

USING THE CHECK EMPLOYMENT STATUS FOR TAX (“CEST”) TOOL

Members have had difficulties with the CEST tool, which as we previously stated is not “user-friendly”. In order to assist you in establishing your status, we have provided further information below that will cut through the jargon and assist you as much as it can to establish your status.

About the people involved

Which of these describes you best?

The end client is the public body, corporation or business that the worker is providing services to.

- The worker
- The end client
- The agency paying the worker

Continue

About the people involved

Have you already started this particular engagement for the end client?

- Yes No

Continue

Worker/End Client/Agency?

All locums will have to put “Worker”. The end client is the Pharmacy, Trust or other organisation you provide your services to and if you work through an agency then this is also not relevant to you, so always tick this box first.

This tool is for use by everyone, not just locums, worker and employees, the end user is responsible for IR35 too and so they will now be more alive to their responsibilities.

You will need to complete this for every end client you provide your services to. You may find that you will have different outcomes for each and this will depend on how involved in the organisation you are; you could be classed as a worker with one and not with another.

You probably will need to answer yes on most occasions, as you will have done shifts, even if this has been on an ad hoc basis over a number of years.

In some cases, you will have done regular shifts on set days every week over many years; these are the ones the HMRC are interested in, as IR35 is likely to apply and you may be able to claim employment status

About the people involved

How do you provide your services to the end client?

- As a limited company
- As a partnership
- Through another individual (not an agency)
- As a sole trader

Continue

About the worker's duties

Will you perform office holder duties for the end client as part of this engagement?

Being an office holder is not about the physical place where the work is done, it's about your responsibilities within the organisation. Office holders can be appointed on a permanent or temporary basis.

This engagement will include performing office holder duties for the end client, if:

- You have a position of responsibility for the end client, including board membership or statutory board membership, or being appointed as a treasurer, trustee, company director, company secretary, or other similar statutory roles
- The role is created by statute, articles of association, trust deed or from documents that establish your organisation (a director or company secretary, for example)
- The role exists even if someone is not engaged to fill it (a club treasurer, for example)

 If you are not sure if these things apply, please ask the end client's management about their organisational structure.

- Yes No

Continue

Some locums will either work on an hourly, weekly or monthly rate on a sole trader basis; others will have set up a limited company but still work in the same way. As stated in other briefings, IR35 is tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an *intermediary* (limited company) but who would be an employee if the intermediary was not used.

If you are a genuine contractor in business on your own account, you should not be concerned about IR35, but as advised in other briefings, you need to go through CEST to see how the relation actually works.

Where you select as a sole trader or as a limited company, the next screen will pop up and so you will need to answer the questions as best you can.

Many locum pharmacists have duties based on the regularity of the work they undertake and the length of time they have been with the end client. Although the end client will repeatedly say that the locum is self-employed, the reality may be very different.

You will see from the PDA Checklist a number of questions explore how integrated you are into the organisation. Generally, a pharmacist signed on as an RP will have a certain amount of integration, but this section is looking at situations where you may be the manager of the pharmacy when you are working there; or where you have been asked to train the pre-reg pharmacist, or you attend management meetings etc.

If your role is similar to that of an employed pharmacist in the organisation you work in, you may find that you are a worker or even an employee and therefore are covered by IR35, despite of having a limited company you work through.

If you tick "Yes" for this, you are likely to be classed as employed for tax purposes and the next screen you come will say "**The intermediaries legislation applies to this engagement**": which means that workers that performing these duties for the end client are classed as employed for tax purposes. In these circumstances you should speak to your accountant and the PDA about potential worker/employment rights.

If you tick "No" you will move onto the next screen.

SUBSTITUTES

About substitutes and helpers

Has your business arranged for someone else (a substitute) to do the work instead of you during this engagement?

This means someone who:

- Was equally skilled, qualified, security cleared and able to perform your duties
- Was not interviewed by the end client before they started (except for any verification checks)
- Was not from a pool or bank of workers regularly engaged by the end client
- Did all of your tasks for that period of time
- Was substituted because you were unwilling but not unable to do the work

- Yes - and the end client agreed
- Yes - but the end client did not agree
- No - it has not happened

Continue

If you answer Yes to the above the following question is asked

About substitutes and helpers

Did you pay the person who did the work instead of you?

i If the substitute was paid by an agency, it does not count as substitution.

- Yes No

Personal service is one of the components of a contract of employment and so the HMRC will look for this when establishing your tax status, so you will need to consider what happens when you are not able to work for the end client (e.g. you are holiday or have another appointment or another contract to fulfil).

In essence, one of the following three will apply to your arrangement:

1. you can provide a substitute who is similarly qualified;
2. any right of appointment is subject to the company's approval and may only be used when you not available (say for holidays or medical appointments); or
3. they will give you no right to appoint a substitute and will engage someone themselves in the same way as they would if you were an employee and go on holiday and your colleague covers for you.

Most of the time the locum has very little say over who will do the role if they are not able to and so either of the following that will occur:

1. the end client will have a reservoir of other locums that it will call on;
2. they will ask you to arrange a locum from a reputable source and pay them instead of you, or you will invoice them to cover for the locum who is in your place;
3. they will make your life difficult given their strict rules on the locums they will use and make it as difficult as possible for you not to work and so in effect it has not happened often and so they make their own arrangements if you do.

In such circumstances, it is likely that you will lose any fee and the substitute will be paid instead and you will make no profit or any money for the time that you are not at work. In these cases, it is likely to show that there is an obligation to provide personal service and you are more likely to fall into IR35 territory.

If you have your own reservoir of locums that you regularly send and invoice for, then it is likely that you would fall outside IR35 as you do not have any requirement to provide a personal service and the end user is happy for you to do this and you do so in the normal course of your business.

If you answer **YES** to this question, you will receive the following response

If you answer YES to this question, THE INTERMEDIARIES LEGISLATION DOES NOT APPLY TO THIS ENGAGEMENT and you will be found to fall outside the IR35 legislation

If you answer NO to the following question is asked

Has your business needed to pay a helper to do a significant amount of the work for this engagement?

A helper is someone who does some of the job you are hired to do, either for or with you.

For example if a lecturer was hired by a university to write and deliver a study module:

- A researcher hired to source information could be classed as doing a significant amount of the lecturer's work
- A company the lecturer pays to print and bind materials for the module would not be classified as doing a significant amount of the work

Yes No

About substitutes and helpers

If your business sent someone else to do the work (a substitute) and they met all the necessary criteria, would the end client ever reject them?

The criteria would include:

- Being equally skilled, qualified, security cleared and able to perform your duties
- Not being interviewed by the end client before they start (except for verification checks)
- Not being from a pool or bank of workers regularly engaged by the end client
- Doing all of your tasks for that period of time
- Being substituted because you are unwilling or unable to do the work

 **We need to know what would happen in practice, not just what it says in your contract.**

Yes - the end client has the right to reject a substitute for any reason, including if it would negatively impact the work

No - the end client would always accept a substitute who met these criteria

If you answer No to the above question: **Has your business arranged for someone else (a substitute) to do the work instead of you during this engagement?** – you will be required to move on to this question. As stated above some locums will provide cover for their holidays and invoice for the cover so as not to be out of pocket, but do not make any money out of it.

If you have established worker status with an end client, you may be able to claim holiday pay.

Whichever response you give, you will be referred to the next screen about **Working Arrangements**

If the answer is:

No - it hasn't happened to the original question, you will be asked this question

By answering yes you will be sent the following screen:

Has your business needed to pay a helper to do a significant amount of the work for this engagement?

By answering no you will be sent to this screen:

Would your business have to pay the person who did the work instead of you?

The result will depend in how you respond to this question

WORK ARRANGEMENTS

Can the end client move you to a different task than you originally agreed to do?

This includes moving project or location, or changing to another task at the same location.

- Yes - but only with my agreement
- Yes - without my agreement (if I do not want to change, the end client might end the engagement)
- No - that would need to be arranged under a new contract or formal agreement

Once you start the engagement, does the end client have the right to decide how the work is done?

This does not include general induction, or the need to follow statutory requirements like health and safety.

- Yes - the end client decides how the work needs to be done without my input
- No - I decide how the work needs to be done without input from the end client
- No - the end client cannot decide how the work needs to be done because it is a highly skilled role
- Partly - I and other people employed or engaged by the end client agree how the work needs to be done

Option 1 is likely to be a situation where you have agreed regular shifts with one or two branches of the end client, and you are asked to work elsewhere, and you have not made any arrangement in this respect.

Option 2 is a situation where you are vulnerable to the whim of the end client and so you may feel compelled to work wherever they send you and this would should a worker relationship, because you are not free to do what you want

Option 3 would indicate that there is a requirement for the parties to enter into a new separate agreement and this may indicate a relationship which is more of a business model

In all cases, you will be sent to the next screen

The answer to this question must factor in your role as an RP and your obligation to the GPhC. Over and above this, you need to consider how controlled your work is by the end client.

Option 1 and Option 2 are unlikely to apply, as there has to be some interaction between you and the end client to ensure that the mutual obligations are met.

Option 3 is relevant in cases where, for instance, the manager is not a pharmacist and cannot decide how you do your role. Given the high level of skill of the pharmacist, it is not likely that you would be told how to work apart from the specific SOPs or ways of working within the particular pharmacy etc.

Option 4 is likely to be the most appropriate response.

Can the end client decide the schedule of working hours?

- Yes - the end client decides my schedule
- No - I decide my own schedule
- Partly - I agree a schedule with the end client
- Not applicable - no schedule is needed as long as I meet any agreed deadlines

It is likely that you will select Options 1 and/or 3

Can you choose where you work?

- Yes - I decide
- No - the end client decides
- No - the task determines the work location
- Partly - some work has to be done in an agreed location and some can be done wherever I choose

It is likely that you will select Option 2

FINANCIAL RISK

What do you have to provide for this engagement that you cannot claim as an expense from the end client or an agency?

These are things that:

- You have to provide to complete this specific engagement
- Are not provided by the end client
- Could place you at financial risk if the cost is not regained

They do not include expenses incurred by being based away from home for the engagement.

Select all that apply

- Materials - items that form a lasting part of the work, or an item bought for the work and left behind when you leave (not including stationery, and most likely to be relevant to substantial purchases in the construction industry)
- Equipment - including heavy machinery, industrial vehicles or high-cost specialist equipment, but not including phones, tablets or laptops
- Vehicle - including purchase, fuel and all running costs (used for work tasks, not commuting)
- Other expenses - including significant travel or accommodation costs (for work, not commuting) or paying for a business premises outside of your home
- Not relevant

What is the main way you are paid for this engagement?

- An hourly, daily or weekly rate
- A fixed price for a specific piece of work
- An amount based on how much work is completed
- A percentage of the sales you make
- A percentage of the end client's profits or savings

It is likely that you will select Option 5, which would make you more likely to be a worker or employee and be covered by IR35

As a sole trader or working through a limited company on your own, you are likely to selection Option 1, the other options do not seem to be appropriate to any locum pharmacy engagement.

If the end client is not satisfied with the work, do you need to put it right at your own cost?

- Yes - I would have to put it right without an additional charge, and would incur significant additional expenses or material costs
- Yes - I would have to put it right without an additional charge, but would not incur any costs
- No - I would put it right in my usual hours at the usual rate of pay, or for an additional fee
- No - I would not be able to put it right because the work is time-specific or for a single event
- No - I would not need to put it right

About the worker's integration into the organisation

Are you entitled to any of these benefits from the end client?

- Sick pay
- Holiday pay
- A workplace pension
- Maternity/paternity pay
- Other benefits (such as gym membership and health insurance)

These do not include benefits provided by a third party or agency.

- Yes No

Are you responsible for any of these duties for the end client?

- Hiring workers
- Dismissing workers
- Delivering appraisals
- Deciding how much to pay someone

- Yes No

Option 1 is unlikely to apply, unless you have made such an arrangement

Option 2 would seem more likely

Option 3 this is not likely, as you would not charge an additional fee for such an situations

Option 4 is not relevant

Option 5 is also not relevant

Depending on what you have agreed with the end client, you may have these. If you do, you are more likely to be covered by IR35 and are more akin to a worker or an employee

If you can establish worker status, you make to able to claim for holiday pay

Many locums take on these roles if they have worked for some years, regular hours and have become integrated into the business. This may also be inevitable if you are working with ACTs and other staff.

If you do, you are more likely to be covered by IR35 and are more akin to a worker or an employee

Do you interact with the end client's customers, clients, audience or users?

These are people who use or are affected by the service provided by the public body, corporation or business. This would not include your colleagues or other employees.

Yes No

This is generally would be **YES**, given the role you are in.

When you interact with the end client's customers, clients, audience or users, how do you identify yourself?

- I work for the end client
- I am an independent worker acting on behalf of the end client
- I work for my own business

You are likely to present yourself to the patient as the pharmacist on duty or RP and so it is unlikely that they would be aware of your employment status and so this question should be **Option 1**

At this stage will receive one of the following responses:

1. This engagement should be classed as employed for tax purposes
2. The intermediaries legislation applies to this engagement
3. The intermediaries legislation does not apply to this engagement
4. Or it will be inconclusive

The first two outcomes are clear, and you will need to take further advice as there will be tax and employment status issues to be explored further

The third indicates that you fall outside IR35 and so you should not be concerned

The fourth means that you will need to investigate your working relationship further.