



FCSA Code of Compliance

Self-Employed/CIS Contractor Provider Questions

FCSA is dedicated to raising standards and promoting supply chain compliance for the temporary labour market. A key way we do that is to publish our Charter and Codes. We do this so that all industry stakeholders and, importantly, all the workers who use our Members' services can be assured that FCSA Members are fully compliant with the laws and regulations surrounding employment rights, personal taxation and corporate compliance with the off-payroll rules. All FCSA Members undertake to abide by our Charter and Codes as a condition of their membership and are contractually obliged to maintain these high standards throughout their membership.

Our Codes, which sometimes go above and beyond what is lawfully required, are formulated by FCSA working closely with independent experts in these areas and changes are reviewed prior to publication by a wide variety of industry stakeholders and official bodies. The Codes cover complex issues and that is why our they are constantly under review and are updated as often as is required to keep them relevant and reflective of not only the regulations but also industry best practice. We believe our Codes set the highest standards of compliance and are industry-leading in their comprehensive scope. Members are assessed against FCSA's Codes not by in-house staff or inexperienced evaluators but by a panel of fully independent and nationally renowned professional services firms, lawyers and accountants, with an authoritative level of expertise in these specialist areas. This assessment for FCSA accreditation is rigorous and stringent and, as a result, it is recognised as the industry's compliance gold standard.

I'd like to thank you for taking the time to read our Charter and Codes.



Chris Bryce

**Chief Executive
Freelancer & Contractor Services Association Ltd**

SECTION A

Ensuring the Contractor understands the risks and responsibilities of being a self-employment/CIS worker is equally as important as the tests undertaken to confirm that they are genuinely outside of supervision, direction and control factors. The following sections covers FCSA's expectations for both of these areas when onboarding a self-employed/CIS worker.



Deborah Murphy
Head of Operations, FCSA

SECTION A: TAKE ON PROCEDURES

A1.

In your introduction letter/email do you state that the worker:

- a. Should consider paying an estimated amount towards their likely income tax and national insurance on a monthly basis, or at least be putting aside sufficient cash to meet their tax liabilities when they fall due (the financial illustration);
- b. Is a Self-Employed worker with responsibilities to pay taxes as a self-employed worker and that they have no Employee/Worker statutory rights;
- c. Will be required to enter into a Self-Employed contract; and
- d. Has a responsibility to notify the service provider immediately of any changes in their status.

FCSA require the introduction letter/email sent to the worker cross referencing the above.

FCSA require a copy of your standard Self-Employed worker contract.

A2.

A financial illustration is optional but must be provided when requested and must comply with the following requirements. Your financial illustration:

- a. Clearly states that it is only an estimate;
- b. Clearly sets out the assumptions used in calculating the financial illustration and that these assumptions are reasonable and, wherever possible based on information provided by the worker;
- c. Clearly shows your company margin.
- d. Provides an indication of what the potential tax liability will be

FCSA require a copy of a financial illustration that you provide to a potential Self-Employed subcontractor cross referencing the above.

A3.

At the take on stage, when considering the worker's suitability to a particular way of working, do you consider and discuss with them the following relevant factors:

- a. Whether the worker is new to self-employment or has previously been self-employed;
- b. What self-employed future the worker anticipates;
- c. The worker's previous employment status;
- d. The worker's understanding and attitude to the risks and responsibilities of being self-employed and running their own business;
- e. The responsibilities of being self-employed;
- f. The other options available to the worker – PAYE working, umbrella company working, limited company ownership;
- g. The financial implications of the different ways of working, e.g., as a minimum this must include a comparison to PAYE/Umbrella;
- h. The worker's commercial situation (e.g., one client or many, level of income being generated, placements via recruitment agencies or direct, existing limited company owner)
- i. Where a CIS contractor had previously operated through their own limited company they are asked if they have received an inside IR35 assessment (via SDS) from their agency or hirer for that role.

A4.

Was the worker offered a choice between the employed and self-employed models at the take on stage (subject to status)?

A5.

Confirm that the basis on which the business operates (i.e., as the contractor) is adequately explained to the worker at the take on stage;

A6.

Confirm that you review the employment status of all prospective Self-Employed workers prior to making the first payment to them after initial engagement;

FCSA require a copy of your policies and standard documents concurring how you review the employment status of all prospective self-employed workers prior to making a first payment to them after initial engagement. FCSA also require the details of where the results of these checks are documented, alongside supporting evidence and/or narrative with cross referencing.

FCSA require the details of how you evidence cases where workers chose the umbrella/PAYE option over self-employment, again with supporting evidence and/or narrative with cross referencing. FCSA also require the details of how you record failures of the self-employment review, also with supporting evidence and/or narrative with cross referencing.

A7.

In terms of your assessment of whether a worker is subject to (or to the right of) supervision, direction or control, confirm that your checklist evidences the findings of discussions with any parties in the contractual chain and/or any other information provided by them, specifically covering the following areas:

- ▶ Can the worker decide how the work is done?
- ▶ Can the worker be told what to do (as to the manner)?
- ▶ Can the worker be moved depending on priorities?
- ▶ Can the worker decide when the work is done?

FCSA require a copy of the checklist and cross reference where each of the above are covered therein.

A8.

Confirm that if a worker fails one question as set out in the checklist then that worker is deemed a 'Fail' and will be an employee under your Umbrella solution.

A9.

Confirm that as part of your review of the status of the worker, the worker understands and accepts (both contractually and in reality) that on all assignments they:

- a. Have an unfettered right of substitution.
- b. Have no mutuality of obligation;
- c. Are not controlled, directed or supervised as to how they perform their work by anyone in the contractual chain (or subject to the rights of any such person to control, direct or supervise them);
- d. Are able to take financial risk/are responsible for defects;
- e. Have no statutory employment rights, e.g., holiday pay, AWR entitlement, Statutory Sick Pay, unfair dismissal rights;
- f. Are self-employed and responsible for paying taxes to HMRC.
- g. Are or will be registered with HMRC as self-employed and that evidence will be provided to document this within an acceptable time frame
- h. That their last piece of work was not as an employee of the end client carrying out similar work.

FCSA require supporting evidence of your status review process (on-boarding questionnaire or equivalent) with appropriate cross-referencing to the above

.A10.

- a. You review the worker's role by reference to the FCSA's High Risk Profile list (which is appended to this Code) and to ensure that, if the role is on this list, additional checks are carried out to verify employment status.
- b. Where CIS is operated, confirm you ensure the activities constitute as "construction operations" defined by HMRC in the CIS 340 guide.

A11.

Any worker whose assignment rate is below £14/hour is automatically assumed to be high risk and therefore subject to additional checks to verify their employment status.

A12.

You are sub-contracting with no more than 5% of your total self-employed work force (being the average number of active workers on assignment) at any one time who are on the FCSA's High Risk Profile list or subject to an assignment rate of below £14/hour. You also have a process to manage this.

A13.

You contact the worker at least monthly (via email, text, letter) to check any change in their employment status, i.e., whether they should no longer be considered self-employed. Note: A statement included on monthly remittance advice issued to the worker for them to confirm to you any change in their status is sufficient.

A14.

You check that the worker was not previously engaged as an employee in a similar role with the same end client within 3 months of the current assignment.

A15.

Confirm you carry out an updated full employment status re-review at least once every 6 months for all self-employed workers and that this employment status re-review complies with all points listed in section A11 above. Note: you must hereby be confirming you make contact with the worker to undertake the re-review.

A16.

Confirm you have a formal process for communicating to agencies your policy regarding:

- ▶ Checklists and SDC;
- ▶ SDC, ensuring that the agency understand that it is their responsibility to advise the service provider if the worker should not be operating under the self-employed / CIS model;
- ▶ Assignment rate conditions;
- ▶ Prohibited/high risk roles;
- ▶ CIS contractors who have previously operated their own PSC

FCSA require copies of relevant documents supporting each of the above.

A17.

Do you make it clear to the agency that if workers fail the SDC tests the worker will only be offered a PAYE option and subject to restrictions on expenses that can be claimed (as set out at employment model)?

A18.

Confirm you do not hold tax payments (beyond statutory deductions such as CIS) on behalf of your workers.

A19.

Confirm the self-employed contract includes:

- a. An unfettered right of substitution clause.
- b. States no mutuality of obligation;
- c. States no control or supervision by any party;
- d. Clauses which make Self Employed Contractor responsible for defects;
- e. Clauses which confirm the Self-Employed worker has no statutory employment rights, e.g., holiday pay, AWR entitlement, Statutory Sick Pay;
- f. States self-employed worker is self-employed and is responsible for paying taxes.
- g. States that the worker is or will be registered with HMRC as self employed
- h. That their last piece of work was not as an employee of the end client carrying out similar work.

FCSA require you to attach a copy of your Self-Employment contract and include appropriate cross referencing to each of the above.

For any revised contract in the last 12 months, FCSA require a copy of the current and past contract and the dates of any revisions.

Additionally, unless included within the contract, FCSA require you to provide copies of any Assignment/Project schedule.

A20.

Confirm:

- a. The self-employed worker receives a remittance advice;
- b. Your company margin is fully disclosed to the self-employed worker prior to commencement of their work;
- c. You retain your margin, then deduct the appropriate tax before giving the net payment to the worker.

FCSA require a sample copy of your remittance advice.

A21.

FCSA require a copy of your latest policies re:

- a. Professional indemnity;
- b. Employers' liability (held on a contingent basis); and
- c. Public liability.

A22.

FCSA require a narrative to explain how you ensure that Self Employed workers have the appropriate insurance cover.

A23.

FCSA require a copy of your standard agencies contract/terms plus a copy of the contractual terms used for your 5 largest agencies if they differ.

SECTION B

Ensuring that all payments fall within the required process for CIS is vital to both the service provider and the worker. FCSA's requirements ensure providers maintain compliance in this area.



Chris Bryce

Chief Executive, FCSA

SECTION B: PAYMENTS

- B1.**
You verify that the self-employed workers are within CIS using the required HMRC process.
- B2.**
If you operate within the construction sector, please confirm that you file monthly CIS returns to HMRC.
- B3.**
Confirm you have never missed or filed any monthly CIS returns late. If you have, please provide an explanation.
- B4.**
Confirm you have never paid the withheld CIS deductions late. If you have, please provide an explanation.
- B5.**
Confirm you do not operate any form of hybrid employment model. If a worker fails the employment status checklist/ tests, they will automatically be offered an employment model subject to PAYE/NIC (and may be subject to restriction on reimbursement of travel and subsistence expenses) and with full employment rights.
- B6.**
Confirm you have considered the implications on invoicing your clients, whether recruitment businesses or hirers, of the DRC VAT.
FCSA require a copy of your consideration process.
- B7.**
FCSA require your UTR and Company Registration Number and status under CIS (e.g., Gross/Net).
- B8.**
FCSA require documentation to support/evidence your UTR, registration under CIS and your status.
- B9.**
FCSA require you to attach your process for verifying self-employed workers with HMRC.
- B10.**
FCSA require you to attach your process for dealing with payments to individuals who work both inside and outside of the CIS rules. E.g. A bricklayer who contracts with Costain and also performs self-employed work in their neighbourhood.
- B11.**
FCSA require you to describe your process for ascertaining the level of materials to be taken into consideration when determining the amount to be subject to deduction under CIS.
- B12.**
FCSA require you to attach your process for ensuring that the CIS returns are accurate and submitted on time.
- B13.**
FCSA require you to detail any penalty notices or correspondence issued to you by HMRC within the last 12 months in respect of late/incorrect PAYE/NIC or CIS returns and payments. You must also inform FCSA's CEO in these instances.

B14.

FCSA require you to provide details of any on-going disputes with HMRC or recently settled disputes within last 12 months concerning PAYE/NIC, VAT or CIS issues including, but not limited to, your own gross payment status. You must also inform FCSA's CEO in these instances.

B15.

FCSA require a copy of your standard agencies' contract/terms.

B16.

Are all expenses treated correctly, this includes but is not limited to subsistence and travel expense claims being taxed at the appropriate level.

FCSA require a copy of your expenses policy.

APPENDIX:

Self-employment - HIGH RISK categories of workers

- ⊗ Administrative/Clerical
- ⊗ Agricultural
- ⊗ Assembly plant
- ⊗ Assistants
- ⊗ Benefits Assessor/housing/council officer
- ⊗ Call Centre
- ⊗ Data Entry
- ⊗ Document Controllers
- ⊗ Hospitality
- ⊗ Industrial
- ⊗ Juniors
- ⊗ Lab Technicians/Biomedical Scientists
- ⊗ Labourers
- ⊗ Light industrial
- ⊗ Low Skilled/Admin roles
- ⊗ Mail Centres
- ⊗ Non-skilled manual workers
- ⊗ NHS / statutory medical / healthcare (for the avoidance of doubt, privately supplied are not high risk)
- ⊗ Package Handling
- ⊗ Pharmacy Technician
- ⊗ Previous employment (same job and organisation)
- ⊗ Restaurant/Food Service
- ⊗ Retail
- ⊗ Secretaries/Personal Assistants
- ⊗ Social care
- ⊗ Trainees
- ⊗ Warehouse



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