



ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts

United Kingdom

2017

Jonathan Bradshaw and Fran Bennett
January 2017



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion
Directorate C — Social Affairs
Unit C.2 — Modernisation of social protection systems

Contact: Giulia Pagliani

E-mail: Giulia.PAGLIANI@ec.europa.eu

*European Commission
B-1049 Brussels*

European Social Policy Network (ESPN)

**ESPN Thematic Report on
Access to social protection of
people working as
self-employed or on
non-standard contracts**

United Kingdom

2017

Jonathan Bradshaw and Fran bennett

The European Social Policy Network (ESPN) was established in July 2014 on the initiative of the European Commission to provide high-quality and timely independent information, advice, analysis and expertise on social policy issues in the European Union and neighbouring countries.

The ESPN brings together into a single network the work that used to be carried out by the European Network of Independent Experts on Social Inclusion, the Network for the Analytical Support on the Socio-Economic Impact of Social Protection Reforms (ASISP) and the MISSOC (Mutual Information Systems on Social Protection) secretariat.

The ESPN is managed by the Luxembourg Institute of Socio-Economic Research (LISER) and APPLICA, together with the European Social Observatory (OSE).

For more information on the ESPN, see: <http://ec.europa.eusocialmain.jsp?catId=1135&langId=en>

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission, however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

© European Union, 2017

Reproduction is authorised provided the source is acknowledged

Contents

SUMMARY.....	4
1 CONTEXT: SELF-EMPLOYMENT AND NON-STANDARD WORK RELATIONSHIPS IN THE NATIONAL ECONOMY AND LABOUR MARKET	5
1.1 Extent and main trends	5
1.2 'Bogus' or dependent self-employment.....	6
1.3 Non-standard work relationships	7
1.4 Risks faced by the self-employed and those with non-standard contracts	9
1.5 Policy measures on self-employment	10
1.6 Policy debates around social protection	10
2 DESCRIPTION AND ASSESSMENT OF SOCIAL PROTECTION PROVISION FOR SELF-EMPLOYED AND PEOPLE EMPLOYED ON NON-STANDARD CONTRACTS.....	12
2.1 Description of social protection provisions for self-employed and people employed on non-standard contracts.....	12
2.1.1 Healthcare and sickness: cash benefits and benefits in kind	14
2.1.2 Maternity/paternity cash benefits and benefits in kind	15
2.1.3 Old-age and survivors' pensions	15
2.1.4 Unemployment benefits and social assistance benefits	17
2.1.5 Long-term care benefits	18
2.1.6 Invalidity, accidents at work and occupational injuries benefits.....	18
2.1.7 Family benefits.....	18
2.2 Assessment of the existing social provisions and of the impact of possible extension of their coverage	19
3 CONCLUSIONS AND RECOMMENDATIONS	22
APPENDIX 1 INFORMATION ON SELF-EMPLOYMENT	26
APPENDIX 2: DETAILS OF LEGAL CASES ABOUT SELF-EMPLOYMENT	28
ANNEX 1	29

Summary

The effect of employment law is that an employee is defined as someone employed under a contract of service. A 'worker' (e.g. someone doing casual work for a business) is employed but has fewer rights than an employee. You are self-employed if you are employed under a contract for services, which you supply to someone else.

There is no agreed definition of non-standard work in the UK. However, it may be seen as comprising part-time work, fixed-term (temporary) work, work as a temporary agency worker, casual and seasonal work, zero hours/on call contracts, annualised hours, term-time working, job sharing, 9-day fortnight/4.5 day weeks, flexitime, and potentially other categories of worker (e.g.) apprentices and trainees), as well as crowd workers, mobile app workers etc. Part-time work is often permanent and secure.

Self-employment has been growing since 2009 (see below) and most of the growth has been part time and the age profile has grown older.

Low pay is more common among self-employed people and the self-employed have formed a growing proportion of the population in poverty.

There has been a growing concern with bogus self-employment and the trades unions have been successful recently in challenging it in employment tribunals.

In fact there is generally increasing concern about the rights of self-employed and non-standard workers. The Government appointed the Taylor Commission in 2016 to review workers' rights and practices and the Work and Pensions Select Committee is now setting up an inquiry into self-employment and the gig economy, with a particular focus on whether the UK welfare system adequately supports these workers.

The self-employed can contribute to National Insurance (NI) and receive all such benefits except unemployment benefit (Jobseeker's Allowance) if their income is above the NI threshold; but low-earning self-employed (and employed) workers do not.

The fact that much of the UK social security system is means tested, and that the means-tested benefits are similar to the contributory benefits in some ways, could be seen as meaning that low income self-employed people are protected. But this takes no account of take-up, joint assessment or other problems of means testing.

Universal Credit (UC) is replacing existing means-tested working age benefits (since 2013) and has a new earnings floor that will assume that the self-employed are working 35 hours per week for the national living wage. This may lead to a reduction in in-work transfers that the self-employed have been entitled to in the past.

Self-employment and non-standard work have some advantages. Most (see below) of the self-employed seem to be content with the freedom and flexibility, particularly older and female workers, and few part-timers want to work full time. There may be more of a problem for younger male workers. And temporary agency workers often have low pay and inadequate incomes.

In our view, the current social protection system is not well suited to such workers and should be rethought with them in mind. Conditions were tightened recently and could be relaxed. Provision for the self-employed should be reviewed, in particular in relation to the current proposals for access to maternity protection.

In the meantime, the national living wage clearly needs to be enforced and 'gig' employers should be prevented from avoiding their obligations as employers.

The impact of the UC minimum income floor for the self-employed, as well as in-work conditionality, needs to be carefully monitored.

1 Context: self-employment and non-standard work relationships in the national economy and labour market

1.1 Extent and main trends

An employee is defined as someone employed under a *contract of service*. You are self-employed if you are employed under a *contract for services*. Although the term 'worker' is used more widely, in terms of employment law a worker has fewer rights than an employee. A worker is an individual who is not self-employed but works for an employer, whether under a contract of employment, or any other contract where an individual undertakes to do personally any work or services. Workers are entitled to core employment rights and protections (such as the National Minimum/Living Wage and sick pay, maternity, paternity and adoption pay), but not all rights of employees (e.g. maternity leave). Those likely to be workers but not employees include most agency workers, short-term casual workers and some freelancers.¹

There is no agreed definition of non-standard work in the UK² - and, indeed, the proportion of part-time work amongst women in particular is so significant that this could be argued to be no longer 'non-standard'. However, non-standard employment may be seen as comprising various categories (see Non-standard work relationships, below).

The number of self-employed people was 4.788 million in the quarter ending June 2016 - 3.257 million men and 1.531 million women. Figure 1.1 in Appendix 1 shows that self-employment has risen by 900,000 since January 2008. In fact the number of self-employed people has been rising since 2002. As a proportion of the total work force, self-employment has risen from 15% in 2008 to 18% in mid-2016; the Resolution Foundation reports that self-employment accounts for 81% of the net change in employment since 2008.³

Of this, 1.2 percentage points was made up of part-time self-employed workers. The Work and Pensions Select Committee⁴ reports that part-time self-employment grew by 88% between 2001 and 2015, compared to 25% for full-time. (There was also a 25 per cent rise in small incorporated companies in 2015 alone.)⁵ The Office for National Statistics (ONS)⁶ finds that self-employed older workers are much more likely than their younger colleagues to make the transition from full-time to part-time working, and account for a larger proportion of the growth in this employment mode in recent years. This rarely involves a change of industry and occupation, and is consistent with workers managing their retirement in a different manner. A larger number of workers appear to be choosing part-time self-employment rather than retiring directly.

Some trends are common to both full- and part-time self-employment. Both groups of workers have seen their age profile get markedly older in recent years, and both are increasingly concentrated in the finance and business services industry (which now accounts for nearly 25% of full-time, and nearly 30% of part-time, self-employment). Both groups are relatively concentrated in higher occupational groups and in the South East and London, with full-time self-employed workers in particular becoming more concentrated in the capital (which now accounts for about 17% of full-time self-employment, compared with less than 15% in 2001). The ONS suggests that self-

¹ <https://www.gov.uk/employment-status/overview> has more information

² For an overview, see http://ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm

³ Reported by Debbie Abrahams MP, in *Hansard* 9 January 2017, col. 4

⁴ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/self-employment-gig-economy-16-17/>

⁵ Chris Giles, *Financial Times*, 1 December 2016

⁶ <http://www.ons.gov.uk/news/news/parttimerscontributetostronggrowthinselfemployment>
<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/trendsinselfemploymentintheuk/2001to2015>

employed workers are broadly content with their position in the labour market, with little evidence of older part-time self-employed workers wanting a full-time position, or of job search or dissatisfaction with being self-employed. Among younger and mid-aged self-employed women, the growth in self-employment has not been accompanied by a rise in the number of people who would prefer to work full time, nor a clear rise in the number of workers seeking an alternative job. Among younger part-time self-employed men, however, the picture is less certain: evidence of under-employment is strongest; and larger proportions display a greater degree of dissatisfaction with their part-time status and appear to have come directly from unemployment – possibly indicating a choice made under economic hardship.

Self-employment is concentrated in construction (959,000), professional, scientific & technical activities (608,000), other services (525,000), wholesale, retail and repair of motor vehicles (401,000), administrative and support services (349,000) and human health and social work activities (322,000).⁷ The self-employment rate in the UK (14.5%) is below the OECD average (16.5% in 2013) but twice the rate of Luxembourg (6.2%) and Norway (7.0%).⁸

The proportion of self-employed people who employ staff has dropped from 23 to 11 per cent since 2000; and the proportion working over 40 hours per week has dropped from 51 to 35 per cent.⁹ The government is also concerned about a lack of training.

1.2 'Bogus' or dependent self-employment

There is growing concern about 'bogus' self-employment.¹⁰ There are no official figures; but this has been an issue in the construction industry for many years,¹¹ and Citizens Advice has recently estimated that the number overall could be as high as 460,000 (or one in ten of the 'self-employed'),¹² though others believe the real figure to be lower. Frank Field MP, chair of the Work and Pensions Select Committee, said the government should review HM Revenue and Customs (HMRC) criteria that allow companies to contract work to self-employed individuals rather than hire them as employees.¹³ HMRC have launched an enquiry into Hermes employment practices; and an employment tribunal has concluded that a group of Uber drivers are not self-employed but are workers (albeit not employees) entitled to essential workers' rights, including the National Minimum/Living Wage and paid holiday (see Appendix 2 for details of current legal cases).¹⁴

There is also an issue of recruitment agencies using an 'aggressive' tax avoidance scheme which, by transferring workers' contracts from a single employment agency to

7

<http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employeesandselfemployedbyindustryemp14>

⁸ <https://data.oecd.org/emp/self-employment-rate.htm>

⁹ Reported by Sarah O'Connor, *Financial Times*, 26 October 2016.

¹⁰ See Chartered Institute for Personnel and Development checklist on defining 'bogus' self-employment: <http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2015/03/24/employers-using-bogus-self-employment-to-face-heavy-penalties.aspx>

¹¹ For example, see Hard Work, Hidden Lives: The full report of the Commission on Vulnerable Employment, Trades Union Congress, 2008

¹² Citizens Advice, *Bogus self-employment costing millions to workers and government*, 2015: <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/bogus-self-employment-costing-millions-to-workers-and-government/>

¹³ <https://www.theguardian.com/society/2016/jul/19/hermes-couriers-low-pay-national-living-wage-self-employed>

¹⁴ The London Central Employment Tribunal has found that a group of Uber drivers are workers and are entitled to receive the National Minimum Wage and holiday pay. In a landmark ruling that follows a hearing in July, which will affect tens of thousands of Uber drivers, <https://www.leighday.co.uk/News/News-2016/October-2016/Historic-victory-for-Uber-drivers-as-Tribunal-find>

many micro-agencies, attracts multiple 'NICs (National Insurance Contributions) holidays' (with a saving of £3000 (EUR 3480) per year each time) introduced to incentivise employers to create jobs.¹⁵

1.3 Non-standard work relationships

Nearly a quarter of the 32 million people in work are now self-employed or in 'precarious' employment; for example, the University and College Union analysis of official figures appears to show that more than half of academics in universities are employed on temporary or insecure contracts.¹⁶

The Resolution Foundation estimates that there are 865,000 agency workers in the UK – roughly on a par with zero hours contracts; and it is growing, too – by 30 per cent in the last five years alone.¹⁷

Figures for numbers in part-time and temporary work by occupation¹⁸ and by socio-economic classification are published every quarter.

Part-time work: In July-September 2016 in the UK 23.24 million people working full time and 8.56 million (31.8%) were working part time; both these totals were higher than a year earlier.¹⁹ Women are far more likely to work part time and men and women work part time for different reasons and at different lifecycle stages.²⁰ The majority of part-time workers choose to work in that way,²¹ and many part-time jobs are permanent, with workers staying in them long-term (particularly mothers, even after their children have grown up). This means this is often not seen as 'atypical' work. There has been concern since the financial crisis about 'under-employment', with increasing numbers of 'involuntary' part-timers who have taken such jobs only because full-time jobs were unavailable. However, recent governments have been keen to stress the high percentage of full-time jobs amongst those created. And the longer-standing concern has been that many jobs of better quality are not open to part-time applicants. (**Job-sharing** does not affect many people in the UK, though it does have some potential to resolve this problem, and indeed is often a form of standard contract in practice; the same is true of 9-day fortnights or the equivalent in weekly arrangements, as well as many other **flexible working hours arrangements**.) The application of the right to request flexible working for those with children has been significant, and has now been extended to all employees; but there is no right for jobseekers to ask for flexible hours to be considered when they apply for jobs.

The Resolution Foundation has argued that the number of people with multiple jobs in the UK is lower than is imagined. Around 1.1 million people work in multiple jobs, making up 3.6 per cent of the workforce. 590,000 of these have multiple employee roles; 120,000 have multiple self-employments; and 420,000 combine both. Accounting for seasonal differences, the proportion of workers doing multiple jobs is at a record low, having peaked at around 5 per cent in the mid-1990s; and the proportion of workers

¹⁵ *The Guardian*, 17 November 2016.

¹⁶ *The Guardian*, 17 November 2016.

¹⁷ <http://www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/>

¹⁸

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/parttimeandtemporaryworkersbyoccupationemp10>

¹⁹

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/latest>

²⁰ Fagan, C., Norman, H., Smith, M. and Menéndez, M. C. G. (2013), *In Search of Good Quality Part-time Employment* (ILO Conditions of Work and Employment Series)

²¹ However, there is an ongoing and lively debate about the extent to which the context of a gendered labour market and gendered relationships within the household can be thought to facilitate real 'choice'.

doing multiple employee jobs has fallen particularly far, and half of those with multiple jobs are now self-employed in one or all of their jobs.²²

Zero-hours contracts mean that the individual is 'on call', i.e. is not guaranteed any work; but s/he also does not have to do any specific piece of work (though the freedom to reject this may be more apparent than real). The ONS collects statistics from employers about employee contracts which do not guarantee a minimum number of hours, in addition to the LFS figures. The increase in zero-hours contracts, especially amongst young people, has been of growing concern, and led to the abolition of exclusivity clauses (so that someone can now engage in other employment as well). In addition, people may not be aware this is the nature of their employment. In an analysis of the Labour Force Survey (LFS), Philpott²³ found 750,000 more people on such contracts in 2016 than in 2006, typically earning about 40 per cent of the wage of permanent employees. The TUC,²⁴ analysing the LFS for April-June 2016, said the number on zero hours contracts went up by 21% over the year. The ILO²⁵ reported recently that the UK had 2.5% of employees on zero hours contracts at the end of 2015.

Annualised hours contracts mean the employee works a certain number of hours per year, with flexibility for the employer's needs. **Term-time working** is often done by employees in education who are only paid for the hours they work in term-time, with no retainer during the holidays.

Temporary work: The ONS produces quarterly figures on temporary employees (all, and part-time).²⁶ These have risen from 1,656,000 in July-September 2012 to 1,661,000 four years later (with part-time work within this rising from 793,000 to 835,000). The use of fixed-term contracts is seen as relatively minor in the UK by international standards, which is usually put down to the flexibility in the labour market. Casual and seasonal work is not usually identified separately; seasonal work is likely to be largely managed via fixed-term temporary contracts.

Temporary agency workers: Official sources do not enumerate temporary agency workers, so numbers have to be collated from the agencies or their representative bodies. A research report on temporary agency work²⁷ showed that such work was highest in the financial crisis, and constitutes a significant part of recent job growth in the UK. Another report,²⁸ published to initiate an 18-month inquiry, found two groups of agency workers (the permanent and the self-employed) missing from some past reports. The authors say analysis of the Labour Force Survey (LFS) shows an estimated 865,000 agency workers in 2015 (p. 17). Agency working has risen by over 30% since 2011, with women accounting for 85% of the growth in temporary agency staff. Philpott²⁹ found from the LFS that 207,000 more people are working as 'temps' compared to 2006, and earn two-thirds the wage of permanent employees.

²² <http://www.resolutionfoundation.org/wp-content/uploads/2016/11/Double-take.pdf>

²³ Reported in *The Guardian*, 16 November 2016: <https://www.theguardian.com/uk-news/2016/nov/15/more-than-7m-britons-in-precarious-employment>

²⁴ <https://www.tuc.org.uk/economic-issues/labour-market/zero-hours-contracts-have-become-easy-way-employ-staff-cheap-says-tuc>

²⁵ http://ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm

²⁶

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/temporaryemployeesemp07>

²⁷ Institute for Policy Research, *Temporary Agency Work in the UK Today: Precarity intensifies despite protective legislation*, Bath, 2015: www.bath.ac.uk/casp/projects/migration-and-temporary-agency-work/index.html

²⁸ Judge, L. and Tomlinson, D. (2016) *Secret Agents: Agency workers in the new world of work*, London: Resolution Foundation; <http://www.resolutionfoundation.org/publications/secret-agents-agency-workers-in-the-new-world-of-work/>

²⁹ Reported in *The Guardian*, 16 November 2016.

1.4 Risks faced by the self-employed and those with non-standard contracts

Low pay is much higher in self-employment than in conventional work; and self-employed workers can also experience considerable variations in pay from month to month.³⁰ Since 2008, real earnings have fallen faster for the self-employed than for employees (see figure 1.2 in Appendix 1).

There is growing concern about low-paid self-employment in the UK and what the government can do to address it. Much of the focus has been on the Hermes and Uber forms of employment.³¹ The Social Market Foundation (SMF) reported³² that 45% of self-employed people aged 25 or over are paid below the National living Wage (£7.20 or EUR 8.35³³ per hour) and 64% of low-paid self-employed people have no income from savings, investments or pensions. It recommends addressing the tax and regulation gap; giving the self-employed a stronger voice; and supporting them into higher pay.

Figure 1.3 (in Appendix 1) shows that the self-employed have been contributing an increasing share to the population in poverty. However, Figure 1.4 (in Appendix 1) shows that over the same period the poverty rate of the self-employed has not increased - but the gap between the poverty rate of the self-employed and the whole population has widened since 2003/4.

In 2016, the government published the results of an independent review of self-employment,³⁴ which criticised the lack of support for self-employed people starting out and made recommendations to improve provision, including calling for a legal definition. In the 2016 Budget, the government introduced targeted tax allowances for those making up to £1,000 (EUR 1160) from selling goods or renting out property.³⁵

Altogether, Philpott's analysis of the LFS³⁶ found over 1 in 5 workers, 7.1 million people, now face precarious employment conditions, up from 5.3 million in 2006. There are also disproportionate numbers of such workers in particular regions, exacerbating geographical inequalities. The prime minister has described her concern about people who are working hard but only 'just about managing' (known as JAMs). The latest report by the official Social Mobility Commission says that the 'two-tier labour market' is 'exacting too high a social price', and that barely one in ten low-paid workers at the start of the last decade had escaped low pay by the end; those who start out in low-paid jobs (with young workers experiencing a 15 per cent fall in hourly rates since 2008) struggle to escape them. Fees for employment tribunals, where unfair employment practices can be challenged, have been raised significantly.³⁷

A recent research report showed that since 20 years ago, there has been a four-fold increase in men (aged 25 to 55) with low hourly wages working part time - though the

³⁰ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/self-employment-gig-economy-16-17/>

³¹ See <https://www.theguardian.com/commentisfree/2016/oct/19/self-employment-dream-governments-gig-economy>

³² Broughton, N. and Richards, B. (2016) Tough Gig: Tackling low paid self-employment in London and the UK, Social Market Foundation. <http://www.smf.co.uk/publications/tough-gig-tackling-low-paid-self-employment/>

³³ The £ to EUR exchange rate has been quite volatile in recent months. On 17 January 2017 it was £1=EUR 1.16

³⁴ Deane, J., Self-employment Review: An independent report, 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505561/ind-16-2-self-employment-review.pdf

³⁵ <https://www.gov.uk/government/news/budget-2016-some-of-the-things-weve-announced>

³⁶ Reported in *The Guardian*, 16 November 2016.

³⁷

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/569410/Social_Mobility_Commission_2016_REPORT_WEB_1_.pdf

opposite has happened amongst low-paid women.³⁸ The Resolution Foundation says that all workers without a permanent full-time role lose out in terms of wages, but people on zero hours contracts suffer the biggest penalty.³⁹ A recent research report found that temporary agency workers' incomes were often inadequate.⁴⁰ The new Prime Minister has asked Matthew Taylor, the former head of Tony Blair's policy unit and currently leading the RSA (Royal Society of Arts, Manufacture and Commerce) to head a review of workers' rights and practices, which will try to address concerns that millions are stuck in insecure and stressful work.⁴¹ The Work and Pensions Select Committee is now setting up an inquiry into self-employment and the gig economy, with a particular focus on whether the UK welfare system adequately supports these workers.⁴² Its call for evidence emphasises factors that create problems for other workers on non-standard contracts in relation to the social security system as well – in particular, the part-time nature of much of this work and variation in incomes. The New Economics Foundation say that there has been a 72% increase in London's gig economy since 2010.⁴³ Field and Forsey issued a report in 2016 on sweated labour, Uber and the gig economy.⁴⁴

1.5 Policy measures on self-employment

The New Enterprise Allowance (NEA), introduced in April 2011, is available to those on certain social security benefits to help them to start up self-employed businesses (see section 2.1 below). There is some concern⁴⁵ that the tightening of conditionality measures and sanctions for the unemployed, combined with the availability of working tax credit for the self-employed on low incomes, have incentivised people to take up self-employment which may not be viable. In addition, it may be the loss of security in employment that has made it more attractive for people to switch to being self-employed; but this may also be due to the 'tax' advantages, including higher NICs for employees and employers versus the self-employed, and real increases in personal tax allowances in recent years, making it more attractive to form small companies.⁴⁶

1.6 Policy debates around social protection

One relevant debate developing apace is on the funding side. This concerns the potential for closer alignment, or even merging, of income tax and NICs. This would have implications for self-employed people in particular, but also – because of the current growing gap between the lower earnings limit (LEL) for NICs and the personal tax threshold – for part-time and low-paid employees. There have been many proposals in the past to merge income tax and NICs;⁴⁷ but these have often been motivated by social security reform concerns. However, in a recent report the Office of Tax Simplification

³⁸ Belfield, C. et al. (2017), *Two Decades of Income Inequality in Britain: The role of wages, household earnings and redistribution*, London: Institute for Fiscal Studies

³⁹ Reported in *The Guardian*, 30 December 2016.

⁴⁰ Institute for Policy Research, *Temporary Agency Work in the UK Today: Precarity intensifies despite protective legislation*, Bath, 2015: www.bath.ac.uk/casp/projects/migration-and-temporary-agency-work/index.html

⁴¹ <https://www.gov.uk/government/groups/employment-practices-in-the-modern-economy>

⁴² <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/self-employment-gig-economy-16-17/>

⁴³ <http://neweconomics.org/massive-surge-londons-gig-economy/>

⁴⁴ <http://www.frankfield.com/upload/docs/Sweated%20Labour%20>

⁴⁵ For example, expressed by A. Painter of the Royal Society for the Arts, Manufacture and Commerce.

⁴⁶ Chris Giles, *Financial Times*, 1 December 2016.

⁴⁷ See, e.g., the report of the Mirrlees review of taxation in the UK, *Reforming the Tax System for the 21st Century*, Oxford: Oxford University Press, 2010: <https://www.ifs.org.uk/publications/mirrleesreview/>

(OTS)⁴⁸ instead proposed the closer alignment of income tax and NICs in order to simplify the payments system. It also suggested a NICs relaunch, to help people understand the system better. It found 'little recognition of the differing and sometimes distorted outcomes for the employee and the self-employed', as well as a lack of knowledge amongst employers and the public. Instead of combining the two at this stage, the OTS wishes to align them by simplifying NICs. In particular, it asked whether the self-employed should pay and benefit in the same way as those who are employed. (See Sections 2.2 and 3. below.) In addition, HMRC consulted on potential reforms to Class 2 and Class 4 NICs⁴⁹ for the self-employed, which resulted from April 2015 in the collection of Class 2 NICs alongside Class 4 through self-assessment, and the restriction of liability to those with profits above a certain amount (although others can pay voluntarily).⁵⁰

The government is going to abolish Class 2 NICs from April 2018,⁵¹ so the entitlement conditions described below will change fundamentally in future; the government has said Class 4 contributions will be reformed, so that self-employed people can continue to build benefit entitlement. It has consulted on benefit entitlement for the self-employed.⁵² It will create a zero rate band for liability on profits for Class 4 NICs; voluntary contributions will have to be paid for lower-income self-employed people for contributory ESA, and for Maternity Allowance - meaning a five-fold cost increase for self-employed women⁵³ - and spouses' contribution records can no longer be relied on for women working in their partner's business..

In part as a result of the developments in the labour market described above that appear to increase insecurity and the risk of low pay, exploitative conditions and poverty, debate about a '(universal) basic income' or 'citizen's income' has also been growing apace in the UK in recent years. Several think tanks and other organisations across the political spectrum, including Compass,⁵⁴ as well as the RSA (led by Matthew Taylor),⁵⁵ have published reports advocating basic income. (The Adam Smith Institute has also claimed to do so,⁵⁶ but this model seems instead to be a form of negative income tax.)⁵⁷ The University of Bath is running a research programme about basic income.⁵⁸ The Work and Pensions Select Committee is holding an oral evidence session to discuss basic income in January 2017.⁵⁹ However, not all voices are uncritical;⁶⁰ and no major political party is currently advocating its introduction – apart from the Green Party, whose costings were challenged in the run-up to the 2015 general election.

⁴⁸ Office of Tax Simplification, *The Closer Alignment of Income Tax and National Insurance*, 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505610/PU1909_cover_prelims_web.pdf

⁴⁹ <https://www.gov.uk/national-insurance/national-insurance-classes>

⁵⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331758/tiin-class2-nic.pdf

⁵¹ <https://www.gov.uk/government/news/budget-2016-some-of-the-things-weve-announced>

⁵² <https://www.gov.uk/government/consultations/consultation-on-abolishing-class-2-national-insurance-and-introducing-a-contributory-benefit-test-to-class-4-national-insurance-for-the-self-employed/the-abolition-of-class-2-national-insurance-introducing-a-benefit-test-into-class-4-national-insurance-for-the-self-employed>

⁵³ <https://www.gov.uk/government/publications/abolition-of-class-2-national-insurance-contributions/abolition-of-class-2-national-insurance-contributions> – see p. 24

⁵⁴ <https://www.compassonline.org.uk/publications/a-citizens-income-a-recipe-for-change/>

⁵⁵ <https://medium.com/rsa-reports/creative-citizen-creative-state-a3cef3f25775#.6dab85mg5>

⁵⁶ <https://www.adamsmith.org/blog/welfare-pensions/the-ideal-welfare-system-is-a-basic-income>

⁵⁷

https://static1.squarespace.com/static/56eddde762cd9413e151ac92/t/56f711a3ecb92886bb6cc478/1459032484139/NIT_WEB.pdf

⁵⁸ <http://www.bath.ac.uk/ipr/news/news-0262.html>

⁵⁹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/citizens-income-16-17/>

⁶⁰ E.g. see Piachaud, D., *Citizens' Income: Rights and Wrongs*, CASE200, London: Centre for Analysis of Social Exclusion, London School of Economics, 2016.

2 Description and assessment of social protection provision for self-employed and people employed on non-standard contracts

2.1 Description of social protection provisions for self-employed and people employed on non-standard contracts

Overview of social protection in the UK: The best and most comprehensive summary of UK benefits and tax credits is in a handbook published annually.⁶¹ Benefits and services provided by the UK social protection system are mainly provided on a non-contributory basis. Thus health care and education are free at the point of demand and no account is taken of the source of employment income. Help with charges for social care and childcare provision are largely income related and no account is taken of the source of employment income. The social security system is also now substantially means tested as a whole. The main exception is the basic pension and some residual contributory elements in disability and unemployment benefits, as well as non-contributory carer's benefit. Means tests tend to take account of net income and self-employed claimants have some advantages in being able to offset expenses associated with their employment.⁶²

Much of the discussion below focuses on the social protection rather than the funding side of the equation. Social protection in the UK is funded by general taxation and by NICs. These are currently operationalised very differently, with Pay as You Earn (PAYE) income tax being cumulative (over a financial year), whilst NICs are not, and with different kinds of income being subject to income tax and NICs. Employer NICs match employees', whilst the same is not true for income tax.

Many part-time workers will be below the income tax threshold, which has been rising in real terms in recent years, although the same is less likely to be true of the NICs threshold. In the case of temporary agency workers, the onus is now on the agency as employer to deduct PAYE income tax and comply with the NICs requirement (the legislation is known as IR35).⁶³ Self-employed people and small companies pay less in tax and also in NICs; the biggest saving is on employer NICs, which amount to 13.8 per cent.

Employer provision: Some social protection is provided by employers, including some statutory payments made on behalf of the government by employers but refunded to them; such social protection may be earnings related, and thus higher than the level of most state benefits in the UK, which are usually flat rate. Self-employed people cannot benefit from such employer provision. In genuine self-employment, where contractors bid for commissioned work, the theory is that a higher rate of pay will compensate them for the lack of such provision, and they are expected to either insure themselves or save for contingencies. In bogus self-employment, such higher pay rates may be less likely. Statutory Maternity Pay, Paternity Pay and Adoption Pay are paid by employers (who can recover most of the cost from the government). This means self-employed people cannot get them. They are not contributory; but entitlement is based on earnings above the NI lower earnings limit (LEL). The same is true for Statutory Sick Pay (SSP), also paid by employers (but no longer refunded). The problem here is that those with more than one job may have none with earnings above the LEL. There is not as much incentive now as there used to be for employers to pay below the LEL, but it is still the case that employers' contributions do not apply if a job is below the LEL; and that liability for NICs is not calculated by adding jobs together, but by taking each one separately – meaning part-time workers with several jobs may not pay any NICs.

⁶¹ Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook*, London: CPAG (annual)

⁶² Net profit is self-employed earnings minus reasonable expenses, income tax and NICs, plus half of any premiums paid in respect of a personal pension which is eligible for tax relief – averaged over the year.

⁶³ <https://www.gov.uk/guidance/ir35-find-out-if-it-applies>

Contributory benefits: The contributory benefits system was designed largely with employees in mind; but self-employed people can also benefit from most of it, via low level contributions (now paid as part of income tax self-assessment) and additional contributions on higher profits (also paid in this way). The major benefit they cannot qualify for, apart from those paid by employers (e.g. SSP), is contributory unemployment benefit, i.e. Jobseeker's Allowance (JSA). The detailed conditions are set out in the relevant sections below.

Contributions are divided into four main types (no contributions are payable over pension age):

- Class 1: employees pay a basic contribution of 12 per cent and employers pay a basic contribution of 13.8 per cent above certain thresholds;
- Class 2: for self-employed people, a flat rate per week of £2.80 (EUR 3.25);
- Class 3: voluntary contributions payable to fill gaps in contribution records;
- Class 4: self-employed people pay 9 per cent on profits between certain thresholds and then at 2 per cent above the upper threshold. Class 4 NICs do not currently count towards benefit entitlement.

The self-employed are normally liable to pay Class 2 contributions unless their profits are low or they are exempt from payment. You must pay Class 2 contributions for each week in a tax year in which you are a self-employed earner unless the taxable profits from your self-employment in that tax year are below the 'small profits threshold' or you are exempt from payment. The small profits threshold in 2016/17 is £5,965 (EUR 6919). The main grounds for exemption from Class 2 contributions are that you receive certain benefits – maternity allowance or ESA - for the week to which the contributions relate, or carer's allowance for at least part of the week. Even if you are not liable for Class 2 contributions, provided you are a self-employed earner you may still choose to pay Class 2 contributions on a voluntary basis to protect your NI contributions record. Class 2 contributions are paid at a flat rate of £2.80 (EUR 3.25) per week in 2016/17 (now deducted after the end of the tax year).

Contributory benefits for those of working age (not those of pension age or above) have an earnings rule, meaning that it is not possible to claim these benefits with earnings above certain limits. This affects the self-employed as well as the employed.

Means-tested benefits are available to those in certain situations as an earnings top-up (e.g. working tax credit) or income maintenance or income replacement (e.g. income based JSA or income related Employment and Support Allowance (ESA), or Income Support); they can also receive payments to meet certain costs on top of this (e.g. child tax credit, housing benefit, council tax support).

For self-employed people, their 'normal' hours of work must be at least the minimum to qualify for working tax credit (WTC), and they must be undertaking a trade, profession or vocation, carried out on a commercial basis, regular and organised, with a view to making a profit.⁶⁴ From April 2016, you may need to register with HMRC for self-assessment. For Income Support, income based JSA or income based ESA, their weekly earnings are usually taken as the average over the past year, excluding expenses etc. (This also applies to contributory JSA under the earnings rule.)

Transitioning to self-employment: The New Enterprise Allowance (NEA) is available to those aged 18 or over who get JSA or ESA (or whose partner does), or Income Support (IS) (as a lone parent or if sick/disabled), or Universal Credit (UC) (some claimants).⁶⁵ If

⁶⁴ Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook 2016/17*, London: CPAG, 2016, p. 184.

⁶⁵ See http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2014_annual_review_korr.pdf (but figures based on 2009/10).

someone in these groups has a business idea which is approved, and they start working at their business for 16 hours or more per week, they could get a weekly allowance paid for up to 26 weeks (up to £1,274 (EUR 1478))), as well as a business mentor and access to a loan to help with start-up costs. The NEA does not affect housing benefit, tax credits, income tax or Universal Credit (UC). A voluntary experiment is currently being carried out giving face-to-face support for self-employed people on tax credits. More than a fifth of participants are people with a declared disability.⁶⁶ (Otherwise, self-employed people on JSA not getting the NEA must actively seek work, unless they are on a scheme allowing people to take active steps to set themselves up in self-employment for up to 8 weeks).

2.1.1 Healthcare and sickness: cash benefits and benefits in kind

Healthcare in the UK is provided free at the point of need by the National Health Service. This includes hospital in-patient and out-patient care and treatment by a general practitioner. So there is no discrimination between employed and self-employed or non-standard employment contracts. There are charges for prescription drugs, and for dental and optical treatment. Children and pensioners get prescriptions free and exemption from prescription and other charges is based on a means test of net income for other groups. Again there is no discrimination by type of employment.

There are two types of cash benefit for sickness causing incapacity for work – Statutory Sick Pay and Employment and Support Allowance (ESA).

Statutory sick pay (SSP) is paid by employers after four days and for 28 weeks if you are incapable of work, at the rate of £88.45 (EUR 102.60) per week. It is not available to people who are self-employed. To qualify, normal earnings have to be at least at the level of the LEL for NICs. So those employees earning less than £112 per week (effectively 15.6 hours at the National Living Wage) are not entitled to SSP. This could affect many part-time workers in ‘mini jobs’, for example.

Those not entitled to SSP or who have exhausted their entitlement are eligible to claim Employment and Support Allowance if they have limited capability for work. **Contributory Employment and Support Allowance (ESA)** is paid on the basis of the NICs record. The self-employed are eligible if they have paid Class 2 NICs. The contribution conditions are that in one of the last two complete tax years before the relevant benefit year you must have paid NI contributions producing an earnings factor of at least 26 times that year’s LEL and, in each of the last two complete tax years ending before the relevant benefit year, you must have paid contributions, or received NI credits, which produce an earnings factor of 50 times the LEL.

The benefit is £73.10 (EUR 84.80) per week during an initial 13-week assessment phase, with an increase of £36.20 (EUR 41.99) for those people who qualify for the support component, assessed as having a limited or no capability for work related activity. The rest are expected to engage with work focussed interviews and associated activity and receive an addition of £29.05 (EUR 33.70) per week work-related activity component - but this will be abolished from April 2017, leaving the level as the same as JSA. There is a 365 day limit to contributory ESA for those in the work related activity group (but not the support group).

Individuals (including the self-employed, and temporary or part-time workers) without an adequate contribution record, incapable of work and no longer (or never) entitled to SSP or ESA, and without substantial other income or capital, may claim **income based Employment and Support Allowance (ESA)**, a means-tested, tax-financed benefit. The benefits paid are identical to contributory ESA, as is the conditionality regime, but

⁶⁷ See http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2014_annual_review_korr.pdf (but figures based on 2009/10).

means-tested on joint income for couples, so cutting out some claims entirely. Eighty per cent of ESA recipients are receiving the income based benefit (though some may do so in addition to the contributory element). It is based entirely on a test of net income and so does not discriminate on the basis of previous employment status, although it may clearly be more difficult for self-employed people to provide evidence of income. It is being replaced by UC (see above).

2.1.2 Maternity/paternity cash benefits and benefits in kind

Statutory maternity pay (SMP) which is paid for up to 39 weeks (6 weeks at a higher rate) is not based on a record of NICs as such, but requires 26 weeks' continuous service with an employer and average weekly earnings of at least the amount of the LEL. Both these conditions mean that self-employed workers cannot qualify, and temporary and part-time workers are less likely to qualify. Currently those taking the shortest paid leaves are low earners, part-time workers and self-employed people.⁶⁷ The independent review of self-employment published in 2016 recommended extending full maternity provisions to the self-employed.⁶⁸

Other payments, such as **statutory adoption pay, statutory paternity pay** (up to 2 weeks), **and statutory shared parental pay** (available for either parent for up to 37 weeks in total within the first year after the birth, following SMP if this is ended early by the mother), have similar conditions of earnings and continuous employment.

Maternity Allowance (MA), which is a state benefit paid for up to 39 weeks and can be claimed by those who do not qualify for SMP, became a non-contributory benefit in 2000. Self-employed women can claim, as can those helping their spouse/civil partner with their self-employment (changing from April 2018). There is also an earnings test, which for self-employed women is based on payment of Class 2 NICs (sufficient of which, paid by the woman – or, in the case of helpers, their spouse/partner - qualifies someone for the standard rate of MA). So this means employment for at least 26 weeks, and payment of Class 2 NICs for at least 13 weeks, of the 66 weeks preceding the week the baby is due. A very much lower rate is paid for those who have not paid Class 2 NICs for 13 weeks. For employed women, the earnings test is that they must have earned a certain amount per week (lower than the LEL) – which, when introduced in 2000, extended social protection to more part-time women workers.

Benefits in kind for maternity/paternity include free prescriptions and dental care in pregnancy and the first year after childbirth, which are universal entitlements; and Healthy Start vouchers, which are means tested. Neither of these should therefore be affected by work status; and those on means-tested benefits also have 'passported' rights to some of them.

2.1.3 Old-age and survivors' pensions

Entitlement to the basic state pension is based on a record of NICs from employers and employees. The self-employed are normally liable to pay Class 2 contributions unless their profits are low or they are exempt from payment. Class 2 contributions entitle you to all insurance benefits including the basic state pension (but not JSA). You must pay Class 2 contributions for each week in a tax year in which you are a self-employed earner unless the taxable profits from your self-employment in that tax year are below the 'small profits threshold' or you are exempt from payment. The small profits threshold in 2016/17 is £5,965 (EUR 6919). The main grounds for being exempt from payment of

⁶⁷ See http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2014_annual_review_korr.pdf (but figures based on 2009/10).

⁶⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505561/ind-16-2-self-employment-review.pdf

Class 2 contributions are that you receive certain benefits – maternity allowance or ESA for the week to which the contributions relate, or carer's allowance for at least part of the week. Even if you are not liable for Class 2 contributions, provided you are a self-employed earner you may still choose to pay Class 2 contributions on a voluntary basis to protect your NI contributions record. Class 2 contributions are paid at a flat rate of £2.80 (EUR 3.25) per week in 2016/17 (now deducted from earnings after the end of the tax year).

If you reach pension age on or after 6 April 2016, there is a new single-tier state pension. This treats NICs from self-employed and employed people on an equal basis. As before, the **state pension** you receive will depend on your qualifying years. You are entitled to the full rate of state pension if you have at least 35 qualifying years in your working life. If you have less than 35 qualifying years but at least ten you build up one thirty-fifth of the full weekly rate of state pension for each of your qualifying years. (Qualifying years relate to the NICs system.)

The state pension system for individuals who reached State Pension age before 6 April 2016 includes a contributory state pension scheme consisting of a flat-rate basic State Pension, and an earnings-related additional state pension. The current level of the contributory State Pension is a flat rate of £119.30 (EUR 138.39) per week from April 2016, plus any additional pension award. As noted above, people reaching State Pension age after 5 April 2016 will qualify instead under the new scheme. Once the transition to the new system is fully in place, this will provide a state pension of £155.65 (EUR 180.55) per week (at April 2016 rates) for those with the requisite number of qualifying years. In the interim, individuals whose pre-April 2016 contribution records would have provided more than £155.65 (EUR 180.55) under the old State Pension rules will receive the higher amount.

Individuals, including the self-employed or part-time workers, without an adequate contribution record for the state pension and without substantial other income or capital may claim **Pension Credit**, a means-tested, tax-financed benefit consisting of a guarantee credit providing a weekly income of £155.60 (EUR 180.55) for a single person and £237.55 (EUR 275.56) for a couple and a Savings Credit providing up to £13.07 (EUR 15.16) per week for a single person and up to £14.75 (EUR 17.11) for a couple. 1.9 million pensioners were receiving pension credit in 2016. 12.9 million were receiving the state pension.

Part of the redesign of pension provision has been prompted by the low savings for pensions amongst many employees, especially because of the decline in defined benefit pension schemes. The replacement of state earnings related provision entirely by auto enrolment into personal pension provision for those who do not already belong to a company scheme is likely to mean less redistribution towards the low paid in future; and employers are not obliged to offer auto enrolment to part-time workers who earn under the qualifying threshold. The TUC has estimated that 4.5 million workers do not qualify because they earn under £10,000 (EUR 11,600) per year (with the limit applying to each job, not to earnings from several jobs added together). A minister has also suggested that the government is considering including self-employed people in auto enrolment as part of a forthcoming review, as numbers paying into a personal pension have plummeted between 2001/02 (1.1 million) and 2014/15 (380,000), with a lower proportion of women paying in. The lifetime ISA, introduced as a new savings vehicle including for pensions recently, is only open to those aged under 40;⁶⁹ for self-employed people of this age it may be a flexible vehicle for saving towards a pension.

There are currently three elements to survivors' pensions. **Bereavement payment** is a lump sum of £2000 (EUR 2320) payable to widows, widowers or civil partners who died having satisfied the NIC conditions; this includes the self-employed. The condition is that

⁶⁹ *The Guardian*, 19 November 2016.

in any one tax year the late spouse/civil partner should have paid NICs of at least 25 times that year's LEL. Most people, even on non-standard contracts or self-employed, should be able to meet this condition. But the payment is only temporary. Bereavement support payment will replace bereavement payment and other bereavement benefits from April 2017.

Widowed parent's allowance, for people with dependent children, or **bereavement allowance**, paid for a year for people aged at least 45 when their spouse/civil partner died, are payable (including to the self-employed) if in any one tax year the late spouse paid NICs that produced an earnings factor at least 52 times the LEL; in addition, to get the standard basic rate they must have had qualifying years for about 90 per cent of their working life. (If they had at least a quarter, some benefit will be paid.) Qualifying years include credited NICs. This condition may be more difficult for part-time low-paid workers or temporary workers.

There will be major changes to bereavement benefits from April 2017, with one benefit paid for 18 months, higher for those with children, replacing the current suite of benefits (some longer term). There will be only one NI contribution condition.⁷⁰

2.1.4 Unemployment benefits and social assistance benefits

Unemployment benefits consist of **contribution-based JSA**. However, the self-employed, even if they have paid Class 2 NICs, do not qualify for contribution-based JSA. And JSA claimants must be available for employed earner's employment; only being available for self-employed work is not enough. Part-time and temporary employees can qualify for contribution-based JSA, but will find it harder to fulfil the contribution conditions (the same as for contributory ESA – above).

However, if you are over 18, have limited income and only modest savings (under £16,000 EUR 18560), you may be eligible for income-based unemployment benefit (also called JSA). A partner must not be in full-time work (24 hours per week or more in this case – the same as for Income Support). Although this is non-contributory and means-tested, it pays the same amounts as contribution-based JSA and on the same conditions⁷¹ – you must be fit for work, satisfy the job-seeking conditions and sign on every fortnight; and if you do not take up a job or an employment programme or training scheme opportunity you may be sanctioned by JSA being paid at a reduced or nil rate. You may, as with contribution-based JSA, have to be prepared to take part-time work, though you also need to be available to take up full-time work, and immediately (unless you are allowed to place restrictions on your availability). Income-based JSA is an automatic passport to maximum housing benefit (though it may be affected by recent cuts. JSA is £57.90 (EUR 67.16) for a single claimant aged 18-24 and £73.10 (EUR 84.80) for a claimant aged 25 or over. Only 14% of JSA recipients were receiving contribution-based JSA in 2016/17.

Income support (IS) is the general means-tested social assistance benefit for those whose resources are less than their requirements and who not eligible for JSA, SSP, ESA, or Pension Credit. The main group of beneficiaries are lone parents with a child under five who are still not expected to fulfil full job-seeking conditions and people who are topping up carer's allowance (or in some cases caring but not eligible for carer's allowance). You cannot get IS if you are in full-time paid work, which for a lone parent is defined as 16 hours per week. There is no distinction about the source of earnings and so there is no discrimination against self-employed people. The first £20 (EUR 23.20) of part-time earnings are disregarded for most claimant groups.

⁷⁰ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-01-12/HCWS409/>; http://www.entitledto.co.uk/help/Benefit_Changes_April_2017

⁷¹ Many couples now have to make a joint claim for JSA and both have to satisfy jobseeking conditions

There are other means-tested elements of the minimum income schemes in the UK including housing benefit, local council tax support, local welfare assistance and free school meals. None of them discriminates in principle in favour of or against the self-employed or those on non-standard employment contracts.

2.1.5 Long-term care benefits

The major benefit for caring is Carer's Allowance. This is non-contributory and non-means-tested, but paid at a lower weekly rate than contributory benefits. It provides an income maintenance benefit for those caring for 35 hours or more per week for someone in receipt of Attendance Allowance or Personal Independence Payment. As with contributory income maintenance benefits, there is an earnings rule; in this case, claimants of Carer's Allowance must not earn more than £110 (EUR 127.60) per week.

Other carers who do not qualify for Carer's Allowance but have a low income may receive Income Support (the main social assistance benefit). Neither Carer's Allowance nor Income Support distinguishes in terms of qualifying conditions between those who are or were employed or self-employed (or neither). But Carer's Allowance receipt does provide some credits towards long-term contributory benefits. There are no benefits to meet long-term care costs as such in the UK. Instead, there is means-tested help with social care charges (with nursing care being free at the point of use in Scotland). This arrangement is no different for employed and self-employed people – or indeed others.

2.1.6 Invalidity, accidents at work and occupational injuries benefits

The main cash income replacement benefit for invalidity (meaning long-term incapacity for work) is Employment and Support Allowance (ESA) (covered above, under sickness benefit). In addition, there are two benefits paid in respect of the extra costs of disability: Attendance Allowance (for people of 65 or over) and Personal Independence Payments (formerly disability living allowance) (for people under 65). These benefits are non-contributory and non-means-tested, paid on a test of categorical need which takes no account of work history or employment status of the individuals concerned. They do not discriminate against the self-employed or non-standard workers.

Industrial Injuries Benefits (including industrial injuries disablement benefit, reduced earnings allowance or retirement allowance) are paid if you are disabled as a result of an accident at work or a disease caused by your job. They are non-means-tested and are non-contributory. But you have to have been an employed earner. So self-employed people are not entitled.

2.1.7 Family benefits

The main family benefits in the UK are child benefit and child tax credit. These are paid to meet the additional costs of children. **Child benefit** is paid to most families. It is not means tested but does now have a high income charge which withdraws it between certain income limits from those with that level of income and someone in the household who gets child benefit; it can be avoided by giving up child benefit, but there has been concern about some women losing out on pension entitlement because of taking this decision. The high income charge applies to the self-employed as well as employees.

Child tax credit is means tested on family income, but can be claimed by parents in and out of work, so the issues about work conditionality and non-standard work do not apply. It can therefore be claimed by self-employed parents, and those in part-time work, or on temporary contracts. There may be time lags between income from work changing and this being reflected in child tax credit amounts that may then result in overpayments to be clawed back; the tighter means tests consequent on recent cuts may make this more problematic.

2.2 Assessment of the existing social provisions and of the impact of possible extension of their coverage

Contributory benefits: The contributory benefits system could be said to work best for employees with standard contracts of employment. Qualifying for contributory benefits is usually easier for those with higher pay and steady work. Those who cycle in and out of low pay and worklessness, and/or those with temporary contracts, or part-time work, may all find it more difficult to reach the contribution conditions (described below for particular benefits). In addition, those who combine earnings from employment and self-employment, both of them low paid, may have a total income high enough to pay NICs, but may not do so because each source of income is below the level at which NIC payment is required. They will therefore not build up benefit entitlement unless they pay voluntarily.⁷² The Office of Tax Simplification report on aligning income tax and NICs stated clearly: 'there is a distortion built into the system – two individuals with the same gross income, constituted differently, may have very different NICs outcomes, and possibly be entitled to different benefits; some employers use the NICs structure to decide work patterns (part time / self-employed)'.⁷³

Policy proposals under consideration include the abolition of Class 2 NICs from April 2018 and the government has considered the consequences for benefit entitlement for self-employed people.⁷⁴ The concern is that this has been driven by an effort to simplify the funding side of the equation, i.e. by an administrative imperative, rather than by a desire to improve social protection coverage for the self-employed.

The OTS proposed⁷⁵ that the income threshold for reaching eligibility for NI benefits should apply across more than one job, whereas at present each job is considered separately; this would help those who have more than one part-time job with low hours/earnings. NICs would be based on annual income. The Fabian Society included broadening eligibility for NI benefits, including extending JSA to self-employed workers, in its recent report.⁷⁶ It points out that, especially if this were done, there is no real reason for the NICs of self-employed workers to be as low compared with those of employees as they are today. If NICs were higher for self-employed people, there should be less of an incentive for 'bogus' self-employment. However, it needs to be acknowledged that many self-employed people have very low incomes and make little profit (below).

Now state pensions are solely flat rate in the UK (for those retiring from April 2016), auto-enrolment was introduced to persuade people to save for private pensions via their employment. This means this does not apply to self-employed workers. Low-paid part-time employees are not included automatically and those with several low-paying jobs may be excluded in all these, despite their total earnings being high enough.

As noted, some benefits are non-contributory as well as being non-means-tested; the main example is Carer's Allowance. This is clearly beneficial to those with non-standard contracts. But so far Carer's Allowance has been paid at a lower rate than contributory

⁷² <https://www.gov.uk/government/consultations/consultation-on-abolishing-class-2-national-insurance-and-introducing-a-contributory-benefit-test-to-class-4-national-insurance-for-the-self-employed/the-abolition-of-class-2-national-insurance-introducing-a-benefit-test-into-class-4-national-insurance-for-the-self-employed>

⁷³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505610/PU1909_cover_prelims_web.pdf, p. 8

⁷⁴ see government response to consultation at <https://www.gov.uk/government/publications/abolition-of-class-2-national-insurance-contributions/abolition-of-class-2-national-insurance-contributions>

⁷⁵ Office of Tax Simplification, *The Closer Alignment of Income Tax and National Insurance*, 2016:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505610/PU1909_cover_prelims_web.pdf

⁷⁶ Harrop, A. (2016) *For Us All: Redesigning social security for the 2020s*, London: Fabian Society: <http://www.fabians.org.uk/publications/for-us-all/>

benefits. And when pensions were reformed recently, introducing the single tier pension from April 2017, it was decided to continue with contribution conditions.

Means-tested benefits: There is heavy reliance on means-tested benefits in the UK system. Although some would argue that means-tested benefits are suited to fluctuating circumstances, this is not necessarily the case in practice. Current means-tested benefits do not cope well with changes in hours or earnings; so those on non-standard contracts may find there is a lag before their benefit matches their circumstances once reported. This can result in incentives not to report such changes. The government's aim is that Universal Credit (UC) will make this easier, because of Real Time Information reporting of earnings and hours for each pay period by employers to the DWP.

Because means-tested benefits depend not only on the individual's work status and resources but also on their partner's, the impact of self-employment and non-standard contracts is more complicated, and will depend on the extent to which work conditionality is applicable to the partner as well as the claimant. Although claims for tax credits and JSA for childless couples have been joint claims for some time, conditionality for both partners has only applied to the latter, and for many benefits conditionality for partners with children is not applied or applied only lightly.

This will change with UC, which is in the process of replacing six means-tested working-age benefits/tax credits⁷⁷ with a single payment by 2021/22.⁷⁸ UC is already national in all 714 Jobcentre Plus offices for single people. The Full Service, which takes in all claimant types, is being introduced on a rolling 'test and learn' basis that started in 2013 in pilot areas and is still in the early stages of roll out.⁷⁹ The remaining insurance-based benefits will continue to exist alongside UC; but UC simplifies the (means-tested) benefits system and incentivises claimants to take up work, including 'mini jobs'. There will no longer be the same clear distinction between out-of-work and in-work benefits. The amount of UC depends on income and other family circumstances, not the number of hours a claimant works (which is the case in the existing system under tax credits, where there is a threshold of qualifying weekly hours). As claimants begin earning, they still keep a proportion of their UC award as it is reduced by less than they are earning (a taper of 65% was applied to net earnings, but will now be changed to 63% following an announcement in the Autumn Statement 2016), so that they still benefit from their income increasing. Some recipients (those with children or who have limited capability for work) can keep earnings up to a threshold (work allowance), after which the taper is applied.

By July 2016, 280,000 people were claiming UC.⁸⁰ It has now been rolled out nationally in every jobcentre for new single unemployed claimants (the simplest cases), with nearly 100 of these jobcentres processing claims for more complex cases of couples and families as well. Most UC cases are dealt with under the 'Live Service', helped by staff, but in parallel a Full Service is being developed and rolled out, to replace this.⁸¹ The intention is now that UC will have been fully implemented by 2022.

The government sees UC as suited to the modern labour market, in particular because it rewards all work, including 'mini jobs' which do not attract much support in the current

⁷⁷ Income support, income-based jobseeker's allowance, income-related employment and support allowance, child tax credit, working tax credit and housing benefit

⁷⁸ Universal Credit at work reports (October 2014 and Spring 2015) - <https://www.gov.uk/government/publications/universal-credit-at-work-december-2015>
<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-07-20/HCWS96>

⁷⁹ <https://www.gov.uk/universal-credit>

⁸⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517536/universal-credit-statistics-to-7-apr-2016.pdf

⁸¹ Social Security Advisory Committee (2015) *Universal Credit: Priorities for action*, Occasional Paper no. 15, London: SSAC

system. The debate focuses on whether UC will be subsidising and thus encouraging exploitative work conditions by treating 'mini jobs' more generously, whereas now the more generous working tax credit is only available at 16/30 hours.

UC will impose work conditionality on both partners in all couples in principle. Most claimants will have to look for work for 35 hours per week. This is potentially modified for those with caring responsibilities, although easements will now only be discretionary rather than in regulations. The requirement to progress in work for UC claimants (with support from work coaches) means that part-time workers will potentially be required to increase their hours and wages until they can be clear of UC. However, the earnings target is joint for couples; so the extent to which part-time workers feel under pressure to do this will depend on their partner's work/earnings.

It is less clear how UC will deal with temporary contracts. It is intended to be more responsive to changes in earnings through the Real Time Information (RTI) system, under which employers report earnings monthly and UC is adjusted for any changes. In principle this should mean that (e.g.) changes to hours, or transitions between temporary work and worklessness, should be dealt with more quickly and smoothly than in the current system. It is too early to tell whether this is the case in practice.

We should also discuss the impact of UC rules on self-employed people in particular. UC is a reform to working age benefits only, so formerly self-employed retirement pensioners will not be affected. UC is also only a reform to the means-tested system of tax credits and benefits, so it will not make any difference to the contribution-based benefits. The income from those will be fully taken into account in assessing UC, just as they are with the existing tax credits and means-tested benefits. The main change under UC will be the treatment of earnings. At present, if you work for more than a certain number of hours a week you are not entitled to out-of-work benefits. Under UC you will be able to work as many hours as you can or wish but (if you have a child or limited capability for work) for every £1 (EUR 1.16) earned over a work allowance threshold you will lose 65% (soon to be 63%) of UC. The work allowance replaces a complex set of earnings disregards which at present vary between £5 (EUR 5.80) and £25 (EUR 29) per week depending on the benefit and the claimant circumstances. The work allowance in UC is higher⁸² than these disregards, though not as high (or available to as many categories of claimant) as originally planned – it was subject to austerity cuts made in the 2016 Welfare Reform Act. These arrangements are likely to improve the circumstances of those with very part-time or 'mini' jobs. However, they do not introduce any new distinction between the employed and self-employed.

The only element in UC that will affect self-employed earners differently from others is the assumption that (after a year of self-employment) they are earning the National Living Wage (NLW) for the number of hours that they are expected to work according to their conditionality requirements – usually 35 hours per week. Under the existing schemes, only actual net earnings or profits are taken into account

It is difficult to predict what impact this scheme will have.⁸³ It will have a more significant impact because of the higher level of the NLW (representing an increased

⁸² £192 per month if UC includes a housing costs element and £397 per month if UC does not include a housing costs element – only available to those with child(ren) and/or limited or no capability for work.

⁸³ See also the Universal Credit Impact Assessment

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220177/universal-credit-wr2011-ia.pdf

Response to the introduction of the Minimum Income Floor for the self-employed

17. Under Universal Credit a Minimum Income Floor will be introduced for the self-employed. Where a self-employed claimant's declared earnings are lower than the Minimum Income Floor, the Minimum Income Floor will be used to calculate the claimant's Universal Credit award (see Annex 1). It is likely that some claimants would respond to this by acting to increase their earnings from self-employment, or find other forms of employment to increase their income. Others might stop their self-employment activity and search for other work and some may not change their behaviour.

National Minimum Wage for those aged 25 and over). It may reduce the income of the self-employed; it may lead to pressure on contractors of the self-employed to pay the NLW; it may reduce and deter self-employed people from engaging in employment that does not pay the NLW; it may reduce self-employment and increase unemployment.⁸⁴ The assumption is mitigated by the 'start-up period' of 12 months for a new self-employed person, when actual earnings, however low, are taken into account; this can be repeated once every 5 years, following a government concession.

The Social Market Foundation claimed that 190,000 families would be affected and that there is little scope for the self-employed to increase their earnings by working longer hours – they already work longer hours than low-paid employees and the level of competition makes the prospects of increased earnings limited.⁸⁵ Under in work conditionality the activities of self-employed people will be monitored for the first time.

Individual social security accounts: the government is planning to review pension provision, in part with a view to drawing in more self-employed people.⁸⁶ The review may examine auto-enrolment (workplace pension saving with a private provider for employees, who have to opt out if they do not want to be included) to see if it could be adapted for self-employed people, as well as examining the other groups excluded (including many part-time workers with multiple low-paying jobs). Insurance companies may be interested in building on auto-enrolment to introduce group protection schemes for sickness absence payments. In addition, proposals have been made recently by various think tanks to introduce individual social security accounts; most of these would eliminate cross-subsidies which share risk and/or redistribute.

We are not aware of systematic costings to assess the potential financial and/or labour market impacts of extending coverage of social protection to self-employed and/or non-standard contract workers.

3 Conclusions and recommendations

There is a range of views about whether there is necessarily a problem with self-employment, or with their social protection arrangements. This judgment depends on what situation(s) their case is being compared with. And there are a number of issues, as described above, with social protection for those with non-standard contracts. In our view, the key issue is whether governments should try to counter the moves towards increases in forms of employment that are likely to lead to fewer social protection (as well as employment) rights; or whether there should be an acceptance of such changes to the labour market, with policy measures to try to ensure a more inclusive social protection system to protect people engaged in self-employment and non-standard contracts. In practice, however, there is probably likely to be a mixture of both policy approaches under any government.

Self-employment has been growing - but so has all employment, and arguably self-employment is a better alternative than unemployment. There are indications that the increase in self-employment is due to more people staying in it, including older workers in particular, rather than a significant growth in new entrants. It is true that much of self-employment is part time; but most part-time self-employed people are positive about their work choice. The key is probably how much control people have over their working conditions and hours. It is also true that the median earnings of the self-employed have

18. It is difficult to estimate the overall impact on employment, but the intention of the policy is to reduce the number of people who do not progress from low earning activity and who participate in activities that are not self-sufficient in the long term.

⁸⁴ See also Sainsbury, R. and Corden, A. *Self-employment, tax credits and the move to Universal Credit* <http://www.york.ac.uk/inst/spru/pubs/pdf/rrep829summ.pdf>

⁸⁵ Broughton, N. and Richards, B. (2016) *Tough Gig: Tackling low paid self-employment in London and the UK*, Social Market Foundation. <http://www.smf.co.uk/publications/tough-gig-tackling-low-paid-self-employment/>

⁸⁶ Reported in *Financial Times*, 13 December 2016

fallen more than those of the employed recently; but the difference is small, and there is evidence of a recovery in the last two quarters. Self-employed people are currently also able to top up low earnings with working tax credit. It is true that individuals in households containing one or more people who are self-employed represent a growing proportion of those living in poverty – but so do those in households with one or more people who are employed. Their risk of household poverty is only slightly higher than that of employed people. There is particular concern with so-called ‘gig’ jobs; but the trades unions are beginning to challenge the employment conditions of these workers, including through judicial means. Also Parliament and the Government are giving increasing attention to the issue of self-employment.

In relation to employment status, the Social Mobility Commission, in its 2016 *State of the Nation* report, argued that ‘if this fundamental divide [in the labour market] is to be overcome, employers and government will need to agree a new deal on workforce proficiency, productivity and progression to make it possible to move millions of people from low pay to living pay’. The Trades Union Congress has recommended that ‘workers’ should have stronger rights (including redundancy payments, unfair dismissal and parental leave), in the same way as employees do; and that self-employed people should be assumed to be employed unless the employer could prove otherwise. Both these organisations are tackling the issue from the employment rather than social protection perspective.

Turning to social protection for the self-employed, the largely means-tested nature of the UK social security system means that effectively the self-employed have very similar protection to employed workers – or at least that those on lower incomes (and without a partner with adequate income) do so. As with employed workers, the support may be comparatively low; but the coverage is fairly comprehensive, and not fundamentally different to that for employed workers. Industrial injuries benefit is not available to self-employed workers; but protection of those working for an employer had a founding rationale. In addition, if the incapacity benefits system in the UK were more generous, this would not be so much of an issue.

The self-employed do not get Statutory Sick Pay, as they have no employer - but there is contribution-based ESA as an equivalent. Their Class 2 NI contributions currently cover them for ESA and for the state pension; with the new single-tier state pension, this means self-employed people getting increased value for their very low Class 2 NICs (though this will change in future when these are abolished, and they will have to pay voluntary NICs to get contributory ESA). If their earnings are too low or episodic to have made enough NI contributions, there is (as for those previously employed on non-standard, or indeed other, contracts) means-tested Pension Credit, paying similar levels of benefit; however, this depends on a partner’s income – and the basic pension is payable to individuals, whoever paid the qualifying NICs, unlike Pension Credit. The self-employed are not entitled to contribution-based JSA; they can get the same amounts in income-based JSA, but again only if they do not have a partner with adequate income. Self-employed low-waged work can be topped up by means-tested in-work benefits – such as working tax credit and housing benefit and, if they have children, child tax credit – though UC is arguably much less generous in the way it treats their income, as described above.

The judgment about whether such rights are equivalent depends on how important the distinction between non-means-tested and means-tested benefits is thought to be. As noted, anyone with a partner who has more than a certain level of resources will not get any benefit if it is means tested. The problems of low take-up, poverty traps and lack of independent income for individuals,⁸⁷ which are all inherent issues for means-tested

⁸⁷ Bennett, F. and Sutherland, H., *The Importance of Independent Income: Understanding the role of non-means-tested earnings replacement benefits*, Working Paper no. 2011-09, Colchester: Institute for Social and Economic Research, University of Essex, 2011: https://www.iser.essex.ac.uk/files/iser_working_papers/2011-09.pdf

benefits, are all more likely to affect self-employed people, as they are likely to have less entitlement to non-means-tested benefits than employed people do; the same is true of part-time and temporary workers, who are also less likely to qualify for non-means-tested benefits in their own right.

In terms of the non-means-tested benefits system, the OTS has as noted suggested that the current structure of NICs is no longer fit for purpose for a modern flexible workforce, and that it should move to an annual, cumulative and aggregated assessment period for employment income, similar to income tax. In addition, it suggests that NICs for employers move to a payroll tax. The first of these would be likely to make it easier for some of those with non-standard contracts to qualify for contributory benefits, in our view, although we are concerned that the significance of the tripartite funding system for contributory benefits (employer, employee and the Treasury, via general taxation) could be lost, and that the transition to a solely means-tested benefits system in the UK would be even more likely. In addition, as the OTS itself points out, changing to a payroll tax would not in itself address the incentives for engaging self-employed workers instead of employees.

The OTS also suggests that the NICs of self-employed and employed individuals should be more closely aligned. For those self-employed people who pay NICs, alignment with income tax may result in some paying more - though they may receive a greater range of benefits in return. It also notes that a similar situation arises for people who have more than one job, but whose jobs pay less than the NICs threshold, with about 2.6 million people having more than one job. However, it is clear that the OTS has not focused on the social protection rights of self-employed people (in contrast to their liability for NICs), as it suggests that the self-employed would accept paying more in return for more benefits, such as some form of sickness/unemployment benefit. But, as we have shown, self-employed people can already qualify for ESA if sick, and in previous discussions it has been seen as inherently problematic to create a contributory unemployment benefit for self-employed people. The OTS also suggests critically examining the contributory principle, though perhaps without very much knowledge itself. But it has certainly initiated a debate which is now being taken further by the government.

As the labour market has become more flexible, the contributory benefits system seems to have become more rigid. It is no longer possible, as it once was, to claim a partial benefit for an incomplete record. It was also possible to claim just for those days for which one was prepared to work as a part-time worker; this is also now no longer possible. The only mechanism to include people now is NI credits; and often these will only help towards the state pension.

In addition, contribution conditions have been tightened up, making it more difficult for part-time and/or temporary workers to qualify for these benefits. In relation to part-time workers, in the mid-1990s the Commission on Social Justice proposed an hours rather than earnings threshold for inclusion in the contributory benefits scheme; Bell and Gaffney⁸⁸ more recently suggested partial crediting in below the LEL. Part-time work of a certain number of hours per week could lead to a pro rata part-time entitlement to non-means-tested benefit in unemployment. In addition, a relaxation of the time period for contributions/credits for short-term benefits (tightened up in recent years) could mean that more temporary workers would be entitled.

More radically, it has been suggested that unemployment insurance should be expanded to a system of *employment* insurance, covering risks related to transitions between full- and part-time work, different occupations, care and paid work, and full and partial

⁸⁸ Bell, K. and Gaffney, D., *Making a Contribution: Social security for the future*, London: Trades Union Congress, 2012.

capacity to work.⁸⁹ This would not go so far as a basic income, but potentially could deal with some of the labour market related insecurities outlined above.

The UK social protection system is in the process of radical change with the introduction of UC. The freezes and other cuts that have been made to the original scheme mean that some people on UC will be less well-off than they are under the existing schemes – particularly families with children. That will be no different for the self-employed. The big difference that UC will make to the self-employed is the introduction of the Minimum Income Floor.

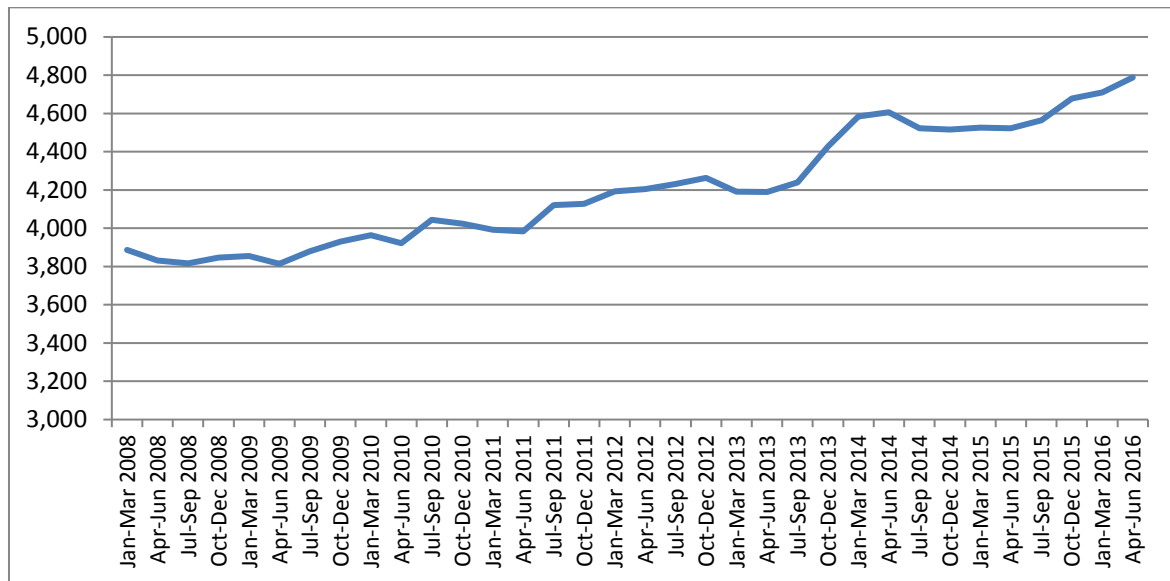
We recommend

- that the consequences of introducing the Minimum Income Floor for self-employed incomes and employment, and the impact of in work conditionality on self-employed people and non-standard contract workers, should be monitored very carefully;
- that 'gig' employers must not avoid their obligations to their workers to pay the national living wage, sick pay and holiday pay by pretending that they are self-employed;
- that non-means-tested benefits which provide some security to workers with insecure earnings and contracts (such as child benefit) should be protected and strengthened;
- that reforms to make contributory unemployment and sickness benefits more inclusive of part-time and/or temporary workers should be considered, reversing the tightening up of contribution conditions over recent years; and
- that the reforms to NICs and NI benefits currently being put forward should be revised pay more attention to protecting and enhancing commensurate benefit rights, in particular the rights of self-employed women to Maternity Allowance.

⁸⁹ Schmid, G. (2015) 'Sharing risks of labour market transitions: towards a system of employment insurance', *British Journal of Industrial Relations* 53(1): 70-93.

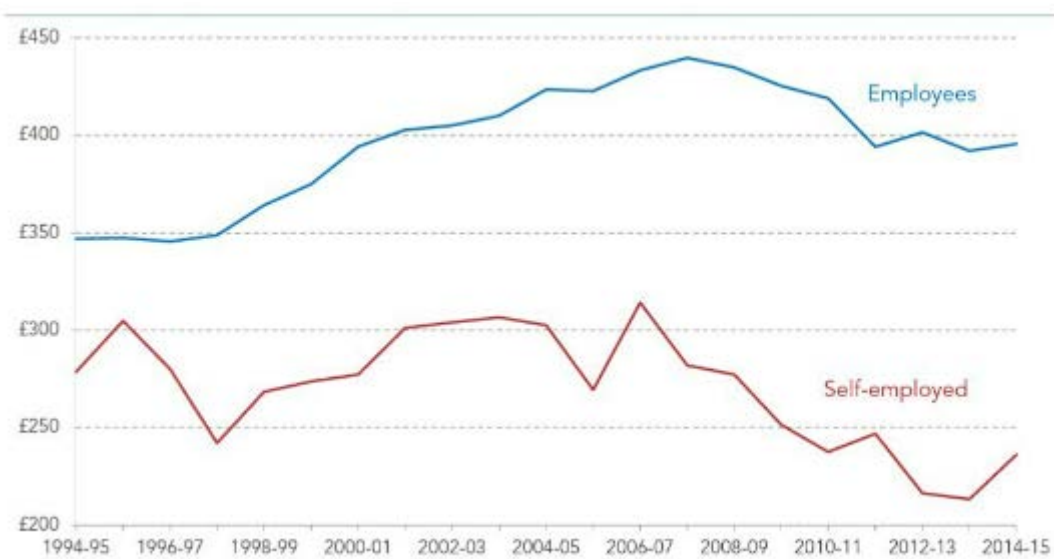
Appendix 1 Information on self-employment

Figure 1.1: Number of self-employed 2008-2016. Thousands



Source: Own analysis of ONS employment statistics

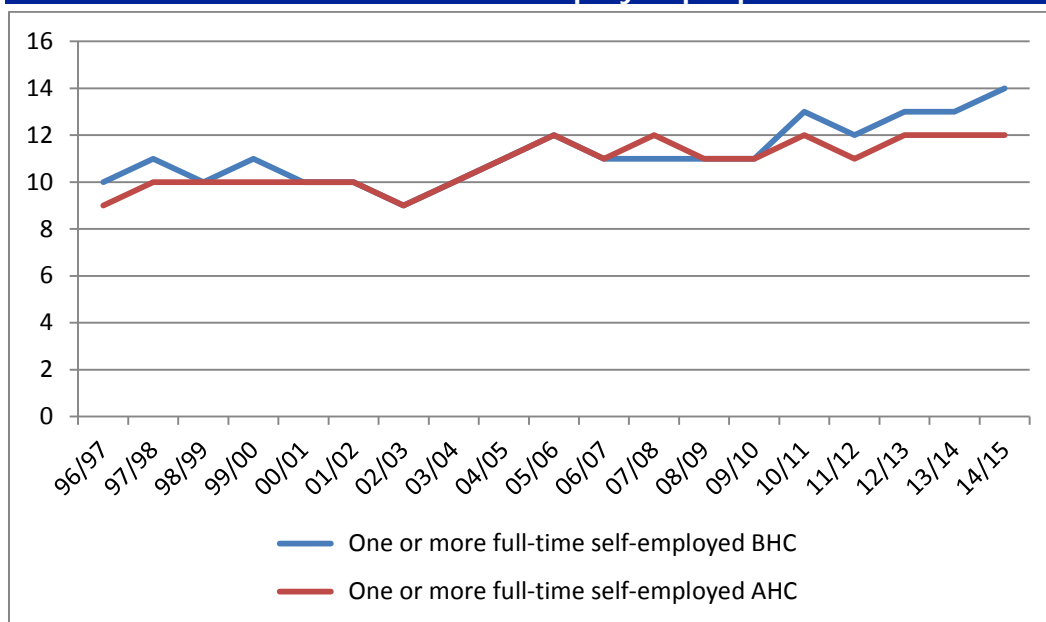
Figure 1.2: Median weekly earnings of the self-employed and employees CPI adjusted 2014/15 prices



Source: Resolution Foundation analysis of the Family Resources Survey.⁹⁰

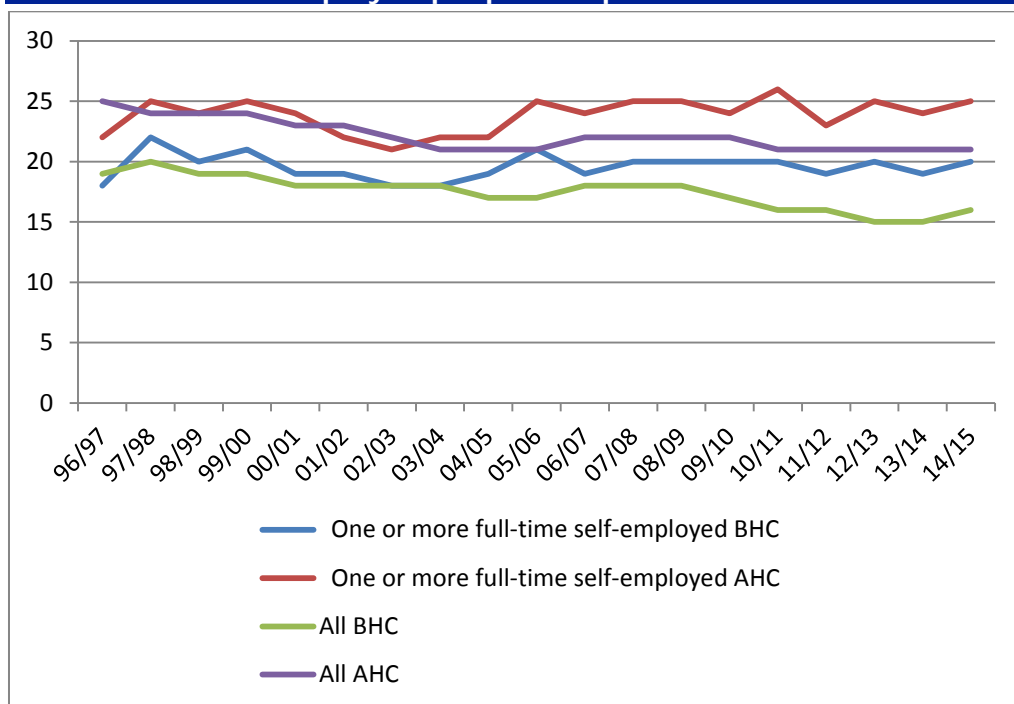
⁹⁰ <http://www.resolutionfoundation.org/media/blog/britains-self-employed-workforce-is-growing-but-their-earnings-have-been-heading-in-the-other-direction/>

Figure 1.3: Percentage of the population in poverty (<60% median) whose households have one or more self-employed people in them



Source: Own analysis of HBAI 2014/15

Figure 1.4: Poverty rate (<60% median) of the population in households with one or more self-employed people compared with all



Source: own analysis of HBAI 2014/15

Appendix 2: Details of legal cases about self-employment

Uber uses about 30,000 drivers in London, all of whom are designated as self-employed. The two drivers who took the case to the employment tribunal argued that they should be classed as workers, meaning that they were entitled to holiday pay and the National Living Wage (National Minimum Wage for those aged 25 or more). They said that their work was controlled by the firm as they are only told the destination of a job when they pick someone up, and they were not allowed to send another driver in their place – two features of employment. If the ruling eventually goes in their favour, 17 other drivers will also be deemed to be workers and entitled to compensation, and HMRC may decide to take a closer look at the firm.

CitySprint, Excel, Addison Lee and eCourier are also facing tribunal cases brought by cycle couriers working in London who argue that they are not really self-employed.⁹¹ Currently, they are classed as “independent contractors”, but say they should be recognised as workers because: they tend to work for one company at a time only; are subject to the control of their managers; and have no say over their rates of pay.

Deliveroo, the takeaway food delivery service, has more than 3,000 riders around the UK on contracts that say they are self-employed and cannot contest their status. Employment lawyers have dismissed this clause as unenforceable. A strike in the summer over changes to the way riders were paid to deliver food prompted the government to state that workers’ status was determined “by the reality of the working relationship and not the type of contract they have signed”. It also led drivers to join forces to call for better rights.⁹²

As Angela McKnight has written:

‘ ... (T)he structure of the economy is moving rapidly towards scenarios where many more people are ‘multi-jobbers’, have zero hours contracts, are self-employed or contracting out their services using new and often disruptive technologies. Whether referred to as ‘uberisation’, the ‘sharing economy’ or the ‘gig economy’, these ways of working are expected to accelerate’. (Angela McKnight, Foreword to report from Office of Tax Simplification, March 2016)

⁹¹ The first case, against City Sprint, started on 22 November and the other three will follow in the New Year. The courier companies say the tribunal claims are unfounded. Excel has previously said its London couriers “operate as independent subcontractors”.

⁹² Deliveroo has defended its employment terms, saying: “We provide a platform for people to work with us on a freelance basis. This allows riders to work flexibly around another commitment, like studying or other work. We’ve worked with legal experts to design our contracts to reflect that”. Michael Newman, an employment lawyer at Leigh Day, said there were other “gig economy” businesses that depend heavily on self-employed workers. “There are other smaller businesses in different sectors, such as cleaning, that tend to go under the radar”, he said. “People who are working for these are likely to face the same issues of no holiday or sick pay, or not earning the [national] living wage.” Newman said that these companies were unlikely to be too concerned about the latest development at HMRC. “Until they see some kind of enforcement in place it will be business as usual”, he said. These are ‘dependent’ self-employed groups.
<https://www.theguardian.com/law/2016/oct/20/self-employment-status-hmrc-who-is-next-analysis>

Annex 1

SUMMARY TABLE: ACCESS TO SOCIAL PROTECTION: SELF-EMPLOYED

	On her/his own account	With employees (self-employed employer)	Dependent on single client	Dependent on contractual relationship with client	Liberal professions (e.g. doctor, notary, lawyer)	
Healthcare - cash benefits and benefits in kind	Full	Full	Full	Full	Full	
Sickness - cash benefits and benefits in kind	Partial	Partial	Partial	Partial	Partial	Not entitled to SSP but can contribute to ESA
Maternity/paternity - cash benefits and benefits in kind	Partial	Partial	Partial	Partial	Partial	
Old age pensions (preretirement benefits and pensions)	Partial	Partial	Partial	Partial	Partial	Can contribute to basic state pension
Survivors pensions and death grants	Partial	Partial	Partial	Partial	Partial	Can contribute to NICS
Unemployment benefits	Full/Partial	Full/Partial	Full/Partial	Full/Partial	Full/Partial	Can claim income tested JSA
Social assistance benefits	Full/Partial	Full/Partial	Full/Partial	Full/Partial	Full/Partial	Can claim social assistance
Long-term care benefits	Full	Full	Full	Full	Full	
Invalidity benefits	Partial	Partial	Partial	Partial	Partial	Can claim income tested ESA
Accidents at work and occupational injuries benefits	None	None	None	None	None	
Family benefits	Full	Full	Full	Full	Full	

SUMMARY TABLE ACCESS SOCIAL PROTECTION: CONTRACTUAL EMPLOYMENT (NON-STANDARD CONTRACTS)

	Full-time employee	Part-time employee	Fixed-term employee	Temporary agency worker	Casual and seasonal workers	On-call workers	Zero-hour workers	Apprentices	Paid trainees	(Other) persons in vocational / professional training
Healthcare - cash benefits and benefits in kind	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
Sickness - cash benefits and benefits in kind	Full	Full	Full	Partial	Full	Full	Full	Full	Full	Partial
Maternity/paternity - cash benefits and benefits in kind	Full	Full	Full	None	Full	Full	Full	Full	Full	None
Old age pensions (preretirement benefits and pensions)	Full	Full	Full	Partial	Full	Full	Full	Full	Full	Partial
Survivors pensions and death grants	Full	Full	Full	Partial	Full	Full	Full	Full	Full	Partial
Unemployment benefits	Full	Full	Full	Full/Partial	Full	Full	Full	Full	Full	Full/Partial
Social assistance benefits	Full	Full	Full	Full/Partial	Full	Full	Full	Full	Full	Full/Partial
Long-term care benefits	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
Invalidity benefits	Full	Full	Full	Partial	Full	Full	Full	Full	Full	Partial
Accidents at work and occupational injuries benefits	Full	Full	Full	None	Full	Full	Full	Full	Full	None
Family benefits	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
		Assuming earnings exceed NIC threshold	Assuming earnings exceed NIC threshold		Assuming earnings exceed NIC threshold	Assuming earnings exceed NIC threshold	Assuming earnings exceed NIC threshold	Assuming hours exceed NIC threshold	Assuming hours exceed NIC threshold	

