

**Good work: The Taylor review of modern working practices
Consultation on employment status
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 LITRG welcomes the opportunity to respond to this consultation. From our considerable involvement with voluntary organisations such as the charity TaxAid, and via feedback from members of the public to our website, we strongly believe there has been an increasing trend towards the ‘false’ self-employment of low-paid workers. As this is worrying and of great concern to us, we focus on this issue in much of our response.
- 1.2 False self-employment (treating a worker as self-employed when the true nature of his/her engagement is that of employment) is sometimes foisted upon the low paid, in order to drive down the engager’s costs and responsibilities, especially employers’ National Insurance (NIC). It is therefore hugely disappointing that this consultation document focusses solely on the boundary between status – we think it is a missed opportunity for discussion around removing the tax and NIC differences between the two regimes that drive workers to be hired other than as employees in the first place.
- 1.3 We do however, appreciate that there are competing pressures making this matter unsolvable in the short term, and so making it ‘easier for both workers and businesses to understand whether someone is an employee, worker or self-employed – determining which rights and tax obligations apply to them’ (the stated aim of this consultation) is still a very worthwhile exercise.

- 1.4 False self-employment is a huge problem for both the worker and the Exchequer alike. It has potentially wide reaching consequences – the fact that the worker is being treated as self-employed for tax purposes means that they are likely to declare themselves as self-employed for benefit purposes – which in Universal Credit (UC) tends to be a more burdensome and less generous route than for an employee – a double whammy for the worker.
- 1.5 Engagers can often get away with false self-employment because many workers think that self-employment is a choice rather than something decided by fact. Others, particularly in the construction industry, may be told that because they have a Unique Taxpayer Reference (UTR), their position lacks permanency, or because they provide their own small tools, they are self-employed. All of these things raise legitimate and worrying questions about the current state of guidance on employment status.
- 1.6 The low paid, who will not usually challenge engagers even if they have an inkling something may be wrong through fear of losing the work, have limited access to recourse through the courts, and so they must rely on effective state enforcement to help protect them from false self-employment. However, in our experience, some engagers who take part in this practice consider it unlikely they will ever be challenged by HM Revenue & Customs (HMRC).
- 1.7 There is no obvious route for workers to report ‘false self-employment’. There seems to be no protocol in place for dealing with those who telephone HMRC presenting false self-employment. There are minimal risks of HMRC investigating engagers on a self-starting basis. A more proactive and visible approach to enforcement would act as a serious disincentive to those engagers considering gaming the system.
- 1.8 The consultation document suggests that codifying existing status law might improve the current system. We understand the ambition for employment status law to be written down in one place, but it is hard to see how codification will make things any better for low paid workers unless there is also a refocus on compliance and enforcement. As we relayed in our recent submission to the Director of Labour Market Enforcement: ‘it doesn’t matter how thick you make the rule book, if it is not being visibly enforced there is no incentive to read it’.
- 1.9 The consultation explores the potential for developing a formal test that could be applied to establish the employment status of an individual. This is by no means a ‘quick fix’ solution but provided this is based on objective criteria and any supporting online tool is not a mere repetition of HMRC’s ‘Check Employment Status for Tax’ tool (which is too technical in its language to be easily useable by a lay person), there are clear benefits to this.
- 1.10 The Statutory Residency Test (SRT) sets a precedent for such a piece of work. Prior to its introduction, one of the main issues around assessing residence was that the intention of the individual was key. This was difficult to prove and as a result, a taxpayer’s position was uncertain. SRT is able to provide a much greater degree of certainty to taxpayers (though not without some element of ‘crystal-balling’ in some parts of the test). However clunky and unwieldy some of the definitions, and however time-consuming it is to systematically work

through the various elements of the test, it is generally regarded as an improvement to the old system and a similar type 'employment status test' should be seen as an attainable goal.

- 1.11 Although the SRT can provide certainty on residence status and has reduced the flow of disputed cases, it is quite complex and it is usually important to take appropriate professional advice to ensure a full understanding of the rules and definitions – this is not ideal as far as the low paid are concerned. HMRC need to be mindful of this when designing any new statutory status test – it needs to be easy to understand and use by those most likely to be caught up in false self-employment – this may include young people who are unskilled, or have lower levels of education or are migrant workers with limited English.
- 1.12 In terms of whether a simplified test could be developed, we caution against this – implementing a narrower 'employment' test like the supervision, direction, control test used by individuals working through an agency, would only serve to capture more people as employees who currently pass for self-employed, which could cause more distortive hiring behaviour in the long run. The fact that it is based on subjective criteria means an element of decision-making is still required and therefore seems to bring us little further forward from where we are now.
- 1.13 There is one aspect of the supervision, direction, control test which is of interest to us however. That is the fact that it is assumed to apply unless it can be shown otherwise. Given the low paid are typically within a master-servant type relationship, implementing a 'default' employee status for tax purposes could help stamp out false self-employment.
- 1.14 To summarise our thoughts concerning the part of the consultation focussed on tax status, the tax/NIC burden differential between the statuses means distortive behaviour is inevitable. However, a less subjective definition of the borderline, better guidance so that workers can understand the rules/distinction and more robust enforcement on HMRC's initiative would help cut down on the exploitation of vulnerable workers. All these elements are key; a response missing any one of these, will simply be ineffective in the long run.
- 1.15 We offer limited views on the questions around the minimum wage or whether there should be positive legislative definitions of employer and self-employed. However, in respect of the question over who is an employer, we highlight some specific issues for 'accidental' employers, e.g. disabled people seeking to engage the services of a carer. In many of these cases, it is the Government's own funding for individuals that creates status issues. But there is a lack of joined-up thought between HMRC and other Government bodies, which seems to be leaving those in charge of handing out funds – such as the NHS – in a difficult position.
- 1.16 We make some high level observations about 'worker' status as regards its application to agency workers, zero-hours workers and those in dependent self-employment. We do think it is a valuable status, however many 'workers' seem to have extremely limited or indeed no real understanding of the current set-up. In particular, they may be finding the dividing line between 'worker' status and self-employment hugely confusing, which is regrettable as this is the key distinction as far as those in the construction industry and gig economy are concerned (as compared with employee and worker).

- 1.17 In our view much of this confusion stems from the ‘in business on own account’ element of the test rather than the ‘personal service’ element of the test (as set out in the consultation). We do agree however that there is a problem with semantics around ‘worker’ status. It has a specific meaning in the context of employment law but also refers to the working population at large, which makes it very difficult for people to get clear results when using an internet search engine to research their positions.
- 1.18 Whether tax law and employment law should be aligned is a key question and we recognise that the importance of this may change depending on whether you are talking about low paid or higher paid workers. However, at the bottom end of the market, there is a vicious model of engagement that exploits that fact that there is a fault line between tax law and employment law (the elective deductions model, which treats workers as employees for tax purposes but self-employed for employment law purposes); so aligning tax law and employment law would seem sensible in this context.
- 1.19 There is an obvious hurdle to alignment, in that tax law has two categories of status, while employment law has three. We note the Taylor review recommendation that ‘workers’ should be taxed as employees as a workaround to this. Some already are, e.g. agency workers and zero hours contract workers, and so bringing dependent self-employed people into PAYE also, would certainly make the framework more coherent. Simplicity also suggests that this should be a long term aim, however it would obviously have far reaching implications, particularly for the gig economy – which has revolutionised opportunities and choice for consumers in a way that may be difficult to roll back - and so the proposal should be subject to full and proper consultation to fully understand the impacts.
- 1.20 If gig economy workers and other dependent self-employed persons are to remain paying taxes on a self-employed basis for the time being, statutory payments such as sick pay or maternity pay need to be untangled from PAYE. They are often thought of as employment law ‘rights’, but are actually dependent on whether there is a ‘secondary contributor’ (i.e. someone that is liable to pay employers’ National Insurance contributions (NIC)). These payments form an important part of the safety net for workers, so should become available to all those with ‘worker’ status, whether or not they are also treated as employees for tax purposes and paid under PAYE.
- 1.21 There is no reason to apply different definitions of employment/self-employment across other regimes that have the binary distinction, e.g. tax credits and UC, and we recommend this is changed as soon as possible.
- 1.22 To be helpful, we have summarised the recommendations made throughout this submission here:
- The Government should consider whether more could be done to equalise the tax/NIC treatment of employees and self-employed.
 - The Government should carefully consider the extent to which more costs and obligations are imposed on employers, as those costs and obligations are a major factor in fuelling the drive towards false self-employment.

- HMRC should refocus on PAYE compliance and enforcement at engager level.
- HMRC should develop and publicise a central gateway within which workers can report false self-employment and have clear protocols in place for dealing with those who call the helplines presenting false self-employment.
- HMRC should try to identify which factors are misleading workers the most when it comes to their employment status and put out specific messages to try and counter them.
- HMRC should work with tax professionals and representative groups, including LITRG, to develop better guidance around employment status and a more useable CEST.
- An easy to use and apply statutory status test should be explored further, based on the current principles (but distilled as far as is reasonably practicable into objective criteria).
- The law should treat low-paid individuals fulfilling certain criteria as employed for tax purposes by default unless it can be shown that the worker is genuinely self-employed.
- The confusing official information and guidance on GOV.UK on 'worker' status needs to be rethought, particularly to bring greater clarity for the 'dependent' self-employed. It should contain some real-world examples of where the dividing line between employees, workers and the self-employed sits.
- Workers should be given a written statement confirming their employment status, what this means and where to go for further help.
- The Government should consider whether there is a role for the Gangmaster's Licensing and Abuse Authority (GLAA) in supporting people with securing 'worker' rights. Alternatively, the Government should return to the default worker status recommendation made by Matthew Taylor.
- 'Worker' status should be renamed to bring clearer demarcation to the concept.
- The Government should wait to see what the likely business reaction will be to the *Uber* case decision before worrying about how to apply the minimum wage legislation to the very specific circumstances of on-demand work.
- The current 'unitary' approach to identifying an employer for compliance purposes should be widened so that other entities in a supply chain could become liable for any breaches.
- HMRC should work with other areas of Government, e.g. the NHS, that hand out independent living funding (or similar) and ensure that correct advice is being given to claimants about the status of the carers they engage.

- Employment status should copy across the two regimes (tax and employment law) wherever possible.
- The Government should consult on extending the boundaries of PAYE to ‘workers’ to fully understand the benefits and risks to those potentially affected.
- Given the difficulties in practically implementing a requirement that all ‘workers’ be taxed as employees any time soon, sick pay and parental pay should be made expressly ‘worker’ rights and not reliant on there being a secondary contributor.
- There should be an alignment of the meaning of employed and self-employed across systems with a binary distinction, e.g. tax, tax credits and UC, as soon as possible.

2 About Us

- 2.1 The LITRG is an initiative of the CIOT to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other Government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT’s primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

- 3.1 LITRG welcomes the opportunity to respond to this consultation on employment status and, in particular, is pleased that the consultation considers employment rights and tax issues together.
- 3.2 The fact that this is the latest in a long line of consultation documents, reviews and studies on employment status¹ and that there are 64 questions in this consultation, speaks to the

¹ Including the Matthew Taylor review, the Office of Tax Simplification’s review on employment status in 2014/2015 (<https://www.gov.uk/government/publications/employment-status-review>), the cross government working group on employment status (<https://www.gov.uk/government/groups/cross-government-working-group-on-employment-status>) and the Cable review of 2014

enormity and complexity of the topic. However in some parts of the consultation, it seems the Government are asking questions for completeness, rather than with a view to making any changes. In others, the issues highlighted as important cannot, in our view, be considered properly without taking into account a range of other issues which themselves are not covered – e.g. IR35.

- 3.3 Ultimately there is a need for a much fuller debate and we think it would have been better to produce a call for evidence as a first step, in order to identify the areas that need tackling as a priority.
- 3.4 Our approach is therefore to provide some general comments, loosely framed under the various chapter headings, as the points we would like to raise at this juncture are not necessarily covered by the specific questions.
- 3.5 We hope these will be useful to the Government understanding the current problems and potential solutions in respect of the low-income population and in deciding how to move this matter forward.

4 General comments

- 4.1 The proportion of the workforce described as self-employed is growing. However there is increasing evidence to suggest that a significant amount of this is ‘false’ self-employment,¹ which engagers use as a way of driving down costs (e.g. by avoiding employers’ NIC) and circumventing employment rights legislation. In particular, there still seems to be widespread false self-employment in the construction industry² but we do not believe it is limited to this sector.
- 4.2 The Director of Labour Market Enforcement notes in his recent strategy³ that exploitation exists in the form of: ‘employers and agencies incorrectly treating workers as self-employed with the intention of evading National Insurance, PAYE and other financial obligations.’ Sadly, it seems that it is low-paid and vulnerable workers that are finding themselves contending with such practices.

(<https://www.gov.uk/government/news/employment-review-launched-to-improve-clarity-and-status-of-british-workforce>)

¹ For example see here: <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/bogus-self-employment-costing-millions-to-workers-and-government>

² A recent Freedom of Information request made by Unite the Union reveals that 47% of the workforce are being treated as self-employed: <http://www.unitetheunion.org/news/huge-rise-in-bogus-self-employment-demonstrates-urgent-need-for-radical-employment-reforms/>

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf

- 4.3 Repeatedly, we see queries to our website such as this: *‘My job is as a leaflet distributor. I was initially PAYE, by my employer has informed me that I am now self employed (from Feb 2016). I have undiagnosed learning disabilities and require step by step help with what to do in order to pay tax and National Insurance that is due. My sister is trying to help me, but we really do not know where to start. We have a number of queries. e.g. I do not have a business, but my employer says that I am now self employed. Am I a business? What form should I be filling out to work out my tax and NI? Can I claim expenses...Also, work clothing, in particular footwear.’*
- 4.4 In Appendix 1 of this response, we have included a selection of other queries that LITRG and our counterparts at the charity TaxAid have received from workers presenting potential false self-employment. We think these examples demonstrate the extent and breadth of the issue.
- 4.5 Those in false self-employment are not ‘enjoying’ the certainty of having their pay and taxes dealt with under Pay As You Earn (PAYE) and will be missing out on employment rights. But it gets worse. A person’s tax credits or UC status may follow their tax status, so if a person is treated as self-employed for tax purposes, then this means they are likely to declare themselves as self-employed for tax credits or UC purposes (although this rule of thumb cannot always be relied upon – see section 10 for more on this). The rules for the self-employed in Universal Credit in particular, tend to be less generous/more burdensome than for employees, so false self-employment can result in a worker getting the worst of all worlds.¹
- 4.6 Before moving on, it is worth saying that we are disappointed that the Government do not seem to be considering the idea of equalising the NIC treatment of employees and self-employed (particularly at engager level). There is growing consensus that this is the correct direction of travel in the long-run, given this is the driver of much of the labour market abuses that the Taylor Review attempted to deal with. We would therefore recommend that the issue continues to be discussed and researched.
- 4.7 In the meantime other factors that may be acting as drivers of behaviour around employment status need to be examined. These include things such as automatic enrolment into pensions, more regular PAYE reporting requirements under Real-Time Information (RTI), and the removal of the Percentage Threshold Scheme for statutory sick pay.
- 4.8 Many small employers in particular find PAYE compliance overwhelming when they take on an employee. They are usually fully occupied developing and running their business and so do not have the time or energy required in getting to grips with their HMRC obligations. The burden is disproportionate and no doubt acts as a significant disincentive to employing workers for some engagers.

¹ For example, a self-employed UC claimant’s benefit is restricted if they do not earn each month a minimum amount which equates to the National Living Wage (NLW) for (usually) 35 hours a week (the ‘minimum income floor’ or MIF), a burden which is not imposed upon employed claimants.

- 4.9 While we appreciate that there are sensible policy decisions behind many of these employer costs and obligations, there is a balance to be found and the Government should think carefully before adding further to them in the future.

5 Section 4 – issues with the current employment status regime

- 5.1 From a general perspective (one which our colleagues in the CIOT will be commenting on further), we largely agree with the summary of issues around the current employment status regime, i.e. it is open to interpretation, it is complex and there are difficulties in resolving disputes. However, these are not necessarily the issues behind *false* self-employment – where employee status may be quite clear but self-employed status is foisted upon the person anyway.
- 5.2 At the root of much of this is often worker ignorance (or indeed workers going along with their engagers on the basis of financial need) and the fact that there is little deterrent for engagers.
- 5.3 If HMRC enforced the rules more visibly and brought unscrupulous engagers to account for the PAYE failures sat behind false self-employment, then this would help check poor hiring practices – safeguarding both workers and compliant businesses that are currently being undercut. Sadly, in our experience, this is often lacking. Indeed, HMRC have recently abdicated their status policing responsibility to end users in public sector IR35 cases (and are now considering doing the same in the private sector¹), raising real questions about their compliance and enforcement capacity and capability.
- 5.4 We sympathise with HMRC that status issues are time-consuming and difficult to investigate. But this does not mean that they should not be undertaken where appropriate (in any case, our view is that much false self-employment is so obviously false that it could be easily challenged).
- 5.5 We also understand that HMRC are operating against a backdrop of reduced resources but why then do HMRC use what little resource they have in pursuing workers? In particular, we understand from our counterparts at TaxAid, that HMRC's hidden economy work means that officers are likely to concentrate on failure to notify and underreporting issues around self-employment, without considering whether it is genuine self-employment in the first place.
- 5.6 To be clear (and despite what the GOV.UK website says²) under the PAYE regulations,³ the general principle is that it is the engager's responsibility to get tax status right for the

¹ <https://www.gov.uk/government/consultations/off-payroll-working-in-the-private-sector>

² "Individuals and their employers may have to pay unpaid tax and penalties, or lose entitlement to benefits, if their employment status is wrong" <https://www.gov.uk/employment-status/employee>

³ <http://www.legislation.gov.uk/ukxi/2003/2682/regulation/80/made>

purposes of operating PAYE. Only if the employer satisfies HMRC that the PAYE under-deduction was a genuine error despite taking reasonable care, does the liability shift to the employee, and then only if HMRC serve a direction formally requiring the employee to pay the outstanding tax, against which the employee can appeal.

- 5.7 HMRC need to put in place a dedicated taskforce to tackle false self-employment at engager level – not least, because administratively it must be far harder to chase large numbers of workers rather than just deal with the single engager. They need to undertake visible, fast, strong investigations and prosecutions that really send a message out to engagers who may be thinking about false self-employment.¹
- 5.8 Alongside such an approach, HMRC also need to improve education and awareness around employment status to help people recognise false employment (more on this in the next section) and develop and publicise a central gateway within which workers can report false self-employment.² HMRC should also ensure that their helpline advisers and other frontline staff, including on the Needs Enhanced Support (NES) team, are well-versed in false self-employment. There should be a clear protocol in place for dealing with those who present with false self-employment. It is not enough to just advise they look on GOV.UK, ‘talk to their employer’ or complete the self-employment pages of a tax return anyway.
- 5.9 The fiscal losses arising from false self-employment must not be forgotten, so the incentives for HMRC to prioritise their work in this area are there. Not only are those in false self-employment likely to earn significantly less than regular employees and therefore pay less tax and NIC (which makes them more likely to need to rely on in-work benefits such as tax credits), even when they do earn as much as regular employees, the tax and NIC is structured so that they pay less. (The engager, of course, has avoided employers’ NIC altogether.)
- 5.10 There is another issue – many of those in false self-employment will not usually have had to fill in a tax return before and are unlikely to engage a professional accountant or tax adviser. As a consequence, these individuals have to navigate the complexities of the confusing self-

¹ While tax is not formally part of the Director of Labour Market Enforcement’s remit, he does take it upon himself in his recent strategy document to mention enforcement gaps around tax avoidance, which should act as a wake-up call to HMRC. His recent 2018/19 strategy document, at figure 4, provides a useful outline of the characteristics of an ideal enforcement system, which it would be useful for HMRC to reflect upon.

² There is the cash-in-hand hotline but this is not intuitively the place that workers would go to report false self-employment as many of them are not paid in cash: <https://www.gov.uk/report-cash-in-hand-pay>

assessment system on their own, which may well result in non-compliance or underreporting.¹

6 Section 5 – Legislating for the current employment status tests

- 6.1 We appreciate that case law is not always elegant, but the case law on employment status is probably more coherent than on first sight (albeit the principles that come out of it are not explained particularly well – more on this later) and indeed, it gets to the ‘right’ answer for the majority of people most of the time. Even for borderline or ‘hard cases’ it affords the best chance of correct classification as the courts will deal with complex and circumstantial relationships on a case-by-case basis.²
- 6.2 While we understand the ambition for employment status law to be written down in one place, full codification is likely to take a great deal of time and effort and will be challenging even for the most talented of draftsmen.³ On the other hand, legislating for the principles only and leaving judicial decision making to fill in the gaps, seems to bring us no further forward. In any case, per our comments in section 4, it is hard to see how codification will make things any better for low-paid workers unless there is also a refocus on education and enforcement. As we relayed in our response to the Director of Labour Market Enforcement⁴: ‘it doesn’t matter how thick you make the rule book, if it is not being visibly enforced there is no incentive to read it’.
- 6.3 Part of the solution to ‘false self-employment’ is for workers to be able to identify the correct tax treatment for themselves. It is not so much a case of replacing the minimalistic approach to legislation (which is unlikely to be any more accessible to workers than case law), but replacing the minimalist approach to guidance. In general, the Employment Status

¹ Alternatively they may end up falling into the hands of unscrupulous agents who often exploit the situation for their own gain, including via the making of dubious expense claims to generate tax savings (which they then take a percentage of, as their fee).

² In the words of Judith Freedman (<https://www.ifs.org.uk/comms/dp1.pdf>): ‘In the UK, great weight is placed by the courts on the facts of each case and there is no definitive list of factors or weighting of those factors to be taken into account. If workers are seen as stretching across a continuous spectrum, then this fact-based jurisprudence accords with reality and gives the courts the best chance of adapting the law to changing work patterns.’

³ Capturing all the detail as of now, will essentially ‘freeze’ the development of the law for the time being. It is also likely to enhance avoidance opportunities because it will set a ‘roadmap’ for people to use – defining what is not caught as well as what is caught.

⁴ <https://www.litrg.org.uk/latest-news/submissions/171010-informing-labour-market-enforcement-strategy-201819-0>

Manual is a comprehensive manual but it is far too detailed and technical for the lay person, and the current GOV.UK summary is too basic and inadequate,¹ even as a place to start.

- 6.4 Because of this, many workers simply do not understand that self-employment is not a 'choice' but rather one that depends on the true underlying nature of the relationship between the parties. Some are bamboozled by unscrupulous engagers telling them that their employment status relies on the permanency of the position² or the provision of tools and equipment or them having a UTR. In other cases things like self-billing invoices and the Construction Industry Scheme (CIS) (being given 'payslips' and having tax deducted at source) mean people do not even know they are being treated as self-employed – until something goes wrong. We think HMRC should try and get to the bottom of what the main pitfalls are in terms of workers being misinformed or misled around status, and design tailored guidance to address them.
- 6.5 HMRC used to have a good factsheet, now archived,³ that could be brought back to life to provide the 'second tier' of guidance that is so clearly missing. It could be enhanced to include 'real world' examples of what employment v self-employment may look like up against each other. This would obviously then need to be well signposted and disseminated, via more than one channel.
- 6.6 Alongside this, HMRC urgently need to rethink the employment status tool. On a relatively basic level, it could be greatly improved by being split into two tools – one that deals with IR35 issues and one that deals with general status enquires – or one that deals with engagers and one that deals with workers.⁴

¹ GOV.UK (<https://www.gov.uk/employment-status>) has long lists of indicators of employment/self-employment. Some of the indicators of employment seem to put the cart before the horse, which is less than helpful – e.g. 'someone who works for a business is probably an employee ifthe business deducts tax and National Insurance contributions from their wages'. Others lack key detail which leaves them open to interpretation e.g. 'someone is probably self-employed and shouldn't be paid through PAYE if they use their own money to buy business assets, cover running costs, and provide tools and equipment for their work' (this does not make clear that tools and equipment is not 'picks and shovels'¹ but probably expensive and/or significant equipment). The self-employed indicator 'they can hire someone else to do the work' does not make clear that this means an *unfettered* right of substitution.

² There seems to be a widespread belief in the construction industry that you can be self-employed if your work lasts less than two years – this seems to have been confused and conflated with the 24 month 'temporary workplace' rule.

³<http://webarchive.nationalarchives.gov.uk/20141203185309/http://www.hmrc.gov.uk/employment-status/index.htm#1>

⁴ The Office of Tax Simplification made various recommendations around the Employment Status Indicator tool in their review of employment status, suggesting there was potential for this being split into more than one system. The Government accepted this, however we can find no indication that this recommendation has been given any further consideration or taken forward in any way.

- 6.7 It would be much harder for an engager to insist on self-employed status if a worker could show them something they have printed off from GOV.UK that says they are an employee. However, the current Check Employment Status for Tax (CEST) tool (since being redesigned for changes in off-payroll working in the public sector) tries to do too much and even we, as tax professionals, can barely understand the questions (the statement answers often seem too mechanical, even where we can). The bottom line is that most low-paid workers will not have the knowledge or confidence to tackle the status tool and so will walk away before they have even started.
- 6.8 For example, the second question asks ‘How does the worker provide their services to the end client?’ – a worker should choose ‘As a sole trader’ to access the part of the tool that they need (i.e. the bit that deals with ‘general’ status enquiries). But how would they know to pick that if they do not know what a sole trader is, or indeed – are not one (given its technical meaning is someone who is the exclusive owner of a business). Similarly, the term ‘end client’ is not something likely to be understood by the majority of workers.
- 6.9 Having run the language of several questions of the CEST (included as Appendix 2) through a reading age checker,¹ the result is about grade 12, which is at the same reading level as the Harvard Law Review. This is way above the target recommended reading age (it is suggested that for most purposes, grade 7 is what to aim for meaning someone between 12 and 13 years old, could probably understand it). Ultimately, to help protect the lowest paid and most vulnerable in society, the tool needs to be something that the young man highlighted in para 4.3 could use.

7 Section 6 – A better employment status test?

- 7.1 A statutory status test which is ‘simpler, clearer, more coherent’ has the potential to bring benefits to workers and those engagers who want to get things right. To be an improvement on the current system however, the guiding principles would need to be distilled into objective criteria as far as is reasonably practicable.² They could then potentially be considered under a more precise structure – e.g. be weighted or points-based.
- 7.2 We would support the use of an online tool to supplement the test (subject to the comments made around CEST in para 6.7-6.11) and it is important that the results of such a tool are treated as definitive provided the input is correct. Consideration will need to be

¹ <http://www.thewriter.com/what-we-think/readability-checker/>

² The objective criteria would need to be focused on the nature of the arrangement between the engager and employee, e.g. how much income comes from that engager, where the individual carries out the work, how long the engagement lasts, etc. They should not be focused on anything external to that arrangement, e.g. the percentage of an individual’s income that comes from one engager, as it is difficult to see how an engager can be held to account for misclassification where the factors leading to that classification are outside of its control or even knowledge.

given to how those who are digitally excluded might be able to independently check their status, for example by offering a dedicated helpline.

- 7.3 Developing a statutory status test is likely to be a difficult process and means everyone would need to learn new rules, but the advantages of the definitive and binding outcome one would get are clear, particularly for those in false self-employment. We suggest that a working group with relevant stakeholders is set up to help develop the test in an open and transparent way.¹
- 7.4 A precedent for this kind of test and collaborative working lies in the development of the SRT. However clunky and time consuming it is to systematically work through the various elements of the test, it is generally regarded as an improvement to the old system as it introduced a lot more certainty and reduced the flow of disputed cases. It is this sort of benefit we see as attainable for employment status.
- 7.5 However, the SRT is complex – the guidance booklet RDR3² is over 100 pages long and many people still need to take professional advice to ensure a full understanding of the rules and definitions – not ideal for the low paid.³ Any new statutory status test needs to be easy to understand and use by those most likely to be caught up in false self-employment – this may include young people who are unskilled, or have lower levels of education or are migrant workers with limited English.
- 7.6 The consultation also considers ‘a less complex’ test. On first sight, a simplification in this area seems attractive, however upon reflection we wonder whether it would be able to deal fairly with the complexities that exist in the ever-changing labour market.
- 7.7 As the consultation document points out, a simplified ‘employment test’ (supervision, direction, control or SDC) has been legislated for in several areas involving agency workers⁴), however SDC is a materially tighter test than ‘employment’. It would likely redefine much current self-employment as employment, potentially increasing the scope for distortive

¹ It goes without saying that it should be subject to full and proper period of consultation and should be tested from both a technical and usability perspective extensively before launch. Consideration should be given as to how to ‘protect’ those that find themselves on a different side of the line than under the current system.

² <https://www.gov.uk/government/publications/rdr3-statutory-residence-test-srt>

³ In addition, where SRT does not give an intuitive result, in most cases the impact is limited because of the ability to override the domestic position under the terms of a double tax treaty. With the question of employment status, there is no such ‘back-up’ position to take. Further, whereas the SRT can be considered once, at the end of the tax year – for a status test an engager would need to complete it in real time and potentially continue to update it for changing circumstances (e.g. an extended engagement).

⁴ The 2014 agency rules (ITEPA 2003, s44(2)) and the 2016 travel and subsistence rules (ITEPA 2003, s339a).

hiring practices. Ultimately, it is also still a subjective test (HMRC's 19 pages of guidance illustrating that there is still much decision making required¹) – so a refocus on compliance and enforcement would still be necessary.

- 7.8 One aspect of SDC that is interesting to LITRG however, is the assumption that SDC does exist in every case of agency supply unless the opposite can be shown. In order to protect the low-paid from 'false' self-employment (and based on our view that the low-paid will typically hold master-servant jobs), we recommend that individuals fulfilling certain criteria could be treated as employed for tax purposes by default unless it can be shown that the worker is genuinely self-employed.
- 7.9 For example, it could be the case that where an individual is offered a rate of pay equivalent to less than £20,000 p.a. say, then the engager has an obligation to demonstrate that certain statutory criteria are met (triggering something like the US ABC test) if he or she wishes to avoid the responsibilities of being an employer. As wages are very often determined by external forces and commercial considerations they are unlikely to be manipulated upwards by engagers seeking to avoid such rules.

8 Section 7 – The worker employment status

- 8.1 Ultimately as we are not employment law specialists, we are not in a position to make many technical comments here,² however we do get queries into our website that expose issues around 'worker' status so we make a few high-level observations.
- 8.2 'Worker' status is important and relevant in ensuring that people in non-standard work have access to a basic suite of employment rights. However, it is clear to us that it is not a well-understood concept. In particular, confusion is created in itself by virtue of there being three different statuses – employee, worker and self-employed – for employment law, as against the two more distinct categories of employed or self-employed for tax purposes.
- 8.3 'Worker' status will include agency workers and zero-hours contract workers – who clearly personally perform services outside their own business, but who lack the mutuality of

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/290051/Definition_of_Supervision_Direction_or_Control_with_supporting_examples.pdf

² Having said that, we do think it would be useful if there was one legislative definition of 'worker' that was applied across the board and if all 'worker' rights could be legislated for in one place rather than scattered over different Acts as they are now. For example, the Employment Rights Act (ERA) 1996 s. 230 provides the core definition of 'worker' for some purposes. This definition is also picked up for National Minimum Wage purposes (s.54(3) National Minimum Wage Act 1998), in the Working Time Regulations 1998 (SI 1998/1833, s.2) and also in the Pensions Act 2008 for auto enrolment (s.88). However a slightly different definition of 'worker' is used for discrimination law for example in the Equality Act 2010 (s.83(2)).

obligation between assignments to gain them access to full employee rights.¹ ‘Worker’ status will also potentially include self-employed people, such as construction workers and those in the gig economy who often have less autonomy than the genuinely self-employed and may derive all or most of their income from the business they work for.

- 8.4 However sadly, this is where things get really confusing as working out whether such people are in fact ‘workers’, as distinct from self-employed, appears to start at the same point and cite the same authorities (including from tax cases) as trying to work out whether they are employees as distinct from self-employed. We understand that ‘worker’ status is for those who do reach the ‘pass mark’ for acquiring employee status, but even to us, it is not clear where the line is (or should be) drawn.
- 8.5 However many of the issues here stem from the second part of the test (i.e. the ‘in business on own account’ section) rather the first part of the test – the personal service section, which the consultation document identifies as the main culprit in ‘worker’ problems.
- 8.6 The flipside of personal service is, of course, the right of substitution. While it may be the case that some businesses deliberately add in substitution clauses to contracts to make it seem as if personal service is not present (even though in reality the clauses cannot be exercised), we would have thought that many people are now awake to this wheeze.²
- 8.7 We understand that Matthew Taylor is keen on framing ‘worker’ status more around ‘control’ to by-pass this issue, however this seems unnecessary. Simply issuing more sensible guidance explaining the current rules may be a better option.
- 8.8 A good start would be to improve the confusing ‘worker’ status guidance on GOV.UK (see Appendix 3), which seems to suggest that ‘casuals and irregulars’ are a different category of ‘worker’ altogether but makes no mention of the dependent self-employed. It completely misses the fact that ‘workers’ are entitled to auto-enrolment and avoids the complex question of sick pay/parental pay completely (as we describe in section 10) by saying that ‘workers’ *may* be entitled to statutory payments, which is less than helpful to someone who is trying to research and fully understand their position.

¹ While we appreciate that it can be hard for those contending with things like overarching contracts of employment, pay between assignments contracts and nominal hours contracts to be sure as to whether mutuality of obligation exists, the differences between employee rights and ‘worker’ rights are possibly not all that significant for many workers. The ‘extra’ rights that come with employee status are often time based and their work is often short term (unfair dismissal or a redundancy payment are only available after two years’ service for example).

² Indeed, it was back in 2014 when the problem of sham substitution clauses was highlighted (albeit in the context of agency workers and PAYE). The Government explained that intermediaries attempted to sidestep the personal service test by claiming that there is no obligation for the worker to provide their services personally: *‘This may be done by including a clause in the contract that states the worker is able to send someone else to do their work. In fact this is often not the case because in reality the engager wants that specific worker.’*¹

- 8.9 To help get past the issue described in para 8.5 it should contain some real-world examples of where the dividing line between employees, workers and the self-employed sits – there is an excellent example in the Law Society’s case study ‘*What status is the driver?*’.¹ An interactive tool to assist those seeking to determine ‘worker’ status could also be developed. It must then be publicised and promoted to workers.²
- 8.10 Regardless of what action is taken to improve ‘worker’ awareness and information around their status and rights, there would still seem to be a bit of a ‘gap’ when it comes to low-paid ‘workers’ securing their rights in practice.
- 8.11 We recognise that there is a proposal to extend the right to written particulars to ‘workers’ as part of the transparency consultation.³ However, this must include confirmation of employment status and where to go for further help, if it is to make any difference whatsoever. We can also see that implementing the requirement to provide such a document on some engagers will be challenging. We also appreciate that the issue of a state enforcement body for holiday pay is being looked at as part of another other consultation⁴ however as described in our submission to this consultation, this does not seem to us to be a complete solution.
- 8.12 We think there should be a state body charged with supporting and enforcing worker rights in the round. It seems to us that the GLAA are suitable for this role – they are approachable/independent, it fits squarely under their remit (indeed they have licensing standards covering basic employment rights for certain low-paid sectors already⁵) and they are widely regarded as being robust and effective in helping to stamp out bad practices. Of course they would require more resources should they accept additional responsibilities.
- 8.13 It strikes us that another way of dealing with this whole issue (as a number of bodies, including LITRG have recently recommended⁶), is that the burden of proof should be reversed. This would mean that it is for the engager to prove that the individual is not

¹ <http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/independent-review-of-employment-practices-in-the-modern-economy-response/>

² There should also be a more joined up approach across official bodies as they all seem to explain ‘worker’ status differently. For example, ACAS’s (the Arbitration, Conciliation and Advisory Service) definition is: ‘*A worker will also work to the terms within a contract of employment and generally have to carry out the work personally. However some workers may have a limited right to send someone else to carry out the work, such as a sub-contractor.*’

³ <https://www.gov.uk/government/consultations/increasing-transparency-in-the-labour-market>

⁴ <https://www.gov.uk/government/consultations/enforcement-of-employment-rights-recommendations>

⁵ <http://www.gla.gov.uk/media/1596/licensing-standards-may-2012.pdf>

⁶ <https://www.litrg.org.uk/latest-news/news/170504-press-release-default-‘worker’-status-smart-move-says-lit>

entitled to ‘worker’ employment rights, not for the individual to prove that they are so entitled. We note the Government have said that they do not wish to “reverse the burden of proof at this time”, but we hope the Government will return to this recommendation as this seems to chime with the intention behind the policy – i.e. that it should apply to those who are not ‘genuinely’ self-employed.¹

- 8.14 Finally, we agree that there is a problem with semantics when considering ‘worker’ issues – it has a specific meaning in the context of employment law but also refers to the working population at large, meaning that it causes confusion for people, for example it is very difficult to get clear results when using an internet search engine. It could also be usefully repurposed to refer to limb (b) workers only (rather than both employees and limb (b) workers as is now). However the label ‘dependent contractor’ does not seem relevant to agency workers and zero hours contracts workers, who are also ‘workers’, so it may be that the language needs to be rethought.

9 Section 8 – Defining working time

- 9.1 We can see the Government’s dilemma on classifying on demand ‘workers’ as hourly workers for minimum wage purposes (or indeed piece rate workers, as suggested by Matthew Taylor and others²).
- 9.2 It is clear to us that as things stand, many of those in the gig economy are entitled to ‘worker’ rights, including the minimum wage. However we are unclear on whether there is actually a problem in terms of such workers being paid below the equivalent of the minimum wage. Has the Government explored this? If not, it is something that should be explored further.
- 9.3 In any case it seems to us that if the trend of gig economy court cases on ‘worker’ status continues, one likely reaction of the businesses involved will be to change their operating model (e.g. reduce control, etc.) to manoeuvre their workers outside of ‘worker’ status. As minimum wage is on course to rise to £9 per hour by the end of the decade, and particularly if the boundaries of PAYE are extended to those with ‘worker’ status (as examined in section 10), there will be a huge incentive for businesses to engage workers outside of this framework.
- 9.4 While we appreciate that there will still be a question over calculations in respect of any historic liabilities, it seems a bit premature to consult on how to apply the minimum wage legislation to the very specific circumstances of on-demand work going forward. While there

¹ As set out by Recorder Underhill QC in the case of *Byrne Brothers (Formwork) Limited v Baird (2002)* ICR 667

² <https://www.resolutionfoundation.org/publications/the-minimum-required-minimum-wages-and-the-self-employed/>

is so much uncertainty (and indeed, while the *Uber* case decision¹ that brought this all to the fore is still under appeal), we think the Government should adopt a wait-and-see approach.

10 Section 9 – Defining self-employed and employers

- 10.1 As stated previously, we are not employment law experts but we think it would be inherently difficult to formulate a positive definition of self-employment (although we can see that it could help lead to a better understanding of genuine self-employment, which could in turn, be useful in preventing false self-employment).²
- 10.2 In terms of whether the employing entity should be defined by the law, we think this would be helpful to low-paid workers, because often they find themselves working through long and complex supply chains where there is tax and employment law non-compliance. If the current ‘unitary’ approach to identifying the employer for these purposes was also widened, so that other entities in the supply chain could become liable for any breaches, this would help ensure compliance throughout supply chains.
- 10.3 The question over ‘employers’ leads us to comment on the positions of ‘care and support employers’, i.e. disabled people who take on carers and in many cases become an employer as a result.
- 10.4 There has been a substantial rise in the numbers of people being given Government funding via personal budgets, etc. to engage the services of a carer and who therefore need to consider that person’s working status.
- 10.5 HMRC’s view is that a carer providing care in a person’s home is likely to be an employee³. However, there is an unfortunate lack of understanding of status issues by those administering Government funding to those who might engage such a carer, and consequent lack of advice for claimants of funding. This is demonstrated in this query we have received: *‘Due to my health and disability, I have been advised by (local social services) to employ a private carer of my choice. They only approve carers registered with HMRC as self employed. Request, please give me information on registering, paying tax and N .I. contributions.’*
- 10.6 Problems are then compounded because there are real difficulties in determining status in these cases because naturally the lives of a carer and the person whom they care for tend to be more closely intertwined than in other sectors where the boundaries between employer/employee or engager/contractor are more clearly demarcated.

¹https://assets.publishing.service.gov.uk/media/5a046b06e5274a0ee5a1f171/Uber_B.V._and_Others_v_Mr_Y_Aslam_and_Others_UKEAT_0056_17_DA.pdf

² The recommendation we make in section 6 would require a statutory definition of self-employment, however this would only apply in limited circumstances.

³ <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4015>

- 10.7 For example, we recently instigated a meeting with the NHS regarding personal health budgets.¹ As well as giving out 'new' personal health budgets, the NHS are starting to 'inherit' cases where the disabled person has been in receipt of a social care budget. As alluded to above, often carers in these cases have been engaged on a self-employed basis, which may not be correct in many cases.
- 10.8 Of course, the NHS wants to ensure that people use NHS funds correctly and we are working with them to design guidance for individuals that explains they must consider the employment status of the worker they take on,² however in many cases this could result in a good and longstanding carer relationship being unravelled. This leaves the NHS, and other Government departments with similar funding systems, in a potentially difficult position.
- 10.9 There is an urgent need for HMRC to work with these other areas of Government and ensure that clear protocols are in place for dealing with 'hard cases' and to ensure that correct advice is being given to claimants about the status of the carers they engage. More broadly, it seems to us that better-coordinated policymaking all round is required, as another piece of the employment status jigsaw.³

11 Section 10 – Alignment between tax and rights

- 11.1 Whether tax law and employment law should be aligned is a key question and we recognise that the importance of alignment may change depending on whether you are talking about low-paid or higher-paid workers.
- 11.2 However, at the bottom end of the market, there are vicious models of engagement that exploit the fact that you can have one status for tax law and one status for employment law. One such example is described in this email we received to our website: *'hi im after a little advice please, i am classed as self employed..i think, i work for a sub contractor in the XX delivery network as a delivery driver, in about august my route got took over by a new sub contractor who i now deliver for, my wages used to be paid directly to me by my old employer who did not deduct any tax and ni and i had to sort that out which was fine, i didnt DWP have any holiday pay pension sick pay etc which i accepted as i was sel employed, now this new company i work for use some sort of company called YY who pay me my wages with*

¹ <https://www.england.nhs.uk/personal-health-budgets/>

² We have cautioned against reliance on the GOV.UK/CEST for reasons explained in this paper. It also seems that if you phone the HMRC employment status helpline to ask for their opinion, you may be told that they can only do this after a two-year investigation, which is obviously not helpful.

³ Another example of fragmented policy making causing status issues is given by the EU accession rules for (historically for Romanians/Bulgarians, but now on Croatians) who, because of the employment restrictions, have had little choice but to come as 'self-employed' if they want to enter the UK to work.

tax and national insurance deducted so it seems i am employed but with no benefits ie no pension holiday pay etc my question is are they allowed to do this basically am i employed or self employed as i keep getting told different things by my friends many thanks' (sic)

- 11.3 This person is working under the 'elective deduction model' which was first seen following the onshore intermediary legislative changes, designed to clamp down on 'self-employed' agency workers.
- 11.4 Under this model, the individual is treated as an employee for tax purposes where PAYE is operated (this means that as far as HMRC are concerned, everything appears to be in order), but treated as self-employed for all other purposes. This means that they may not be paid the minimum wage, not be given paid annual leave, etc. Such treatment will be generating cost savings for the businesses but benefiting the workers in no way at all.
- 11.5 In our view, employment status should copy across the two regimes wherever possible (and indeed to tax credits/UC – see below), not least to reduce scope for exploitative arrangements like the elective deductions model – however this leaves the question as to which leads and which follows.¹
- 11.6 In addition, there is a problem because, at the moment, there are only two categories for tax but three categories for employment rights purposes. We note the Taylor review's recommendation that 'workers' should be taxed as employees as a workaround to this. Some already are, e.g. agency workers and zero hours contract workers, and so bringing dependent self-employed people into PAYE also would certainly make the framework neater and more coherent.
- 11.7 However, the reality is that this will affect huge numbers of people currently working in the gig economy (who are currently treated as self-employed for tax purposes, probably correctly) and would have huge ramifications for businesses like Uber, etc. The biggest financial implication for them would be liability for NICs – it seems to us that this alone could disrupt their entire model – affecting workers and consumers alike. We think it would be very difficult to roll back the sharing economy phenomenon like this (and see section 8 for our comments as to what the likely reaction of such businesses would be anyway). Further work is therefore needed to fully understand the benefits and risks that this proposal may bring.
- 11.8 If some 'workers' are to remain outside the PAYE system for the foreseeable future, it is vital that statutory payments such as sick pay or maternity pay are untangled from the PAYE net. Often these are thought of as employment law 'rights', but they are actually dependent on

¹ It is worth saying that in our opinion, it would be extremely unlikely for such a clear division to exist between employment law status and tax law status in low-paid scenarios. The individuals concerned are likely to be at least 'workers'. So this model could also be dealt with by better 'worker' rights enforcement action as explained in para 8.12.

whether there is a ‘secondary contributor’ (i.e. someone that is liable to pay Employers’ National Insurance).

- 11.9 Sick pay and parental pay are a vital part of the safety net for the lowest paid workers and we think they should be made expressly ‘worker’ rights, potentially funded and administered directly by the Government (although we recognise that there are no easy answers as to where the money for this would come from), and not reliant on there being a secondary contributor.
- 11.10 There is however certainly a case for greater alignment in other systems where there is a binary distinction, such as the benefits system. Employment status is an issue that increasingly crosses the divide between tax and benefits, given the rise in the numbers of low-income self-employed. Indeed, there has been a push in recent years to encourage self-employment as a means back into work – for example, for the long-term unemployed, and for people with disabilities.
- 11.11 While the legal definitions of self-employment in tax credits and UC are based on the concept of a ‘trade, profession or vocation’ from tax law, there are also additional requirements in both benefits – for the person to be recognised as either ‘gainfully’ self-employed in UC or in ‘qualifying remunerative work’ for working tax credit.
- 11.12 The UC Regulations¹ include a concept of ‘gainful self-employment’ as follows:

“Meaning of “gainful self-employment”

64. A claimant is in gainful self-employment for the purposes of regulations 62 and 63 where the Secretary of State has determined that—

(a) the claimant is carrying on a trade, profession or vocation as their main employment;
(b) their earnings from that trade, profession or vocation are self-employed earnings; and
(c) the trade, profession or vocation is organised, developed, regular and carried on in expectation of profit.”

- 11.13 Thus it would seem that a person might be self-employed and paying income tax and NIC on profits, yet the Department for Work and Pensions (DWP) could determine that they are not *gainfully* self-employed for UC purposes.
- 11.14 A similar issue arises with working tax credit. A person is defined as self-employed for tax credits if they are engaged in carrying on a trade, profession or vocation on a commercial basis and with a view to the realisation of profits, either on one’s own account or as a member of a business partnership and the trade, profession or vocation is organised and regular². It is therefore possible for HMRC to find that the person is not self-employed for tax credit purposes but that they are self-employed for tax purposes so that they must file a self-

¹ <https://www.legislation.gov.uk/ukdsi/2013/9780111531938/contents>

² <https://www.gov.uk/government/publications/revenue-and-customs-brief-7-2015-new-rules-for-the-self-employed-claiming-working-tax-credit>

assessment return etc. The situation does not need to be this complicated and we have recommended on a number of occasions that definitions are aligned as far as possible.

LITRG
31 May 2018

Appendix 1 – Examples of correspondence from workers*Example 1*

Hi, I moved to UK on January and I start to work as Nanny in March of this year. In signed a contract saying that I will work just for than as a self employee. But the other Nanny told us that I couldn't be a self employee if I work for just one family. The family promised to change the contract and everything, but thy never did. I just left the job and I would like to know how I can pay for my taxes. I don't have any idea how to start the process but I want pay the taxes. I had work£1193.00 in March, £947.00 in April and £750.00 in May (but they just payed me £ 500). Could you help me with this? Thanks a lot! (I am Portuguese and I was working legally)

Example 2

Hi I am looking for some information my son was working for a company for 14mths and had to eventually leave as he was struggling so much a first he was going to be on a apprenticeship but then changed as was told he was self employed and so I registered him and have to complete his first return in January he has not earned enough to pay tax however people have told me that he should not have been self employed as he turned every day and was paid a set amount and was told what to do and where to go can you please tell m if there is somebody I need to speak to about this or should I just fill in a self assessment for him. I also have my own to do and we have not paid any NI do I have to pay that separately ?thank you

Example 3

I worked for a firm of lawyers from Sept 2016 until Feb 2017 and was never given a payslip. I constantly chased this up but they refused to provide them, also no P45 was provided. As I suspected no tax or NI has been paid on my behalf even though my contract of employment states that I was employed, not self employed.I will be starting a new job shortly so I'm not sure where I stand as I have no P45 and probably won't get a P60 either. I have contacted HMRC on several occasions but nobody seems to know what to do so they keep telling me to contact the employer. The company is not paying Tax or NI for any employees so they just keep fobbing me off! Any advice would be greatly appreciated as this was my first job and I know I must owe some Tax and NI. Thank you

Example 4

I have been forced by the dance school I have worked for during the past 16 years to suddenly be made "self employed" by them...I earn a maximum of £5.000 per year and want to make sure that everything is legal as regards the amount of Tax and NI contributions I am required to pay. This is all new to me as I have never had to sort it all out myself. How do I set any payment contributions up? Help! Regards,

Example 5

I am currently seeking full-time employment. In an attempt to make ends meet through this period I am working approximately one shift a month with a brewery. The arrangement is that I invoice them for the hours I work and they pay me. I am responsible for reporting to HMRC and paying NI contributions and income tax so I am presumably seen as self-employed. This arrangement should be short term as I hope to gain full-time employment elsewhere. I have never had to report my earnings myself so am unfamiliar with the process. Should I register as self-employed with HMRC?

Appendix 2 – Extract from CEST tool*About the people involved*

How does the worker provide their services to the end client?

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

About the worker's duties

Will the worker (or their business) perform office holder duties for the end client as part of this engagement?

Being an office holder isn't about the physical place where the work is done, it's about the worker's 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:

- the worker has 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 an organisation (a director or company secretary, for example)
- the role exists even if someone isn't engaged to fill it (a club treasurer, for example)

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

- Yes
- No

About substitutes and helpers

If the worker's 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 the worker's 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 the worker's tasks for that period of time
- being substituted because the worker is unwilling or unable to do the work

We need to know what would happen in practice, not just what it says in the worker's 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

Appendix 3 – GOV.UK ‘worker’ guidance

A person is generally classed as a ‘worker’ if:

- they have a [contract](#) or other arrangement to do work or services personally for a reward (your contract doesn’t have to be written)
- their reward is for money or a benefit in kind, for example the promise of a contract or future work
- they only have a limited right to send someone else to do the work (subcontract)
- they have to turn up for work even if they don’t want to
- their employer has to have work for them to do as long as the contract or arrangement lasts
- they aren’t doing the work as part of their own limited company in an arrangement where the ‘employer’ is actually a customer or client

Employment rights

Workers are entitled to certain employment rights, including:

- getting the [National Minimum Wage](#)
- protection against unlawful deductions from wages
- the statutory minimum level of paid [holiday](#)
- the statutory minimum length of rest breaks
- to not work more than [48 hours on average per week](#) or to opt out of this right if they choose
- protection against unlawful [discrimination](#)
- protection for [‘whistleblowing’](#) - reporting wrongdoing in the workplace
- to not be treated less favourably if they work part-time

They may also be entitled to:

- [Statutory Sick Pay](#)
- [Statutory Maternity Pay](#)
- [Statutory Paternity Pay](#)
- [Statutory Adoption Pay](#)
- [Shared Parental Pay](#)

[Agency workers](#) have specific rights from the first day at work.

Workers usually aren't entitled to:

- minimum notice periods if their employment will be ending, for example if an employer is dismissing them
- protection against [unfair dismissal](#)
- the right to request [flexible working](#)
- [time off for emergencies](#)
- Statutory Redundancy Pay

Casual or irregular work

Someone is likely to be a worker if most of these apply:

- they occasionally do work for a specific business
- the business doesn't have to offer them work and they don't have to accept it - they only work when they want to
- their contract with the business uses terms like 'casual', 'freelance', 'zero hours', 'as required' or something similar
- they had to agree with the business's terms and conditions to get work - either verbally or in writing
- they are under the supervision or control of a manager or director
- they can't send someone else to do their work
- the business deducts tax and National Insurance contributions from their wages
- the business provides materials, tools or equipment they need to do the work