



Unite response to HMRC Consultation: Construction Industry Scheme Reform

This submission is made by Unite, the UK and Ireland's largest trade union with over 1 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Executive Summary

- **Unite demands urgent reform of the law on employment status.**
- **Unite calls for the Construction Industry Scheme and other exploitative models of bogus self-employment construction to be outlawed.**
- **Unite calls on the UK Government to legislate to embed direct employment and national industrial collective agreements across the construction sector.**
- **Anyone subject to significant control, supervision or direction in relation to their work should be deemed to be employed for tax and employment rights purposes.**

- **Workers who are not self-employed should be directly employed and in receipt of employment rights.**
- **Care must be taken to ensure that those in the supply chain understand their responsibilities.**
- **HMRC needs effective resources to ensure compliance within the private sector construction supply chain.**

Introduction

1. Unite's policy is to oppose the current misuse of the CIS scheme and our response is focused upon the need to simplify the system of employment in the construction sector. Any remedial measures introduced while the scheme remains in place allowing the misclassification of construction workers employment status are ineffective and it is our view that fundamental employment rights reform is necessary.
2. Through years of experience and case work on behalf of our construction members we are clear that the use of the CIS leads to construction workers being exploited and underpins a system of bogus self-employment in the sector.
3. While the day to day employment situation of CIS construction workers is reflective of an employee or worker they are wrongly classed as self-employed for tax and employment purposes, undermining their employment rights and limiting financial returns to the Treasury from construction industry employers and agencies.
4. Unite's industrial experience in construction identifies that the CIS scheme does not work for our members, those individual workers who should be deemed employees, and it does not work for the Treasury who are missing out on tax returns because of this misclassification.

Employment status

5. Unite has a straightforward view of employment status that could be used to simplify the current position on intermediaries and outsourced workers. In terms of employment rights and taxation, **Unite is of the view that there should be only one definition provided by legislation to define workers, all of whom must have full employment rights. There is an immediate need for this to happen. An idea would be an assumption that all individual workers have full employment rights.** It would be open to individual workers who believed they were genuinely self-employed to present a claim to HMRC at the end of the year for any tax adjustment.

6. Unite is supportive of the **“Status of Workers Bill”¹ to make provision for the creation of a single status for workers** by amending the meaning of “employee”, “worker” and “employer” in the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996. Unite’s General Secretary, Sharon Graham, highlighted the need for such legislation saying:

“It’s a disgrace that millions of UK workers are the victims of inadequate labour laws which have more holes in them than Swiss cheese. Passing this Bill is an absolute necessity for Britain’s workers.”

7. The Institute of Employment Rights (IER)² identifies that miscategorisation occurs in the UK economy where workers are misled as to their employment status and eligibility for employment rights. For instance, some of those informed that they are on a zero-hours contract may actually be legally defined as an employee, many of those told they are self-employed are actually limb (b) workers³, and those forced to

¹ <https://bills.parliament.uk/bills/2876>

² <https://www.ier.org.uk/publications/briefing-the-status-of-workers-bill/>

³ <https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-employment-rights-guidance-for-hr-professionals-legal-professionals-and-other-groups#employment-rights>

set up a Personal Service Company become responsible for meeting their own employment rights, thereby effectively leaving them with no rights at all.

8. With the support of trade unions, workers may fight this through the courts and employment tribunal system however this can take years, requires legal resources, and success will only be applied to those individuals who made a tribunal claim and not to similarly placed colleagues who did not. This is rife in construction and means employers can play the system safe in the knowledge that the set-up of work discourages trade union organising and that for every one tribunal case thousands of workers will be forced to suffer exploitative practices.
9. **UK workplace law has many problems but one of the worst is the classification of workers into categories, many of which have none or only a few of the rights.** It should be clear that **the organisation that substantially determines the terms on which the individual works is the employer**, and an even better option would be to **have joint and several liability.**
10. Unite is clear there is a need to **develop legislation that ensures where main contractors have a responsibility for the supply chain** they contract to deliver works or services so that those same companies seeking to profit from **construction have a clear responsibility to those workers within the supply chain whose skills and ingenuity underpin the work and create profits.**
11. There is merit in examining the **appropriate level of responsibility these main contractors should have across their supply chain in construction.** In terms of the engagement of workers and ensuring the correct employment status then liability and responsibility for the **financial cost of misclassification resting with main contractors would, in our view, focus minds on classifying workers correctly** based upon their day to day employment relationship.
12. The **lack of control across the construction industry supply chains** is not only borne out in the misuse of the CIS system for workers but **Unite has evidence that the**

engagement of workers through intermediaries such as payroll companies and umbrella companies leading to further issues of exploitation, precarity and insecurity⁴ for construction workers. Unite surveys of our construction member welfare has identified that this precarity and stress based on the organisation of work can lead to ill-health, stress at work, and to workers considering taking their own life.⁵

- 13.** Unite’s experience across construction and associated sectors identifies that **there is an urgent requirement for employment legislation that delivers certainty on who is liable for rights**, linking in with concepts of vicarious liability, for example, on personal injury or industrial disease cases.

Workplace rights inequality

- 14.** Furthermore, Unite has had numerous cases where workers are misclassified. For example, evidence of **an exploitative use of an intermediary, where a cleaning operative is engaged through PAYE and Class 1 NICs**, yet this worker is told they are **not an employee or worker and have no statutory employment rights**.

This encapsulates the realities of the level of misdirection that employers and their intermediaries will go to **in order to avoid employing workers directly, evading holiday pay, sick pay** and other statutory entitlements. Unite regularly pursues these cases on behalf of our members but the lack of preventative legislation is indicative of an imbalance of power in the relationship between worker and engager or employer.

- 15. Elongated supply chains** means cuts made to tenders that result in a **‘race to the bottom’ on pay and conditions in the construction sector**. We would encourage the Government to consider the wider role and influence in the sector of CIS, intermediaries such as Umbrella Companies and to look at the detrimental impact on

⁴ <https://www.unitetheunion.org/news-events/news/2020/march/government-must-extend-wage-assistance-to-help-constructions-million-plus-bogus-self-employed/>

⁵ <https://www.unitetheunion.org/news-events/news/2023/may/hse-must-investigate-all-work-related-suicides-demands-unite/>

work of lengthy supply chains in construction. This should include **placing limits on the extent of sub-contracting chains and making tangible changes to employment status through legislation in the form of the Status of Workers Bill.**

Pensions

- 16.** In response to a Freedom of Information request the Department of Work and Pensions revealed official estimates show that 797,000 (employees) in the construction sector are paying into a pension of any form. This is from a total construction workforce of 2.225 million (divided between 1,507 employees and 712,000 officially self-employed workers), according to Office for National Statistics figures.
- 17.** Therefore just 36 per cent of the construction workforce is known to be paying into a pension. As this is the figure for the entire construction industry, the percentage of blue collar construction workers contributing to a pension is expected to be considerably lower. The number of self-employed workers paying into a pension is likely to be even lower. If they have a private pension, as they don't receive any employer contributions, it is unlikely the pension saving a self-employed worker makes will prevent poverty in retirement. In 2017 the Government rejected extending the auto-enrolment pension system to the self-employed.
- 18.** The misuse and failure of the CIS scheme is one of the key factors that results in construction workers not having an adequate pension and dignity in retirement, with rampant bogus self-employment meaning around half of the manual workforce are officially registered as self-employed and therefore not eligible for the auto-enrolment scheme.
- 19.** The reality is that only by forcing companies to comply with legal obligations, ending schemes such as CIS that perpetuate false self-employment; and **embedding a**

culture of direct employment supported by collective bargaining will the Government collect the taxation returns due from all workers and ensure dignity and respect in employment.

20. The latest **Construction Skills Network (CSN) report predicts that an extra 225,000 construction workers may be needed by 2027⁶**, and this endemic skills shortage across the industry is substantiated in no small part to the means of engagement used more frequently across the industry. Unite has long held the view based on our members experiences and substantiated by the evidence from the Construction Skills Network, that classifying workers as self-employed for tax purposes undermines the ability of companies to invest in training.

We have been clear that this leads to a race to the bottom, not just on employment rights, pay and terms and conditions, but also on skills. This is a view that is supported by the Construction Leadership Council, the UK government partnership organisation representing the voice of construction which identified the need to support direct employment in its Future Skills Report 2019⁷:

“Direct employment is already mandated on several public and private major infrastructure projects, often to reduce risks associated with delivery certainty, reputation and quality as direct employment is reported to overcome skills shortages, spiralling labour costs, poor productivity and quality performance, ...

“Direct employment allows an organisation through training and investment, to have a highly engaged and competent workforce which...delivers increased productivity and higher value that can be sustainably re-invested in future innovation and skills development. Direct PAYE employment also simplifies taxation.”

Joint and several liability

⁶ <https://www.citb.co.uk/about-citb/construction-industry-research-reports/construction-skills-network-csn/>

⁷ https://www.constructionleadershipcouncil.co.uk/wp-content/uploads/2019/06/CLC-Skills-Workstream_Future-Skills-Report_June-2019_A4-Print-Version.pdf

21. Unite supports an extension of UK law so that **organisations and lead contractors who transfer obligations to other parties can be liable and accountable for any breaches of employment rights in their supply chains of workers**. This would prevent 'phoenix' cases from disappearing along with the companies, giving workers a route to enforce rights. It would **help with sub-contractor engagement**, and could **help incentivise more permanent employment contracts** as companies become more careful about selection.

Consultation Questions

Unite reiterates our policy position on the Construction Industry Scheme:

- **Unite demands urgent reform of the law on employment status for the purposes of statutory employment rights;**
- **Unite calls for the Construction Industry Scheme and other exploitative models of bogus self-employment construction to be outlawed;**
- **Unite calls on the UK Government to legislate to embed direct employment and national industrial collective agreements;**
- **Anyone subject to significant control, supervision or direction in relation to their work should be deemed to be employed for tax and employment rights purposes;**
- **Workers who are not self-employed should be directly employed and in receipt of employment rights;**

We will only provide responses to consultation Questions that are relevant and not already covered in our opposition to the scheme

What are your views on including VAT in the GPS compliance test?

22. The very fact that the CIS scheme is being used by organised crime networks to make payments through a myriad of sub-contract creations avoiding taxation is of huge concern. This is ultimately indicative of a scheme that is open to exploitation. Unite

has already identified the often coercive nature of the CIS scheme in construction with workers being engaged through the scheme who should be operating through direct employment contracts and PAYE, the reality is that the scheme itself is so open to exploitation it is unfit for continued use.

Are there any other changes that could be made to the scheme which would prevent abuse, while also maintaining simplicity for legitimate users?

23. Unite supports the simple employment status classification of workers and self-employed, and we demand the removal of the CIS scheme. In the absence of this policy change, any changes to the CIS scheme must ensure that it is only bonafide contractors and sub-contractors which operate a legitimate trading business that can apply for CIS status. The current use of CIS in the industry sees main contractors and agencies seek to avoid the payment of national insurance contributions by advertising work offering CIS terms or engaging intermediaries to supply workers that would ordinarily be engaged as employees.

Should any landlord to tenant payment be within the scope of CIS?

24. Unite fails to understand how a commercial payment from a landlord to a prospective tenant should come under the scope of the CIS which is intended for contractors and sub-contractors across the sector, we do not believe that payment to a tenant for works required should be in scope of the scheme. This appears a commercial transaction which may include works to be undertaken in a property however not specifically to a contractor that is charged with carrying out the work. This would appear to be yet another example where the CIS scheme is open to exploitation and misuse.

Question 6: Do all landlord to tenant payments include an inducement or encouragement element?

Reference to response to Q5

Is a 'grouping arrangement' the best solution to the problem outlined and are there any elements which have not been set out?

25. If any property company or landlord is engaging contractors or sub-contractors (workers) that operate CIS then they should have in place the necessary administrative resources that allow payments to be made correctly within the existing finance and tax rules. Grouping of these payments would still require calculations to be made in order that the correct payments are made.

Are there areas of the CIS in terms of its scope and or administration where simplifications or improvements could be made?

26. Unite's policy is to oppose the misuse of the CIS scheme and our response is focused upon the need to simplify the system of employment in the construction sector. Any remedial measures introduced while the scheme remains in place allowing the misclassification of construction workers employment status are at best a sticking plaster and it is our view that fundamental employment rights reform is necessary.

27. Through years of experience and casework on behalf of our construction members we are clear that the use of the CIS leads to construction workers being exploited and underpins a system of bogus self-employment in the sector.

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For further information please contact:

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