

FAQ: Health Board approach to taxation and employment status of GPs working in directly managed practices or Health Board managed Out of Hours services

What is the problem?

HMRC has recently taken a keen interest in the employment status of many independent contractors which includes GPs working in a sessional capacity.

In essence, if it determines that you are employed, as opposed to being self-employed, then your tax and national insurance contributions will be removed by the organisation which pays you.

In addition, if the organisation has, in HMRC's opinion, wrongly treated you as self-employed then the organisation can face a significant fine and interest which can potentially go back as far as 20 years.

Therefore, this is causing much angst amongst employers. In particular, Health Boards have become very concerned about their potential liabilities and have commissioned specific advice from Deloitte. The Health Board interpretation of this advice has concluded that GPs working for the Health Board but not in a salaried position (e.g. in out of hours centres; in prisons; doing shifts in a minor injuries unit; working in directly managed practices) should be classed as employed for taxation purposes but not for employment purposes. Thus, you would be unable to access employment rights, which includes annual leave / sick leave / maternity leave / and other parental rights.

Their assertion applies to all sessional GPs whether working through an intermediary (where IR35 applies) or not.

Please note, for avoidance of doubt, this guidance applies also to GP principals or salaried GPs offering services and directly contracting with the Health Board on a sessional basis for the types of work as outlined above.

Does GPC Wales believe that the Health Board interpretation of the taxation status is correct for GPs working in above settings?

Sadly, it appears that the HMRC toolkit to determine whether an individual is employed or self-employed isn't always that clear-cut, and thus there are risks to any organisation in getting it wrong. However, we support the guidance in other parts of the UK; namely that blanket application of the ruling is wrong as it doesn't allow for differences in an individual's circumstances.



Does GPC Wales believe that the Health Board interpretation is correct for the employment status / ability to access employment rights of GPs working in above settings?

We **do not** feel this interpretation is correct.

The tests to determine whether an individual is employed for taxation purposes and for access to employment rights are very similar, and it seems nonsensical to say they apply to one section and not to the other.

We believe this could be open to challenge by GPs who contract directly with the Health Board. However, if you are working through an intermediary/ personal service company (see below) then it is unlikely that you could argue you are employed for employment benefits.

Isn't this just about the HMRC IR35 regulation?

This is wider than the application of IR35 regulations.

IR35 solely applies to GPs working through an intermediary such as limited liability companies. These are often described as a personal service company which individuals have set up so that they avoid paying tax and are liable to a lower rate of tax via corporation tax (which currently stands at 19% rather than the tax levels for higher earners) and this is why HMRC at trying to close the loophole.

The approach from the Welsh Health Boards applies to all sessional GPs working as above. Matt Mayer from the BMA sessional GPs committee has written an excellent blog on this issue which can be accessed here:

https://www.bma.org.uk/connecting-doctors/the_practice/b/weblog/posts/a-locum-s-guide-to-the-changes-to-ir35-legislation

Should I just accept the HB advice?

We would say no. There are a few issues to consider

- Lack of consultation: is this fair or right given the significant change to your terms and conditions of service?
- The assertion that employment status does not confer employment rights Do your own HMRC toolkit assessment and take individual accountant advice
- Talk to your LMC or contact the BMA if you are a member (unfortunately neither are in a position to offer individual legal or financial advice).

What actions are possible?

1. What can I do?

- a) Consider the BMA website advice, complete the HMRC toolkit (www.tax.service.gov.uk/check-employment-status-for-tax/setup) and discuss the results with your accountant. You could use it to challenge the Health Board to apply non-employed status to you. However, it is unlikely the Health Board will change its stance and the toolkit isn't quite clear cut
- b) Consider whether you want to continue working for an organisation that has taken this unilateral action. Your accountant may be able to help guide this with respect to impact on tax brackets etc.
- c) Consider whether to ask your LMC to act on your behalf and outline what course of action you wish them to take. You should do this whether you continue working or not.
- d) Consider whether you are willing to withdraw services or not? The BMAs sessional GP subcommittee states that you can consider the following:
 - *“If you are willing to withdraw services, then further think about whether you would add your name to signatures to be gathered by LMCs threatening to withdraw services OR write to the Health Board declaring a termination of service in accordance with the contractual obligations to which you are subject.*
 - *If you are not willing to withdraw services, then (if you are a GP who contracts directly rather than via an intermediary) consider writing to the Health Board telling them that you believe you are entitled to statutory employment protection and reserve the right to take them to an employment tribunal, and advise them, if employment tribunal found in your favour that you would be chasing historic holiday pay / sick pay / pension etc. back to your start date. This latter needs to be done by an individual GP.”*

2. What can your LMC do?

LMCs do have the responsibility of acting on behalf of all GPs in their area in all their working roles. To do so effectively they need a clear mandate from the workforce affected – therefore **you** have to play **your** role in making your feelings known.

The LMC can:

- a) liaise with Health Board to ask further questions as to validity of this change to terms and conditions of service through seeking to see evidence, challenging lack of consultation, highlighting potential adverse impact on sustainability of workforce and service provision (including whether this is on the Health Board's risk register)
- b) work with the Health Board to find possible solutions e.g. deferred implementation date of changes to enable consultation, devising a zero-hours contract for local GPs to work under which could confer some employment rights etc.
- c) keep local GPs up to date with likely impact of these decisions and progress on solutions
- d) work on your behalf without you having to raise your head above the parapet e.g. gather signatures from affected GPs threatening to withdraw services; OR collate responses from GPs to the Health Boards declaring a termination of services in accordance with the contractual obligations to which they are subject.

3. What is GPC Wales doing?

GPC Wales is:

- a) working closely with LMCs to support them in progressing local discussions and solutions on behalf of GPs in their area (that's why it is important to make your views and situation known to LMCs)
- b) in our regular meetings with the Welsh Government, highlighting risks to service provision and workforce sustainability in an already creaking service area, requesting that it seeks assurance from Health Boards on how these risks have been considered, including in respect of winter pressure plans
- c) considering what other national solutions may need to be implemented after listening to the profession and seeing how the Health Boards respond e.g. a national zero-hours contract for GPs working in settings as above

What already happened in Wales and elsewhere?

- **Betsi Cadwaladr UHB** did not use Deloitte to determine its stance but instead worked directly with HMRC. This has already been put in place and GPs have made individual decisions whether or not to accept changes, and this has resulted in less GPs working in directly managed practices.
- **In Dorset**, a blanket policy was applied early in 2017 which was challenged by GPs, LMC and GPC. A new deal was offered to GPs with better pay and employment rights and a catastrophe was averted.
- **In Swindon**, the OOH trust applied a blanket policy but despite pressure did not back down and this resulted in great difficulty in sourcing doctors.

What should I do next?

It comes down to whether **you** as an individual want to take action on this. Please review this guidance carefully and consider all the available options before deciding on your response.

The Local Medical Committees and GPC Wales are here to help. We need to know your views to inform our next steps in discussions with Health Boards at a local level, and the Welsh Government on a national basis.

Please inform your LMC about what **you** want to see happen.

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