
Introduction
1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries.

2. The CWU is unable to respond to each individual question in the consultation due to time constraints. However, we wish to make some general points, as set out below.

3. There has been a rapid rise in non-standard forms of employment in recent years as employers seek to cut costs by avoiding statutory employment obligations and employment related taxes. Workers are increasingly being denied basic workplace rights such as the minimum wage, whilst substantial sums are being lost in tax revenue.

4. The CWU believes the law needs to change to ensure that all workers are treated fairly and entitled to a decent floor of rights at work, including a real living wage, holiday pay, sick pay, protection from unfair dismissal and a workplace pension. The Government should introduce a new single definition of worker to determine who qualifies for all statutory employment rights. There should also be a statutory presumption that all workers qualify for employment rights unless the employer can demonstrate they are genuinely self-employed.

Raising the floor of rights for all workers
5. The current three tier approach to employment status which includes ‘workers’, ‘employees’ and the ‘self-employed’, means that many non-standard forms of employment are excluded from receiving full employment rights. This includes agency workers, zero-hours contract workers, online platform workers and those in bogus self-employment. The TUC estimates that at least 1.8 million workers are at risk of losing out on key employment protections because they fail to qualify as employees.¹

6. The CWU joins the TUC in calling on the Government to reform employment status rules to raise the floor of rights for all working people. We believe all economically dependent workers who are not genuinely self-employed should be entitled to the full range of statutory employment rights currently enjoyed by employees. As we said in our response on labour market transparency, we believe all workers should be entitled to these rights from day one.² This will prevent employers from manipulating the system and laying workers off for short periods to stop them from qualifying for basic rights.

¹ TUC Submission to BEIS on Employment Status, May 2018
² CWU response to BEIS on labour market transparency, 21st May 2018
7. The Government should establish a commission on employment status, which includes representatives from trade unions and employers, to develop a new single statutory definition of ‘worker’ to determine who is entitled to the full range of statutory employment rights. The new ‘worker’ test should span the myriad of employment relationships existing in the UK. It should also respond to new and emerging forms of employment and prevent employers from devising new contractual devices to avoid their employment responsibilities.

8. We oppose the Taylor Review’s proposal to rename ‘worker’ as ‘dependent contractor’ as it would allow employers to continue undercutting employees by hiring workers with fewer rights. The Institute of Employment Rights (IER) has labelled this rebranding exercise a ‘gift to gig economy companies that hope to avoid the minimum wage’, as it would become the worker’s responsibility only to accept work that pays highly enough to make up any shortfall.

Protecting agency workers

9. The Government should ensure that agency workers are properly protected when at work and benefit from the same decent floor of rights as employees. In particular, the Swedish Derogation must be repealed so that agency workers cannot be denied pay equality with their permanent counterparts.

10. Agency workers are too often excluded from basic rights because of the tripartite nature of their employment. For example, agency workers are unable to claim unfair dismissal against hirers, even though it is usually the end user who decides when their assignment should be terminated. Equally, agency workers may find it difficult to prove they are an employee of the agency due to the lack of control or direction over their work.

11. As we said in our response to BEIS on agency workers, we believe the rules on employment status should be revised to ensure agency workers benefit from the same decent floor of rights as employees. End-users, agencies and umbrella companies should be made jointly and severally liable for any breaches of employment law during any assignments.

Ending bogus self-employment

12. There is a serious and growing problem of bogus self-employment in Britain today, with estimates that one in ten self-employed workers – equivalent to 480,000 people – are falsely self-employed. The CWU is currently pursuing a claim for worker status for over two hundred subpostmasters who we believe are incorrectly classified as self-employed. Subpostmasters are subject to a command and control approach from the Post Office which gives them very little say over many aspects of how their post office is run, but at

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3 CWU response to BEIS on agency workers, 8th May 2018
the same time they are responsible for all the costs and responsibilities associated with running their own business.

13. As we said in our response to the BEIS consultation on enforcement, bogus self-employment is a particular problem in low paid sectors of the economy, including the unregulated parcel delivery sector. Tens of thousands of parcel couriers are working for highly profitable companies including Hermes and Amazon on a self-employed basis and being denied basic rights such as the minimum wage and sick pay. However, they have all the characteristics of permanent employees working regular hours for the same company with little or no control over their work.

14. Following a number of successful tribunal cases against delivery companies regarding employment status, there is clear evidence that self-employed status is being incorrectly applied by businesses to avoid statutory obligations and taxes. Not only is this contributing to the rapid rise of in-work poverty in Britain today, it also presents a considerable problem of lost revenue for the Exchequer. In early 2015 the Office of Tax Simplification estimated lost tax from bogus self-employment would have been £314m if 10% of those classed as self-employed were categorised wrongly.

15. It is unacceptable that employers are relying on false self-employment to maximise their profits at the expense of working people and society more generally. The CWU joins the TUC in calling on the Government to crack down urgently on bogus self-employment, including by creating a statutory presumption that all individuals will qualify as employees unless the employer can demonstrate they are genuinely self-employed. There should also be substantial penalties for employers who misinform workers about their employment rights or seek to devise contractual arrangements to avoid their employment responsibilities.

Reforming the tax and benefits system

16. The current tax system creates clear financial incentives for employers to hire staff on a self-employed basis. Companies that employ someone as a contractor pay no National Insurance Contributions (NICs) at all, compared with NICs of 13.8 per cent for those who take on an employee directly. Employers can also achieve significant cost advantages by hiring staff on a zero-hours or short-hours basis, including by avoiding NICs and certain social security benefits.

17. The CWU joins the TUC in calling on the Government to carry out a dedicated review of the tax and benefits system, involving representatives from trade unions and business. The review should seek to ensure that all forms of employment are fairly taxed. It should remove any financial incentives which are driving the growth in self-employment and insecure forms of work.

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5 CWU Response to BEIS on enforcement of employment rights recommendations, 16th May 2018
6 For example, recent tribunals have ruled against City Sprint, Addison Lee and Excel on employment status, finding their couriers should be classed as workers rather than self-employed contractors.
7 Office of Tax Simplification, Employment Status Report (March 2015), p.29
8 TUC Submission to BEIS on Employment Status, May 2018
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