



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

## Using contractors and subcontractors

It is common for businesses to use contractors or subcontractors instead of hiring permanent staff when the work is short term and expert skills are needed for a finite period or the extent of the workload is unknown.

Contractors are not employees of the business but have a contract to provide certain services. Subcontractors undertake a contract from a contractor.

This guide explains the different roles of contractors and subcontractors, sets out how your business might benefit from using them, outlines your legal responsibilities towards contractors, subcontractors and the general public, and explains some of the potential disadvantages of using contractors and subcontractors.

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### Contractors and subcontractors - the difference

There is an important distinction between using contractors and subcontractors.

**Contractors** provide agreed services to a client for a set fee - and possibly duration - under a contract **for** services. (This is in contrast to a contract **of** service, eg a contract of employment, which is between an employee and employer.)

Many businesses typically use contractors for:

- building work
- catering
- cleaning
- gardening
- marketing services
- IT maintenance and support
- security services
- recruitment

Contractors can charge the client fees by the hour, day or on a lump-sum basis. Their contracts often specify milestones for part payment, eg on completion of specific goals.

**Subcontractors** undertake a contract from the contractor.

Subcontractors can be anything from an individual self-employed person - eg a plumber carrying out work for a building contractor - to a large national organisation. A subcontractor has a contract from the contractor for the services provided - an employee of the contractor cannot also be a subcontractor.

Subcontractors undertake work that a contractor cannot do but for which the

contractor is responsible. For example, a building contractor may hire a subcontractor to complete the electrical wiring part of the contractor's building job. The contractor is responsible to the client for the building job including the part performed by the subcontractor.

Subcontractors might work on task-based contracts with no fixed date, long-term arrangements which can be discontinued at any time, or fixed-term contracts.

## Pros and cons of using a contractor or subcontractor to provide staff

Your business may need additional resources to carry out specific or specialist tasks. You may want to use the services of a contractor or subcontractor for this, although it is important to weigh up the advantages against the disadvantages.

Consider the following:

Advantages	Disadvantages
You can hire a contractor/subcontractor when you need more <b>flexibility</b>	Contractors/subcontractors may <b>cost</b> the business more than the equivalent daily rate for employing someone
You can use a contractor/subcontractor for one-off jobs and jobs requiring specialist <b>expertise</b> or fast turnaround	Your business does not acquire or develop skills in-house and relies on suppliers
Your permanent staff can concentrate on the core business	Permanent staff may resent contractors being paid more money for doing similar work to them
Some contractors/subcontractors can start the work or project at <b>short notice</b> , even when large numbers of workers are required	You have no direct control over the <b>quality</b> of subcontractors' work
You can often specify the type and duration of contract you need for the job	Contractors/subcontractors may not appreciate your business culture and may lack the <b>motivation</b> and <b>commitment</b> of permanent staff
You have no <b>PAYE</b> or National Insurance contributions administration for contractors/subcontractors	Workers can be employees or subcontractors of the contractor - you need to understand relevant tax implications and other rights. For more information see the page in this guide on employment status - implications for tax and worker rights
You can obtain temporary <b>cover</b> for a permanent staff job or work that needs doing	

## Employment status - implications for tax and worker rights

The employment status of those who do work for you has implications for tax and worker rights:

- an **employee** has a contract **of service**, eg a contract of employment, with you as an employer
- a **contractor** has a contract **for services** where you are the main client business, while a **subcontractor** has a contract **for services** with you if you

business, while a **subcontractor** has a **contract for services** with you if you are the main contractor

As such, neither contractors nor subcontractors will normally be considered as your employees. Instead they might be self-employed, an agency worker or employees of another business.

However, even though a worker may be described as a contractor or subcontractor, it is still possible that - under the law - they may actually be considered your employee.

If so, they would therefore have the full range of employment rights, eg the right to claim unfair dismissal and the right to maternity, paternity and adoption leave and pay.

If you are unsure, you must take steps to clarify their employment status.

Read the employment status manual on the HM Revenue & Customs (HMRC) website - Opens in a new window.

## Tax

If you use contractors/subcontractors you will not generally make tax and National Insurance (NI) deductions or employer NI contributions.

If you provide your services personally through your own limited company or partnership, IR35 rules could apply. Your limited company or partnership may then have to account for income tax and NI deductions as if you were an employee.

Find out about IR35 rules on the HMRC website - Opens in a new window or see the page on IR35 and other special rules in our guide on employment status.

Special rules apply to self-employed contractors or subcontractors in the **construction industry** and these rules changed with the introduction of a new Construction Industry Scheme (CIS) in April 2007 - see our guide: what is the Construction Industry Scheme?

Find information about the CIS on the HMRC website - Opens in a new window.

## Worker rights

Contractors, subcontractors and agency workers have fewer employment rights than employees. However, they still have:

- The right to receive the national minimum wage - see our guide on understanding national minimum wage law.
  - Rights under the Working Time Regulations - see our guides on Sunday working and night working and hours, rest breaks and the working week.
  - The right to paid annual leave - see our guide: know how much holiday to give your staff. For agency workers, depending on their contract, you or the agency may be liable to pay holiday pay.
  - The right not to be discriminated against on unlawful grounds - see our guide on how to prevent discrimination and value diversity.
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## Health and safety requirements when using contractors and subcontractors

In any relationship between a business - known as the client - and a contractor, both parties will have duties under health and safety law. Similarly, if the contractor uses subcontractors to carry out some or all of the work, all parties

will have some health and safety responsibilities.

Measures to ensure contractors' or subcontractors' safety aren't substantially different from those to ensure the safety of employees. For example, ensure you:

- identify the requirements of the job and assess the risks involved - see our guide on risk assessment - an overview
- consult staff and unions on relevant health and safety issues
- decide what information and training is required
- select an appropriate contractor and ascertain their health and safety policies and procedures
- find out about subcontractors' competence
- review the way work is carried out and the risk assessment

Ensure that there is co-operation and co-ordination at all times between you/your staff and the contractors/subcontractors. In particular, you should:

- provide all parties with information, instruction and training on anything that may affect health and safety
- make the contractors/subcontractors aware of your health and safety procedures and policies
- provide management and supervision to ensure the safety of contractors/subcontractors

There are actual cases where clients, contractors and subcontractors have all been fined for failing in their health and safety duties, eg failure to:

- ensure a contractor's/subcontractor's competence
- supervise a contractor/subcontractor
- take steps to prevent contact with live equipment
- provide information about the existence of asbestos
- ensure safe operation of vehicles
- ensure safe loading to or unloading from delivery vehicles
- assess risks to health from regular exposure to high vibration levels
- exercise a duty of care towards a contractor/subcontractor
- provide a formal site induction, risk assessment or method statement

Download advice on contractors' health and safety from the Health & Safety Executive (HSE) website (PDF, 140K) - Opens in a new window.

See our guides on your responsibilities for health and safety and how to communicate your health and safety procedures.

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## Other legal considerations when using contractors and subcontractors

As well as worker rights, tax and health and safety, you should also consider liability insurance when you engage contractors or subcontractors:

- If you have employees, you need employer's liability insurance. However, non-employees - such as contractors - aren't covered. Therefore, you will also need to have **public liability insurance (PLI)**.
- Your PLI policy should cover contractors/subcontractors working for you away from your premises unless the contractors/subcontractors have their own PLI with the same level of cover.
- If contractors/subcontractors are working on your behalf, check they have appropriate insurance

appropriate insurance.

- If a contractor works at your premises, eg a builder, they should have their own insurance to protect you and your property, while your PLI covers them.

To be certain, consult an insurance adviser and notify your insurer that you are using contractors/subcontractors. You can also see our guide on liability insurance.

Many businesses aim to incorporate certain clauses and provisions in their contract with the contractor/subcontractor.

Examples include:

- Protection of your intellectual property rights - eg material and equipment designs - if these will be accessed or used by contractors/subcontractors.
- Non-disclosure agreements - these might be needed if you have to tell contractors/subcontractors about - or they help you develop - confidential aspects of your business.
- A project schedule - including performance targets and deadlines.
- A payment schedule - this might include payments on account and the criteria to trigger such payments, eg completion of a piece/stage of work.
- Penalties for poor workmanship or late delivery.
- Minimum quality standards.
- Minimum health and safety standards.
- See the page in this guide on health and safety requirements when using contractors and subcontractors.

If in doubt, consult a legal adviser before you agree a contract for services with a contractor/subcontractor.

If you aren't involved in choosing a subcontractor, tell the contractor you expect them to address these matters in contracts with their subcontracted workers.

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## **Get the most from contractors and subcontractors**

Think about how to get the most out of contractors and subcontractors from the point of engagement through to completion of the contracted work.

### **Consult your staff**

Using a contractor/subcontractor can be successful where there is co-operation and co-ordination between your permanent staff and the contractor/subcontractor.

Get your staff to understand the advantages of using a contractor/subcontractor by setting out any benefits for them, eg they can get on with the core business.

### **Exercise care when hiring**

Take up references and talk to others to determine a contractor's/subcontractor's competence.

Check qualifications, skills, membership of relevant trade or professional bodies, quality standards and accreditations.

Find out the contractor's/subcontractor's policies for health and safety, selecting subcontractors and employee consultation.

If you use contractors/subcontractors on a regular basis, think about setting up a

database of contractors/subcontractors who you know and trust.

## Have a written agreement

Agree in writing:

- the contractor's/subcontractor's responsibilities
- the objectives, scope of the work and key deliverables (goals), eg in a project schedule with milestones
- resources you must provide if the contractor/subcontractor needs access to your equipment and/or staff
- fees and a payment schedule - you may wish to consider penalty or incentive schemes for under-performance or over-performance
- a procedure for resolving disputes, eg review or termination
- confidentiality agreements

You have responsibilities when you engage contractors/subcontractors and you should agree a contract for services that will help you to discharge those duties.

See the page in this guide on other legal considerations when using contractors and subcontractors.

## Manage the work

You should manage and supervise the contractor's/subcontractor's work, seek evidence of work done and check that contractual obligations are met. Raise any issues at the earliest opportunity.

Download advice on the health and safety of contractors from the Health & Safety Executive (HSE) website (PDF, 140K) - Opens in a new window.

Find a guide to contractor management and other articles on the Institution of Engineering and Technology website - Opens in a new window.

Download guidance on using a consultant from the Institute of Directors (IoD) website (PDF, 164K) - Opens in a new window.

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## Protect your business from rogue contractors

There are plenty of ways to get assurance about the competence and integrity of contractors. Factors that will help give you the confidence to deal with a contractor include:

- Current membership of a trade or professional association or other recognised body, including approved scheme operators under the TrustMark initiative for the domestic repair, maintenance and improvement sector.
- Status as a licensed labour provider with the Gangmasters Licensing Authority (GLA), if they supply workers to the agricultural or horticultural industries or food, fish and shellfish gathering, processing and packaging industries. It is an offence for someone without a licence to provide labour in these sectors, and it is illegal to enter into an arrangement with an unlicensed gangmaster. Find out about the gangmaster licensing scheme on the GLA website - Opens in a new window.
- Quality standards, such as British Standards and ISO standards for management systems. See our guide on quality management standards.
- Personal recommendations.
- References.

- Examples of previous work.

Many associations and bodies set membership criteria and minimum standards in areas such as:

- quality systems and training
- health and safety
- environmental management
- deliverables and technical capabilities
- financial stability

Search for a trade association on the Trade Association Forum (TAF) website - Opens in a new window.

Read frequently asked questions about the TrustMark Initiative on the TrustMark website - Opens in a new window.

Recommendations from business or personal associates are often good indicators. Try to see for yourself examples of the contractor's previous work.

It is good practice to obtain at least three quotes or estimates. Make sure you understand the terms, any technical details and any aspects that could change such as:

- material prices that vary
- overtime
- night rates

Even if you get personal recommendations, follow up all references provided. Tips when taking up a reference include:

- letting the contractor know you are following up a reference
  - contacting referees in good time so as not to delay your project start
  - asking specific questions about information the contractor has provided
  - asking about personal qualities, safety records, work standards, any legal case the contractor is or has been involved in
  - checking the authenticity of telephone references and taking notes during the call
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## **Here's how the use of short-term contractors added value to a project**

### **David Macken**

System Associates - Opens in a new window

### **David's top tips:**

- "Spend time researching agencies if you decide to use one."
  - "Check contractors' references meticulously."
  - "Learn to make decisions quickly."
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System Associates is an internet technologies company delivering integrated software services to public and private sector clients. Based in Maidenhead, the company has 25 employees and regularly uses skilled short-term contractors. Managing director David Macken describes the advantages using the example of a recent project.

## **What I did**

### **Recruit carefully**

"Short-term contractors give us both labour flexibility and the ability to bring in specialist skills as we need them.

"For example, we recently won a major contract to build a portal for the new London-wide e-government agency, London Connects. Part of the project was to categorise and set up large chunks of online content. The skills required were highly specialised and our team was already at capacity, so we decided to employ a team of content editors on short-term contracts.

"We sourced a selection of candidates using internet recruitment services that specialise in our sector. Interviews and reference checking were essential to make sure the contractors' skills and experience matched their CVs. We also wanted to ensure a good fit with our existing project team."

### **Agree things in writing**

"We selected four contractors who signed contracts with us before starting work. As with all our written agreements, they covered legal issues like terms and conditions but also included project schedules, deadlines and deliverables, fees payable and so on.

"We couldn't afford to keep on a contractor who didn't meet expectations. We therefore specified a one-day notice period for the first four weeks, a safeguard that we often use in short-term contracts.

"Other points to check upfront before employing contractors are their tax status and whether they're covered by your insurance."

### **Plan and manage**

"We briefed our employees beforehand to reassure them that the contractors would meet their needs and to plan how their skills could be most effectively deployed.

"From the contractors' point of view, we made sure that they felt part of the team. Although we expected them to hit the ground running, we arranged inductions and ensured they were included in company meetings and social events.

"The integration of contractors and our in-house team has worked so well that we've asked two of them to join us permanently."

## **What I'd do differently**

### **Handle recruitment in-house**

"London Connects was such a large project that the use of recruitment agencies was appropriate and worked well. However, in general we find that handling the contracting ourselves works better and we've now built a database of trusted contractors who we can approach direct."

### **Speed up decision-making**

"When we first started employing short-term contractors, we didn't realise that the value is diminished if you apply the same processes and timescales used for

recruiting long-term employees. We've had to develop new processes that enable us to make quick decisions."

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### **HMRC New Employer Helpline**

0845 60 70 143

### **Acas Helpline**

08457 47 47 47

### **HM Revenue & Customs Contractors Helpline**

08457 33 55 88

### **HSE Infoline**

0845 345 0055

### **HSE Books Enquiry Line**

01787 881165

### **ABI Helpline**

020 7600 3333

### **Trade Association Forum Enquiry Line**

020 7395 8283

### **Related guides on the Welsh Assembly Government Business website**

Employment status

Liability insurance

Choosing the right suppliers

Outsourcing

Manage your suppliers

Taking on staff - the options

Flexible working - the law and best practice

What is the Construction Industry Scheme?

Understanding national minimum wage law

Sunday working and night working

Hours, rest breaks and the working week

Know how much holiday to give your staff

Prevent discrimination and value diversity

Manage overtime

Risk assessment - an overview

Your responsibilities for health and safety

Communicate your health and safety procedures

Ensure employees' safety when lifting and carrying

Transport in the workplace

Avoid slips and trips

Ensure the safe use of machinery, equipment and tools

Monitoring and security of staff

Employment status

Buyers' terms and conditions and unfair contract terms

Non-disclosure agreements

Protecting intellectual property

Insure your business - people, life and health

Business insurance: the basics

Liability insurance

Manage your suppliers

Choose and manage your IT supplier

Inform and consult your employees

Buyers' terms and conditions and unfair contract terms

Quality management standards

Avoiding scams

Here's how flexible working has benefited employees and our business

### **Related web sites you might find useful**

#### **Employment status manual on the HMRC website**

<http://www.inlandrevenue.gov.uk/manuals/esmmanual/index.htm>

#### **Employment status indicator on the HMRC website**

<http://www.hmrc.gov.uk/calcs/esi.htm>

#### **IR35 guidance notes on the HMRC website**

<http://www.hmrc.gov.uk/ir35/>

#### **Unlawful discrimination guidance on the Equality and Human Rights Commission website**

<http://www.equalityhumanrights.com/your-rights/rights-in-different-settings/working-and-earning/>

#### **CIS information on the HMRC website**

<http://www.hmrc.gov.uk/cis/index.htm>

**Download guidance on health and safety of contractors from the HSE website (PDF, 140K)**

<http://www.hse.gov.uk/pubns/indg368.pdf>

**Contractor management guide on the Institution of Engineering and Technology website**

<http://www.theiet.org/factfiles/health/index.cfm>

**Intellectual property guidance on the Intellectual Property Office website**

<http://www.ipo.gov.uk/home.htm>

**Solicitor locator on the Law Society website**

<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

**Broker locator on the British Insurance Brokers' Association website**

<http://www.biba.org.uk/ConsumerHome.aspx>

**Download guidance on using a consultant from the IoD website (PDF, 164K)**

<http://www.iod.com/intershoproot/eCS/Store/en/pdfs/Hr17usin.pdf>

**Gangmaster licensing scheme guidance on the GLA website**

<http://www.gla.gov.uk/index.asp?id=1012785>

**Download a guide to ensure a labour provider is licensed from the Department for Environment, Food and Rural Affairs website (PDF, 345K)**

<http://www.defra.gov.uk/foodfarm/farmmanage/working/gangmasters/documents/labourusers.pdf>

**Trade association search on the TAF website**

<http://www.taforum.org/searchgroup.pl?n=500&directory>

**TrustMark Initiative frequently asked questions**

<http://www.trustmark.org.uk/questions>

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You can find this guide by navigating to:

Home > Employment & skills > Recruiting people > Terms of employment

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