

Submission by Institute of Chartered Accountants of Scotland to the BEIS/UK Parliament Call for Evidence entitled: “Post-pandemic economic growth: UK labour markets” #2646

By 8 July 2022

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to comment on [“Post-pandemic economic growth: UK labour markets” #2646](#), which was issued on 27 May 2022.
5. ICAS has reserved its comments to certain questions within the section entitled: “Employment status and modern working practices five years on from the Taylor Review”.

Response to specific questions

6. **How are working patterns changing in the UK? To what extent is the gig economy growing and permanent full-time employment contracts in decline?**

We are unable to respond to this question.

7. **What should the Government be doing five years on from the Taylor review of modern working practices to address the issues raised in that report?**

Ideally, the Government should be acting on all the recommendations it has chosen to adopt in its response to the Taylor review whereby it committed to act upon 51 out of the 53 recommendations made by way of the Good Work Plan published in December 2018. We note that although five years have passed since Matthew Taylor issued his 2017 report, many of these recommendations have not yet been acted upon, most likely because of the EU withdrawal and the Covid-19 pandemic, requiring civil service resources to be redeployed.

Two key recommendations were to better align employment status for tax with that for employment rights purposes and also to use legislation to clarify/simplify the test for employment status. Neither of these have been progressed or considered further since the Taylor report was published. Until and unless the Government does something radical around these points, the current problems experienced by engagers and contractors on employment status generally and in relation to work carried out by individuals working through intermediaries will continue (see our response to point 8 below).

We note that certain areas of the UK have already started to formulate regional plans in the absence of any overarching action by the UK Government since the Taylor Report and the Good Work Plan were published – for example in London, the Mayor of London has set out a [Good Work Standard](#), the three Metro-Mayors in the “Northern Powerhouse” geographical area of Liverpool, Manchester and Leeds have been working together to create an employer's [Fair Work Charter](#), and in Scotland, the Scottish Government set out its [Fair Work Action Plan](#) in February 2021.

Whilst this is commendable proactivity, it may lead to regional variations such that the original objectives of the Good Work Plan become fragmented, depending on the outcomes of each approach. The quality of the UK working experience should be the same, regardless of geographical location.

8. Are current legal definitions of employment status, in light of recent judicial rulings, still fit for purpose?

In 2018, ICAS submitted a [paper](#) to BEIS in response to the Taylor review, which contained information on the ICAS stance in relation to the employment status conundrum – with three legal statuses of employed, self-employed and worker and two tax statuses of employed and self-employed.

Whilst four years has passed since this submission was made, nothing has changed in relation to the difficulties which determining employment status causes individuals, employers and the tribunals and courts to suffer along the way.

Consequently, we consider that our 2018 paper still stands as a valid submission today because, as Court of Appeal judge Sir David Richards stated at paragraph 56 of the recent [Atholl House case decision](#): “It might be supposed that, and it would certainly be desirable if, there were one clear test or approach to determining whether a person was an employee”.

The difficulties with employment status are impacting severely on the engagers and contractors caught up in the ‘intermediaries’ legislation at Chapter 8 ITEPA 2003 and the ‘off-payroll working arrangements’ legislation at Chapter 10 ITEPA 2003. The considerable burden of the work involved by engagers to establish whether a contractor should or should not be employed under a hypothetical contract of employment and then prepare and issue a Status Determination Statement cannot be underestimated.

The complexity of the work involved in making status determinations demands an in-depth knowledge of employment law and taxation which most businesses do not possess unless they are large enough to have their own in-house department. Many businesses who do not possess the requisite knowledge cannot necessarily budget for regular professional legal and tax advice, and this leaves them in a potentially vulnerable position by comparison.

In addition, the Public Accounts Committee recently issued a [report](#) which highlighted some of the main failings of the current taxation approach towards the provision of work through intermediaries and the difficulties which have presented themselves since the ‘off-payroll’ regime was introduced in to the public sector. The recommendations made in that report are sensible if the current legislation and status quo is to be maintained and the entire intermediaries’ regime is not to be overhauled completely.

In the Low Incomes Tax Reform Group's response of 20 June to the Low Pay Commission consultation of April 2023 National Minimum Wage rates, an interesting point was raised which is valid in this context. They suggested that rather than the Government focussing on employers who have technical breaches of NMW for relatively small amounts, “workers would benefit more if HMRC concentrated on arguably more serious and complex cases involving ‘worker’ status and false self-employment”.

9. How have employee demands and employer offers of flexible working been affected by the pandemic? How should this affect Government plans and commitments around flexible working?

The extent to which working patterns are changing in the UK is probably more down to the Covid-19 pandemic than to the Taylor review, because in many businesses, where it is possible to allow flexible working and hybrid working, this appears to be being largely embraced, with notable exceptions of employers who wish to or have already returned to pre-covid arrangements and not allow flexible and hybrid working.

By way of evidence, ICAS is an example of an organisation which has embraced flexible working – and seen productivity and engagement rise as a result. As an organisation, ICAS went into complete lockdown and transferred everyone on to home working arrangements without needing to utilise the Coronavirus Job Retention Scheme - and continued to work in that way for a further two years. In recent months, ICAS has reopened its headquarters in Edinburgh, but has closed the Glasgow office premises down with a view to looking for suitable alternative accommodation in that city.

New office working arrangements are now in place with an online desk and meeting space booking system, and all employees are working flexibly to suit their working needs. Staff who were previously office-based are now encouraged to attend the office two days a week where possible, and the staff who have always been home based are continuing to be home based with occasional visits to the office as needed.

Many businesses appear to have independently embraced flexible working in a similar way to ICAS, despite the Employment Bill having been omitted from the Queen's Speech for the second year in a row. The Government should ideally now use the opportunity to expedite flexible working legislation to afford all employees and workers the ability to work flexibly and in a hybrid way where this dovetails well with the needs of the business.

10. Are there particular types of work, for example, night-time or shift work, which warrant further consideration in respect of the impact of that work on workers?

We are unable to respond to this question.