

Summary of response to Employment Status Consultation

Submission from the Institute for Employment Studies, May 2018

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Introduction

The emergence of the gig economy has focused attention on employment status and on self-employment in particular. It is important to note that only a small proportion of self-employed work is in the gig economy, and that the size of the self-employed workforce is much greater than the number of individuals active in the gig economy. Around 4.8 million individuals are self-employed while only 1.1 million people are estimated to be working in the gig economy (ONS, 2018; Balaram, Warden and Wallace-Stephens, 2017). Additionally, not all gig economy workers are self-employed with more than half of gig economy workers permanently employed elsewhere and working in the gig economy for additional income (CIPD, 2017). In both the self-employed workforce and the gig economy there are individuals who are well-paid and content with their work, and others who may be subject to exploitative practices (Broughton et al, 2018; Williams et al, 2017).

We urge caution in instituting any major changes to accommodate the gig economy, which is a new form of working where there has been relatively little research to date. We suggest that a 'broad-brush' approach to regulation of self-employment and the gig economy may risk losing the benefits of these types of employment, which our research shows are highly valued by individuals (Broughton et al, 2018).

Self-employment

Self-employment is growing as a proportion of employment and now accounts for 15 per cent of the workforce (ONS, 2018). It also appears to be becoming more diverse in terms of the types of work and the types of workers it includes (Williams et al, 2017). There is uncertainty about whether this rise includes an increase in 'false' self-employment, and about what the long-term impacts of greater self-employment may be.

Gig economy

Our recent research highlights the diversity of work offered by platform-based employers and the diverse experiences of individuals accessing work in this way. In particular, we found that experiences varied considerably depending on whether or not this type of work was an individual's only source of income. For most individuals, however, the disadvantages were offset by the benefit of flexibility. There is also some evidence that platform-based working may be helping individuals with health issues or caring commitments access the job market (Broughton et al, 2018). New measures to regulate the gig economy must retain this flexibility while also supporting vulnerable workers and providing protection against exploitative practices.

Long-term impacts

We recommend further research into the long-term impacts of the growth of self-employment, including individuals working in the gig economy. We do not know, for example, what the impact of this growth will be in the long-term with regards to pension savings and skills. Based on our research into the gig economy, it seems that some individuals who are self-employed and work in the gig economy are not saving any money or receiving any skills training, while it has also been shown that the self-employed save less for their pensions than employees do (Broughton et al, 2018; D'Arcy, 2015). This may become an issue for governments of the future.

Additionally, research shows that individuals moving from work onto the Employment and Support Allowance are disproportionately likely to be coming from self-employment, and more research is needed into why this is the case and what the impact of a greater self-employed workforce may be on workforce health (Black and Frost, 2011). Similarly, any schemes to succeed the Fit for Work Service should not neglect measures for the self-employed.

A bibliography of research cited is included on the final page of this response.

Questions responded to

Question 1 (Chapter 4, page 21 in discussion document)

Do you agree that the points discussed in this chapter are the main issues with the current employment status system?

☐ Yes ☒ No ☐ Not sure

Are there other issues that should be taken into account?

☒ Yes ☐ No ☐ Not sure

Comments:

The lack of alignment between tax and employment status is also a significant issue within the current system. It creates an artificial incentive for organisations to class individuals as self-employed. This may be causing false self-employment where individuals are subject to the dependency of employment but without the protections and benefits of worker or employment status.

Question 51 (Chapter 7, page 39 in discussion document)

Are there any other factors (other than those set out above for all the different tests) that should be considered when determining if someone is a worker?

☒ Yes ☐ No ☐ Not sure

Please state:

Our recent research into the self-employed differentiated the workforce based on their level of dependence. Those who were most dependent were more likely to be 'falsely' self-employed (Williams et al, 2017).

The criteria used were:

- the degree of autonomy and control over work;
- the number of clients an individual was working for;

- whether the self-employed individual views themselves as having a job or a business; and
- whether the individual has a separate bank or business account.

The analysis found that 53 per cent of the solo self-employed workforce (self-employed individuals without employees) were operating with a high level of independence and security. Fifteen per cent were found to have an uncertain employment status with very limited independence, and therefore more likely to be in false self-employment. More independent self-employed individuals included builders, IT professionals, financial advisers and tutors, while those with a more ambiguous status included drivers, carers and cleaners (Williams et al, 2017). Revised criteria could help to clarify the status of those in the self-employed workforce who do not have a clear employment status.

Question 53 (Chapter 8, page 43 in discussion document)

If the emerging case law on working time applied to *all* platform based workers, how might app-based employers adapt their business models as a consequence?

Please state:

The term 'platform-based workers' incorporates a great deal of diversity and this is likely to influence how employers adapt their business models to any changes in the definition of working time. App-based employers will most likely make different changes based on their own business model, and we would caution that a 'broad-brush' approach that applies emerging case law to all platform-based workers may be ineffective if it does not account for this diversity.

For example, our research found diversity in how app-based employers set working time. Most app-based employers do not require individuals to commit to a minimum number of hours where they must be available for work. The only exception to this is delivery companies who do set shifts where individuals must have their app switched on and be able to accept work.

We also found diversity in how pay is set. In some cases pay rates are negotiable and in others pay rates are set and can vary with demand.

Finally, there is diversity in the type of work offered by app-based employers. Platforms that act as a portal to provide freelancers to access work that they would previously have accessed through other means may respond differently to platforms involved in 'undifferentiated' gig economy work, such as couriership or taxi driving which represent more recent types of involvement in the sharing economy (Williams et al, 2017).

Question 54 (Chapter 8, page 43 in discussion document)

What would the impact be of this on a) employers and b) workers?

a) Employers - please state:

b) Workers - please state:

Our research into the gig economy has shown that it is very diverse in terms of the individual circumstances of the workforce and the type of work they are doing (Broughton et al 2018). The proposed changes are therefore likely to affect employers and workers in different ways depending on their specific business models and individual circumstances.

Question 56 (Chapter 8, page 43 in discussion document)

Should government consider any measures to prescribe the circumstances in which the NMW/NLW accrues whilst ensuring fairness for app-based workers?

☐ Yes ☐ No ☒ Not sure

Comments:

Any measures to prescribe when the NMW/NLW should accrue will need to account for the diversity in how app-based employers set pay rates.

Some platforms require an upfront subscription fee, while others are free. Other platforms, particularly delivery companies, adjust their pay per task depending on demand. In some cases individuals and customers are able to negotiate a price for services or goods, and this creates further complexity: our research found that some individuals felt that they were struggling to compete with individuals from low-wage countries outside Europe who were more willing to set a lower rate for their work (Broughton et al, 2018).

Question 60 (Chapter 9, page 44 in discussion document)

Do you agree that self-employed should not be a formal employment status defined in statute? If not, why?

☐ Yes ☒ No ☐ Not sure

Please explain why/why not:

Our recent research recommended that self-employment should be defined as a formal employment status (Williams et al, 2017). A statutory definition of self-employment would provide a clear message of support for the genuinely self-employed while making it easier to identify and crack-down on false self-employment.

Question 62 (Chapter 10 page 46 in discussion document)

If the terms employee and self-employed continue to play a part in both the tax and rights systems, should the definitions be aligned? What consequences could this have?

☒ Yes ☐ No ☐ Not sure

Please explain:

Although we cannot comment on this from a legal perspective, we would generally support any measures that reduce confusion in employment and tax status. Alignment between tax and rights categories may also help to identify fraud, as identification of fraudulent activity in one area could be used to show fraud in the other, reducing the enforcement burden.

Bibliography

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