seirbhíse a thabhairt le fios. Ba cheart breathnú ar na chéad trí cheist mar scagaire. Má thugtar freagra diúltach ar aon cheann díobh seo, ní féidir go bhfuil conradh fostaíochta i gceist. Má fhreagraítear na chéad trí cheist go dearfach, ní mór ceist a ceathair agus a cúig a thabhairt san áireamh chun a thabhairt le fios cibé acu atá conradh fostaíochta i gceist nó nach bhfuil.

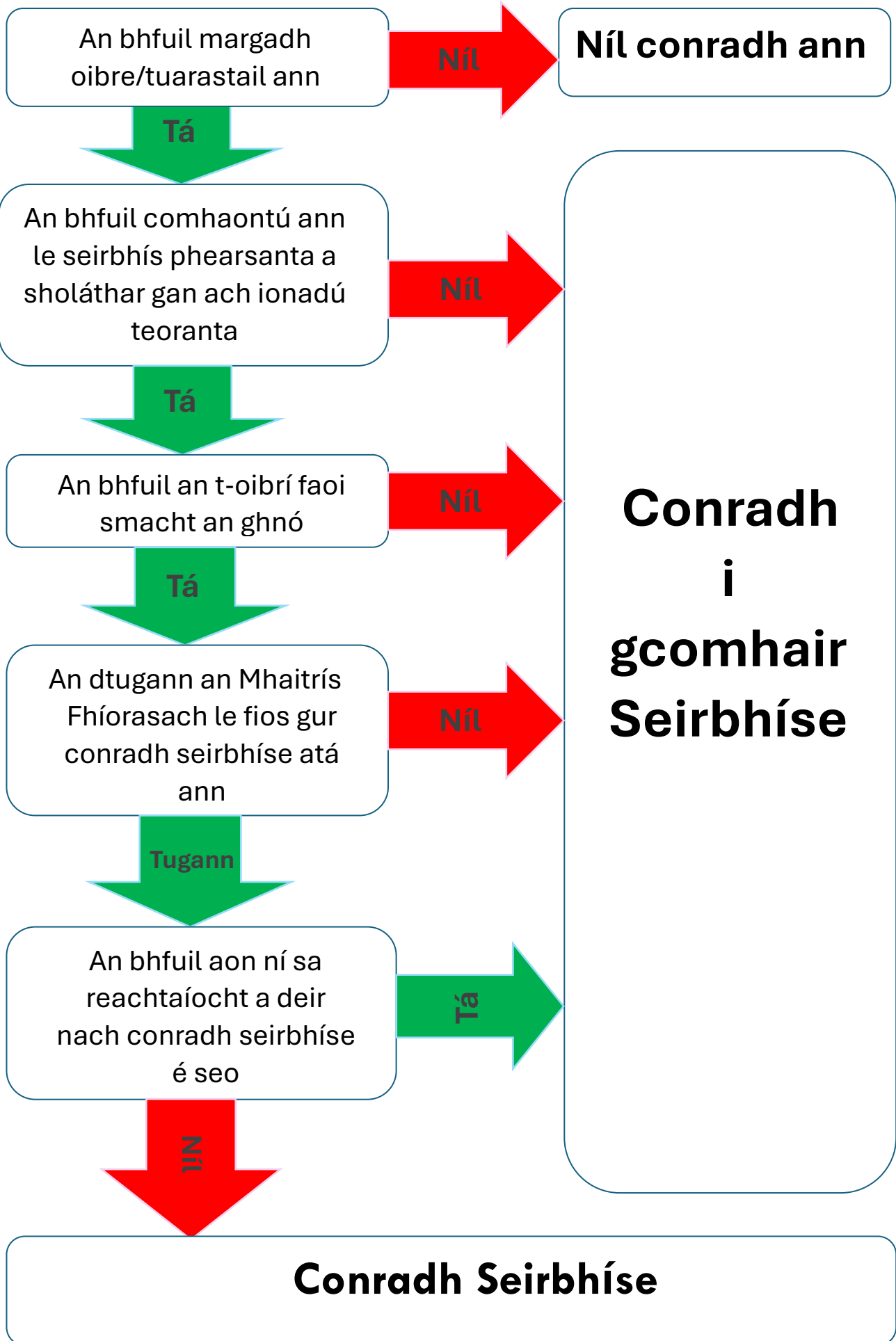
Seo a leanas na cúig cheist arb iad an creat cinnteoireachta iad:

- 1) An bhfuil malartú pá nó íocaíocht eile le haghaidh oibre i gceist leis an gconradh?  
Tugtar an 'margadh Oibre/Pá' air seo de ghnáth agus tugtar míniú níos mionsonraithe air i Roinn 3.2.
- 2) Más amhlaidh go bhfuil, an comhaontú é ina n-aontaíonn an t-oibrí a chuid seirbhísí féin, agus ní seirbhísí tríú páirtí, a sholáthar don fhostóir?  
'Seirbhís Phearsanta' a thugtar air seo de ghnáth agus tugtar míniúchán níos mionsonraithe air i Roinn 3.2.
- 3) Más amhlaidh atá, an bhfuil smacht leordhóthanach ag an bhfostóir ar an bhfostaí measta chun comhaontú fostaíochta a dhéanamh den chomhaontú?  
Tá míniú níos mionsonraithe ar 'Smacht' le fáil i Roinn 3.2.
- 4) Má chomhlíontar na trí cheanglas sin, ní mór don chinnteoir a thabhairt le fios ansin cibé acu atá nó nach bhfuil téarmaí an chonartha idir an fostóir agus an t-oibrí, léirithe i bhfianaise na maitrise fíorasáí inghlactha, agus ag féachaint do na socruithe oibre idir na páirtithe mar a nochtar san fhianaise, ag teacht le conradh fostaíochta, nó le conradh de chineál éigin eile ag féachaint, go háirithe, do cibé acu a chuireann na socruithe le fios go n-oibríonn an fostaí measta dó féin nó don fhostóir measta.  
Tá míniú níos mionsonraithe ar 'Chúinsí iomlána na fostaíochta' le fáil i Roinn 3.2.
- 5) Ar deireadh, ba cheart a thabhairt le fios an bhfuil aon ní sa réimeas reachtach áirithe atá á bhreithniú a éilíonn ar an gcúirt aon cheann dá bhfuil thuas a choigeartú nó a fhorlíonadh.  
Tá míniú níos mionsonraithe ar 'An Comhthéacs Reachtach' le fáil i Roinn 3.2.

**Cuireann an Crann Cinneadh ar an gcéad leathanach eile léiriú amhairc ar fáil ar an gcaoi ar cheart an creat a chur i bhfeidhm.**

Tá foirm cruthaithe againn le húsáid go himheánach chun cabhrú le measúnú a dhéanamh ar cibé atá an fhostaíocht ina conradh i gcomhair seirbhíse, i.e., féinfhostaithe, nó ina conradh seirbhíse, i.e., conradh fostaíochta. **Féach Aguisín 1.**

### 3.1 Crann Cinnteoireachta



### 3.2 Cinneadh Cúig Cheist

Déantar cur síos níos mionsonraithe an gcreat cinnteoireachta cúig cheist thíos. Mar atá sonraithe thuas, ní mór ceisteanna a haon go dtí a trí a fhreagairt go dearfach le go mbeidh conradh fostaíochta i gceist, agus ceisteanna a ceathair agus a cúig a thabhairt san áireamh ina dhiaidh sin.

#### ***C1. An bhfuil malartú pá nó íocaíocht eile le haghaidh oibre i gceist leis an gconradh?***

Tugtar an 'margadh Oibre/Pá' air seo de ghnáth, an bhfaigheann an duine íocaíocht le haghaidh obair a dhéantar, mura bhfaigheann, ní conradh fostaíochta atá i gceist. Má fhaigheann, téigh chuig ceist 2.

#### ***C2. Más amhlaidh go bhfuil, an comhaontú é ina n-aontaíonn an t-oibrí a chuid seirbhísí féin, agus ní seirbhísí tríú páirtí, a sholáthar don fhostóir?***

Tugtar 'Seirbhís Phearsanta' air seo de ghnáth nó 'trial mhalartúcháin'. An gcaithfidh an duine an obair a dhéanamh é féin nó an féidir leis duine eile a cheapadh leis an obair a dhéanamh?

Mura gcaithfidh sé an obair a dhéanamh é féin nó má tá an rogha aige duine eile a cheapadh chun an obair a dhéanamh, is é freagra na ceiste seo 'ní chaithfidh', agus ní seirbhís phearsanta atá i gceist. Mar sin, ní conradh fostaíochta é.

Má tá ceangal ar an duine an obair a dhéanamh é féin, is é freagra na ceiste 'caithfidh', agus is gá dul ar aghaidh go dtí ceist 3.

#### ***C3. Más amhlaidh atá, an bhfuil smacht leordhóthanach ag an bhfostóir ar an bhfostaí measta chun comhaontú fostaíochta a dhéanamh den chomhaontú?***

Tagraíonn smacht don chumas, don údarás, nó don cheart ag gnó smacht a chur i bhfeidhm ar oibrí maidir leis an obair ba cheart a dhéanamh, agus an dóigh, an uair agus an áit ar cheart í a dhéanamh.

Sa chás go gcuireann an fostóir smacht leordhóthanach i bhfeidhm, tá smacht suntasach ag an bhfostóir ar an obair a dhéantar, ar an dóigh, ar an uair, agus ar an áit a ndéantar í. Tá ar an oibrí teoracha a leanúint agus déantar maoirseacht air.

Sa chás go bhfuil neamhspleáchas ag an duine maidir leis an dóigh a ndéanann sé an obair agus go bhfuil sé saor chun a modhanna, a sceideal, agus áit oibre a shocrú gan maoirseacht shuntasach, ní cuireann an fostóir smacht suntasach i bhfeidhm chun go mbeidh an comhaontú ina chonradh fostaíochta.

Cuir i gcás, Andrew, aisteoir a fostaíodh chun ceardlann a chur ar siúl do dhaltáí na hidirbhliana i meánscoil. Cuireann sé a chuid earraí féin, a chuid árachais féin ar fáil, is féidir leis duine eile a chur ina ionad féin leis an gceardlann a chur ar fáil agus tugann sé a rátaí féin in iúl don scoil chomh maith leis na huaireanta atá sé ar fáil. Tá sé saor chun obair den chineál céanna a dhéanamh ag an am céanna le gnóthais eile. Titeann na ceardlanna amach le linn uaireanta scoile, agus de thoradh nádúr na hoibre, ní mór an cheardlann a dhéanamh ar láthair na scoile, ach ní thugann an scoil treoir do Andrew

maidir leis an obair ba cheart a dhéanamh, ná maidir leis an dóigh ar cheart í a dhéanamh, mar sin, meastar nach bhfuil sé faoi smacht an bhoird agus nach fostaí é dá réir.

Sampla eile, is síceolaí é Rónán lena chleachtas féin. Fostaíonn carthanas áitiúil é chun ceardlanna a chur ar siúl dá fhoireann bainistíochta. Tá sé fós saor lena chliaint eile a bhainistiú, agus aontaítear ar am agus líon na gceardlann roimh ré. Cuireann sé sonrasc chuig an gcarthanas maidir leis na ceardlanna agus íocann an carthanas é ráta uaire. Téann sé chuig áitreabh an charthanas chun na ceardlanna a dhéanamh.

Meastar go bhfuil smacht leordhóthanach ag an gcarthanas chun go mbeidh sin ina chonradh fostaíochta, toisc go gcuireann an carthanas in iúl do Rónán an méid ba cheart a chur sna ceardlanna, an áit ar cheart iad a chur ar siúl, agus aontaítear an dáta le Rónán, agus socraíonn an carthanas na daoine a fhreastalóidh ar na ceardlanna. Comhlíontar critéir na tástála smachta mar is é an t-aon rud a bhfuil smacht ag Rónán air ná modh an tsoláthair mar is gnách i gcás oibrí oilte.

Más é freagra na ceiste ‘ní chuireann’, ní chuireann an fostóir smacht leordhóthanach i bhfeidhm agus ní conradh fostaíochta atá i gceist. Más é freagra na ceiste ‘cuireann’, cuireann an fostóir smacht leordhóthanach i bhfeidhm. Téigh ar aghaidh go dtí ceist 4.

***C4. Má chomhlíontar na trí cheanglas sin, ní mór don chinnteoir a thabhairt le fios ansin cibé acu atá nó nach bhfuil téarmaí an chonartha idir an fostóir agus an t-oibrí, léirithe i bhfianaise na mairtise fíorasáí inghlactha, agus ag féachaint do na socruithe oibre idir na páirtithe mar a nochtar san fhianaise, ag teacht le conradh fostaíochta, nó le conradh de chineál éigin eile ag féachaint, go háirithe, do cibé acu a chuireann na socruithe le fios go n-oibríonn an fostaí measta dó féin nó don fhostóir measta.***

Ansin, is gá don fhostóir fíricí na fostaíochta a bhreithniú agus a dhéanamh amach cé acu an gcuireann siad le fios go bhfuil conradh fostaíochta i gceist nó nach bhfuil.

i. Cad a deir an conradh?

ii. Cad a deir na fíricí iarbhír?

#### ***Táscairí Fostaíochta:***

*Frithpháirteachas na hOibleagáide:* Tá ceangal ar an bhfostóir obair a thairiscint, agus tá dualgas ar an duine glacadh leis an obair agus í a dhéanamh.

*Comhtháthú:* Tá an duine lárnach san eagraíocht. Tá an obair a dhéanann an duine lárnach in obair an ghnóthais, agus tá an duine páirteach i struchtúr an ghnóthais. D’fhéadfadh sé go mbíonn an duine páirteach i gcruinnithe foirne agus go n-úsáideann sé acmhainní an fhostóra.

*Seirbhís Eisiach:* Is iondúil go n-oibríonn an duine d’aon fhostóir amháin nó do líon teoranta fostóirí.

*Soláthar Uirlisí:* Soláthraíonn an fostóir uirlisí, trealamh, agus acmhainní eile is gá don obair.

*Fírinne na hEacnamaíochta:* Is iondúil go bhfaigheann an duine pá nó tuarastal seasta, gan mórán riosca nó gan riosca caillteanais airgeadais ar bith. Is féidir go bhfaigheann an duine sochair fostaíochta amhail laethanta saoire le pá nó saoire bhreiteachta.

*Uaireanta Seasta:* Oibríonn an duine uaireanta seasta nó bíonn súil leis a bheith ar fáil le bheith ag obair ag uaireanta faoi leith.

*Struchtúr Íocaíochta:* Is iondúil go ndéantar íocaíocht go tráthrialta, cuir i gcás, go seachtainiúil nó go míosúil.

*Sochair Fostaithe:* Tá an duine i dteideal sochar amhail ranníocaíochtaí pinsin, saoire le pá, agus pá breiteachta.

### ***Táscairí Féinfhostaíochta:***

*Frithpháirteachas na hOibleagáide:* Níl aon oibleagáid leanúnach ar aon pháirtí. Tá an duine fostaithe i gcomhair tásc nó tionscadal sonraithe, agus ar chríochnú dó, tagann deireadh leis an ceangal fostaíochta ach amháin má dhéantar comhaontú nua.

*Comhtháthú:* Reáchtálann an duine gnóthas neamhspleách agus soláthraíonn seirbhísí don eagraíocht mar sholáthraí seachtrach. Bíonn an duine fós lasmuigh de struchtúr oibríochtúil an fhostóra.

*Fírinne na hEacnamaíochta:* Glacann an duine riosca airgeadais chuige féin, clúdaíonn sé a chuid costas féin agus tá féidearthacht ann brabús a dhéanamh nó caillteanas a thabhtú. Is iondúil go soláthraíonn sé a chuid uirlisí agus earraí féin, agus is féidir go bhfostóidh sé daoine eile le cuidiú leis an obair a chur i gcrích.

*Níos Mó ná Aon Chliant Amháin:* Bíonn an duine ag obair do níos mó ná aon chliant amháin agus tairgeann sé seirbhísí do réimse eagraíochtaí.

*Soláthar Trealamh:* Soláthraíonn an duine a chuid uirlisí, trealamh, agus earraí don jab é féin.

*Solúbthacht in Uaireanta Oibre:* Tá solúbthacht ag an duine a chuid uaireanta agus a sceideal oibre a shocrú é féin.

*Íocaíocht ar bhonn Sonrais:* Is iondúil go ndéantar íocaíocht ar bhonn jab nó tionscadail, agus go gcuireann an duine isteach sonrasc maidir leis an obair a rinneadh.

### ***C5. Ar deireadh, ba cheart a thabhairt le fios an bhfuil aon ní sa réimeas reachtach áirithe atá á bhreithniú a éilíonn ar an gcúirt aon cheann dá bhfuil thuas a choigeartú nó a fhorlíonadh.***

Is é an chiall leis sin an bhfuil aon dlí ann a deir nach conradh fostaíochta é?

Más é an freagra ‘tá’, tá reachtaíocht ann a deir nach conradh fostaíochta é, ba cheart caitheamh leis mar chonradh i gcomhair seirbhíse.



#### 4. Cáin a ghearradh ar íocaíochtaí

Sa chás go gcinntear go bhfuil duine fostaithe faoi chonradh seirbhíse (fostaí) lena n-áirítear iad siúd atá fostaithe mar léachtóir/múinteoir/oiliúnóir ócáideach nó ‘aonuaire’, ba cheart aon íocaíochtaí a dhéantar a íoc glan ar asbhaintí reachtúla do cháin ioncaim, MSU agus ÁSPC faoin gcóras ÍMAT agus a phróiseáil trí phacáiste párolla na scoile.

Más rud é, tar éis an creat cúig chéim a chur i bhfeidhm, go meastar duine a bheith fostaithe faoi chonradh i gcomhair seirbhíse (i.e. féinfhostaithe) chun críocha cánachais, is duine inmhuirearaithe é an duine chun críocha cánach ioncaim agus tá ceangal air tuairisceáin chánach ioncaim a chur isteach agus a dliteanais chánach ioncaim féin a urscaoileadh faoin gcóras féinmheasúnaithe de réir Part 41A den Taxes Consolidation Act, 1997.

Ba cheart don duine sonrasc ceart a chur ar fáil:

Is gá go n-áireofaí le haon sonrasc a chuirtear isteach an méid seo a leanas:

- Ainm agus Seoladh Gnó
- Ainm agus Seoladh an Chustaiméara
- Dáta an tSonraisc
- Uimhir an tSonraisc
- Sonraí Táirgí / Seirbhísí Billeála
- Uimhir thagartha CBL nó Cánach (i gcás méideanna sa bhreis ar €7)

Moltar, sa chás go bhfuil amhras fós ar bhainistíocht na scoile, tar éis dul trí na ceistanna thuas, maidir le cibé an meastar gur fostaí é an duine nó go bhfuil sé féinfhostaithe, go gcaitear leis an duine mar fhostaí agus go bpróiseáiltear íocaíocht trí chóras párolla na scoile.

#### 5. Teistiméireachtaí

Tá an treoirlíne seo bunaithe ar Lámhleabhair na gCoimisinéirí Ioncaim um Cháin agus Dleacht [Cuid 05-01-30 Treoirlínte na gCoimisinéirí Ioncaim chun Fostaíocht a Chinneadh](#) agus [Cuid 05-01-11 Léachtóirí/Múinteoirí/Oiliúnóirí Páirtaimseartha](#).

*Is féidir tuilleadh eolais nó soiléiriú a fháil ar aon cheann de na saincheistanna sa treoirlíne seo ach dul i dteagmháil le FSSU.*

Guthán: 01-269 0677

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An 13 Samhain 2024

## Aguisín 1

### *Foirm chun stádas fostaíochta a mheasúnú (úsáid inmheánach amháin)*

Ceist			
1.	An bhfaigheann an duine íocaíocht i gcomhair obair a rinneadh?	<i>Faigheann:</i> Téigh chuig C2	<i>Ní fhaigheann:</i> Ní conradh fostaíochta atá i gceist
2.	An gcaithfidh an duine an obair a dhéanamh é féin (i.e., ní féidir leis duine eile a cheapadh leis an obair a dhéanamh)?	<i>Caithfidh:</i> Téigh chuig C3	<i>Ní chaithfidh:</i> Ní conradh fostaíochta atá i gceist
3.	An bhfuil an t-oibrí faoi smacht na scoile? i.e. An socraíonn an scoil an méid, an dóigh, an uair agus an áit a ndéantar an obair?	<i>Tá:</i> Téigh chuig C4	<i>Níl:</i> Ní conradh fostaíochta atá i gceist
4.	An gcuireann fíricí na fostaíochta le fios gur conradh fostaíochta atá i gceist?  Ba cheart na gnéithe a leanas a bhreithniú lena mheasúnú más tá conradh fostaíochta i gceist nó nach bhfuil. Más mó na gnéithe a chuireann le fios gur conradh fostaíochta atá i gceist, is é freagra na ceiste ‘cuireann’, más mó na gnéithe a chuireann le fios go bhfuil an duine féinfhostaithe, is é freagra na ceist ‘ní chuireann’.	<i>Cuireann:</i> Téigh chuig C5	<i>Ní chuireann:</i> Ní conradh fostaíochta atá i gceist
	<p><b>Gnéithe a chuireann conradh fostaíochta le fios:</b></p> <ul style="list-style-type: none"> <li>• Tá an duine faoi smacht duine eile a stiúránn é maidir leis an dóigh, an uair agus an áit a n-oibríonn sé, (iontach tábhachtach)</li> <li>• Ní chuireann ar fáil ach a chuid saothair</li> <li>• Faigheann pá seasta in aghaidh na huaire / na seachtaine / na míosa</li> <li>• Ní féidir leis an obair a ligean ar fochonradh</li> <li>• Ní chuireann earraí ar fáil don jab</li> <li>• Ní sholáthraíonn trealamh seachas uirlisí beaga na ceirde</li> <li>• Níl sé neamhchosanta ar riosca airgeadais pearsanta mar gheall ar an obair a dhéanamh</li> </ul>		

	<ul style="list-style-type: none"> <li>• Ní ghlacann sé chuige freagracht as infheistíocht sa ghnóthas ná é a bhainistiú</li> <li>• Níl deis aige brabús a dhéanamh as dea-bhainistiú i dtaobh fostaíocht a sceidealú nó feidhmíocht i gcur i gcrích tascanna a eascraíonn as an bhfostaíocht</li> <li>• Oibríonn sé uaireanta seasta nó líon seasta uaireanta in aghaidh na seachtaine nó in aghaidh na míosa</li> <li>• Oibríonn sé do dhuine amháin nó do ghnóthas amháin</li> <li>• Faigheann sé íocaíocht le haghaidh costas chun speansais taistil agus/nó cothaithe a chlúdach</li> <li>• Tá sé i dteideal pá breoiteachta nó pá sa bhreis i gcomhair ragoibre</li> <li>• Tá sé faoi cheangal obair a dhéanamh ar bhonn rialta agus tá an fostóir faoi cheangal an obair sin a thairiscint dó (tugtar 'frithpháirteachas na hoibleagáide' air sin)</li> </ul>		
	<p><b>Gnéithe a chuireann le fios go bhfuil duine féinfhostaithe (conradh i gcomhair seirbhíse):</b></p> <ul style="list-style-type: none"> <li>• Is leis an duine a ghnóthas féin</li> <li>• Tá an duine neamhchosanta ar riosca airgeadais toisc go gcaithfidh sé aon chostas a bhaineann le cúiteamh a dhéanamh ar obair atá fabhtach nó faoi bhun an chaighdeáin de réir an chonartha a sheasamh é féin</li> <li>• Glacann sé freagracht as infheistíocht a dhéanamh san fhiontar agus as é a bhainistiú</li> <li>• Tá deis aige brabús a dhéanamh as dea-bhainistiú i dtaobh fostaíocht a sceidealú agus feidhmíocht i gcur i gcrích tascanna agus gníomhaíochtaí</li> <li>• Tá smacht aige ar an méid a dhéantar, ar an dóigh, ar an uair agus ar an áit a ndéantar é, agus ar cibé acu a dhéanfaidh nó nach ndéanfaidh sé féin é go pearsanta</li> </ul>		

	<ul style="list-style-type: none"> <li>• Tá sé saor chun daoine eile a fhostú, de réir a théarmaí féin, chun an obair ar a aontaíodh a chur i gcrích</li> <li>• Is féidir leis na seirbhísí céanna a sholáthar do níos mó ná duine amháin nó gnóthas amháin ag an am céanna</li> <li>• Soláthraíonn sé na hearraí don jab</li> <li>• Soláthraíonn trealamh agus innealra is gá don jab, seachas uirlisí beaga na ceirde nó trealamh nach mbeadh ina tháscaire ar dhuine a bheith i mbun gnó ar a bhonn féin go ginearálta</li> <li>• Áit sheasta ghnó inar féidir earraí, trealamh, etc., a stóráil</li> <li>• Déanann sé costáil ar an jab agus aontaíonn ar phraghas ina leith</li> <li>• Soláthraíonn sé a chlúdach árachais féin, e.g., clúdach um dhliteanas poiblí, etc.</li> <li>• Tá smacht aige ar na huairéanta oibre chun dualgais an jab a chomhlíonadh</li> <li>• Níl sé faoi cheangal glacadh le hobair shonraithe a thairgtear dó</li> <li>• Tá sé cláraithe chun tuairisceán cánach nó CBL a chur isteach é féin</li> </ul>		
5.	An bhfuil aon dlí ann a deir nach Conradh fostaíochta é?	<i>Tá:</i> Ní Conradh fostaíochta atá i gceist	<i>Níl:</i> Is Conradh fostaíochta é agus ba cheart íocaíochtaí a dhéanamh tríd an bpárolla

Moltar, sa chás go bhfuil amhras fós ar bhainistíocht na scoile, tar éis dul trí na ceisteanna thuas, maidir le cibé an meastar gur fostaí é an duine nó go bhfuil sé féinfhostaithe, go gcaitear leis an duine mar fhostaí agus go bpróiseáiltear íocaíocht trí chóras párolla na scoile.