



House of Commons  
Work and Pensions Committee

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**Self-employment and  
the gig economy:  
Government Response  
to the Committee's  
Thirteenth Report of  
Session 2016–17**

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**Second Special Report of Session  
2017–19**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons to be printed  
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## Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

### Current membership

[Rt Hon Frank Field MP](#) (*Labour, Birkenhead*) (Chair)

[Heidi Allen MP](#) (*Conservative, South Cambridgeshire*)

[Andrew Bowie MP](#) (*Conservative, West Aberdeenshire and Kincardine*)

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[Chris Green MP](#) (*Conservative, Bolton West*)

[Steve McCabe MP](#) (*Labour, Birmingham, Selly Oak*)

[Chris Stephens MP](#) (*Scottish National Party, Glasgow South West*)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the [publications page](#) of the Committee's website and in print by Order of the House.

Evidence relating to this report is published on the [inquiry page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Adam Mellows-Facer (Clerk), Katy Stout (Second Clerk), Libby McEnhill (Committee Specialist), Rod McInnes (Committee Specialist), Tom Tyson (Committee Specialist), Jessica Bridges-Palmer (Senior Media and Policy Officer), Alison Pickard (Senior Committee Assistant), Michelle Garratty (Committee Assistant) and Ellen Watson (Assistant Policy Analyst).

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## Second Special Report

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The Work and Pensions Committee published its Thirteenth Report of Session 2016–17, [Self Employment and the gig economy](#) (HC 847) on 1 May 2017. The Government’s response was received on 30 November 2017 and is appended to this report.

In the Government response, the Committee’s conclusions appear in **bold text** and its recommendations appear in **bold italicized text** and the Government’s responses appear in plain text.

## Appendix: Government Response

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### Introduction

1. The Government welcomes the Thirteenth Report of Session 2016–17, following the Committee’s inquiry into self-employment and the gig economy. In that report the Committee noted that:

“The self-employed are a large and growing part of the UK labour force. Five million people – 15% of workers – are now self-employed, and the expansion of self-employment has played an important part in current record employment levels.”

2. The Government recognises the valuable role that self-employment has played, and continues to play, in supporting record employment levels and record low levels of unemployment and economic inactivity. The level of self-employment in the UK increased from 3.8 million in 2008 to 4.8 million in 2017. While this strong performance is among the defining characteristics of the UK’s economic recovery, the recent rise in self-employment is the extension of a trend that started in the early 2000s. Self-employment now constitutes 15.1 per cent of the workforce. The Government is committed to support enterprising small and medium-sized business owners: people who start and grow a business, contribute to UK growth and productivity and provide employment to other people. The Government also recognises that self-employment offers flexibility that allows people to balance fulfilling and productive work with other circumstances such as a disability, a health condition or significant caring responsibilities.

3. The Government recognises, however, that self-employment is not right for everyone. Although the number of self-employed workers in the UK has risen, on average, self-employed people earn significantly less than people in work as employees, with some self-employed people working long hours and earning less than the National Living Wage with little prospect of growing their earnings, trapping them in poverty and welfare dependency. Evidence from the Family Resources Survey 2014–15 shows that, on average, self-employed workers earn £10,800 per year compared to employees who earn on average £20,000 per year. The Government wants to ensure that it supports people into pathways that are genuinely right for them and where self-employment is not the right option, Jobcentre Plus can support people into work as an employee where there are currently around 750,000 vacancies.

4. The Committee noted that new technology has facilitated a rise in flexible working, particularly, but not exclusively, through an increase in gig work, characterised by a reliance on intermediary digital platforms or apps to connect self-employed workers with work. The Committee heard evidence from both representatives of gig companies and workers, that the flexibility offered by gig work is valued by many of the workers and is an important part of the companies' business models. But the Committee also heard evidence from "many contractors for whom the reality of "gig" and self-employment did not live up to the flexible ideal [...] Rather, we heard of low pay, inflexibility in working times, long hours, instability, and difficulties in taking time off (such as for a holiday or for sick leave)."

5. The Government is committed to protecting and enhancing workers' rights, as set out in the Queen's Speech. The Government has already taken action in this area, including introducing the National Living Wage, doubling the budget for minimum wage enforcement, banning the use of exclusivity clauses in zero-hours contracts and appointing the first Director of Labour Market Enforcement.

6. In December 2016 the Prime Minister commissioned Matthew Taylor, Chief Executive of the Royal Society for the Encouragement of Arts, Manufactures and Commerce (RSA) to conduct an Independent Review of Modern Employment Practices (the Taylor Review). The Taylor Review panel considered how practices may need to change in order to keep pace with modern business models and considered the implications of new forms of work, driven by digital platforms, for employee rights and responsibilities, employer freedoms and obligations, and our existing regulatory framework surrounding employment. The Committee heard evidence from Matthew Taylor at its oral evidence session on 29 March 2017 and heard further evidence from him at a joint hearing with the Business, Energy and Industrial Strategy Select Committee on 11 October 2017.

7. The Taylor Review panel published its report, *Good Work: the Taylor review of modern working practices* on 11 July 2017. The Government is currently considering the Taylor Review's recommendations and will respond to them shortly.

8. The Committee published its abridged report on 1 May 2017, immediately before the dissolution of Parliament. The Committee has made a number of recommendations (cross-cutting employment status recommendations 1–4 below) regarding the status of workers in the modern economy, the classification of workers for employment rights and taxation purposes and the benefits, rights and obligations that accrue to particular classes of worker. The Government welcomes the Committee's recommendations and will of course give them full consideration. However, as the Government is also considering the recommendations of the Taylor Review which overlap substantially with the Committee's recommendations on these matters, we propose to respond to the Committee on these recommendations when the Government publishes its response to the Taylor Review.

9. The Committee has, however, also made a number of recommendations (recommendations 5 to 10 below) that fall wholly or substantially within the remit of the Department for Work and Pensions, which are not within the scope of, or are peripheral to, the Taylor Review. The Government's response to these recommendations is set out below and forms the content of the remainder of this memorandum.

## Committee Recommendations

### *Cross-cutting employment status recommendations*

#### *Recommendation 1*

Our welfare system, and public support for it, is founded on the contributory principle. The introduction of the New State Pension means the last major difference between the entitlements of employees and self-employed has been removed. It is now difficult objectively to justify the differing rates of contribution. Fairness must be the future direction of travel and, political constraints aside, the equalisation of NICs rates was right. *The incoming government should set out a roadmap for equalising the National Insurance contributions made by employees and the self-employed. (Paragraph 10)*

#### *Recommendation 2*

Companies relying on self-employed workforces frequently promote the idea that flexible employment is contingent on self-employed status. But this is a fiction. Self-employment is genuinely flexible and rewarding for many, but people on employment contracts can and do work flexibly; flexibility is not the preserve of poorly paid, unstable contractors. Profit, not flexibility, is the motive for using self-employed labour in these cases. Businesses should of course be expected to seek out opportunities and exploit them. It is incumbent on government to close loopholes that incentivise exploitative behaviour by a minority of companies, not least because bogus self-employment passes the burden of safety net support to the welfare state at the same time as reducing tax revenue. (Paragraph 19)

#### *Recommendation 3*

Designating workers as self-employed because their contract offers none of the benefits of employment puts cart before horse. It is clear, though, that this logic has taken hold, enabling companies to propagate a myth of self-employment. This myth frequently fails to stand up in court, but individuals face huge risks in challenging their employment status in that way. Conversely, where there are tax advantages to both workers and businesses in opting for a self-employed contractor arrangement, there is little to stand in the way. It is clear that current ways of categorising workers are creaking under the weight of the changing economy. (Paragraph 20)

#### *Recommendation 4*

The apparent freedom companies enjoy to deny workers the rights that come with employee or worker status fails to protect workers from exploitation and poor working conditions. It also leads to substantial tax losses to the public purse, and potentially increases the strain on the welfare state *An assumption of the employment status of “worker” by default, rather than “self-employed” by default, would protect both those workers and the public purse and would put the onus on companies to provide basic safety net standards of rights and benefits to their workers. This assumption would entitle workers to employment rights commensurate with “worker” status. As there is*

*no “worker” status in tax law, tax status would be unaffected. Companies wishing to deviate from this model would need to present the case for doing so, in effect placing the burden of proof of employment status on the company. (Paragraph 21)*

### **Recommendations relating wholly or substantially to the business of the Department for Work and Pensions**

#### **Recommendation 5**

**Understanding whether an individual is gainfully self-employed requires specialist knowledge and understanding of business development that is beyond the remit of Work Coach training. This stage is vital in ensuring the Department supports potentially successful businesses while not squandering resources on those that have little chance of becoming sustainable. We recommend responsibility for conducting Gateway Interviews is transferred to New Enterprise Advisers, who are specialists in supporting the self-employed. (Paragraph 24)**

10. The term gainful self-employment has a particular meaning in relation to an individual's entitlement to Universal Credit (UC) and the administration of their claim. Self-employed claimants who are in a group expected to work or look for work, are interviewed by a specially trained Work Coach at a Gateway Interview to determine if they are gainfully self-employed. This means that a determination is made, based on evidence supplied and discussed, that self-employment is their main employment, their earnings are self-employed earnings, and the work is organised, developed, regular and carried out in expectation of profit.

11. The Department for Work and Pensions does not employ New Enterprise Allowance (NEA) Advisers. The Department contracts with third parties to provide mentoring support as part of its NEA scheme. As part of the NEA package, providers are required to provide support from Business Mentors. Business Mentors have the business experience and skills needed to support scheme participants to prepare for self-employment and develop a viable business plan that demonstrates the business's sustainability and growth potential (or, in relation to those who participate in the scheme because they have earnings below their Minimum Income Floor (MIF) level, a Business Growth and Development Plan). Business Mentors are expected to understand the local business landscape and be candid with participants, but at the same time have the ability to listen and empathise, they also now have working knowledge of UC policy and the impact of other benefits on a participant's business. They are not, however, expected to have the level of knowledge of UC policy required to make the determination of self-employment. The role of the Business Mentor is to act as a critical friend to NEA scheme participants to help them to plan, start and grow their business. Their role does not extend to determining a person's status for the purposes of entitlement to benefits and there are no provisions in NEA contracts that would allow the employees of third party NEA providers to determine whether a claimant is gainfully self-employed.

12. It should further be noted that Regulation 64 of the UC Regulations 2013 provides that the determination of gainful self-employment is to be made by the Secretary of State. This determination forms part of the overall determination of a household's entitlement to benefit and is therefore a class of decision that is not delegable to a third party and

may only be made by the Secretary of State or by Civil Servants acting on the Secretary of State's behalf in accordance with the *Carltona* principle. The Department does not, therefore, accept the Committee's recommendation that NEA advisers be responsible for conducting Gateway Interviews.

13. Through its test and learn approach to the rollout of UC, the Department has, however, recognised that Jobcentre Plus Work Coaches require specific skills and training to help them to make the determination of gainful self-employment and to support self-employed claimants during their start-up period and beyond. The Department has trained a cadre of Work Coaches with additional skills to enable them to understand the challenges faced by self-employed claimants and has developed a package of specialised training and guidance to support them.

### *Recommendation 6*

**The expansion of the NEA is welcome. Nevertheless, Jobcentre Plus remains heavily focused on getting the unemployed into employee jobs. For many, this will be the right pathway. But the Department must ensure that there is adequate specialist support on offer to help those who could become gainfully self-employed fulfil their potential as self-reliant business owners. Even the expanded NEA can only cater for 7% of JCP's caseload. This falls a long way short of the level of provision that we would expect to be allocated to supporting self-employment in a modern labour market. (Paragraph 27)**

### *Recommendation 7*

**The Department should commission research on the extent of unmet need for specialist self-employment support among the JCP caseload. This should consider both unemployed people and those who are currently in low-paid self-employment who might benefit from support in growing their businesses. If the Department can identify significant unmet need then it should expand the NEA, considering a separate specialist self-employment programme and payment structure for the long-term unemployed and for those who experience additional barriers to work, such as disabled people. (Paragraph 28)**

14. The Department agrees with the Committee that self-employment is not the right choice for everyone. Where it is, though, the Government can support them financially (through UC and other benefits) and through a variety of sources of support which they can access through Jobcentre Plus.

15. NEA now provides specialist support to claimants and now includes a pre-NEA Link-Up: Start Up workshop designed to ensure a claimant understands the implications of becoming self-employed and to help to identify those people whose business ideas are likely to be successful before the individual progresses on to the scheme.

16. The NEA scheme also includes an offer of mentoring support for UC claimants with existing businesses with earnings below their MIF. The mentoring is designed to help claimants further develop their business and grow their earnings to at least the level of their MIF.

17. Over the next two years the NEA scheme has the following number of places to provide support to self-employed people:

- 86,154 places on Link-Up: Start-Up workshops for people considering self-employment;
- 56,000 mentoring places for people wanting to start a new business; and
- 24,000 mentoring places for UC claimants who are already self-employed and need additional support to grow their earnings.

18. The introduction of the Link-Up: Start-Up workshop provides the Department with a greater volume of initial support for people considering self-employment than the previous phases of the scheme. While the number of mentoring places on the scheme is slightly lower than the previous phases, this is reflective of a lower claimant count and the likelihood that a number of claimants will decide not to proceed with self-employment following participation in the Link-Up: Start-Up workshop.

19. The Government constantly reviews its programmes and support offers to ensure they meet the needs of benefit claimants and that they continue to be value for money for the tax payer. NEA has been iterated several times since its launch in 2011 in response to various reviews and the changes in claimant needs. Gradually, between 2013 and 2017, the Department has widened eligibility to other benefit claimants (Employment and Support Allowance, Income Support and UC claimants and the dependant partners of Jobseeker's Allowance and Employment and Support Allowance claimants), and brought eligibility forward to day one of a claim.

20. Self-employment is part of our wider strategy to get one million more people with disabilities into work over the next ten years, and we have introduced more personalised and tailored support for people with health conditions delivered through our new Personal Support Package (PSP). So far, the Department has recruited 300 new Disability Employment Advisers, introduced Community Partners to Jobcentres across Great Britain, allocated £15 million to the Flexible Support Fund, made changes to the permitted work rules, and completed the roll-out of the Health and Work Conversation. This is in line with the Department's ambition to provide a support system which can be tailored to individuals' needs and will help ensure Work Coaches can access the support they need to support people with a health condition or disability to enter employment – whether as an employee or self-employed.

21. When it is the most appropriate way of supporting an eligible individual, NEA is able to provide support to disabled people who want to start their own business: approximately 20 per cent of business starts on NEA to date have been by people with a self-declared disability. The Department provides guidance to its Work Coaches to ensure they consider and address the needs of an individual before they refer them to NEA.

### *Recommendation 8*

**There are three different categories of employment status in the UK. Universal Credit (UC) takes into account two, but focuses on one—employees. The self-employed are a**

**large and growing component of the UK workforce. Taking urgent action to ensure that UC is appropriate to support them should be a priority for the incoming government. (Paragraph 33)**

22. As with Recommendations 1 to 4, employment status is integral to the Taylor Review and the Department will contribute to the Government's response to that Review. As discussed above, the Department looks forward to responding to the Committee's recommendations regarding employment status at that time.

23. Nevertheless, the Department does not accept that UC does not take account of all three current types of employment law status – employee, worker, or self-employed - or that UC focuses only on employees. UC has been specifically designed as an “in and out of work” benefit. It has one common objective for all those claimants whom the Government expects to work, which is to support them to find and progress in work, and become less dependent on benefit. This is good for them, their families, broader society, and the taxpayer.

24. As part of this, all claimants receive support tailored to their specific needs. For those claimants with a work expectation, this is based on one of two core models, or customer journeys. In the first, jobseekers, low-earning employees and those with worker status, plus those in low-level self-employment, are broadly treated in the same way, with Work Coach support to help them find more and better work. For those in low-level self-employment, the Work Coach can reduce their expected hours of job search to take some account of time spent on self-employment, for example where this is recognised as improving their overall employability.

25. The second model for those expected to work, but with more substantial gainful self-employment, is to exempt them from all job search activity but instead to apply the MIF. For those within 12 months of starting their self-employment, a start-up period of up to one year is allowed during which neither job search requirements nor the MIF apply. Those in the start-up phase receive support from Work Coaches specially trained in self-employment. For those subject to the MIF, who find themselves unable to grow their business or find other work to earn up to their MIF level, the Department is also offering additional voluntary mentoring support from NEA providers to help assess the scope to develop their business and provide support to prepare and implement a Business Growth and Development Plan.

26. The key point here, in terms of employment status, is that the gainful self-employment test only applies to claimants who are expected to work, and requires that self-employment is: their main employment; that the earnings derived are self-employed earnings; and that the self-employed work is organised, developed, regular and in expectation of profit. Those claimants who are employees or workers, even where they may combine this with low-level self-employment, would not pass this test. More information and worked examples are in the publicly available Advice for Decision Makers at chapter H4.<sup>1</sup>

27. Although the status of gainful self-employment is specifically designed for the purposes of UC, and may be guided but not legally bound by tax and employment status decisions, the Department will keep this under review in response to developments in employment status case-law and the cross-Government response to the Taylor Review.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/618963/admh4.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/618963/admh4.pdf)

### *Recommendation 9*

**The Department is seeking to support entrepreneurship without subsidising unprofitable self-employment. The existing Minimum Income Floor in UC does not get this balance right and risks stifling viable new businesses. The incoming government should commission an independent review of the MIF with a view to improving its sensitivity to the realities of self-employment. Until this is complete, the MIF should not apply to self-employed UC claimants. (Paragraph 34)**

28. The Department's written evidence and the Minister for Employment's oral evidence to the Committee explains why the Department continues to believe that the MIF is necessary, set at the correct level, and should be applied after a reasonable duration. In short, benefits such as tax credits and housing benefit allowed claimants to persist in low earning self-employment, sometimes for long periods, trapping them and their families in benefit dependency. This was not good for them, their families or the taxpayer.

29. The MIF seeks to incentivise those in gainful self-employment, who nevertheless earn less than they could expect to earn as an employee at minimum wage, to grow their earnings and become more productive and self-sufficient in the long term. Some people will respond to this by increasing their earnings from self-employment, others will look for other employment to increase their income, perhaps combining self-employment with work as an employee, or even switching to work as an employee.

30. Where self-employment is not the right option for the claimant, Jobcentre Plus can support the claimant into work as an employee where there are currently around 750,000 full and part-time vacancies. By doing this they are guaranteed to receive National Living Wage as well as benefits such as enrolment into a workplace pension and holiday and sick pay.

31. As the Committee will be aware, the MIF's assumed level of earnings is calculated by reference to the National Minimum Wage or National Living Wage for the claimant's age, matching the work expectations of claimants seeking paid employment in similar circumstances. Where a person has limitations on the hours they can reasonably be expected to work, their MIF is reduced accordingly, again matching the work expectations on jobseekers in the same circumstances.

32. In addition, the Government recognises the need for claimants who are setting up a business to be given time to establish themselves and develop their business and customer base. That is why claimants who are gainfully self-employed and within one year of starting out in self-employment are eligible for a start-up period, during which the MIF will not be applied for up to 12 months.

33. For these reasons, the Department cannot agree to suspend the MIF and does not agree that the time is right for an independent review of it. However, in keeping with UC's test and learn approach, and as the numbers of self-employed claimants grow on UC, the Department will continue to monitor and evaluate the impact of self-employment alongside the roll-out of UC. This will include conducting analysis to assess how self-employed claimants with different demographic characteristics are responding to the MIF.

### *Recommendation 10*

**Low levels of retirement saving amongst the self-employed risk storing up grave problems of potential hardship and reliance on the welfare state in later life. While auto-enrolment for employees has been a great success, current structures are not encouraging sufficient pension saving by the self-employed. The idea of using an opt-out system on tax returns to encourage greater contribution to pensions is an interesting one that merits further consideration. (Paragraph 38)**

34. The Committee's report outlined differences in pension arrangements of self-employed people and employees. The Committee also recognised some of the key challenges presented when considering the position of the self-employed in relation to retirement savings. As the Committee refers, the Department is currently carrying out a review of the policy and operation of automatic enrolment (AE). This review is supported by an external advisory group. As part of this review, the Department has committed to consider how self-employed people might be helped to save for their retirement. During the course of the review process, the Department has met with a range of stakeholders and received further input through responses to the review questions published earlier this year. The Department will, of course, consider the Committee's report alongside these other representations as it explores and considers this issue in more detail to inform the review report. The Department has committed to report to Parliament on the AE review by the end of 2017 and looks forward to updating the Committee on this in due course.