



Self-Employment Guidelines Guidance Notes

June 2015

Please note that this document is a summary of the points discussed at the workshop and is intended for the delegates who attended. It is for guidance only and independent advice must be sought before making any decisions based on the information herein.

The information in this handout does not include details of the case studies discussed or the questions and answers highlighted during the workshop session. Delegates who attended the workshop can contact GBSport (see below) for further advice and support.

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Paying Self-Employed Workers

It is the responsibility of the organisation paying a self-employed worker to meet the self-employment guidelines. Failure to meet these guidelines could result in the worker being declared employed by the organisation and tax and NI being owed (and possible backdated by up to six years).

A number of organisations publish checklists to use as verification as to whether someone is self-employed or not – we strongly advise that these are NOT used as they do not provide an accurate answer or advice.

There is only one way to check the guidelines and be able to rely on the advice and that is to use a software package on the HMRC web site – the EMPLOYMENT STATUS INDICATOR (see our guide below on how to find and use this software).

There are three possible ways to pass the guidelines:

SUBSTITUTION

- The organisation allows and requires the worker to send a substitute for sessions the worker cannot make personally
- Substitution must actually happen at least occasionally when reviewed over a reasonable period of time
- The organisation must pay the contracted coach for any work done by a substitute (and the contracted coach will then pay the substitute)

CONTROL OF THE WORK

- The worker is in control of the work they undertake and they decide on when, where and how they carry out the work

FINANCIAL RISK

- The worker provides all of the equipment required to carry out the work
- The worker pays a reasonable fee for the facility they use to carry out the work
- The worker is required to submit an invoice for the hours worked
- The worker is required to put right any work they carry out that is deemed to be unsatisfactory by the organisation at the worker's own expense

IMPORTANT – you only have to pass one of the three to pass the guidelines (but ideally try to pass all three)

It is important for the organisation to have a contract with their worker which details how the worker passes the guidelines.

Using the Employment Status Indicator software

- Confirm worker is self-employed or willing to register as self-employed for the purposes of the work you will be offering them.
- Use the **EMPLOYMENT STATUS INDICATOR** (ESI) software on the HM Revenue & Customs (HMRC) web site (<http://www.hmrc.gov.uk/calcs/esi.htm>) to determine whether the proposed working relationship with the coach is one of self-employment. You can get detailed advice on using this software on the www.businessforsport.com web site.
- If the initial result from the software is not one of self-employment, revisit the questions and see what you need to change in your working relationship with the coach to achieve the required status. PLEASE NOTE – you must ensure that your answers accurately reflect the way you will work with the coach.
- Once you have the desired result from the ESI software, print out the answers you have given (on the ENQUIRY DETAILS screen) and the software results screen (on the RESULTS screen) and file these for future reference and in preparation for any future HMRC inspection. HMRC state on their web site that they will be bound by the results of the software so long as you print off these details and have answered the questions accurately.
- Amend the written contract template for the coach to reflect your answers to the ESI software, ensuring that the answers given to the ESI software are accurately reflected in the contract terms and conditions.
- Monitor the working relationship on a regular basis to ensure compliance with the guidelines and the terms and conditions of the contract.

Self-employment Contract

It is imperative that the details of how an organisation passes the guidelines are included in the clauses of a robust self-employment contract.

Substitution Clauses

You need to state that the coach has an obligation and a right to substitute, as detailed in the following clauses:

The Coach shall be obliged to appoint a substitute coach to deliver any element of the contracted services he/she is unable to personally deliver, and shall be required to ensure that the substitute coach is a suitably qualified Coach, is CRB checked to the satisfaction of the Client, is covered for Public Liability insurance/Employers' Liability insurance as appropriate to an acceptable level, [ADD/AMEND REQUIRED CONDITIONS] and is approved by the Client (approval not to be withheld unreasonably). It shall be the responsibility of the Coach to pay the substitute coach for services provided by the substitute coach.

The Coach shall be entitled to appoint a substitute coach to deliver any element of the contracted services, so long as the substitute coach is a suitably qualified Coach, is CRB checked to the satisfaction of the Client, is covered for public liability insurance/employers' liability insurance as appropriate to an acceptable level, [ADD/AMEND REQUIRED CONDITIONS] and is approved by the Client (approval not to be withheld unreasonably). It shall be the responsibility of the Coach to pay the substitute coach for services provided by the substitute coach.

Strictly speaking, the client is not entitled to approve the substitute but you should ensure that the tax authorities are aware that this needs to be done for child protection/vulnerable persons purposes.

It is important to note that substitution must actually take place if you are to rely on it – it is NOT enough just to have this clause in the contract with no actual proof of substitution.

We recommend that, when the contracted coach sends a substitute, they should detail this on their invoice (your proof) and you must then ensure that you pay the CONTRACTED coach and NOT the substitute! You should therefore also have the following clause in the contract:

The Coach shall be responsible for the control and payment of other coaches and/or assistants used by the Coach in the delivery of the contracted coaching sessions.

Control Clauses

In order to pass control, you need to state in the contract that OWNERSHIP of the coaching sessions /work required is with the coach/worker and not you, the client (the organisation paying the coach), as follows:

The Coach shall have ownership of the coaching sessions outlined in the Services and will organise and run a balanced programme of coaching sessions, which shall meet the needs of the Client

You can of course liaise with the coach to determine what the programme will contain but it is important that the coach determines the times and content of the sessions.

Financial Risk Clauses

In order to pass financial risk, you will need to state that the coach should provide their own equipment:

The Coach shall be responsible for providing their own equipment, administration, transport and support services as shall be necessary for the proper performance of the agreed services

The coach should also pay a facility hire fee for use of the facility if owned/rented by the client:

The Coach shall pay the Client a facility and equipment hire fee for use of the Client facilities and equipment as detailed in the Services [ENTER FEE DETAILS IN APPENDIX A]. Payment shall be made on submission to the Coach by the Client of a detailed invoice setting out the dates and times when the facilities/equipment were hired.

The fee paid can be hours given to the Client rather than/as well as actual money paid.

The contract should state that the coach only gets paid on submission of a detailed invoice:

The Client shall pay to the Coach a fee per hour for each session delivered by the Coach (or his/her appointed substitute) as specified in the Services [ENTER SESSIONS AND HOURLY RATES IN APPENDIX A]. Payment shall be made on submission by the Coach of a detailed invoice setting out the dates and times of the services delivered.

The contract should also state that the client can withhold payment to the coach should any aspect of the coaching be deemed to be unsatisfactory:

The Coach shall regularly invoice the Client for the services provided. Payment shall be dependent on satisfactory completion of the required services.

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