

# CENTRAL BEDFORDSHIRE COUCIL

## MANAGEMENT GUIDELINES

### EMPLOYMENT OF INDIVIDUALS CLAIMING SELF EMPLOYED STATUS

Departments engage individuals who claim self employed status. It is important to establish whether or not an individual is an employee for the following reasons:

- Individuals' rights under statute, such as those relating to dismissal, redundancy and maternity rights, only apply to “employees”
- Pay procedures and calculations depend on the status of an individual (employed or self employed). Incorrect determination may result in the County Council and thus the Department or Establishment incurring large Income Tax and National Insurance bills.
- Employers may be held liable for the civil wrongs of their employees.
- Certain common law rights, duties and obligations only apply between employers and employees.

The key to deciding whether or not an individual is an employee is to ascertain whether a “master/servant” relationship exists. An employee is defined by statute as “an individual who has entered into or works under a Contract of Employment”. The common law also uses this definition but refers to it as a “Contract of Service”. This is in direct contrast to a self employed person who works under a “Contract for Services” and is, therefore, regarded as an independent contractor rather than an employee.

It is also possible that an “accredited” self employed person can carry out work that HM Revenue & Customs decides is employment, even though for the majority of their working life they are clearly self employed.

### HM REVENUE & CUSTOMS GUIDANCE

Further guidance is provided in HM Revenue & Customs leaflet CA26 “National Insurance contributions for examiners, moderators and invigilators, lecturers, teachers and instructors' and leaflet IR56 “Employed or Self Employed?”. The latter leaflet gives two lists of questions to be answered by the individual claiming self employment. Answering predominantly “yes” to the questions on one list means that they are probably employees, and answering predominantly “yes” to those on the other list means that they are probably self employed. The questions are as follows:

<b>“Yes” employment</b>	<b>answers</b>	<b>indicate</b>	<b>“Yes” employment</b>	<b>answers</b>	<b>indicate</b>	<b>self</b>
	<ul style="list-style-type: none"> <li>• Do you have to do the work that you have agreed to undertake yourself (that is, you are not allowed to send a substitute or hire other people to do it)?</li> <li>• Can someone tell you what to do, when to do it and how to do it?</li> <li>• Does someone provide you with holiday pay, sick pay or a pension? (although a lot of employees do</li> </ul>			<ul style="list-style-type: none"> <li>• Are you ultimately responsible for how the business is run? Do you risk your own capital in the business? Are you responsible for bearing losses as well as taking profits?</li> <li>• Do you yourself control what you do, whether you do it, how you do it, and when and where you do it? (although many employees have</li> </ul>		

not get any of these)

- Are you paid so much an hour, a week or a month? Can you get overtime pay? (although many employees are paid by commission or on a piece work basis)
- Are you expected to work set hours, or a given number of hours a week or month?
- Do you work wholly or mainly for one business? (but remember that many employees work for more than one employer)
- Are you expected to work at the premises of the person you are working for, or at a place or places they decide? (but remember that a self employed person such as a plumber may, by the nature of the job, have to work at the premises of the person who engages him or her)

considerable independence)

- Do you provide the major items of equipment you need to do your job? (not just the small tools which many employees provide for themselves)
- Are you free to hire other people, on terms of your own choice, to do the work that you have agreed to undertake? (but remember that an employee may also be authorised to delegate work or to engage others on behalf of his or her employer)
- Do you have to correct unsatisfactory work in your own time and at your own expense?

HM Revenue & Customs have issued specific guidance to Central Bedfordshire Council on the subject of the engagement of lecturers. Their view is that if the curriculum is issued and a course is offered by the Council, and a lecturer is engaged to teach on it, it would be very unusual for such a person to be regarded as self employed.

#### CENTRAL BEDFORDSHIRE COUNCIL POLICY

The decision as to whether someone is employed or self employed is often a difficult one, and mistakes can be very costly.

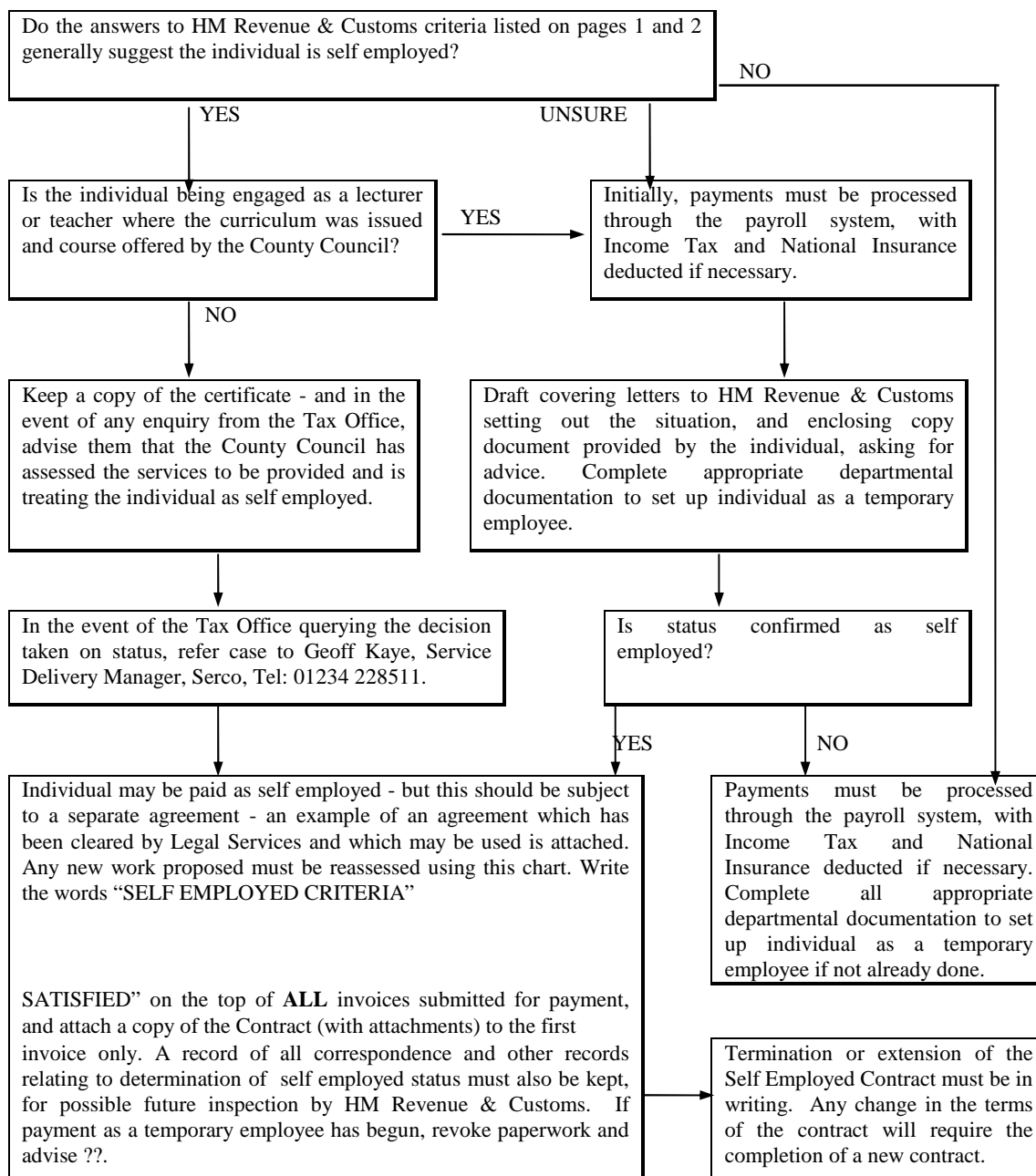
Departments and Establishments **must**, therefore, adhere to the procedure set out in the Appendix to assess the employment status of a worker. This has been agreed with HM Revenue & Customs at Bedford and any deviation from it could result in the Department or Establishment incurring the Income Tax liability of the individual and the National Insurance liability of both the individual and the County Council. In addition, there could be wider ranging pay and employment law consequences if the individual is subsequently found to be an employee.

If Departments or Establishments have any doubt at all after following the procedure set out in the Appendix, they should ensure that the individual is set up on the payroll by completing all necessary starter documentation e.g. appointment form, bank details etc., pending receipt of such evidence that conclusively confirms that the individual is self employed. Should departments or Establishments have any queries regarding the guidance as set out, they should contact Geoff Kaye, Service Delivery Manager, Serco, Tel: 01234 228511 for a decision **before** the individual commences work.

## Self Employed Decision Chart and Contract

In normal circumstances self employed individuals will have Schedule D tax reference. However, possible due to timing of engagement, or due to the fact that individuals are assessed under other arrangements, they may not possess a Schedule D tax reference. The following decision chart should be used to determine the appropriate action in relation to the engagement of individuals.

↓ **START**



\* Tax Office address is Bedford 1 Tax Office, Chailey House, Cardington Road, Bedford MK42 OYS  
If you have any doubts about the decision that this chart has lead you to, please contact Geoff Kaye, Service Delivery Manager, Serco, Tel; 01234 228511 before engaging the person.

**To: Central Bedfordshire Council, \_\_\_\_\_ School/Establishment**

### **SELF EMPLOYED STATUS CERTIFICATE**

I confirm that, having answered the questions set out on pages 1 and 2 of the Central Bedfordshire Council guidance, I consider myself self employed for the services that I am performing for Central Bedfordshire Council.

My tax office is: \_\_\_\_\_ (district)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

and my Tax reference number is: \_\_\_\_\_ (if known and appropriate)

I authorise you to confirm this information with my Tax Office.

I understand that it is my responsibility to declare all earnings for taxation purposes in accordance with statutory provisions.

Signed:

Name:

Address:

Date:

**For Office use:**

Self employment notified:

Date of letter of notification: \_\_\_\_\_ Reference: \_\_\_\_\_ (Copy of letter to the HM Revenue & Customs to be attached to and filed with this certificate).

**To: Central Bedfordshire Council, \_\_\_\_\_ School/Establishment**

### **EMPLOYER CONFIRMATION OF SELF EMPLOYED STATUS**

This side of the form must be completed by the line manager within the Central Bedfordshire Council who has responsibility for commissioning the individual to undertake work for the Council

I confirm that I have asked the questions listed below of the individual and considered them myself in light of the circumstances of this engagement. The answers to the questions indicated that the engagement of this individual is on a self employed basis.

Name of Individual Engaged \_\_\_\_\_

Certification by Line Manager: \_\_\_\_\_

#### **“Yes” answers indicate employment**

- Do you have to do the work that you have agreed to undertake yourself (that is, you are not allowed to send a substitute or hire other people to do it)?
- Can someone tell you what to do, when to do it and how to do it?
- Does someone provide you with holiday pay, sick pay or a pension? (although a lot of employees do not get any of these)
- Are you paid so much an hour, a week or a month? Can you get overtime pay? (although many employees are paid by commission or on a piece work basis)
- Are you expected to work set hours, or a given number of hours a week or month?
- Do you work wholly or mainly for one business? (but remember that many employees work for more than one employer)
- Are you expected to work at the premises of the person you are working for, or at a place or places they decide? (but remember that a self employed person such as a plumber may, by the nature of the job, have to work at the premises of the person who engages him or her)

#### **“Yes” answers indicate self employment**

- Are you ultimately responsible for how the business is run? Do you risk your own capital in the business? Are you responsible for bearing losses as well as taking profits?
- Do you yourself control what you do, whether you do it, how you do it, and when and where you do it? (although many employees have considerable independence)
- Do you provide the major items of equipment you need to do your job? (not just the small tools which many employees provide for themselves)
- Are you free to hire other people, on terms of your own choice, to do the work that you have agreed to undertake? (but remember that an employee may also be authorised to delegate work or to engage others on behalf of his or her employer)
- Do you have to correct unsatisfactory work in your own time and at your own expense?

## CENTRAL BEDFORDSHIRE COUNCIL AGREEMENT

### *APPOINTMENT OF SELF EMPLOYED CONTRACTOR*

**THIS AGREEMENT** is made the                      day of                      in the year 199

#### **BETWEEN:**

Central Bedfordshire Council,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Department/Establishment details)

referred to in the rest of this document as “The Council”

and

\_\_\_\_\_  
—

referred to in the rest of this document as “The Contractor”, and the person whose name and address are set out in the Schedule, annexed to this document.

#### **WHEREBY IT IS AGREED** as follows:

##### **1. Definitions**

In this agreement:

“Council” means the Department/ Establishment of Central Bedfordshire Council referred to above.

“Contractor” is the person named above and in the annexed Schedule.

Masculine gender includes the feminine and singular includes the plural.

This agreement is complete and operative only when the Schedule entitled “The Contractor” and a Self Employed Status Certificate are completed and annexed to it.

##### **2. Appointment**

The Council hereby offers to the Contractor an assignment and the Contractor shall advise the Council whether or not he accepts that assignment. The terms of the assignment are specified in the Schedule annexed to this agreement and any subsequent assignment(s)

##### **3. Power and duties**

The Contractor shall for this assignment:

3.1 use his own knowledge and initiative to perform the duties under the assignment in a proper and efficient manner;

3.2 perform such additional duties as may be required to complete satisfactorily performance of the assignment including without prejudice to the generality of the foregoing at his own cost and in his own time correcting any unsatisfactory performance;

3.3 comply with all reasonable directions from time to time given to him by the Council’s representative as detailed in the Schedule;

3.4 maintain the highest standards of professional conduct in keeping with the reputation of Central Bedfordshire Council

##### **4. Fees**

The Contractor shall be paid fees for his services at the rate and frequency set out in the Schedule. These fees will be paid in arrears, together with VAT where appropriate, upon presentation of a suitable invoice. The invoice must set out the days and hours worked, rounded to the nearest half hour, and an analysis of work done or services provided in such detail as shall be requested by the Council. The invoice must be rendered within 10 working days of the end of each charging period of the assignment.

The Contractor hereby confirms that he is subject to Schedule D assessment for Income Tax purposes (as detailed in the Self Employed Status Certificate annexed to this agreement) and is accepted by HM Revenue & Customs as self-employed. He accepts full liability for the payment of any sums due in respect of Income Tax, National Insurance or any other relevant taxes arising out of payments made to him under this agreement.

If the Schedule so states, the Contractor shall be entitled to receive expenses on the basis set out in the Schedule and shall provide full details and VAT receipts (where applicable) to support any expenses claimed.

undertaken by the Contractor will require the termination of this agreement and the signing of a new one.

## **5. Secrecy**

The Contractor shall *never* reveal, disclose, publish or use for any purposes other than those of the Council, confidential information that he may acquire in relation to the business or affairs of the Council, unless the Council gives written authority.

## **6. Termination**

Either the Council or the Contractor may terminate this agreement at any time after it is signed, by giving to the other the minimum notice set out in the Schedule.

If the Contractor:

6.1 is or becomes incapacitated from any cause whatsoever from efficiently performing his duties hereunder for three consecutive weeks or fifteen working days in aggregate during the term of this assignment, or

6.2 is or becomes of unsound mind or is or becomes a patient for any purpose of any statute relating to mental health, or

6.3 is or becomes bankrupt or compounds with his creditors or, in the case of a limited company, goes into liquidation, or

6.4 is or becomes prohibited by law from holding any office or post for which he is or has represented himself as being qualified, or

6.5 is or becomes guilty of misconduct or commits any serious or persistent breach of any of his obligations to the Council (whether under this agreement or otherwise) or refuses or neglects to comply with any relevant instructions or requirements consistent with the terms of this agreement, or

6.6 is convicted of any criminal offence (other than under the Road Traffic Acts), or

6.7 shall have offered, or given, or agreed to give any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of the Contract, or any other Contract with the Council, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract, or any other Contract with the Council, or if the like acts shall have been done by any person employed by the Contractor, or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor), or if in relation to the Contract, or any other contract with the Council, the Contractor or any person employed by the Contractor

Contractor's behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any officer of the Council, which shall have been exacted or accepted by such officer by virtue of his/her office or employment and is otherwise than such officer's proper remuneration,

the Council shall have the right to notify the immediate (without notice) termination of this agreement in writing to the Contractor, subject to the payment of invoices for work done up to such termination. In this event, the Contractor will have no claim against the Council for damages, redress or compensation. If the Council delays or exercises forbearance in exercising this right of determination, it shall not mean the right is waived.

## **7. Notices**

Any notice in writing to be served hereunder may be given personally to the Contractor or the Council's representative specified in the Schedule. Alternatively, it may be posted to the Council's address specified at the beginning of this agreement or to the Contractor's address specified in the Schedule. Any such notice by post shall be deemed served 48 hours after it is posted; in proving such service it shall be sufficient to prove that the notice was properly addressed and posted.

## **8. Governing Law**

This agreement shall be construed under English law. The Council and Contractor submit to the non-exclusive jurisdiction of the English Courts.

**AS WITNESS** the hands of the parties hereto or their duly authorised representatives, on the date at the top of the agreement

**SIGNED by:**  
**(for and on behalf of the Council)**

**in the presence of:**

**SIGNED by:**  
**(the Contractor)**

**in the presence of:**

## **SCHEDULE**

THE CONTRACTOR :

ADDRESS :

BANK DETAILS (for mandatory payment by BACS):

Name of Bank :

Address of Branch :

Bank sort code :

Account Name :

Account Number :

SPECIFICATION OF WORK :

CLIENT'S  
REPRESENTATIVE/CONTACT:

Name :

Telephone number :

NORMAL DAYS PER WEEK :

NORMAL HOURS PER WEEK :

MAXIMUM HOURS PER WEEK :

HOURLY RATE :

INVOICING FREQUENCY :

CONTRACT PERIOD:

Commencement date :

Duration :

Anticipated End Date :

EXPENSES :

MINIMUM NOTICE :

**SIGNED by:**  
**(for and on behalf**  
**of the Client)**

**SIGNED by:**  
**(the Contractor)**