

IR35 regulations: Statement – October 2017:

INVOLVE has spoken with HMRC and the Department of Health Tax Advisor about the potential application of IR35 to public involvement in research, and is advised as follows:

“Recent changes to [IR35](#) regulations were not intended to be applied to most instances where members of the public are offered payment for active involvement in health or social care research, but to address contractors who do not fit the HMRC criteria as ‘self-employed’.

As stated in the [EIM 71105](#) agreement between British Universities Finance Directors Group and the former Inland Revenue, ‘amounts paid to those concerned are unlikely to fall within the definition of ‘earnings’ for PAYE or NI purposes.’ As IR35 only covers payments that fall within PAYE, these payments do not appear to fall within IR35.

Although the original EIM 71105 agreement covers payment made through UK universities, these principles could be applied to involvement within other research institutions.”

INVOLVE’s understanding of IR35 and public involvement

The recent changes by HMRC to IR35 regulations rarely apply to public involvement. IR35 is the short name for the “intermediaries” legislation, which is a set of tax rules that apply to those who work for a client through an intermediary, which can be a limited company or a “personal service company”. This applies to many contractors. IR35 helps to stop contractors taking roles that would otherwise be paid employment, and to apply correct use of taxation in employment.

In April 2017, changes to these regulations came into effect to address payment of contractors and intermediaries who do not meet HMRC’s definition of ‘self-employed’. It was not intended that public contributors involved in research activities be affected by these regulations.

It is very important for public involvement in health and social care research that a diverse range of individuals can share their knowledge and experiences. Applying IR35 where it is not necessary will limit the diversity of those who can become involved.

Some research institutions and organisations have interpreted these changes to include public contributors involved in research, with some insisting that any payments to them be processed via the institutional PAYE (Pay-As-You-Earn) system. This results in income tax and National Insurance contributions being deducted at source, similar to the institution’s employees.

Most public involvement that includes offer of payment for involvement is performed without a contract, there is no mutual obligation, no control and it doesn’t fit the definition of employment (www.gov.uk/employment-status/employee). In these cases, it is highly unlikely that IR35 is applicable.

When IR35 might be applicable

If all of the following criteria are met, then it is sensible to seek advice on the employment status of the individual and whether IR35 regulations apply.

- **Control** – where the activities undertaken are wholly within the control of the research team or organisation, or an individual within the organisation that is offering payment. IR35 would only be applicable if the individual has no control over when and where, or how these duties or activities are undertaken.
 - For example – a service user researcher who is given specific tasks to perform, under the direction of the Principal Investigator or study team.
- **Obligation** – where there is a ‘mutual obligation’ associated with the role, so that the research team or organisation has an obligation to offer the role to the individual, and the individual has an obligation to take part.
 - For example – a public named co-applicant, whose responsibilities in the role are to perform specific duties as part of the study team. The study team has agreed that the co-applicant is therefore under an obligation to deliver these duties at certain times and in certain ways.
- **Substitution** – where the individual is the only person who could undertake the role or activity, and could not be substituted by another.
 - For example – a named public co-applicant, whose responsibilities in this role include specific duties that could not be performed by any other within (or outside) the study team.

For the vast majority of public involvement activities, the above criteria are not applicable.

Clearly, much depends on the role and activity in question when determining whether IR35 should apply, but the statement above offers clarity for most involvement activities.

In line with INVOLVE’s payment guidance (<http://www.invo.org.uk/resource-centre/payment-and-recognition-for-public-involvement/developing-a-policy-for-payment-and-recognition/>), it is advisable to ensure that you have a payments policy in place that is agreed with your institution’s finance and HR departments.

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