

Employment Status for Tax Purposes: a short guide for PCCs

On 6 April 2013 the reporting arrangements for employers operating Pay As You Earn (PAYE) changed. Such employers are now required to provide Real Time Information (RTI) – that is, to notify HMRC on each occasion that payment is made to an employee. Detailed guidance on RTI is available at www.hmrc.gov.uk/rti

These changes do not of themselves require anybody to operate PAYE who was not previously liable to do so. They have, however, brought into focus the importance of correctly determining the employment status of those who receive regular or occasional payments from a parochial church council (PCC). This guide is intended to assist PCCs in considering the relevant issues. It does not, and cannot, offer definitive advice, as the employment status of an individual depends in every case on the particular facts of the arrangement. What the parties call their relationship, or what they believe it to be, is not conclusive – it is the reality of the relationship that counts. Nevertheless, the intention of the parties must be taken into account and can be decisive where the relationship is ambiguous or where other factors are neutral¹.

A. General Principles

A PCC needs to ask the following questions in determining a person's employment status for tax purposes.

1. Is there a contract?

A contract is an agreement between parties, which may be written, oral or implied or a combination of these. There are three main elements of a contract of service (employment) or for services (self-employment):

- an offer of work and an acceptance of this offer;
- the intention to enter into legal relations;
- consideration (usually – but not always – payment in return for the services provided).

2. If there is a contract, is the worker an employee or are they self-employed?

There is no single test which will provide an answer to this question. All the circumstances of the arrangement need to be taken into account. As a general guide, the HMRC guidance suggests that if the answer to all the following questions is 'Yes', the worker is probably an employee.

- Does the worker have to do the work personally?
- Can someone else tell the worker what to do and when, where or how to do it, and move him or her from task to task?
- Does he or she work set hours?
- Is he or she paid by the hour, week or month?
- Is he or she entitled to overtime or bonus payments?

On the other hand, if the answer is 'Yes' to the following set of questions, it will usually mean that the worker is self-employed.

- Can the worker hire someone else to do the work or engage helpers at his or her own expense?
- Can the worker decide what work to do, and when, where or how to do it?
- Does the worker risk his or her own money?

¹ This and much of the following section is derived from the very useful HMRC guidance on employment status (www.hmrc.gov.uk/employment-status)

- Does the worker provide the equipment needed to do the job?
- Does the worker agree to do a job for a fixed price, regardless of how long it may take?
- Does the worker regularly work for a number of different people?
- Does the worker have to correct unsatisfactory work in his or her own time and at his or her own expense?

B. The PCC context

Applying these principles in the context of people who receive payment from a PCC is not always straightforward. This section focuses on some considerations that may apply to particular categories of church worker.

Stipendiary clergy

The vast majority of parochial clergy are office holders and their terms of service are governed by law rather than by contract. They receive a stipend through the central payroll operated by the Church Commissioners, and an agreement has been reached with HMRC whereby income tax and NI contributions are deducted at source.

Sometimes PCCs indirectly fund assistant clergy by making a payment into the stipends fund held by the Diocesan Board of Finance, but the clergy in question are paid and taxed through the central payroll in the usual way. Clergy in these categories are not employees of the PCC.

Occasionally, however, assistant clergy are employed and paid directly by the PCC under a contract of employment.

Non-stipendiary and retired clergy in receipt of fees

In some dioceses the board of finance (DBF) has directed that where an occasional office such as a wedding or funeral is conducted by a retired or non-stipendiary minister, that minister may retain the whole or part of the statutory fee that would otherwise be payable to the DBF. The fact that the PCC may act as a conduit for the payment of these fees to the minister does not of itself create any contract between the minister and the PCC: the PCC is simply paying over the money at the direction of another party.

In some dioceses a retired or non-stipendiary minister receives a small payment direct from the PCC for conducting a Sunday or weekday service (in others, such payments are made by the DBF). HMRC has issued advice on the position of unpaid office holders, which states that '*they will not have any taxable earnings unless it can be shown that they are being remunerated for their services. If the sums involved are small, you should not spend time examining the amounts paid to such officials to compensate them for the extra expenses they incur as a result of holding office*'.²

It is the individual's responsibility to account to HMRC (as miscellaneous income) for any amounts which go beyond the simple reimbursement of expenses.

Organists/directors of music

Under Canon B20, the power of appointing and terminating the appointment of any organist, choirmaster or director of music is exercisable by the incumbent with the agreement of the PCC (unless, in the case of termination of an appointment, the archdeacon directs that the agreement of the PCC should be dispensed with).

² www.hmrc.gov.uk/manuals/eimanual/EIM71100.htm

Organists may be employed or self-employed depending on the terms of their engagement. Some publicity was given to the decision of an employment tribunal in 2008 that an unnamed organist was an employee³ and there have since been further cases where the tribunal came to a similar conclusion⁴. However, each of these decisions is dependent on its particular facts and creates no binding precedent.

Organist Publications, an independent organisation providing resources for church musicians, has produced a model contract for the engagement of an organist which includes a statement in terms that it is a contract of employment⁵. This is not necessarily determinative in law: a court will always look at the reality of the arrangements lying behind any written agreement.

Choir members, bell-ringers and vergers

A wide variety of arrangements exists for the remuneration of choir members, bell-ringers and vergers which varies from those undertaking the duties as unpaid volunteers through to those who are engaged on a regular basis and who receive remuneration in return for providing their services. It is the engaging church's responsibility to determine if the individual is an employee, is self-employed or is a volunteer.

See Section C: Further advice (below) which explains where assistance can be obtained to establish an individual's employment status. In many cases there may be no intention to create a legal relationship and the individuals are volunteers, who receive a small payment for their services at weddings or funerals if they choose to participate, but who are under no legal obligation to do so. In such circumstances, as in the case of unpaid office holders, it is the individual's duty to account to HMRC for payments which go beyond the reimbursement of expenses.⁶

Expenses

Any payments which are simply reimbursing costs incurred, or are at the scale rates provided by HMRC for those costs (e.g. mileage rates) are not employment income and do not need to be declared, whether or not PAYE is being operated for the person concerned.

C. Further advice

HMRC provides a Status Customer Service Team helpline (03000 527450) to provide assistance on Employment Status matters within the UK. In addition, HMRC has an online employment status indicator interactive tool (www.hmrc.gov.uk/calcs/esi.htm) which helps to determine employment status based on the answer to questions posed. However, this does not take account of the particular context of ecclesiastical law, and it is recommended that PCCs consult the diocesan registrar for advice on employment status in individual cases.

Frank Cranmer of the Churches Legislation Advisory Service has written a helpful article on the new PAYE regime as it affects churches, with links to the relevant HMRC publications. This can be found at www.lawandreligionuk.com/2013/05/30/churches-employment-and-real-time-information-for-payee. There is also a comprehensive note (kept updated) on employment case law as it relates to churches, which can be downloaded from the CLAS website:

<http://www.churcheslegislation.org.uk/publications>

³ www.churchtimes.co.uk/articles/2008/22-february/news/tribunal-rules-that-unnamed-organist-was-an-employee

⁴ e.g. *Sholl v PCC of St Michael & All Angels w St James, Croydon & Anor* [2011] ET 2330072/2010

⁵ www.organistpublications.co.uk

⁶ www.hmrc.gov.uk/manuals/eimanual/EIM71100.htm