



LOCATE
A LOCUM

Response

Her Majesty's Revenue and Customs Consultation on off-payroll working rules from April 2020

28 May 2019

For enquiries regarding this response please contact office@thecca.org.uk

Company Chemists' Association Ltd
16 Upper Woburn Place
London
WC1H 0AF

About the Company Chemists' Association (CCA)

Established in 1898, the CCA is the trade association for large pharmacy operators in England, Scotland and Wales. Our membership includes ASDA, Boots, LloydsPharmacy, Morrisons, Rowlands Pharmacy, Superdrug, Tesco, and Well, who between them own and operate over 6,000 pharmacies, which represents nearly half the market. Our members deliver a broad range of healthcare and wellbeing services, from a variety of locations and settings, as well as dispensing almost 500 million NHS prescription items every year.

The CCA represents the interests of its members and brings together their unique skills, knowledge and scale for the benefit of community pharmacy, the NHS, patients and the public. Our vision is that everyone, everywhere, can benefit from world class healthcare and wellbeing services provided by their community pharmacy.

About the National Pharmacy Association (NPA)

The NPA is the body which represents the vast majority of independent community pharmacy owners in the UK. We count amongst our members independent regional chains through to single-handed independent pharmacies. This spread of members, our UK-wide geographical coverage, and our remit for NHS and non-NHS affairs means that we are uniquely representative of the independent community pharmacy sector. In addition to being a representative voice, we provide members with a range of commercial and professional services to help them maintain and improve the health of the communities they serve.

About the Association of Independent Multiple Pharmacies (AIM)

AIM is a membership organisation representing community pharmacy businesses with multiple pharmacies. Our members represent a significant number of pharmacies across the UK, delivering primary healthcare and advice to their local communities.

AIM also engages with politicians, policy makers, the NHS and local government stakeholders to influence decisions about community pharmacy provision, services and remuneration.

About the Royal Pharmaceutical Society (RPS)

Our mission is to put pharmacy at the forefront of healthcare. Our vision is to become the world leader in the safe and effective use of medicines.

Since the Society was founded in 1841 we have championed the profession, and are internationally renowned as publishers of medicines information. Our Royal Charter gives us a unique status in pharmacy.

We promote pharmacy in the media and government, lead the way in medicines information, and support pharmacists in their education and development.

About Team Locum

Established in 2001, Team Locum Limited is the UK's largest supplier of locum pharmacists and opticians to the retail sector and provides services to pharmacies and opticians throughout the whole of the UK.

Team Locum also supply nursing and care services in and around the West Midlands registered with regulatory bodies such as REC, CQC, West Midlands CCG and FSB. As the leading UK healthcare agency in its field Team Locum Ltd must default to very high standards, Healthcare isn't like any other type of business it must have the utmost integrity, it must care, and it must possess the required knowledge and experience to provide its service.

Our dedicated staff takes care to place the best-trained, most-qualified professionals as quickly as possible. We take pride in representing hardworking, skilled professionals working in various environments. Acting as a voice for them, we build relationships and provide support in a range of work-related issues.

About Locate a Locum

Locate a Locum was founded by pharmacist Jonathon Clarke, with a vision to transform workforce management in the pharmacy industry through innovative software. We have a suite of products to achieve this goal; a booking platform, full workforce scheduling platform (permanent, relief and locum), compliance modules and real time reporting solutions. With a customer base right across the UK, our locum booking platform connects locum pharmacists with available shifts in pharmacies, from large multiples to small independents and with circa 7000 locums on the platform.

Consultation response

Definitions

The term “client” is used throughout our response to refer to the organisation or business owner receiving the services of a worker who is off-payroll. The term “worker” is used to refer to the individual providing services, off-payroll, and this term does not confer employee rights to this person. These definitions are in line with the terminology used in Her Majesty’s Revenue and Customs (HMRC) consultation document.

About this response

This response has been provided jointly by the Company Chemists’ Association (CCA), National Pharmacy Association (NPA), The Association of Independent Multiple Pharmacies (AIM), The Royal Pharmaceutical Society (RPS), Team Locum and Locate a Locum. We are a collection of trade associations, a professional body and locum agencies.

We recognise the aims these reforms are setting out to achieve in ensuring that those who are effectively employed and operating as personal services company (PSC) are paying a fair tax contribution. However, we believe that in order to be fair and to avoid unintended consequences for clients and workers, HMRC need to pay due regard to feedback from its range of stakeholders before introducing these reforms.

Therefore, we welcome the opportunity to respond to this consultation and we have welcomed the engagement we’ve had with HMRC to date; notably a joint seminar on tax status for the pharmacy sector was held by HMRC and CCA in February. However, following this meeting, the sector continues to have questions about HMRC’s position on tax status for locums and self-employed workers. From reviewing the consultation document, we are concerned that there is still much work to do to bring clarity to the questions raised. Namely, we believe that the following actions need to be addressed by HMRC as a matter of priority:

- Ensure that the tools and methodology by which clients should be determining the employment status are fit for purpose. One of the tools promoted by HMRC is the Check Employment Status for Tax tool (CEST). We believe that this is not refined enough to meet the needs of the community pharmacy sector. This is because, pharmacy has unique features; for example, many of the elements of control in this profession are out of the client’s hands and arise from regulatory and professional requirements and others are contractual through the NHS Terms of Service. Therefore, the nature of working as a contractor or locum in the sector may meet the HMRC’s ‘tests’ for employment and this may lead the Revenue to declaring that all workers are ‘employed’ for employment tax status. If this were the situation, it would make working as a locum or self-employed person untenable because, for many, the reforms may mean that they pay the same tax as employees but without the same access to employee rights. Additionally, clients may shun hiring workers on a temporary basis because of the ambiguity that exists around HMRC’s definition of a true locum, and whether a locum would exist in HMRC’s eyes following the reform. Therefore, because of this, we believe that HMRC need to;
- Conduct appropriate due diligence through an assessment of the impact that these proposals may have on the private sector. We are concerned that the impact the reforms

have had in the public sector, including in nursing, has not been thoroughly examined. We have significant concerns that, following these reforms, the flexibility of the pharmacy workforce may be affected to the extent that it disrupts the necessary supply of medicines and services to patients.

- Lastly, HMRC need to recognise that it takes time for businesses to change their processes to reflect new legislation. We believe that the IR35 reforms are complex changes which will be difficult to embed across the diverse populations of workers that exist across the private sector. Therefore, we are calling for businesses to be given enough time to adjust to these changes and for HMRC to announce and publicise a detailed timetable for rolling out the reforms. As part of this rollout, we believe that the Revenue need to provide clear communications to both clients and workers as currently many people are not in the know about HMRC's proposals, and the detail of these plans is still very unclear. With now less than 12 months before these reforms are due to be enforced, businesses will struggle to put the required changes in place on time. Therefore, we believe that a well planned and executed communications strategy is key to the success of reforms such as these.

We've fed the above points back to HMRC and we feel strongly that these issues should be addressed before plans for bringing the IR35 reforms into force are progressed. We're disappointed by the 'guidance' provided by HMRC following the series of roundtables held about this consultation. In addition to the three 'next steps' contained in the consultation document; this new guidance advises business to prepare by checking the CEST tool for any determinations. Clients and workers are caught in a 'catch 22' situation – there is a need to prepare in advance for these reforms, but this made impossible without the tools being workable for our sector and clarity on HMRC's position on the key determinants that signal employment for tax status.

We are keen to continue to work with HMRC on the issues we have raised regarding tax status. As well as working together as representatives from the pharmacy sector, we have met with colleagues from the ophthalmology sector who have similar concerns. We are also aware of the wider discussion about the efficacy of these proposals through the Westminster Hall debate held on 4 April 2019 about the IR35 reforms in the private sector. This debate raised concerns about the effectiveness of the CEST tool; the impact the changes may have on the flexibility of the workforce and the impact on the individual who may be taxed as 'employed' but without employee rights. The debate concluded that the private sector is varied and complex in comparison to the public sector and there isn't a 'one size fits all' approach to determining the employment tax status of those operating within this sector. This is a position that we strongly agree with. Furthermore, the debate highlighted that there is a need for tailored guidance - something we are also eager to see.

We would be happy to be contacted to provide more information about our response.

Consultation questions

We've chosen to respond to a selection of the questions from the consultation and these are identified below.

Question 11 - Would liability for any unpaid income tax and NICs due falling to the client (if it could not be recovered from the first agency in the chain), encourage clients to take steps to assure the compliance of other parties in the labour supply chain?

Whilst we recognise that the intention behind this principle is to encourage clients to take steps to assure the compliance of other parties in the labour supply chain, we are concerned that the liability aspect of this proposal means that everything falls onto their shoulders. This is a huge burden for clients, potentially navigating complex labour supply chains. The proposed dispute framework will be another resource intensive task for clients to manage, if the determination is challenged.

Additionally, there's an emphasis on performing employment status checks for all off-payroll workers for each engagement, yet without acknowledging that the administrative burden for businesses, particularly those with multiple premises, will be huge.

One possible solution may be to allow businesses to conduct an assessment based on the roles and responsibilities the worker will have, rather than an assessment of individuals in the same post. This is a discussion some clients have had with HMRC without a clear position being shared by the Revenue. Again, we believe that for this to work, HMRC need to let businesses know where they stand in advance so they can prepare. Furthermore, the tools for making the assessment, whether this is CEST or otherwise, need to be fit for purpose. We are concerned that HMRC continue to promote the CEST tool when the feedback from our sector, and in the wider public domain, would suggest that it's currently not capable of catering to all workers and professions.

Additionally, businesses that have pharmacies may hire professionals from trades and professions beyond pharmacy. This means that they will have people working in several job roles and will need to identify if they are employed for tax status purposes. This is hugely problematic because the organisations hiring the individual may not know if they are a PSC, an individual, or hired through another business, as this is not always obvious and it's difficult to identify these individuals from volumes of payroll data. In some cases, the contract businesses have may be between them and the pharmacist directly, not with the limited company.

Question 18 - Are there any other issues that you believe the government needs to consider when implementing the reform? Please provide details.

Administrative burden

We believe that HMRC need to consider the administrative burden that these reforms will create for the sector. HMRC's position states that the reforms won't apply to the vast majority (as the majority are small businesses). However, in pharmacy, *the majority* of businesses do not qualify as 'small'.¹

¹ Sukker, E. 2016. Community pharmacy in Great Britain 2016: a fragmented market, *The Pharmaceutical Journal*, 26 May 2016. Accessed online here: <https://www.pharmaceutical-journal.com/news-and-analysis/infographics/community-pharmacy-in-great-britain-2016-a-fragmented-market/20201210.article> (last accessed 24/05/2019).

Therefore, we believe that the community pharmacy sector will be adversely impacted by these changes.

Furthermore, there is an assumption that the reforms will be easier for large businesses to introduce because there will be more sophisticated HR departments and systems. However, it needs to be appreciated that payroll, not HR, will deal with locums and contractors within these organisations. Essentially, businesses will need to pay workers through accounts software, and this will be complex to calculate and resource intensive to administer. As mentioned before, there's also not enough regard given to the amount of time it will take for businesses to embed these changes.

Additionally, businesses already spend time performing checks on locums - they need to use broader compliance tools and sophisticated controls which allow them to identify who is on and off registered lists for the purpose of maintaining safety. Some pharmacy contractors hire people through the Venloc software, which is a system which allows for safe placements of pharmacy staff by performing these checks for clients. However, whilst software assists with broader compliance, it adds an additional layer of complexity for identifying PSCs, and an extra administrative burden.

The burden is also likely to be greater for medium sized pharmacies as they may not have the resource or the tools to manage the reforms in the way that HMRC expect.

CEST tool

As we have said already, we believe that concerns about the CEST tool need to be addressed to ensure that it can meet the needs of the specific nuances of working practices in the pharmacy and healthcare sectors. We also believe that HMRC need to provide clear guidance to support clients making determinations on employment status for tax.

Impact on the workforce

We are concerned that there will be workers than fall inside of IR35 and pay the same amount of tax as employees but without access to the same employee rights. This may lead to less people willing to work in the sector as 'self-employed' and therefore impact on the flexibility of the workforce. If this flexibility is disrupted significantly, it could impede the necessary supply of medicines and services to patients.

Communications

Finally, HMRC need to recognise the amount of time it takes for business to change their processes to reflect this new legislation. Therefore, we are calling for businesses to have time to adjust to these changes and clear communications from the Revenue to both clients and workers. We believe that this will be key to the success of these reforms.