

SELF EMPLOYMENT IN THE LIVE MUSIC AND EVENTS INDUSTRY

**A GUIDE FOR THE SELF EMPLOYED AND THOSE WHO USE
THE SERVICES OF THE SELF EMPLOYED**

A COLLECTION OF ARTICLES AND NOTES PREPARED FOR THE



BY

STAGESAFE

***HEALTH AND SAFETY CONSULTANTS AND TRAINING SERVICES TO
THE LIVE MUSIC AND EVENTS INDUSTRY***

www.stagesafe.co.uk

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Self Employment Vs PAYE - Words of warning

Chris Hannam & Nick Cook

"The tax rules for self-employed people are designed to reflect the day-to-day transactions of the true risk-taking entrepreneur. Genuine self-employment is about being in business on one's own account and not simply applying a label of self-employment." – HMR&C

With the introduction of Self Assessment in 1997 HMR&C gained the power to mount an investigation into any company or individual, at random and without giving any reason or warning. At the end of 2001 a small set and decoration company in Berkshire was subject to just such an investigation. HMR&C decided that the freelancers they had been using were booked under terms and conditions which meant they were classed as employees rather than self-employed subcontractors. As is usual in these cases the Revenue said that the money paid to these freelancers over the last few years was just their net pay. The arrears bill sent the company into liquidation. Some while earlier a mains and generator supplier to the Industry found itself landed with an arrears bill of around £70,000 for National Insurance Contributions, again because its freelancers were booked in a way that made them employees of the company, rather than self-employed subcontractors. Just recently it has been reported that a number of artists have also been under investigation and ordered to pay Tax on the "backline" technicians they engaged as they were deemed by HMR&C to be employees and not self-employed.

While these two cases alone do not amount to a campaign against the Industry by HMR&C, they may well be the shape of things to come. Our industry is a sitting duck for this kind of attention from the Taxman because most freelancers are either operating in a way, or being booked in a manner, that prevents them from being classed as genuinely self-employed. The fundamental problem is that both freelancers and their clients want to enjoy all the financial benefits of self-employment, but either refuse to accept, or are unaware of, the responsibilities that go with that particularly special status. There is a common, even wilful, misconception on all sides of the Industry that "freelance automatically equals self-employed", which is simply not the case.

A 'freelancer' is merely someone who supplies services to a number of different clients. They can be taxed for each job either under Schedule D or PAYE, depending on how they operate their 'business' and the terms under which their services are engaged; NOT according to what the freelancer or their accountant think. A 'freelancer' (or rather 'contractor') may be taxed as self-employed for one job, but under PAYE for the next, even if supplying services to the same client, according to the terms and conditions under which their services have been engaged on each job.

Freelancers and those who use them must stop thinking of freelancers as though they were 'temporary employees' and must start treating them as 'contractors', their correct status if they are to be classed as genuinely self-employed.

The HMRC website is a mine of information on this subject. Clear cut explanations of the regulations regarding Employed Vs. Self-Employed and what they mean to us all, in frighteningly plain English, can be found there.

Of particular relevance to our industry are the IR 35 and IR 56 Regulations, which basically determine under what conditions a person may be deemed truly self-employed.

While it's true these days that many companies insist on their crews having their own insurance, tools and safety kit, not all of them do. Even when they do, a lot of them blow it immediately by sending out purchase orders booking people for x days at y pounds per day with z per diems; conditions which, in the eyes of a Tax Inspector, define their subcontractors as PAYE-taxable employees. What (very basically) should happen here is that a purchase order should only show the total price for the job 'as quoted' by the subcontractor for 'providing services as...'. Even then, would a taxman really believe that this group of 'self-employed subcontractors' had 'just happened' to quote exactly the same price as each other on every single job? It was actually the notion of the Daily Rate that did for the set company mentioned at the start of this article. Even so, we still continue to meet far too many 'subcontractors' who not only don't have, but are still completely unaware that they should have, at the very least, their own Public Liability insurance and yet seem to remain in regular work despite this.

In a nutshell: if (when) this industry winds up operating completely under PAYE, the cost of engaging the services of freelancers will rise by around 25%. The employers (as they will legally then become) will be lumbered with Employer's NI at 12%, Holiday Pay at 8.3% and even Statutory Sick Pay, along with the costs of providing insurance, tools, PPE, etc. There will also be several back tax bills flying around, most of which would be capable of sinking many of the small companies which make up the majority of our industry.

Also, if they become employees, most freelancers are almost certain to start asking questions about hourly pay, or just how long 'a day' actually is and what the overtime deal is after that. This will make it impossible for hire companies to give a fixed price for a job in advance. As more companies switched to PAYE there would be a diminishing financial incentive for freelancers to maintain their own insurance, etc. and we might see the final push into PAYE coming from the freelancers themselves. Television and Theatre style unionisation might then be just a short step away (Heaven forbid!).

How might those who use freelancers pay for this 25% increase? There are three possible options as we see it:-

1. They swallow the cost themselves somehow.
2. They pass it on to their clients.

3. They get the freelancers pay for it in some way.

Draft Freelancer Contract

The Draft Freelancer Contract in this document (see page 16) offers some guidance as to the terms and conditions under which freelancer's services should be engaged in order to allow them to be classed as self-employed. It also negates the need for a purchase order (unless the client specifically wishes to issue one). It is not just a list of rules, but a flexible document with plenty of empty spaces to fill with numbers, so that there is room for financial negotiation and the traditional haggling.

But it is still not the end of the story. If a production or the contract schedule lists precise times when the freelancer will perform their duties, or if a long list of terms is laid down by the client, then the freelancer can still be classed as an employee. Not only that, but the quote supplied by the freelancer should, strictly speaking, include PDs, travel, accommodation and subsistence. There are further bitter pills in the contract to be swallowed by both sides. Clients (companies) must accept a freelancer's right to assign the actual labour to a third party, as this is another HMR&C 'test' of true self-employment.

Freelancers must also have the right to cancellation fees. Freelancers themselves meanwhile must take fuller (in fact complete) responsibility for the way of life they have chosen and start to run it on a more businesslike basis. People who decide to use this document should keep themselves up to date with the tax regulations regarding self-employment, which are frequently 'amended'. One up to date source of information on the general subject of direct tax is *The Tax Investigations Reporter* published by CCH Publications.

At a yearly subscription of around £550 + VAT & p+p it is beyond the reach of many, although the publishers claim it will put your knowledge on a par with that of a Tax Inspector and some larger companies may find it a worthwhile investment.

Another thing to consider is that HMR&C in general often operates on a 'local' basis, with each tax office interpreting the rules in it's own slightly different way. What may be acceptable to one tax office may be completely out of the question to the next. The HMR&C have also said that they intend to "look behind" contracts, probably by mounting Aspect Inquiries into individuals.

In other words it will not matter what is in the contract because the Revenue will be looking at what you actually do, rather than what the contract says you do. Whether you actually want to raise this issue with your own tax office is a matter for you, but it's probably best to speak to your accountants instead. Don't forget: it was a request for formal guidance from the Revenue which eventually brought PAYE to TV and Film.

We must accept as an industry that these are rules we cannot change. They apply to all industries, everywhere in the UK and our industry is no exception.

They affect every freelancer and everybody who uses freelancers, not just hire companies, but production companies, managers, promoters, producers, agents - just about anyone you can think of really. It is the users of freelancers who have the most to lose, as they not only have to use investigative means to ensure the self-employed person is up to date with their Tax and NI payments, but will pick up the financial penalties if this is not done and they are caught. Yet it is basically the freelancer's duty to ensure that they operate and are engaged under conditions which allow them to be classed as truly self-employed and to state what those conditions are. However most freelancers don't do this for fear that their services will not be engaged so often, if indeed ever again. All you Hire Companies, Management Companies and Promoters, be honest: whose services do you engage most readily: the freelancer who says "Yes!", or the freelancer who says...

"Give me as full a description of the gig as possible and I will send you a quote, along with two copies of my contract stating my terms and conditions, signed by me, which should hopefully allow me to be classed as a self-employed person. If you accept my quote for the job, then sign both contracts and return one copy to me, along with a purchase order if you wish."

Well?

Out of touch with reality? That's the way we have to start operating, not some time in the future, but right now, if we want to avoid the nightmares described above and keep the financial benefits of Self Employment for us all. Don't forget, financial records must be kept for the last six years and are open to inspection by HMR&C at any time.

If the Industry does wind up on PAYE, it might be the freelancers who "win" in the long term. Even though they will lose over a third of their money (including National Insurance) at source and most (but possibly not all) of their tax deductible benefits, they will gain a whole new load of rights and protection at their employer's expense and be able to unload many costly responsibilities onto them as well.

They may even get odd tax rebates rather than regular tax bills and let's face it: with the way state pensions are going it probably wouldn't hurt any freelancer to start paying some 'proper' National Insurance right now. It's true that the employers will pay for it dearly, but PAYE could give them the kind of control over their workforce that they really want and maybe actually need if they are to comply with the Health & Safety regulations. PAYE might even serve to level the playing field a little in some ways and lead to some general improvements in industry standards. Maybe we should not be so quick to rubbish PAYE after all.

The Industry stands at a crossroads on the subject of PAYE and it is the Industry that will ultimately choose which path it takes, either through action or

complacency. Can we maintain the Self Employed status within our industry? Do we want to? Or do we just accept that the party is over and it's time to change?

The bottom line is that if you engage freelances on a daily or hourly rate then you are probably their employer and you bear all the responsibilities of an employer. If you're a freelancer and you work for daily or hourly rates then you are almost certainly an employee and not self-employed. In both cases there is "no business risk" to the freelancer, and the HMC&R do not consider a show or tour being cancelled as being a "business risk". The advice is to get professional advice now before it's too late!

The Limited Company Option

With the introduction of IR35 by HMR&C, becoming a Partnership or Limited Company no longer provides an automatic defence against taxation at source for freelancers nowadays. For example: imagine that Finbarr Fader sets up a company called "Finbarr Fader Ltd". Finbarr Fader Esq becomes an employee of that company. If Finbarr Fader Ltd gets a contract and sends Finbarr Fader Esq (the only employee of the company) out to do the job, say for a production company, HMR&C may (under HMC&R35) look at that transaction and ask: "If Finbarr Fader Ltd did not exist would Finbarr Fader Esq be classed as an employee of the production company?" If the answer is YES then the Revenue will probably consider that any fee paid to Finbarr Fader Ltd should be subject to Tax and NIC. HMR&C will claim this back from Finbarr Fader Ltd, together with any interest and penalties due! Finbarr Fader Ltd will be charged for the extra tax and NIC's. The Revenue will not claim against Finbarr Fader Esq himself unless his company defaults on the payment of Tax and NIC's due.

The company (Finbarr Fader Ltd.) is allowed to deduct 5% from the total fees charged for the work carried out and the remainder will be a deemed salary in the hands of Finbarr Fader Esq. The company must calculate the relevant employer's NI which is deducted from the total (i.e. the 95 %) to arrive at the gross salary in Finbarr Fader Esq.'s hands, this will then be subject to deduction of employee's NI and PAYE whether or not the monies have been paid to F. F.. If the Partnership or Company has ignored IR 35, then corporation tax will have been paid on the profits of the company, and if the Revenue subsequently investigate and apply IR 35 the Partnership or Company will be required to pay the additional PAYE and NI on the deemed salary plus interest and penalties. This could be some years along the line and amount to a very considerable sum.

It is worth noting that some of the work carried out by F F Ltd could fall under IR 35 and some not. There are also considerations regarding year-ends and timing that must be taken into consideration. Professional advice should be sought at an early date, rather than at some time in the future when the proverbial has already hit the fan!

In these self-employment 'situations', the responsibility is for Finbarr Fader to prove he is genuinely self-employed and one of the 'acid tests' is: "is it possible for Finbarr Fader to make a loss as well as a profit? Does Finbarr Fader take any "business risk?" In this situation Finbarr Fader Ltd is known as an "Intermediary Company" and it is these Intermediaries that the HMC&R want to stomp all over with IR 35.

A Simple Guide to Self Employment

Chris Hannam

Interpretation

In this document the following words are used:

Self-employed contractor – a person supplying goods or services, a small organisation with a single person acting as a sole trader. A self-employed contractor is often referred to as a "freelancer" but this is not the correct term as a freelancer can also be paid under PAYE for all or some of the work he or she carries out for his or her clients.

Client – customer or the person or organisation contracting the goods or services, usually the organisation paying the invoice.

Introduction

A self employed contractor is contracted by a client to provide goods and or services and is therefore a trade supplier, as a trade supplier there is no entitlement to any benefits such as sick pay, holiday pay, pensions, Per Diems (PDs) and benefits provided by the client to their employees.

A self employed contractor should have made adequate provision for insurance covering the scope of work they have been contracted to provide, typically this should include Public and Employees Liability, Contractors All Risks covering plant and equipment, Travel and Medical insurance. The client may stipulate the amount of cover required as in some contractual situations the amounts of cover must be the same amongst all contractors – this is especially so in the case of Public Liability Insurance.

Self employed contractors also have their own responsibilities under the Health and Safety at Work Act 1974 (HASAWA), and will be required to make adequate provision for Personal Protective Equipment (PPE), Risk Assessments, Method Statements, Safe Systems of Work, First Aid, Accident reporting etc but this is where it gets confusing because the HSE consider it "good practice" for an employer to provide PPE and training for the self-employed contractors they use and HMR&C have agreed that in doing so the self-employed status will not be affected.

Self -employed contractors are advised to have a contract between themselves and any clients with whom they are engaged to provide services for.

A contract between a self employed contractor and a client is a contract to supply services, it is not a contract of employment or contract of service. It will assist in establishing a self employed contractors status and will go some way in protecting both the parties in the event of a dispute.

Any contract should be issued by the self employed contractor to a client stating the self-employed contractors terms and conditions of business, a contract issued by a client – e.g. a service company or an artist/artist management company, to a self employed contractor may be construed as a contract of employment.

A sample contract is attached at the end of these guidance notes for use by the self-employed contractor.

Areas marked < > indicate any details that need entering - this may be a name, date, monetary sum or figure.

These should be completed at the time of negotiation with the client.,

The list of Clauses contained within the sample contract are by no means an exhaustive list, the self-employed contractor may wish to add additional Clauses to suit their own particular needs. Additionally they may find that the Client wishes additional Clauses to be added or for changes made to existing Clauses.

This is only to be expected but it is advised that legal advice be sought if the self-employed contractor is not 100% certain of the meaning or validity of a particular Clause.

It is also suggested that any paragraphs, lines or words that are struck out or altered should be initialled by both parties and dated.

The notes that follow give guidance as to what HMR&C and the Health and Safety Executive (HSE) consider to be a self-employed contractor but each and every case is different, for further advice contact your local area Tax Office.

It cannot be stressed to often that a self-employed contractor is not an employee and holds all the responsibilities of a person running their own business. A self-employed contractor is in fact considered to be an employer by the HSE and HMR&C as he employs himself; he has all the responsibilities of both an employer and employee!

Health and Safety Duties of the Self Employed

Self –employed contractors have certain duties under the Health and Safety at Work etc Act 1974 (HASAWA.)

These duties include:

- If they are also an employer, to fulfil the duties of an employer.
- To conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that both themselves and other persons (not being their employees) who may be affected thereby are not exposed to risks to their health and safety.
- Not intentionally or recklessly to interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.
- To provide, or ensure that there is provided, such equipment, if any, as is adequate and appropriate in the circumstances to enable them to render first aid to themselves while at work.

It is a legal requirement under the HASWA and the Management of Health and Safety at Work Regulations 1999, to produce a written Health and Safety Policy Statement and Risk Assessments if you employ five or more people.

However, under HASWA if a significant risk could be created to a large number of people, a risk assessment, written proof of a safe system of work and training would still be required from a self employed contractor (business) with fewer than five employees. An example of this would be a rigger.

What Is Self-Employment?

The HSE consider that self-employment is someone who employs themselves, they may also be an employer.

This same view is adopted by HM Tax Inspector as a definition of who is "self-employed" as opposed to an employee but with many additional indicators.

HM Tax Inspector's are also asking self-employed persons if they are allowed to put someone in to do the job on their behalf, they consider that self-employed contractors must be allowed to assign a job. Obviously, this kind of substitution does not hold with employment, similarly, a self-employed contractor does not work under supervision.

If you work for an employer who covers you under their Employers Liability Insurance then the chances are you are an employee even if you pay your own Tax and National Insurance contribution. This is even more the case if you work under supervision such as a "stage hand/local crew" person may do.

Employers need to take care as well, you may end up with a large bill for National Insurance Contributions for your self employed contractors who you thought were paying their own N.I. contributions, this has already happened to at least one company in our industry and it cost them a fortune!

Clients undertaking the services of self-employed contractors are advised to keep evidence of the defining criteria used to determine "self employed" status. It is no longer acceptable for a self employed contractor just to state that they are a "self employed" and provide a self employment reference number.

Typical defining criteria will consist of a questionnaire about the self employed contractor, the services provided, qualifications and training information, bank details, Tax and National Insurance details, written evidence of your trading status e.g. accountants letter or letter from HMR&C and Insurance details. Once the client has satisfied themselves of your "self employed" status they will treat your invoice for payment as trade invoices, otherwise they have to treat you as an employee and deduct tax and NI at source.

It is very important to ascertain a self-employed contractors status as to whether they are in fact employed or self-employed. No client in their right mind should use self-employed contractors unless they carry insurance suitable for the scope of work they have been contracted to carry out.

If the client (as an employer) intends to cover individuals under their own employers/public liability insurance they may then become an employee of the client who then has to take all the responsibilities of an employer.

Clients, Production Managers, Crew chief/bosses take note, you may have employees you did not think you had together with all the responsibilities for Health and Safety, Tax, National Insurance, sick pay, holiday pay and Working Time Regulations.

The more you provide for self employed contractors, the more likely that they may be classed as your employees.

Full details of assessing employee or self-employed status can be found in the section entitled "**IR 56 – Guidance on Employment Status**".

One of the checks that employers can make to ascertain that the "labour only contractors" they intend to appoint are genuine self-employed persons is by getting them to quote for the jobs available and not offering a weekly, daily or hourly rate of pay. Strictly speaking the quote from a self-employed person should include things like transport, accommodation, Per Diems and subsistence.

Quoting for a job uses "entrepreneurial skills" and is an "acid test" for true self employment but even then it may be possible to do the occasional job for a daily or hourly rate, for instance, if it proves to be extremely difficult to quote a price to do the whole job because until you start you don't know how long it's going to take or what is involved. This seems to be acceptable as long as it's only occasional and does not represent the majority of your work. Purchase Orders, Invoices and Contract Schedules should never include daily, weekly or hourly

rates of pay, the hours to be worked or start and finish times. The fact a tour, a show or an event may be cancelled is not considered a “entrepreneurial risk” or to be using “entrepreneurial skills”.

Invoices raised by self-employed contractors should be all encompassing and typically use phrases like “For goods and services provided on ABC event as per our (verbal) quotation”. It is suggested invoices are not split into days, hours, weeks etc unless used to indicate additional services outside of the original quote, or as suggested in the paragraph above, if it is difficult to quote due the nature of the contracted work.

A number of companies in our industry who use the services of self-employed contractors are now insisting these self-employed persons become "Limited Companies" before they will use their services. These companies often claim that there are advantages to the self-employed to trade as a Limited Company. The advice of various Accountants was that it was a disadvantage to becoming a Limited Company unless your business has a turn over of a least £100,000 per year and the responsibility under the HMC&R 35 regulations all rest with the self-employed contractor.

The only people who can really decide if you are genuinely self-employed or not are HMRC and even then it's quite possible for each local area office to give a different definition and ruling on each case.

All the information I have given here acts only as indicators but it's a fair bet that the more indicators you have pointing towards self-employment, the more likely you are to be “self-employed”.

Employers must remember that self-employed persons are not "short term employees" and must not be treated as such.

Employment status is not a matter of choice. People are self-employed if they are in business on their own account and bear the responsibility for its success or failure.

HMRC quote that "The tax rules for self-employed people are designed to reflect the day-to-day transactions of the true risk-taking entrepreneur. Genuine self-employment is about being in business on one's own account and not simply applying a label of self-employment".

The self-employed are advised to use the services of a Chartered Accountant to assist and advise them on their financial affairs and to keep business and personal bank accounts separate. You are required to register as self employed with HM Customs and Revenue within three months of starting work as a self employed person. The simplest way of paying National Insurance by a self-employed person is by Direct Debit.

Bear in mind that because you are self-employed in one job doesn't necessarily mean you will be in your next job.

Insurance

Public Liability Insurance

This insurance can protect you if there is a claim against you or your business under your legal liabilities towards employees or the public. To have Public Liability Insurance is not a legal requirement but it does demonstrate a commitment to your business and your professionalism. Self - employed persons should consider Public Liability Insurance essential. Don't be surprised if you are turned down for some jobs if you don't have the required insurance!

New regulations will require businesses and self-employed persons to hold the same level of cover as their clients, for instance, if a self-employed sound engineer is engaged to provide services to an audio company that holds £10,000,000 Public Liability cover the self-employed sound engineer will also require £10,000,000 of Public Liability Insurance cover.

Employer's Liability Insurance

This is an essential legal requirement.. If you have employees, subcontractors or self-employed persons working for you, you have legal liabilities towards them. Employer's liability insurance can offer protection if one of them brings an action against you for any accident or injury connected with your business. It is one of the few types of insurance that is compulsory in the UK for anyone who pays a wage or instructs others in the work even though they are not employed by them. Crew Chiefs, Stage, Tour and Production Managers should make a special note of this, you will need Employers Liability Insurance if you give instructions or orders to crew even though they are not employed directly by you.

Although public liability insurance is not compulsory, we believe it is essential for a person or business that is involved with the public.

Any liability policy can cover you (in your professional capacity) if you are found liable to pay costs and/or damages in a court of law.

Public liability insurance should protect you if, in the course of your business or profession, you are liable for costs in the event of:

- Accidental injury to a member of the public
- Damage to someone else's property (third-party property)
- Always check that your insurance will cover you for what you need - don't assume - you may find you are not covered for damage to someone else's property (such as your clients equipment).

Having insurance will not protect you against criminal activities and breaching health and safety law is a criminal offence, but it will give you protection against civil claims should you fail in your duty of care. Don't be fooled into thinking insurance is a substitute to following health and safety regulations, that is most certainly not the case.

Specialist insurance packages for freelancers and companies working in the live music and events industries are available from the following brokers:

- Precision Broking
- Robertson Taylor Insurance Brokers Ltd
- Doodson Broking Group

Other information: HMR&C manual on determining self-employment:

TEMPLATE CONTRACT TO PROVIDE GOODS AND SERVICES

Chris Hannam

THIS AGREEMENT is made the < > day of < >
>
BETWEEN < >of
:
<.....>(The
Supplier) and<..... >of:
<.....>
.....>(The Client)

CONTRACT DETAILS CONTRACT NO: < >

EVENT, PRODUCTION OR TOUR:

<..... >

DURATION OF THE AGREEMENT: < >
to <.....>

1. The Supplier agrees to supply goods/services in accordance with the Schedule attached hereto or as subsequently agreed in writing by the parties hereto.

2. It is hereby agreed that prior to the signing hereof The Client has had ample opportunity to examine The Supplier's Terms of Business attached hereto and shall be deemed to have unequivocally accepted them.

3. The total contract price shall be <£..... > plus VAT (if applicable)

4. The terms of payment are:

5. In the event of cancellation of this Agreement by The Client and without prejudice to any rights hereunder or under the Terms of Business attached hereto, The Client will indemnify The Supplier as a result of such cancellation for < >% of the contract price. Interest at a rate of < >% per month is liable to be charged on any outstanding balances.

6. It is a fundamental terms of this agreement that the stipulations as to payment contained be fully adhered to by The Client (including an absolute requirement of payment to be made within the times stipulated but subject to the proviso contained in Condition 4) and if for any reason The Client shall be in breach of such stipulations The Supplier shall have the right at its absolute and sole discretion and without prejudice to its other rights hereunder forthwith and without notice to dismantle remove or otherwise bring to an end any works service goods or other things supplied by the supplier hereunder and to terminate forthwith this agreement and be under no further liability hereunder to provide any of the services or goods herein agreed.

Signed for and on behalf of)
The Supplier)

Signed for and on behalf of)
The Client)

IN ADDITION TO SIGNING THE AGREEMENT, THE CLIENT IS
REQUESTED TO INITIAL ALL PAGES OF THIS AGREEMENT, THE
TERMS OF BUSINESS AND SCHEDULES, IN THE TOP RIGHT
HAND CORNER

TERMS OF BUSINESS

1. All services and goods supplied by The Supplier are subject to the terms set out herein and in the Agreement attached unless varied in writing by the parties. The signing of the Agreement shall be deemed to be acceptance of these Terms of Business.

2. All works, goods and services shall be supplied by The Supplier to a good and workman like standard in accordance with the Schedule which is annexed hereto so far as the circumstances shall reasonably allow. The Client shall ensure that the Schedule complies in all respects with their requirements, or any authority or any other person or entity involved. The Supplier reserves the right to alter or amend the Schedule at any time if in the absolute discretion of The Supplier the needs of safety so require.

3. The Client must ensure that all necessary licences, consents and authorities to stage the event/s have been obtained and shall indemnify The Supplier in respect of any liability costs or claims arising there from.

4. The contract price shall be paid strictly in accordance with the terms of payment contained in the Agreement.

5. The Client shall for the duration of the agreement place in force public liability insurance to a minimum indemnity of <£> and shall produce evidence of such insurance at the request of The Supplier.

6. The Supplier shall for the duration of the agreement place in force public liability insurance to a minimum indemnity of <£> and shall produce evidence of such insurance at the request of The Client.

7. Unless listed in The Suppliers Terms and Conditions, The Client shall be responsible for supplying the items or services listed in the schedules attached hereto at no cost to The Supplier.

8. The Client shall ensure that all equipment provided by The Supplier is fully protected from and insured against all risks (including

but not limited to, theft and malicious acts in respect to equipment) and shall produce evidence of such insurance with The Supplier's interest noted thereon at the request of The Supplier.

9. The Supplier shall not be liable in respect of any damage caused to the site(s) or venue(s) either during the event/s or as a result of the erection and/or dismantling of equipment and services unless such damage results from the negligent act or admission of The Supplier, the servants, agents or sub-contractors, or persons for whom they are responsible.

10. The Supplier shall so far as is reasonably practicable follow the Health and Safety rules and arrangements as set out in The Clients Health and Safety Policy.

11. Unless otherwise agreed in writing by both parties to this Agreement, The Supplier acknowledges and accepts that:
The Client will not be providing First-Aid cover for The Supplier or for The Suppliers employees for the duration of this agreement. The Supplier will be responsible for making First-Aid arrangements according to the standards set by the Health and Safety (First-Aid) Regulations 1981 for The Supplier and for The Suppliers employees.

12. The Supplier shall retain the right to assign this contract.

13. The Supplier shall keep secret and shall not use or disclose and shall use his/her best endeavours to prevent the use or disclosure by or to any person any of The Client's or The Client's clients confidential information which came to his/her knowledge during the engagement. The restriction shall apply during and after The Suppliers engagement without any time limit but shall cease to apply to information or knowledge which the Supplier establishes has in its entirety become public knowledge otherwise than through the unauthorised disclosure or other breach of the Suppliers part of that restriction. Confidential information means all confidential information relating to the organisation, finances, business activities and private activities of the Client, The Client's client and either of their employees and agents, suppliers or advisors.
The Supplier further agrees not to use any information gleaned during the term of this Agreement to directly or indirectly solicit business from any of The Client's clients.

14. The Supplier shall not be liable for any breach of the Agreement or terms hereof where such a breach was caused by or substantially contributed to by any cause beyond the control of the Supplier including (without limitation) Act of God insurrections riot civil commotion's Government or other enforceable regulations embargoes explosions strikes labour disputes fire and exceptionally adverse weather. The Supplier's sub-contractors shall be deemed to be parties to the Agreement for the purpose of obtaining the protection of this clause and The Client shall indemnify The Supplier in respect of any claim by a third party in respect of which liability is excluded by this clause provided always that The Supplier shall use its best endeavours to prevent such a breach or mitigate the effects thereof.

15. If The Client shall make any assignment for the benefit of its creditors, commit and/or fail to inform The Supplier of any act of bankruptcy or if, being a limited company, shall suffer any receiver of its assets to be appointed or upon commencement of any winding up or upon failure to pay any sum due to The Supplier whether due under this contract or otherwise upon other breach of contract by The Client, The Supplier shall be entitled to cease work immediately and to dismantle remove or otherwise bring to an end any works service goods or other things supplied by The Supplier hereunder. Upon ceasing work dismantling removing or otherwise bringing to an end any works service goods or other things supplied by The Supplier hereunder, this contract shall be deemed to have been terminated but without affecting any pre-existing rights of the parties including The Supplier's right to receive payment of the full price of the contract without deduction.

16. Any contract to which these terms apply shall be construed in accordance with the laws of England and the parties agree to accept the jurisdiction of the courts of England.

SCHEDULES

The Supplier will provide for the duration of The Agreement:

The Client will provide for the duration of The Agreement:

**IF IT IS PROPOSED TO USE SUBSTITUTE CONTRACTORS THIS
ADDITIONAL CLAUSE MAY BY USED IN THE CONTRACT**

1. (*insert name of contractor*) may offer a substitute contractor in his place, providing that all the following conditions are met:
- the services provided by the proposed substitute remain as detailed in the schedule
 - the Client is satisfied that any substitute is suitable. In practice, this will mean that he possesses the necessary qualifications, experience and indemnity insurance to fulfill the terms of the contract
 - the Client is satisfied that the proposed substitute has sufficient resources to perform the contract to a sufficiently high standard
 - the Client is satisfied that the intended substitute will comply with its rules on confidentiality, health, safety and security
 - the costs associated with any training of the substitute and handover period will be met by (*insert name of contractor*).

Consent to the proposed substitution is given to (*insert name of contractor*) in writing first.

The Client reserves the right to refuse a proposed substitute only if the substitute does not have the necessary skills and cannot fulfill the contractual requirements.

CONTRACTS

The Department for Business, Enterprise & Regulatory Reform

The contract of employment

A contract of employment is an agreement entered into by an employer and an employee under which they have certain mutual obligations.

If no contract of employment exists beforehand, one will come into existence as soon as an employee starts work and, by doing so, demonstrates that he or she accepts the job on the terms offered by the employer. The contract need not be in writing, unless it is a contract of apprenticeship (employers should note however that a contract of apprenticeship may be found by the courts to be implied even if it is not in writing). Its terms can be written, oral, implied or a mixture of all three. Implied terms might include those that are too obvious to be expressly agreed - for example, a term that the employee must accept reasonable instructions from the employer - those that are necessary to make the contract workable and those that are established by custom and practice in the particular organisation or industry concerned.

Employed or self-employed?

As already discussed, whether someone is an employee working under a contract of employment or a self-employed person working under a contract to provide services depends upon the true nature of the agreement entered into by the parties. If the employer has a duty to provide work, controls when and how it is done, supplies the tools or other equipment needed to do it and pays tax and national insurance contributions on the worker's behalf, then it is likely that the worker is an employee. If, on the other hand, the worker can decide whether or not to accept work and how to carry it out, makes his or her own arrangements for holidays or sickness absences, pays his or her own tax and national insurance contributions and is free to do the same type of work for more than one employer at the same time, this points towards the person being self-employed. The fact that a worker is described (either by himself or herself or by the employer) as being self-employed does not necessarily mean that this is actually so. Neither does the fact that the worker does the job on the employer's premises or from his or her own home determine the issue. The important question is whether or not the worker is genuinely in business on his or her own account. If a dispute arises in which employment status is in doubt, this can be considered as a preliminary issue by the Employment Tribunal or the court concerned, taking into account all factors relevant to the case.

Written statement of employment particulars

All employees taken on for one month or more are entitled by law to be given, within two months of the date the employment starts, a written statement setting out the main particulars. This statement will not necessarily cover every aspect of the contract, but will constitute important evidence of the principal terms and conditions. Further information about the right to a written statement can be found in Written Statement of Employment Particulars

Variation of contract

The contract of employment is binding on both parties. This means that it is unlawful for one party to vary the terms and conditions in the contract without the agreement of the other. The contract itself may, however, include provisions allowing the employer to make important changes - for example, requiring the employee to move to a different place of work or to undertake a different type of work. In the case of a change covered by a provision of this kind, there is no variation of the terms and conditions in the contract and the change will be lawful.

It is always open to either party to seek to renegotiate the terms and conditions with the other. A variation may be made by agreement between the employer and the employee. It may alternatively result from a variation by collective agreement, where the contract itself (either expressly or by implication, such as through long standing custom and practice) provides for this. A collective agreement is one made between, on the one hand, an employer or an association representing employers and, on the other, a trade union representing employees. The contract may provide for its terms to be varied by a particular collective agreement even if the employee is not a member of a trade union (so that, for example, collectively negotiated pay agreements can be incorporated into all employees' contracts). An employee's written statement of employment particulars must specify any collective agreements that directly affect his or her terms and conditions (including, where the employer is not a party, the identities of the parties). If a variation of contract affects one or more of the terms and conditions required by law to be covered in the employee's written statement of employment particulars, then the employee must be given written notification of this. The notification must be given as soon as possible, and at any rate no later than one month after the variation is made.

It should be noted that if an employee finds a variation of contract unsatisfactory but nevertheless continues to work under the new terms and conditions without making his or her objections known to the employer, he or she could after a time be deemed to have implicitly accepted it and it would then become incorporated into the contract.

Refusal by employee to authorise variation

If the employer wishes to vary the terms and conditions of employment and the employee, having been consulted, objects to the variation, then the employer may decide to terminate the contract by dismissing the employee. As usual in the event of dismissal, the appropriate statutory or contractual notice (or pay in lieu of notice) would have to be given and any other contractual obligations relating to the termination of employment would have to be fulfilled. The employer would then be free to offer the job on different terms and conditions either to the dismissed employee or to another applicant. If the dismissed employee considered the employer's actions to have been unfair, he or she would be entitled to make a complaint of unfair dismissal to an employment tribunal - provided that he or she had completed a qualifying period of at least one year's continuous service. This applies to dismissals taking place on or after 1 June 1999: previously two years' continuous service was necessary. Such complaints must normally be made within three months of the date the employment ended. The tribunal would consider all the circumstances of the case in deciding whether or not the dismissal was in fact unfair. These would include the employer's reasons for wishing to vary the terms and conditions - overriding business considerations, for example, might make the dismissal fair - and the employee's reasons for opposing the variation. If an employer attempts simply to impose a variation of contract on an employee without the employee's agreement, this will be a breach of contract. The employee may have various means of redress available in law. These are described in the following sections of this document.

Breach of contract claims by employees

There are a number of factors that a dismissed employee making a claim for breach of employment contract may wish to bear in mind in deciding which of the two alternatives - employment tribunal or civil court - to use. For example, the employment tribunals provide a generally speedier and more informal means of redress than the civil courts for the resolution of employment disputes, and their procedures have been designed to make it unnecessary for the parties to incur the cost of legal representation. On the other hand, employment tribunal claims must be made within three months of the date on which the employment ended (or, if that is not reasonably practicable, within such further period as the tribunal considers reasonably practicable), whereas civil court claims may be made up to a much longer time limit of six years from the date on which the breach of contract occurred. Another consideration might be that employment tribunal awards for an employer's breach of contract are subject to an upper limit, currently £25,000, whereas civil court awards may reflect the full amount of the damages suffered by the dismissed employee.

Breach of contract claims by employers

If an employer suffers a measurable financial loss because one of his or her employees breaches the contract of employment, or any other contract connected with employment, then the employer is entitled to seek damages by making a breach of contract claim. The normal forum for pursuing such a claim is a county court or other civil court. A claim may be made in an employment tribunal instead, but only if it is in response to a breach of contract claim that an employee has already made to an employment tribunal and that has not since been settled or withdrawn. In addition, the claim:

- must arise or be outstanding on the termination of employment of the employee against whom it is made;
- and to relationships of the special categories listed above in respect to employees' claims.

If the dismissed employee withdraws his or her breach of contract claim after the employer has made a claim, the employer's claim can still be considered by the employment tribunal. Employment Tribunal claims by employers must normally be made within six weeks of the date on which the employer (or other respondent) receives from the tribunal a copy of the dismissed employee's originating application (or, if that is not reasonably practicable, within such further period as the tribunal considers reasonably practicable). Civil court claims may be made up to a much longer time limit of six years from the date on which the breach of contract occurred. Employment tribunal awards for a breach of contract by an employer are subject to an upper limit, currently £25,000, whereas civil court awards may reflect the full amount of the damages suffered by the employer.

Constructive unfair dismissal

If an employer breaches an employee's contract of employment in a fundamental way, which effectively indicates that he or she no longer intends to be bound by its terms, the employee may be entitled to resign and to regard himself or herself as having been forced to take that step in response to the employer's behaviour. This is known as constructive dismissal. If the constructively dismissed employee considers the dismissal to have been unfair, he or she will be entitled to make an unfair dismissal complaint to an employment tribunal in the same way as if the employer had expressly dismissed him or her for objecting to a variation of the agreed terms and conditions of employment. Again, the right to make an employment tribunal complaint on these grounds is subject to a one year qualifying period of continuous service. The Tribunal would first consider whether or not there was a constructive dismissal and then, if there was, decide whether or not the dismissal was in fact unfair in all the circumstances.

IR 35 – IGNORANCE IS NO DEFENCE

When, in the 1999 budget, the Chancellor announced he was introducing measures which would stop companies laying off workers on a Friday and taking them back on the Monday on a contract basis, so depriving the workers of their statutory rights, sick pay, maternity pay etc, there could have been few who would have disagreed with the sentiment.

Some months later this altruistic statement proved to be somewhat less than transparent - it was in fact a new stealth tax aimed at increasing revenue in the Treasury coffers. The measure has become known as IR 35, and, according to the Paymaster General of the time, Dawn Primarolo, could affect as many as 90,000 small businesses in the UK, and other estimates are higher.

Will it affect your business? Do you know what IR 35 is? Do you think it will only apply to IT and engineering? You could be in for a nasty shock.

IR 35, in a nutshell, could apply to anyone who has at least a 5% share in their limited company or partnership and physically carries out the company contracts themselves personally, to their clients.

This could be in IT, it could be engineering but it could also include lighting designers, sound engineers, back-line technicians, riggers, catering and wardrobe crew, dental hygienists, milkmen, drivers, builders, lecturers, training personnel, welders, electricians, maintenance fitters, in fact anyone who provides personal services to the client through their own company.

You may contract direct with your customer or you may contract through an agency, it will not matter. If HMR&C decide to investigate your status they will apply HMC&R standard employment tests to each and every one of your contracts to establish if you are really what they call 'self employed' or whether you are in fact a 'disguised employee' of your client company.

And if they decide you are in fact a disguised employee, they will demand that you pay Tax and NI on 95 % of your total company income from the contract, after allowing you to deduct only Professional Indemnity Insurance costs and those limited expenses you could have claimed under Self Employment had you really been an employee. The remaining 5% will be allowed to cover all your business expenses including insurances, accountancy fees, etc. You will no longer be able to make capital investments in the way normal companies do. Any money you choose to leave in your company will be money on which you will have paid Income Tax and National Insurance which cannot be reclaimed against capital investments as you would Corporation Tax. You will not even be able to make tax deductible company donations to charity. You will no longer be able to retain profits for lean times as under IR 35 there can be no profits, 95% of income is paid out as 'deemed salary'

If HMC&R decide you are a disguised employee you will not of course still not be able to claim sickness benefit etc from your disguised employer as HMC&R35 specifically states it does not alter your company status and is a personal tax on the individual. You will still be employed by your own company. The only difference is you will not be paying the same tax and NI as an employee of your disguised employer. What employee also pays employers NI on their earnings?

Dawn Primarolo has stated it will be relatively easy for an individual to assess their status and if in doubt there are facilities to submit your contract to IR 35 status inspectors. Anyone who has looked at the HMC&R employment status manuals will know they are far from simple and any decision by a status inspector will be far from objective. Indeed there is a specific instance of one contract receiving two assessments from the HMC&R, one passed and one failed. This evidence was presented and accepted by the HMC&R in court at the Judicial Review.

To make matters worse no business has received any communication from the HMC&R to explain the new legislation. It has been almost exclusively publicised on the HMC&R web site. The result is the IT contract companies who use the web all the time, quickly became aware of the new laws and mounted a very vocal opposition to it. The British Press perpetuated the myth that only IT were affected, as, in the main, did MP's, but every day more people who work through personal services companies find out they too could be caught.

If you supply your expertise to your clients are you sure IR 35 will not affect you? If you suspect it might or decide it does not and HMR&C decide otherwise you could be in for a hefty tax bill and penalties some years down the line when HMC&R decides to call.

Detailed official information on IR 35 can be found on HMR&C website

IR 56 – Guidance on Employment Status

This guidance is the same criteria (IR 56) used by HMR&C to establish employment/self-employment status, the same criteria is also used to establish a persons status under the IR 35 Tax Regulations.

This information must be used for guidance only, the final decision on a persons employment status can only be decided by HMR&C office, even then it is not clear cut and one office can give a different ruling to another on the same case.

A company can provide a self-employed person with Training and PPE with out affecting that persons self-employed status, it is in fact considered good practice to treat self-employed contractors as employees for health and safety purposes but it must be remembered this is not a legal requirement and is not enforceable

| | Detail as appropriate | Tick as appropriate | |
|--|-----------------------|---------------------|-----|
| | | E | SE |
| Are there people doing similar duties? <ul style="list-style-type: none"> • If “YES” are they employed or self-employed? • Has a formal Tax Office ruling been given and if so by who? • If “employed”, what are the differences in the terms of engagement? | YES/NO | E | SE |
| Was the individual previously employed by you? <ul style="list-style-type: none"> • If so, when was the change? • What are the differences in the terms of engagement? | | YES | NO |
| Did the individuals claim to be self-employed at the start of the present engagement? | | NO | YES |
| Does he have a Self Employed reference number? <ul style="list-style-type: none"> • If so, what is it? | | NO | YES |
| Does he have an accountant? <ul style="list-style-type: none"> • If so, what is the name and address? | | NO | YES |
| How was the work obtained? | | | |

| | | | |
|--|--------|-----|-----|
| <ul style="list-style-type: none"> • If it was advertised, can I have a copy? If unavailable, what was said in the advertisement? • Was the individual interviewed? • What information was given? | YES/NO | | |
| <p>Is there a written contract, letter of agreement or other correspondence setting out terms and conditions? If so, can I have copies?</p> | YES/NO | | |
| <p>If there is no written contracts or other correspondence covering the engagement what oral agreements were made between the parties?</p> | | | |
| <p>If work is sub-standard, can the individual be told to do it again at his own expense?</p> | | NO | YES |
| <p>Can the individual be moved from job to job if priorities change?</p> | | YES | NO |
| <p>Who decides where the work is done?</p> | | Co | I |
| <p>Who decides what is to be done?</p> | | Co | I |
| <p>Who decides how the work is done?</p> <ul style="list-style-type: none"> • What written instructions or other guidance has been given to the individual? • Has the worker a particular skill or experience which means no-one needs to tell him how to do his work? | | Co | I |
| <p>Who decides when the work is to be done?</p> <ul style="list-style-type: none"> • Are there set hours? • Are there arrangements for meal breaks? | | Co | I |
| <p>What are the arrangements</p> | | YES | No |
| | | YES | NO |

| | | | |
|--|--|------|------|
| <p>regarding holiday pay?</p> <ul style="list-style-type: none"> Do you pay the individual holiday pay? | | YES | YES |
| Do you pay the individual sick pay? | | YES | NO |
| <p>Must the individual do the work himself or can he use a stand-in?</p> <ul style="list-style-type: none"> If stand-ins can be used, was there a specific provision to this effect when the individual commenced? In what circumstances can stand-ins be provided? Who make the decision to engage them? Who recruits them? Who pays them? Have any actually been provided? Is so, under what circumstances? | | SELF | S/IN |
| | | NO | YES |
| | | Co | I |
| | | Co | I |
| | | Co | I |
| | | NO | YES |
| <p>What equipment is necessary to do the job?</p> <p>Who provides it?</p> <p>Who is responsible for the equipments upkeep?</p> | | Co | I |
| | | Co | I |
| Has the individual invested any capital in the business? | | NO | YES |
| Is there any chance that the individual may make a loss on the engagement? | | NO | YES |
| Does the individual have to meet the cost of expenses, for example telephone, office stationary etc? | | NO | YES |
| Does the individual pay for special insurance cover such as public liability? | | NO | YES |
| <p>On what basis is payment calculated, e.g. hourly, weekly, daily, by the piece etc?</p> <ul style="list-style-type: none"> How is it paid? e.g. cash, cheque, etc. | | YES | NO |

| | | | |
|---|--|-----|-----|
| <ul style="list-style-type: none"> • Is overtime paid? • What is the frequency of payment? • Does the individual provide receipts? • Is the individual registered for VAT? | | NO | YES |
| | | NO | YES |
| Is payment made for expenses? | | YES | NO |
| Is a company car provided? | | YES | NO |
| Is the individual eligible to join the company's pension scheme? | | YES | NO |
| Is the company under any obligation to provide or offer further work? | | YES | NO |
| <ul style="list-style-type: none"> • Is the individual under a similar obligation to offer or provide further services? • If so, how is the work/services offered or accepted? • Has work ever been refused by the individual? | | YES | NO |
| | | NO | YES |
| Is there any exclusivity, i.e. can the individual only work for you for the duration of this engagement? | | YES | NO |
| <ul style="list-style-type: none"> • If there are no restrictions, is there any scope for the individual to provide services to others? • Does the individual provide similar services to other concerns? | | NO | YES |
| | | NO | YES |
| Is it clear that work has been provided on a continuous basis? | | YES | NO |
| How does the individual fit in with your company? Who is he answerable to? Is he responsible for the work of others and if so, are they employed or self-employed? | | | |
| Is the work self-contained, i.e. does the individual offer a | | | |

| | | |
|--|------------------------------|-----------------------------------|
| | EMPLOYMENT INDICATORS | SELF-EMPLOYMENT INDICATORS |
|--|------------------------------|-----------------------------------|

| | | | |
|--|---------------|------------|------------|
| specific service or produce a particular item? | | NO | YES |
| Does the individual present himself to customers as a representative of your company? <ul style="list-style-type: none"> • Does he have a business card and if so what is written on it? | | YES | NO |
| Does the company have the right to dismissal? Is the individual entitled to a period of notice? | YES/NO | YES | NO |

| | | |
|-----------------------------|---|--|
| Control | Control by another in the manner in which the work is performed. | No control by another over the manner in which the work is done. |
| Hours of Work | The person for whom the work is done lays down and defined hours of work. | The person performing the work is free to decide when he wishes to work. |
| Place of Work | The person performing the work works in premises owned by the person for whom he performs the work. | The person who performs the work decides where it will be performed. |
| Tools/Equipment | The person for whom the work is being done provides the tools and equipment. | The person performing the work provides his own tools and equipment. |
| Payment | The person for whom work is being done cannot generally withhold payment. | The person for whom the work is done is free to withhold payment until the work is performed as agreed. |
| Reward | The person performing the work does not bear the losses nor keep the profits. | The person performing the work bears the losses and keeps the profits. |
| Delegation of Duties | The person performing the work is restricted from delegating his work to another. | The person performing the work is free to delegate his duties to another. |
| Rectifying Work | The person performing the work does not correct unsatisfactory work in his own time and at his own expense. | The person performing the work corrects unsatisfactory work in his own time and at his own expense. |
| Risk | The person performing the work does not risk his own money in it. | The person performing the work risks his own money in the business. |
| Dismissal | The person for whom the work is done can dismiss. | The person for whom the work is done cannot dismiss the worker or cancel the work once the work is agreed, without compensation. |

SIMPLIFIED CHECKLIST OF STATUS FACTORS

Some of the employment/self-employment indicators used above are stronger than others and therefore with this in mind, we have this simplified “Checklist of Status Factors”, which splits the indicators into “Strong” and “Weak”.

| | Y | N |
|--|--------------------------|--------------------------|
| Strong indicators: | | |
| • Would you allow the worker to provide a substitute if necessary, payment of whom will be his responsibility? | <input type="checkbox"/> | <input type="checkbox"/> |
| • You are not obliged to provide the worker with work e.g. during slow periods? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Can the worker turn down work? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Does the worker also work for other contractors? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Does the worker provide his own tools and equipment which are fundamental to the work being carried out? (Small hand tools would be a weaker indicator)? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Does the worker have to put right any errors or supply replacement materials at his own expense? | <input type="checkbox"/> | <input type="checkbox"/> |
| • No company or employee benefits are provided to the worker including paid holidays, sick pay or redundancy entitlement? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Does the worker provide his own indemnity cover? | <input type="checkbox"/> | <input type="checkbox"/> |
| Weak indicators: | | |
| • Does the contract specify that it is a contract for services? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Is the basis of remuneration a fixed fee for work done rather than a rate per hour or day? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Does the worker have headed notepaper and invoices and bill the company for work regularly done? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Is the worker free to work his own hours? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Does the worker have control over how and where the work is done? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Is it clear to the other company workers that the individual concerned is a contract worker and self-employed? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Can you only terminate the agreement for a serious breach of contract? | <input type="checkbox"/> | <input type="checkbox"/> |

A “Yes” answer is indicative of self-employment while a “No” answer indicates employment.

INSURANCE

Insurance is not a "Get out of jail free" card - if you break the Law your insurance may not cover you. A great deal of Health and Safety Law is Criminal Law and it's impossible to insure against breaking Criminal Law! It is almost certain that your insurance will not be valid if you break any health and safety regulations.

Several trade associations and unions that have offered insurance packages as a member benefit have recently had the insurance withdrawn or rates increased by astronomic amounts, if a trade association or union offers such a package and the insurance was withdrawn then the trade association or union could be held responsible because a contract with members had been breached, this is a situation that is obviously unacceptable. Other organisations (and unions) offer very cheap insurance as a membership benefit but on further investigation it is often found that the insurance offered is only valid when working with members of the same organisation or union, when working only in the UK and when only doing work that is "recognised" but that organisation or union - these are unacceptable terms and restrictions that are almost impossible to comply with - don't be fooled by these cheap options and offers.

We must also remember that members of a trade association or union carry out a diverse range of jobs with various levels of risk and that no overall insurance package (of the type normally provided as a member benefit) will cover most of these situations.

Insurance companies now expect clients to meet minimum statutory health and safety requirements, a trade association or union is not be able to guarantee that members meet the minimum level of compliance to health and safety regulations that insurers will require for an adequate members package.

These days more people are aware of their legal responsibilities and do not want to take risks or be seen as "cowboys", they therefore insist the companies and contractors they use have all the necessary insurance cover - don't be surprised if your turned down for work because you don't have the required insurance cover - "self-employed" crew should take note!

For the "self-employed" having the required insurance demonstrates a standard and a professional dedication to ones business - to not be insured indicates a "cowboy attitude" and a dangerous liability who's dubious services should not be considered.

You are urged to take out Public/Employers Liability insurance with insurers who are conversant with our industry and offer bespoke insurance packages.

The companies listed below offer bespoke insurance. Clients are advised to declare all types of work to be carried out to the insurers, failure to declare may result in the invalidation of the insurance. For "self-employed" crew it is vital to ascertain if the insurance meets all your requirements, ask simple questions like: Am I covered for loss or damage to my clients equipment? Am I covered for work at height? What countries does this insurance cover me in? Am I covered for electrical work? Am I covered for driving?

Self-employed (Freelance) operators who either instruct or supervise other crew take on responsibility for the way their crew operates. If one of the crew you are supervising or instructing suffers an injury, it is then possible for them to sue you for damages even though you do not pay or employ them. Tour, Stage, Production Managers and Crew Chiefs should make a special note of this advice and make sure you are covered when working with foreign crew or crew in other territories. With the Employers Liability Cover, you will have legal representation for your defence and payment of damages, if they are awarded against you.

Those who use the services of contractors (including self-employed contractors often referred to as Freelancers) should ensure that the contractors you use hold the same level of insurance as your company, for example, if a rental company has £10,000,000 Public Liability Insurance then the company should ensure that it's contractors (including Freelancers) also hold £10,000,000 Public Liability Insurance. This is normally a requirement of the "Bonifide Contractors" clause of your insurance policy, failure to ensure contractors (including Freelancers) have the required level of insurance (or even worse, no insurance) will almost certainly invalidate your insurance in the event of a claim.

The cost of Public/Employers Liability Insurance has substantially increased in the past few years and further rises are expected. There are several reasons for this including uncertainty and a lack of understanding of our industry by insurance underwriters, the September 11th. disaster, an increase in the number of huge insurance claims, the number of individuals and organisations who do not meet minimum statutory health and safety regulations, the proliferation of no win – no fee legal schemes as advertised on TV and changes to health and safety legislation particularly in the area of asbestos disposal. Insurance companies have reacted by increasing premiums and by checking on health and safety competencies of clients.

There are numerous other types of insurance that are all relevant, for the self-employed working abroad then medical and repatriation insurance is essential in case of illness. The self-employed will also find unemployment and disability insurance a great comfort, and what would you do if you lost or had stolen your work tools and equipment? Are they insured?

- If you drive or use your car for work, are you insured for driving at work or using your vehicle?

- If you give professional advice and information do you have Professional Indemnity Insurance?
- If you manufacture or supply products are you covered for those products?
- Some insurance is required by law - some by prudence.

With all the other expenses involved in setting up a business, it's tempting to have the minimum insurance required by law - insurance against risks to third parties. However, it makes sense to get adequate insurance to avoid the risk of losing it all.

Business insurance is usually divided into three fields:

- Liabilities
- Property and buildings
- Business assets and equipment (contents cover) .

Employers' Liability

Once one employee is taken on it is required by law that the company takes out Employers Liability Insurance. The prescribed legal minimum is currently [2008] £10m of cover against bodily injury, illness or disease sustained in the course of employment. It is a legal requirement to display (in a prominent position so all employees can see it) a copy of the current Employers Liability Insurance certificate.

Public Liability

Definition: Legal liability to pay damages consequent upon bodily injury, illness or disease contracted by any other person, other than employees, or loss of or damage to their property caused by the insured. Limit of Indemnity is the maximum amount the insurance company will pay in the event of a claim being made. The limits are usually up to £5m but when working for another company, cover of £10m or more can be demanded.

Product Liability

Product Liability is your legal liability to pay damages consequent upon a defective product being used in the contract. Products liability insurance is a little more specialist. Businesses that supply products to other businesses or the public, from software to machine tools, are at risk if a faulty product causes damage or injury. Manufacturers of a product are usually at risk if things go wrong, but the liability can fall on a supplier if the maker of the product goes bust.

Professional Indemnity

Unfortunately, we live in litigious times. Businesses can be sued, rightly or wrongly, for vast damages over a range of complaints. Professional indemnity provides protection against any action by clients who believe they received bad or negligent services, and incurred a loss as a result. Most professional bodies have professional indemnity cover - in some cases it is compulsory. Anyone who supplies advice or services such as consultancy should consider professional indemnity.

Key Man Cover

Small firms depend heavily on a small number of key people. This cover cannot replace someone, but it can provide short-term financial help to reduce the impact.

Business Interruption

Even minor damage to your property could seriously disrupt your business leading to loss of income and extra expenses. Business interruption insurance will compensate for the short-fall in gross profit together with paying any increased working costs and extra accountants' fees incurred.

Goods in Transit

Goods in transit insurance covers goods against loss or damage while in your vehicle or when sent by carrier.

Property and Buildings

Buildings and contents can be insured against fire, lightning, explosion of gas and boilers used for domestic purposes without the addition of special perils such as explosion, riot, malicious damage, storm, flood, impact by aircraft, road and rail vehicles, escape of water from tanks or pipes and sprinkler leakage. 'All risks' insurance gives wider cover including any accidental damage or loss not specifically excluded.

However 'all risks' will not cover wear and tear, electrical or mechanical breakdown and gradual deterioration which will be specifically stated in the policy document.

The business premises should be insured for their full rebuilding cost (including professional fees and the cost of site clearance) and not just for their market value. You may need expert advice to calculate the rebuilding cost, which often differs significantly from market value.

Business assets and equipment (contents cover)

Your stock should be insured for its cost price without profit. Plant and business equipment can be insured on either a 'replacement as new' or an 'indemnity' basis. If indemnity is chosen, wear and tear will be taken into account when settling any claims.

Engineering insurance provides cover against electrical or mechanical breakdown for most machinery, including computers. By law, many items of plant such as rigging and lifting machinery must be inspected regularly by a qualified person. Insurers can arrange to provide this service.

Contents are usually covered against theft providing there has been forcible and violent entry to or exit from the premises. Damage to the building resulting from theft or attempted theft will also normally be covered. Theft by employees is usually not covered – cover against employee dishonesty can be arranged by a separate policy.

Money insurance is on an 'all risks' basis and covers cash, cheques, postage stamps and certain other negotiable documents. Different limits will apply to money on the premises in and out of business hours, in safes, at the homes of directors or employees and in transit. There may be requirements in the policy relating to safe keys and the method of transit. Personal assault cover may be included, which will provide compensation for you or your employees following injury during theft or attempted theft of money.

References:

EMPLOYERS LIABILITY (COMPULSORY) INSURANCE ACT 1989 - A GUIDE FOR EMPLOYEES

EMPLOYERS LIABILITY (COMPULSORY) INSURANCE ACT 1989 - A GUIDE FOR EMPLOYERS

Please contact your insurance company or broker for up to date information relevant to your particular situation.

TAX REGULATION - SECTION 660

What is Section 660 (s660a)?

Section 660 is also called the "married couples business tax." It mainly impacts on individuals operating their own service company (self-employed /freelancer). The term has caused a great deal of controversy and media attention as people have been caught with tax-bills dating back several years.

It has been suggested that half a million family businesses in the UK may face the tax. For decades businesses have reduced their tax bills by transferring profits, normally in the form of dividends, from earner to partner who is in the lower tax zone. Many people have received letters asking them to pay back money owed from years ago. The Inland Revenue have hit many different companies, not only service companies. The Times has reported that TV stars and celebrities could be caught.

There are over 3.5 million 'small business' in the UK. It is suggested that around 70 per cent of UK businesses are run by people related either by blood or marriage.

It is a difficult issue for taxpayers as they have no way to calculate whether they are liable under 660, or how large that bill could be. As a rough estimation you could be at risk from Section 660 if:

- Your spouse owns ordinary shares in your company.
- Share profits with / pay dividends to any relatives, spouses or close partners who doesn't play an active role in the business.
- You pay dividends
- The amounts of money you and your spouse bring in to the company are not in proportion to the number of shares you own.

For many, the risk and uncertainty of Section 660 on top of IR 35 and other regulatory issues (not to mention the low rewards) is the final straw with some people choosing to close down businesses (particularly service company business) and look for a more secure trading vehicle.

TRAINING

The Health and Safety at Work etc Act 1974 requires all employers to provide whatever information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of their employees.

This is expanded by the Management of Health and Safety at Work Regulations 1999, which identify situations where health and safety training is particularly important, eg when people start work, on exposure to new or increased risks and where existing skills may have become rusty or need updating.

Employers must provide training during working hours and not at the expense of their employees. Special arrangements may be needed for part-timers or shift workers.

Employers need to assess the risks to their employees while they are at work and to any other people who may be affected by the way you conduct their business. This is so that you can identify the measures you need to take to comply with health and safety law, which includes training and the provision of information.

Many employers may not be in a position to provide this training on their own, in which case you will need competent help. If at all possible, you should appoint one or more of your employees. However, if there is no one with the relevant knowledge, experience and skills in your organisation who can be relied on to deal effectively with health and safety training, you need to enlist someone who has from outside. In some circumstances you may need a combination of internal and external help.

As we have already seen, the self-employed have the same duties as employers as well as employees because they employ themselves, they are therefore required to provide their own training at their own expense, after all, would you engage a plumber to fix your central heating who expected you to send them on a training course so they could learn their trade? All costs spent on training by the self-employed are Tax deductible but as we have already mentioned this all gets rather confusing as the HSE consider it good practice for employers to issue PPE and provide training to self-employed contractors but this is not a legal requirement and they may insist the self-employed provide these items themselves.

A business that provides training to its employees can recoup the cost of the training from an employee if the employee leaves the business within an agreed time (say 12 months) provided that is clearly stated and agreed in the Contract of employment.

A business or organisation that uses the services of contractors (including the self-employed) has a legal duty to ensure that the contractors they appoint are “competent” and that they can demonstrate their competence, this is usually by qualifications and proven training.

The benefits of training.

- Training is a requirement of most safety legislation, HASAWA, MHASAW, PUWER, LOLER, PPE and Manual Handling Regulations etc.
- Training is a means of achieving COMPETENCE
Converting information into safe working practices contributing to a SAFETY CULTURE in the workplace.
- A means of increasing SAFETY and PRODUCTIVITY
- A properly trained and qualified person is likely to find more work and receive better pay.
- Eventually it is hoped that insurance costs can be reduced for trained and qualified persons.

Induction

Perhaps not really training but still essential.

On arrival at every site, venue or premises you should be issued with your passes and receive a brief induction, this should consist of informing you of:

- Where to park, on site vehicle routes and vehicle movement restrictions
- The need to use dipped head lights or a warning beacon on your vehicle (never use hazard warning lights on a moving vehicle).
- The position of welfare facilities such as toilets, drinking water, washing facilities and catering or crew rooms.
- The location of first aid equipment and first aiders
- How to raise the alarm in an emergency.
- The position of exit doors and exit routes
- The position of the Emergency Assembly Point
- The location of fire safety and fire fighting equipment
- Where and to report accidents (Accident Book and RIDDOR)
- Any other required information

ACCREDITED TRAINING PROVIDERS

YOU ARE ADVISED NOT TO ACCEPT TRAINING THAT IS NOT NATIONALLY ACCREDITED AND CERTIFIED BY ONE OF THE ORGANISATIONS LISTED BELOW

It is important to note that your Public/Employers Liability Insurance may not be valid for certain types of work unless you/your employees hold the relevant certification or qualification.

Safety Passports

One of the best and simplest methods to gain basic health and safety training is via the Safety Passport scheme run a number of training providers (including Stagesafe) for the Production Services Association. Tel: 07831 437062

A health and safety passport is similar to any other passport, it allows the holder access to passport – controlled work environments. They are designed to be used by clients seeking assurance on levels of contractor's health and safety awareness. Like induction training, safety-training passports offer basic, practical health and safety training tailored to suit the industry. Successful trainees are usually issued with a credit card size I.D. card that is secure and easily verified from a central database.

We predict that within the next few years Safety Passports will be compulsory before you can work with many services companies in fact several of the largest sound and lighting companies are already insisting their staff and sub contractors (free lancers) hold a Safety Passport, this is extending still further with venues and promoters across the country making it a condition before you can work on their premises.

Safety Passport Benefits.

- Safety Passports are a very simple way for workers (including the self-employed) who move from one contract or company to another to show employers they have received basic training.
- Safety Passports save time and money because workers need less induction training.
- They reduce accidents and ill health at work.
- They can have significant impact in reducing pollution incidents, minimising waste and contribution to a cleaner environment for everyone.
- Companies know that workers have been trained to a common, recognised and validated standard.
- They show a company's commitment to having safe and healthy workers.

- They help promote good practice in the supply chain between contractors and companies.
 - Insurance and liability premiums may be reduced if a company can show that all workers have basic health and safety training
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Fork Lift and Mobile Elevating Work Platform (MEWP) Operator Training

Information on fork-lift truck operator training can be obtained from the following bodies who are recognised by the Health and Safety Commission as competent to accredit and monitor lift truck training providers:

- Construction Skills (formally the Construction Industry Training Board) Tel: 01485 577577
- LANTRA National Training Organisation Tel: 0845 707 8007
- The Independent Training Standards Scheme and Register (ITSSAR) is the administrative arm of the Association of Industrial Truck Trainers training accreditation scheme. Tel: 01530 277857
- National Plant Operators Registration Scheme Tel: 01606 49909
- Road Traffic Industry Training Board Tel: 01952 520200

CPCS (Construction Plant Certification Scheme) Cards issued by one of the above organisations are perfectly acceptable.

The above organisations can often provide accredited training in most other items of plant including MEWPS and Hydraulic Lorry Loaders (HIABS). Construction Skills can also provide training in plumbing, scaffolding and carpentry etc.

IPAF (International Powered Access Federation) are the specialists in MEWPS (Mobile Elevating Work Platforms such as "Cherry Pickers" and Scissor Platforms), they have numerous approved training centres around the country offering training that is recognised by Construction Skills and the HSE.

- IPAF
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Lorry Loader (Hi-Ab) Training

Organisations such as Construction Skills offer Lorry Loader or Hi Ab training and certification but the specialist trade association and training body is the Association of Lorry Loaders and Manufacturers and Importers who operate ALLMI Training Ltd. and the Lorry Loader Training Accreditation Service.

- ALLMI Training Tel: 01249 659150

WARNING! The HSE is alerting users of powered access equipment and lift trucks to be on their guard against bogus trainers and worthless certification.

The move follows a warning about spurious training certification and plant operators' certificates. It is believed that a number of unscrupulous training centres are continuing to offer what they claim to be a nationally recognised certificate, knowing full well that, while the instructor is qualified to the required standard, the resulting certification is not. The HSE is reminding companies hiring powered access equipment and lift trucks that the Provision and Use of Work Equipment Regulations 1998 require the employer to ensure that equipment is operated only by people who are trained to operate it safely, and the only way that the standard of training can be guaranteed is when it is accredited via a nationally recognised training scheme.

Aluminium Access Tower Training

- PASMA (The Prefabricated Access and Manufactures Association) have produced a Code of Practice and approved training in the use of alloy access towers, they also have approved training centres around the country.
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Tallescope Training

- www.tallescope.co.uk – Aluminium Access Products offer approved training in the use of Tallescopes.
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Ladder Training

- The Ladder Association (formally the British Ladder Manufactures Association). Offer ladder training at a number of approved training centres around the UK.
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First-aid Training

STAGESAFE provide training for First Aid at Work and Emergency First Aid, these are the only qualifications set and recognised by the HSE

- Stagesafe Tel: 01458 445186

The two first aid qualifications for use at work and that have been accredited by the Health and Safety Executive are the basic "EMERGENCY FIRST AID AT WORK" and the full "FIRST AID AT WORK" certificates, both of these qualifications require refresher courses after three years.

Fire Safety Training

Stagesafe offer courses for Fire Wardens as well as basic fire safety training.

- Stagesafe Tel: 01458 445186
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Event Stewarding and Crowd Safety Training

The national qualification awarding bodies NCFE, City & Guilds (NVQ) and the Security Industry Training Organisation (SITO) both accredit courses and award qualifications in event stewarding. These qualifications are also approved by the British Standard Code of Practice for Crowd Management Companies.

The International Centre for Crowd Management and Security Studies at Bucks New University offers a range of training and qualifications including SIA training, those listed above and the following:

- SIA Close Protection License Qualification
- Pit Safety Training
- Crowd Safety Control Room Training
- Crowd Ingress and Egress Control
- Pedestrian and Vehicle Control
- Introduction to Crowd Safety Supervision

Contact these organisations for further details.

- UK Crowd Management Association
 - Security Industry Training Organisation
 - NCFE
 - Centre for Crowd Management and Security Studies
 - SIA: Security Industry Authority
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Electrician Training

The recognised qualification for an electrician is City & Guilds 2360 - this qualification is in two parts that is offered by many local colleges. An optional part to the qualification (Part C) is based on "competence".

City & Guilds also offer a Level 1-2 vocational qualification for Entertainment and Theatre Electricians (C&G 1810) and various other electrical qualifications that are of interest to those working in the production industry.

City & Guilds of London Institute

- City and Guilds Tel: 020 7294 2800
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Rigging

PLASA now operate the National Rigging Certificate scheme, this is in fact an assessment scheme rather than a training course, candidates acquire their training by experience and/or by attending commercially run courses and then they can be assessed, there are four levels of assessment. Candidates are required to keep a log book detailing all the work they carry out.

- PLASA : The Professional Lighting and Sound Association Tel: 01323 410335
 - Total Solutions Group – TEL: 0121 772 5234
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Rope Access and Work at Height Training

The National Access and Rescue Centre (NARC) and the Industrial Rope Access Trade Association (IRATA) both offer training courses in rope access and work at height. HSE Inspectors receive their training on Work at Height at the NARC.

- IRATA: Industrial Rope Access Trade Association
 - NARC: National Access and Rescue Centre
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Firework & Pyrotechnic Training

For details of available training contact the British Pyrotechnists Association and Firework Makers Guild (BPA), the Explosives Industry Group (EIG) or the Association of Stage Pyrotechnicians.

- BPA: British Pyrotechnicists Association Tel: 01480 861 975
 - EIG: Explosives Industry Group Tel: 0207 395 8063
 - Association of Stage Pyrotechnicians
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Laser Training

For advice on training with Lasers contact the Entertainment Laser Association (ELA).

- ELA: Entertainment Laser Association Tel: 01291 630 989
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Food Safety & Hygiene Training

Of prime interest to the catering sector, the Chartered Institute of Environmental Health (CIEH) and the Royal Institute of Public Health (RIHP) both offer training and qualifications in food safety and hygiene, a Basic Food Hygiene Certificate is essential for all caterers and food handlers.

- CIEH: Chartered Institute of Environmental Health Tel: 020 792 86006
 - RIHP: Royal Institute of Public Health Tel: 020 7580 2731
 - NCASS: Nationwide Caterers Association Tel: 0121 603 2524 (formally MOCA) also offer training to caterers, mobile and static caterers are advised to join NCASS.
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Computer Skills

A Government backed campaign introduces a skills passport for computer users, known as an e-skills Passport.

e-skills Passport is provided by e-skills UK, the UK's Sector Skills Council for the IT, Telecoms and Contact Centres Sectors.

An e-skills Passport gives a unique profile of the holders IT user skills. It will allow the holder and employers to gain a better understanding of what skills are held, and identify areas which may need further training and development.

The e-skills Passport was developed in conjunction with major UK employers. It is nationally recognised by both employers and training providers and is an ongoing assessment of the holders skills, so it can be kept completely up-to-date.

e-skills UK aims to make e-skills Passport a valuable service that provides the holder the ability to self-assess and improve their e-skills.

Because the e-skills Passport is completely web-based, it can be accessed from any computer with an internet connection.

e-Skillspassport Tel: 0800 028 2952