NOT GOVERNMENT POLICY – SUBJECT TO CONSULTATION

Make Work Pay: employment status reform and protections for the self-employed

Launch date: 14 October 2026

Closing Date: 8 January 2027

Foreword

The world of work has fundamentally changed in recent years. It is no longer the norm for employees to stay in one company, or even a single sector, for their whole career. New technology continues to rapidly transform how we work, where we work, and when we work. And the rise of the gig economy has changed the certainty and stability that employment used to provide.

The government's Plan to Make Work Pay is bringing employment rights legislation into the 21st century, extending the protections many British companies already offer their workers to all.

Our reforms to tackle one-sided flexibility, to end unscrupulous fire and rehire practices, to improve parental leave and to enhance protections from unfair dismissal will be truly transformative for many.

This is on top of the pay rise that around 2.7 million people received in April through increases in the National Living Wage, worth an extra £900 per year for an eligible full-time worker, and the National Minimum Wage.

However, it is clear that without change to address the pressing issues with the employment status framework for rights (the rights framework) there will still be many vulnerable workers, who work day in, day out, often in challenging conditions for low pay, who will not receive the protections they should be entitled to. We need to modernise our employment law framework, to ensure that it works to support the good jobs that are needed to create opportunity for individuals and communities across the whole of Britain.

Employment status is inherently complex and there have been draft papers circulating Whitehall for decades. But nothing has been done, so injustice, confusion and risk have continued. We intend to grasp the nettle and create a system that is both fairer and more resilient.

The current rights framework is leaving too many people in bogus self-employment without access to core rights like the National Minimum Wage. We have also seen a rise in the use of substitution clauses, which when used appropriately are an important and key feature of self-employment, but which can also be exploited to cut costs, prevent people from accessing rights, and open the door to illegal working.

It is widely accepted that there are two reforms that would help address the current power imbalance between some workers and businesses. Creating a 'presumption of worker status' by shifting the burden of proof on status to the employer will empower workers, their representatives and agencies seeking to protect them, most notably the Fair Work Agency. Rebalancing the criteria for employment status so that personal service is less decisive and other factors like control play a greater role in the primary test will mean that employment status will reflect a fair and common-sense view of what it is to be a worker.

Taken together, these reforms would reduce the incentives and opportunities for some unscrupulous businesses to game the system, inserting misleading substitution clauses into contracts or otherwise misclassifying their workers as self-employed. This will lead to a fairer system. It should also reduce pressure on the employment tribunal system from claims by workers arising from misclassification.

We will consider creating a single status of worker as a longer-term goal, while recognising the flexibility that limb (b) worker status can give to workers and business alike.

While our proposals for targeted reform of employment status will seek to tackle the most pressing issues with the rights framework, more also needs to be done to support the genuinely self-

employed. For example, we are committed to exploring a new right for self-employed people, such as freelancers, to receive a written statement, giving them greater clarity and certainty at the outset of their working relationship. The government recognises the crucial role the self-employed play in the economy, providing a flexible, dynamic and project focused workforce that helps drive economic growth.

We want to support the self-employed to continue to play this important role in the wider economy, which is why we have committed to strengthening rights and protections to help the genuinely self-employed thrive. We are legislating to end the scourge of late payments, giving the UK the toughest laws on late payments in the G7 and ensuring that small businesses and the self-employed are paid on time.

Self-employment can take many forms and we are also interested in developing a better understanding of the experiences of the self-employed and how the commitments in the Plan to Make Work Pay - to introduce a new right to a written statement, and extension of health and safety and blacklisting protections - could help.

These proposals build on our small business strategy ‘Backing your business: our plan for small and medium-sized businesses’. We want to use this consultation as an opportunity to hear from the self-employed and will also be conducting further research later this year to strengthen our evidence base on the different characteristics and experiences of the self-employed. This is a government which is supporting small and medium sized businesses, including the self-employed, to succeed across the UK.

We look forward to working in partnership with businesses, trade unions, public sector employers and civil society to grow our economy and raise living standards for everyone, everywhere.

Kate Dearden MP

Minister for the Future of Work

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Introduction

Employment status is the classification of a working relationship between a person or organisation offering work and a person carrying out that work. It determines an individual's entitlement to statutory employment rights and provides the employer with a set of responsibilities.

There is a separate employment status framework for tax. This consultation, and the proposals within it, are concerned with the employment status framework for employment rights, not the framework for tax. All tax policy is kept under review.

Employment status is not just a matter of what is in a contract; it is determined by the reality of the relationship between employer and individual taking account of all the circumstances, of which the contract is one aspect. An individual or employer cannot create a false employment status through a fictitious contract which does not reflect the true reality of the relationship between them.

Although there are countless different working relationships that individuals and businesses can agree to, broadly the law reduces these into one of three main types of status for employment rights:

an **employee** who has the most rights but also has the most responsibilities and obligations towards their employer.

a **limb (b) worker**[1] – i.e. a worker who is not an employee and who has fewer rights and obligations than an employee. The aim of the limb (b) worker status is to extend the coverage of core employment rights to a wider group of individuals than just employees, protecting a larger number of individuals who are in dependent working relationships but are not employees, often by virtue of having more flexibility in their work.

a **self-employed individual** who has the least protection but also tends to have fewer personal obligations and has significant flexibility in their work and/or delivers a service to a customer or client as part of a business or professional undertaking.

Issues with the current framework

Under the current rights framework, it can be difficult for individuals to determine their employment status and therefore the rights and protections they are entitled to. Determining whether you are an employee, a limb (b) worker or genuinely self-employed can require the ability to understand both the original legislation and a significant amount of complex case law.

This presents challenges in a system where the onus is on the individual to bring a case to an employment tribunal to establish their employment status. It enables some employers to undercut their competitors by designating their workforce as self-employed when they are not, denying people the rights they are entitled to, and exploiting the financial advantages that come with self-employment. This is what is termed bogus self-employment.

There are also problems with the current positioning of the boundary between workers and the self-employed, a boundary that has become increasingly difficult to interpret as new technologies and business models change the way we work. When assessing employment status cases, the

[1] The term limb (b) worker is a reference to one of the two 'limbs' in the legal definition of a 'worker' at section 230 of the Employment Rights Act 1996. Limb (a) of the definition covers those with a contract of employment (employees).

courts will look at a number of factors including personal service, i.e. whether the individual has to do the work themselves.

Substitution clauses (i.e. a term in a contract that enables an individual to send another person to perform their work) are a strong factor in deciding whether an individual is providing personal service. Personal service is an essential requirement of both limb (b) worker and employee status. The requirement for personal service has meant that an employer can insert a broad substitution clause into the contract that states that the individual can substitute their labour and argue that on that basis the person does not meet the personal service test and is therefore self-employed. The broader the substitution clause is, the less likely the individual will satisfy the requirement of personal service. Courts will, and do, look at the realities of the relationship and how substitution clauses are used in practice, but nonetheless, such clauses can be used to push people into self-employment, and to prevent the requirement for personal service being met even where substantial control is being exercised over how the work is being carried out.

The ability for someone who is self-employed to subcontract work is a key feature of self-employment, and when used appropriately substitution plays an important role in a flexible and dynamic labour market. However, there are significant harms that can arise from the use of broad substitution clauses including worker exploitation as people are pushed into self-employment and denied access to core protections like the National Minimum Wage.

Substitution clauses can also give rise to illegal working as organisations have less control and knowledge as to who is providing the service. This can be particularly prevalent in the gig economy where there have been examples of account holders renting their accounts to people without the right to work in the UK. This can leave people vulnerable to exploitation, push down wages, and undercut businesses that take care to ensure that everyone in their workforce is working legally.

This also impacts public safety, as individuals may present at members of the public's door unchecked and unvetted. Tackling illegal migration, including illegal working, is a key priority for this government. As part of this, the government has extended existing right to work check requirements, currently placed upon employers, to those who engage limb (b) workers or individual sub-contractors, including in the gig economy. But we must go further to reduce the harms that can arise from substitution clauses to protect people from exploitation in work and to prevent illegal working.

Case for change

The majority of people who work in the UK are working as employees in a contract of employment, with around 30 million people working as employees covered by protections under employment law. However, 4.4 million people now work as self-employed across the economy, including many private hire, package and food delivery drivers as well as some care workers and hairdressers.

Their working conditions can be highly controlled by their employers, but they are nevertheless being designated by their employer as self-employed with no access to the National Minimum Wage, paid holiday, a workplace pension or protections from unlawful wage deductions.

Without government action some of these people will not properly feel the benefits of the Plan to Make Work Pay. If the government is to deliver on the promise to raise living standards and support the lowest paid workers with job security and improved working conditions, then action must be taken to tackle the issues with the rights framework and the problems it gives rise to, including bogus self-employment.

Proposals for reform

The government is therefore seeking views on targeted reform of employment status to tackle the most pressing issues with the current rights framework, such as bogus self-employment and the use of substitution clauses, that can enable exploitation at work, illegal working, and leave vulnerable people without core employment protections.

Introducing targeted reform of the rights framework is not only about protecting individuals. Businesses too want to ensure they are operating on a level playing field when complying with their legal responsibilities, without being undercut by employers who seek to gain a competitive edge by exploiting the favourable financial advantages of self-employment, including reducing their liabilities under employment legislation. Contingent labour of course plays an essential role in the economy, and engaging the services of self-employed individuals is a key part of that. However, gaining a competitive advantage through bogus self-employment is unacceptable.

The government is seeking views on a proposal to place less emphasis on personal service so that, when courts are deciding cases, the existence of a right of substitution does not outweigh all other factors that point to worker status. This would aim to ensure that where significant control is being exercised over the person who is carrying out that work, that person is not denied access to core employment rights on the basis of failing to meet the test for personal service alone.

The government is also seeking views on proposals to improve compliance with the law by including a presumption of worker status so that the burden of proof is on the employer to demonstrate that the person they engage is not a worker and is therefore genuinely self-employed. Currently, the burden of proof in demonstrating this falls on the worker. The aim is to bear down on bogus self-employment by making it harder for employers to designate someone as self-employed and deny them their rights, when that is not the true nature of the relationship.

We are also consulting on enforcement of the rights framework and the potential future role for the new Fair Work Agency to support the government's objective of tackling bogus self-employment.

Strengthening protections for the self-employed

The government is delivering on our commitment in the Plan to Make Work Pay to strengthen rights and protections to help the self-employed thrive in good quality self-employment. We are already taking action to support the self-employed through the small business strategy 'Backing your business: our plan for small and medium-sized businesses'. We are also legislating to end the scourge of late payments, giving the UK the toughest laws on late payments in the G7 and ensuring that small businesses and the self-employed are paid on time.

As part of this consultation, we are interested in developing a better understanding of the experiences of the self-employed and how the commitments in the Plan to Make Work Pay - to introduce a new right to a written statement, and extension of health and safety and blacklisting protections - could help. We are consulting on these proposals as the government committed to exploring them in the Plan to Make Work Pay but that is not the extent of our ambitions in this area.

For example, the Parental Leave and Pay Review, launched by the government on 1 July 2025, is considering whether the support currently available meets the needs of working families who do not qualify for existing leave and pay entitlements. This includes many self-employed parents. The Review will report in early 2027.

The Employment Rights Act 2025 also included a new measure that will address the misuse of non-disclosure agreements (NDAs) by employers who want to silence workers about harassment

and discrimination in the workplace. On 15 April 2026, the government launched a consultation to seek views on the regulations for this new NDA measure, and whether it should, in the future, apply to other individuals who do not meet the standard definition of worker in the Employment Rights Act 1996, including certain groups of self-employed. This consultation closed on 8 July 2026. A government response will be published in due course.

The government will engage widely on the proposals in this consultation, including with businesses, trade unions, public sector employers and civil society. The purpose of the consultation is to gather evidence and views before any decisions are taken.

Consultation details

Issued: 14 October 2026

Respond by: 11:55 pm on 8 January 2027

Enquiries and Responses to: statusconsultation@businessandtrade.gov.uk

Write to:

Employment Status Team, Employment Rights Directorate
Department for Business, Innovation, Science and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Consultation reference:

Employment status reform and protections for the self-employed

Audiences:

- businesses
- trade unions
- business groups or representatives
- consumers
- non-governmental organisations
- members of the public
- all other interested parties

Territorial extent:

England, Wales, and Scotland only. Employment law is devolved to Northern Ireland.

How to respond

Respond online

or

Email to: statusconsultation@businessandtrade.gov.uk

or

Write to:

Employment Status Team, Employment Rights Directorate
Department for Business, Innovation, Science and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

When responding, please state whether you are responding as an individual or representing the views of an organisation. Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

We will publish a government response on GOV.UK.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles. If you have any complaints about the way this consultation has been conducted, please email: enquiries@businessandtrade.gov.uk

About you

Please provide the following information to help us understand the context of your response.

Question 1: Please indicate whether you are responding as:

- [ ] An individual
- [ ] An academic, or on behalf of an academic or research organisation
- [ ] An employer
- [ ] A legal representative
- [ ] A business representative organisation (please specify)
- [ ] A trade union or staff association (please specify)
- [ ] A charity or interest group
- [ ] Other – please specify

Question 2: If responding as an individual, please indicate, to the best of your knowledge, if you are:

- [ ] An employee
- [ ] A limb (b) worker
- [ ] Self-employed
- [ ] Other – please specify

Question 3: If responding as an employer, business, business owner or business representative, approximately what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?

- [ ] Micro (1 to 9 employees)
- [ ] Small (10 to 49 employees)
- [ ] Medium (50 to 249 employees)
- [ ] Large (250+ employees)
- [ ] Don’t know
- [ ] Not applicable

Question 4: Which region are you located in?

- [ ] North-East
- [ ] North-West
- [ ] Yorkshire and the Humber
- [ ] East Midlands

- [ ] West Midlands
- [ ] East of England
- [ ] London
- [ ] South-East
- [ ] South-West
- [ ] Wales
- [ ] Scotland
- [ ] Northern Ireland

Question 5: What sector are you based in?

- [ ] Accommodation & food service activities
- [ ] Activities of households as employers; undifferentiated goods and services-producing activities of households for own use
- [ ] Administrative & support service activities
- [ ] Arts, entertainment and recreation
- [ ] Agriculture, forestry and fishing
- [ ] Construction
- [ ] Education
- [ ] Electricity, gas, steam and air conditioning supply
- [ ] Financial & insurance activities
- [ ] Human health and social work activities
- [ ] Information & communication
- [ ] Manufacturing
- [ ] Mining and quarrying
- [ ] Production
- [ ] Professional, scientific and technical activities
- [ ] Public administration & defence; compulsory social security
- [ ] Real estate activities
- [ ] Services sector
- [ ] Transportation & storage
- [ ] Water supply; sewerage, waste management and remediation activities
- [ ] Wholesale and retail trade; repair of motor vehicles and motorcycles
- [ ] Other service activities

- [ ] Not Applicable

Consultation

Chapter 1: placing less emphasis on personal service

One of the key tests to determine an individual's employment status is whether they provide 'personal service' (i.e. whether the work must be carried out personally by the individual). Some businesses make use of broad substitution clauses, which can have the effect of making it difficult for the individuals they engage to meet the personal service test even where significant control is being exerted over how they conduct their work.

When determining employment status, courts will consider whether the right to substitution is unfettered (i.e. unrestricted). In general, an unfettered right to substitution means the right exists without any restrictions or criteria as to how and when it can be used. This is likely to be inconsistent with personal service and would mean the individual will not be considered a worker. If the right of substitution states that the replacement to carry out the work can only come, for example, from a list of people provided by the employer, then the substitution right is fettered or limited. Depending on the circumstances this may or may not be consistent with personal service.

The courts will also consider the reality of the relationship and whether the right of substitution exists in practice or not. If a substitution clause in the contract reflects the reality of the relationship, then even if it is rarely or never used it can still be valid and prevent the test for personal service from being met.

When looking at the question of substitution in 2017, the Taylor Review of Modern Working Practices stated, *'an individual can have almost every aspect of their work controlled by a business, from rates of pay to disciplinary action and still not be considered a worker if a genuine right to substitution exists. We do not think this is fair or reflects many of the opportunities presented in the modern world of work.'*

Since that Review, it has become clear that there are significant harms that can arise from the use of broad substitution clauses as people are pushed into self-employment and do not have access to core protections like the National Minimum Wage. Substitution clauses can be particularly prevalent in the gig economy, where individuals whose working conditions can be highly controlled (e.g. package and food delivery drivers) are nevertheless designated as self-employed because they either have a valid right of substitution or have a substitution clause in their contract even if it is never exercised or rarely exercised.

The government is already taking action to tackle some of the wider risks that can arise from substitution, for example illegal working, by extending the scope of employers required to carry out Right to Work checks to those who engage limb (b) workers or individual sub-contractors, such as those working in the gig economy. This requirement will also cover those working as substitutes. Additionally, by proposing in this consultation to place less emphasis on personal service in the legal test, the government is aiming to reduce the incentive for businesses to use broad substitution clauses.

This in turn should help reduce the prevalence of widespread substitution and therefore make it harder to work illegally, which can act as a draw to come to the UK illegally. However, there is more to be done to ensure that vulnerable workers, who do have the right to work in the UK, are not left out of scope of core employment protections due to the issues with the rights framework.

The government's intended starting point is that where significant control is being exercised over the person who is carrying out that work, that person should not be denied access to core employment rights on the basis of failing to meet the test for personal service alone. Personal

service should continue to be an important consideration in determining employment status and should be considered alongside other factors relevant to each case, like control. But the personal service test should not play such a critical role in deciding whether someone is a limb (b) worker, as is currently the case.

Therefore, the government is proposing to change the law to place less emphasis on personal service so that, when courts are deciding cases, the existence of a valid right of substitution does not outweigh all other factors that point to worker status. The government believes that personal service is still an important factor in an employment relationship but that it should not be play such a significant role as is currently the case.

The government is interested in views on the role that personal service and substitution clauses should play in establishing employment status, and views on the mechanisms to ensure that the existence of a right of substitution does not outweigh all other factors that point to worker status. The starting point for the government is to ensure that anyone who is currently recognised as a limb (b) worker continues to be so irrespective of any changes to the limb (b) worker test.

1. **Do you agree with the government's view that the worker definition should place less emphasis on personal service and that a failure to meet the personal service test should not on its own prevent someone from being a limb (b) worker?**
    a) Yes
    b) No
    c) Don't know

2. **What role do you think a contractual right to substitution should have as part of the limb (b) worker test? Please explain.** (Open text response)

3. **Should greater weight be given to the factual performance of personal work rather than whether there is a contractual power of substitution?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

4. **Do you think that the current way the courts look at whether the right to substitution is fettered/unfettered is an effective way of establishing personal service?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

The tests the courts apply for limb (b) worker

The main definition of worker in the Employment Rights Act 1996 covers employees and limb (b) workers. This means that all employees are workers, but not all workers are employees. This definition of limb (b) worker is the same (or a similar form) in the Trade Union and Labour Relations (Consolidation) Act 1992, the Working Time Regulations 1998, SI 1998/1833, the National Minimum Wage Act 1998 and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, SI 2000/1551. It is the government's intention to reflect any changes made to the limb (b) worker definition in these other definitions. The definition of limb (b) worker is someone who is not an employee but who:

1. Works under a contract;
2. Provides a personal service; and
3. Is not carrying out a business or profession where the other party to the contract is a client or customer of that profession or business.

The test, as applied by the courts, follows this structure:

- Step 1: does a contract exist?
  - If no, individual is not a worker
- Step 2: does the individual personally provide services?
  - If no, individual is not a worker
- Step 3: is the individual carrying on a business or profession on their own account and is the other party to the contract a client or customer of that business or profession?
  - If yes, individual is not a worker / If no, individual is a worker

On the face of it the definition of limb (b) worker in legislation provides more detail than for an employee. However, in practice the approach to determine a limb (b) worker has generally been said to be similar to that for an employee, but with a lower bar.

One option could be to alter the test above to remove the requirement for personal service altogether. However, the government is of the view that someone who is not required/does not do any work at all personally for the employer/engager should not be considered a worker. The government is not therefore consulting on removing the requirement for some form of personal service altogether.

Proposal: place less emphasis on personal service by elevating control

The government is proposing an alternative approach which is to elevate the importance of control in the limb (b) worker test. As noted above, the government's starting point is that where significant control is being exercised over the person who is carrying out that work, that person should not be denied access to core employment rights on the basis of failing to meet the test for personal service alone.

The government could therefore place an additional requirement in step 2 so that it considers both personal service and control rather than only personal service. This would seek to place less emphasis on personal service by elevating the importance of control.
The test would be:

- Step 1: does a contract exist?
  - If no, individual is not a worker
- Step 2: does the individual personally provide services and/or are they under a significant level of direction or control by the employer/engager?
  - If no, individual is not a worker / If yes, the individual is likely to be a worker but move to step 3
- Step 3: is the individual carrying on a business or profession on their own account and is the other party to the contract a client or customer of that business or profession *(this would also include an assessment of personal service)*
  - If yes, individual is not a worker / If no, individual is a worker

The key difference here is that control is considered alongside personal service in step 2. An individual could only be found to be not a worker (i.e. self-employed) at step 2 if there was neither personal service nor significant direction or control by the employer/engager. If both, or one of either of the factors were present then the courts would move to step 3. This change to step 2 would therefore reduce the emphasis of personal service as it could not on its own be fatal to the worker test. The courts would need to consider personal service again as part of Step 3 to ensure that you could not have a situation where an individual who personally provided no services at all

was found to be a limb (b) worker. The proposal would therefore result in changes to both step 2 and step 3 of the test.

5. **Do you agree that requiring control to be considered alongside personal service in step 2 could be an effective way of placing less emphasis on personal service?**
   a) Yes
   b) No
   c) Don't know

   Please explain. (Open text response)

ILLUSTRATIVE EXAMPLE

Courier drivers v courier company

Background

- Two delivery drivers challenge their employment status after working under franchise agreements.

- Defendants' argument: they are independent contractors with a genuine right to substitute others for their work - no obligation for personal service.

- Claimants' argument: the agreements do not reflect reality; they are effectively required to work personally and under the company's control, resembling employment.

Under the current tests, courts decide:

- Step 1: does a contract exist?
  - If no, individual is not a worker

Explanation:

Yes, a contract exists – the delivery franchise agreement. Proceed to step 2.

- Step 2: does the individual personally provide services?
  - If no, individual is not a worker

Explanation:

Whilst there are some requirements for substitutes – training, vetting, and licence checks – the individuals do have a right to substitute. The court rules that they are not workers, noting that the agreement did not require them personally to perform the services for which they provided.

Under the proposed modified test:

- Step 1: does a contract exist?
  - If no, individual is not a worker

Explanation:

Yes, a contract existed – the delivery franchise agreement. Proceed to step 2.

- Step 2: does the individual personally provide services and/or are they under a significant level of direction or control by the employer/engager?
    - If no, individual is not a worker / If yes, the individual is likely to be a worker but move to step 3

Explanation:

As above, the individuals had a right to substitute – and so did not personally provide services. However, the individuals were under a significant amount of control – the company set their pricing structure, tracked their performance, and set collection times and delivery windows. The company agreed that there is not an insignificant degree of control over the way in which the services are provided. Under Step 2, this means the answer is 'no' to personal service, and 'yes' to control, so we proceed to Step 3.

22. Step 3: is the individual carrying on a business or profession on their own account and is the other party to the contract a client or customer of that business or profession?
    - If yes, individual is not a worker / If no, individual is a worker

Explanation:

A tribunal would now have to consider whether the individuals were in business or a profession on their own account and whether the other party to the contract was a client or customer of that business or profession. There are many factors that could be considered here: the individuals' right to substitute could be considered evidence of entrepreneurial risk – but a court would have to consider how this substitution was used in practice. The individuals provided their own vans and bore some associated operating costs, meaning they carried business risk. They could invoice the company and deduct business expenses. However, they had no control over pricing, no independent customer base, little operational control over delivery and collection times, and were required to use the company's branding.

Ultimately, it would be for the courts to consider each case on its merits and in light of all the circumstances, but it is the government's aim that personal service should be an important but not solely determinative factor in deciding an individual's employment status.

ILLUSTRATIVE EXAMPLE ENDS

The government recognises that there can be circumstances where it appears the engager/employer is relinquishing some aspects of control to the individual and that can mean transferring cost and risk to those who are providing the service. This can be problematic where those individuals are low paid and do not have the ability to set the rate of pay or negotiate pay. For example, a courier company may outsource cost and risk by requiring that the courier drivers purchase and maintain their own vehicle, submit their own invoices and manage staffing where they are unable to do the shift, when in other workplaces, the financial outlay for equipment would be the responsibility of the company, payroll would manage wages and Human Resources would cover staffing shortages. In this example, by appearing to relinquish some aspects of control, the courier company has outsourced cost and risk and may also benefit from the other financial advantages of having a self-employed workforce. It is therefore important to identify which aspects of control are key to the relationship and what weight should be applied to different aspects of control. In the government's view, the ability to set the rate of pay or negotiate pay is a key factor in

differentiating between limb (b) workers and the self-employed and further consideration should be given to this as part of the limb (b) worker test.

6. **Do you agree that the ability to set the rate of pay or negotiate pay is a key factor in differentiating between limb (b) workers and the self-employed?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

Rather than making changes to the full structure of the limb (b) worker test, the government could instead look at changing how the courts currently assess personal service as part of that test. For example, the government could look to lower the bar required to satisfy what the courts consider to be personal service. When assessing personal service, the courts will look at whether the right to substitution is fettered/unfettered. An unfettered right to substitution is considered to not be consistent with personal service. A right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, is, subject to any exceptional facts, considered by the courts to also be inconsistent with personal service. The government could revise this so that any right of substitution limited only by the need to show that the substitute was as qualified as the contractor to do the work would instead be consistent with personal service.

7. **Would you support lowering the bar required to satisfy what the courts consider to be personal service? For example, by stating that any right of substitution limited only by the need to show that the substitute was as qualified as the contractor to do the work would be consistent with personal service?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

Alternative approaches

An alternative way of placing less emphasis on personal service could be for the government to instead legislate so that the existence of a right of substitution does not outweigh all other factors that point to worker status.

This could be done for example by clarifying that the right on the part of a person to substitute their labour shall not be the sole or overriding factor in preventing someone from meeting the limb (b) worker test.

8. **Do you think that this approach would be effective?**
    a) Yes
    b) No
    c) Don't know

    Please explain why, including any potential risks (Open text response)

9. **Are there any benefits to this approach over placing less emphasis on personal service by elevating control? Please explain.** (Open text response)

10. **Do you have suggestions of other ways the government could place less emphasis on personal service when the courts are determining employment status? Please explain.** (Open text response)

11. **If the definition of limb (b) worker is changed, do you agree that this change should also follow through in the Trade Union and Labour Relations (Consolidation) Act 1992, the Working Time Regulations 1998, SI 1998/1833, the National Minimum Wage Act 1998 and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, SI 2000/1551 which use the same or a similar definition?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

Renaming 'limb (b) worker'

One of the challenges with the existing rights framework is the confusion that can arise from the lack of common language to describe different categories of workers and new ways of working. Most people are familiar with the concept of 'employee' but the concept and language of 'limb (b) worker' is not intuitive and is difficult to understand for many workers and employers. To improve clarity and make it easier for people to understand the rights and protections they are entitled to, the government could rename 'limb (b) worker' in section 230(b) of the Employment Rights Act 1996. This could introduce a term that provides greater distinction than the current terminology distinction and would provide a point of common reference for both individuals and employers.

12. **Would you support renaming 'limb (b) worker'?**
    a) Yes
    b) No
    c) Don't know

13. **Do you have any suggestions for a term to replace 'limb (b) worker'?** (Open text response)

Chapter 2: improving compliance with the status framework

Under the current rights framework, it can be challenging for an individual to establish their correct employment status and ensure that they receive the rights and protections which are derived from it. This means that there can be genuine disagreement about what someone's correct status is. It can also open the door for employers to intentionally label their workforce as self-employed when they are not, denying individuals the rights they are entitled to.

The only way to get a definitive and binding determination of someone's employment status is through an individual or group of individuals bringing a case to tribunal. Additionally, as each case is considered on the specific facts of that particular case, employment tribunal determinations do not create a binding precedent and determinations from higher courts can be of limited applicability to other scenarios. Individuals must bring claims even when comparable cases have already been determined by the tribunal. This can be the case even when the employer concerned has already been ordered to pay awards to their colleagues in a similar situation.

The government does not plan to change the overall principles above and is of the view that where there is genuine disagreement, the correct way to interpret an employment relationship is through consideration of the evidence in the tribunal (and where relevant, higher courts). However, in a system where ensuring compliance with the status framework falls overwhelmingly on individuals, more can be done to make this process less onerous for the individuals concerned, and to enable and encourage engagers to comply with the law without being taken to tribunal.

The government is therefore proposing to create a 'presumption of worker status' at tribunal. This will shift from the current situation where the burden is on the individual to establish that they are a limb (b) worker to one where an engager would have to show that they are not. The government is also proposing to introduce increased penalties where tribunals have found a particular business or organisation to have repeatedly misclassified their workforce.

The government also wants to consider what role the new Fair Work Agency can play in improving compliance with the rights framework. This includes asking how the agency could do more to make engagers aware of the law, and/or supply tools to help both organisations and individuals to assess the correct status.

Creating a presumption of worker status

Currently in most employment cases, as in other civil legal disputes, the 'burden of proof' is on the person or group of people bringing the claim. They have to make the argument and supply the evidence that they are entitled to the relevant legal protections, and that the engager failed to supply these protections.[2]

The government instead proposes to legislate to create a presumption of worker status by reversing the burden of proof in certain cases. Such a reversal already exists under section 28(1) of the National Minimum Wage Act 1998 which states that:

> *'Where in any civil proceedings any question arises as to whether an individual qualifies or qualified at any time for the national minimum wage, it shall be presumed that the individual*

[2] This is a distinct concept from the 'standard of proof', which in civil cases is the 'balance of probabilities'. This means, in short, that the tribunal must be convinced that it is more likely than not that the position asserted by the Claimant is true. In other words, if the evidence is 51%-49% in favour of one side this is considered sufficient to find in favour of that side.

qualifies or, as the case may be, qualified at that time for the national minimum wage unless the contrary is established.'

The government proposes that a similar presumption should apply for all rights which flow from limb (b) worker status, such as holiday pay, the right not to experience detriment because of trade union membership, and access to a workplace pension. The government would seek to establish the principle that if a right is one to which a limb (b) worker is entitled, the burden of proof is reversed on the question of whether the claimant has that status. The government does not currently propose to change the assumption for employee status.

This presumption would only be applied to the question of whether an individual was entitled to the rights concerned. On questions of whether such rights were actually fulfilled (for example whether the correct amount of holiday pay was in fact received), both the burden and the standard of proof would remain as they are currently.

The government does not believe that the creation of such a presumption would have a substantial effect on either the genuinely self-employed or those that engage them. In the majority of cases the self-employment relationship is clear and accepted by the parties involved and therefore would be unlikely to come to a tribunal. For those claims that are brought, the tribunal will retain its current powers to strike out cases which have no reasonable prospect of success, discouraging speculative or vexatious claims.

14. **Do you agree that the government should create a presumption of worker status by reversing the burden of proof?**
    a) Yes
    b) No
    c) Don't know

    Please explain (Open text response)

15. **Do you see any risks with this approach? Please explain.** (Open text response)

16. **Do you think there should be any conditions that need to be satisfied first before the reversed burden of proof applies, for example whether the facts indicate direction and control?**
    a) Yes
    b) No
    c) Don't know

    Please explain (Open text response)

Applicability of tribunal judgments

Currently, all tribunal judgments are only directly applicable to the individual or group of individuals who brought a claim. However, judgments can still have some impact beyond those immediately involved. Some organisations will react to judgments by proactively altering their terms and conditions and compensating the affected worker(s). If the judgment is appealed, it can become part of binding case-law and therefore will apply to future tribunal hearings. However, neither of these effects are guaranteed in all circumstances. If there are people working in similar situations

at the same organisation or other organisations in the sector, who use the same working arrangements, and who are still being denied protections after a successful claim by their peer, their only option is to bring their own claim.

This puts a significant burden on individuals to bring claims even where the substance of their potential claims has in effect already been decided and can enable employers to take a calculated risk that most of the people working for them will not act. Additionally, it increases the pressure on the tribunal system, which has to process repeated cases on substantially the same facts and settled questions of law. One way to deal with this problem could be to allow tribunals to make awards which applied beyond the directly affected claimants. However, the government agrees with the Taylor Review that such a measure would undermine the current basis of employment status law – which is that it is based on a consideration of the actual relationship between an individual and their employer.

However, it is possible to strengthen and clarify the powers that tribunals already have to discourage employers from repeatedly breaking the law. Under section 12A of the Employment Tribunal Act 1996, tribunals are empowered to impose penalties when a breach has 'one or more aggravating features'. These penalties are payable to the Secretary of State. However, since coming into force in 2014 this power has been little used by the tribunal. Analysis by the Resolution Foundation in 2020 found that in the five years between 2014 and 2019 only fifty such penalties were levied out of over 55,000 successful tribunal claims.[3]

The government therefore proposes to amend the 1996 Act to establish that repeated failures by an employer to recognise employment status constitutes an aggravating factor in any breach. This will set out explicitly that if employers choose to argue that someone does not have limb (b) worker or employee status, despite a tribunal having previously ruled that their colleagues do have that status (where the facts of their colleagues' employment are broadly similar to those of the claimant's employment) the tribunal can order the payment of an additional penalty, currently of between £100 and £20,000 per claim. The government expects that the threat of such increased sanctions should act to discourage employers from attempting to defend such claims and instead encourage them to consider the implications of any tribunal ruling on status across the whole of their workforce proactively.

17. **Do you agree that repeated failures to recognise employment status should constitute an aggravating factor in any breach of employment rights?**
    a) Yes
    b) No
    c) Don't know

18. **When a second claim is being brought would broadly similar facts be sufficient to constitute an aggravating factor in a breach?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

[3] L. Judge & A. Stansbury, *Under the Wage Floor* (The Resolution Foundation, 2020), p.14

State enforcement: Fair Work Agency

The government's Employment Rights Act 2025 brought together existing employment rights state enforcement functions into one overarching function to enforce a list of labour market legislation.

The Employment Rights Act 2025 vests those enforcement powers in the Secretary of State, who performs that function through the Fair Work Agency, which began operating from April 2026.

Currently, the Fair Work Agency's remit is the same as predecessor organisations', but over time it will take on enforcement of a wider range of employment rights. The Employment Rights Act 2025 also includes a power for the Secretary of State to make affirmative regulations to expand the list of labour market legislation which falls within the remit of the enforcement function.

The Fair Work Agency addresses the fragmentation and inefficiencies of the current system of state enforcement, which was previously split across multiple organisations. Instead, there is one leadership team to oversee the work in line with a single enforcement strategy, and the system is simpler to understand and navigate for workers and employers alike.

The Fair Work Agency has a broad set of powers to investigate and take action against employers that do not comply with the law. These powers include:

- powers to enter and inspect workplaces and require employers to produce relevant documents and evidence to demonstrate compliance with employment law, based on powers the predecessor organisations had;
- a civil penalty regime. Where enforcement officers find that employers have not paid workers in accordance with certain statutory pay rights, they are able to issue Notices of Underpayment. These require the employer to pay workers the wages they are due and pay a penalty to government. This currently applies to the National Minimum Wage, but will be extended to holiday pay and other statutory pay rights;
- an enforcement regime in respect of labour market criminal offences - this involves the voluntary use of Labour Market Enforcement Undertakings and compulsory Labour Market Enforcement Orders that require employers to correct their behaviour;
- recovering enforcement costs from non-compliant employers; and
- a civil proceedings power, enabling the Secretary of State to bring proceedings in the employment tribunal in place of the worker, and to offer legal advice and assistance where someone is, or may become, party to civil legal proceedings related to employment or trade union law. Unlike the other powers which are tied to the Fair Work Agency's remit defined in the Employment Rights Act 2025, the Fair Work Agency will be able exercise this power across all employment law.

There are also some non-statutory functions that the Fair Work Agency has in its toolkit, such as naming non-compliant employers publicly.

Although employment status is not currently enforced by the Fair Work Agency, understanding an individual's employment status is a key part of enforcing certain rights. For example, it is a key element of establishing entitlement to the National Minimum Wage, since only limb (b) workers and employees are entitled to it. Currently if a worker is misclassified as self-employed, and the evidence provided to enforcement officers is sufficient to confidently issue a Notice of Underpayment, this requires the engager to pay back unpaid wages and leaves it up to the employer to appeal via the court if they disagree. However, if the evidence is inconclusive, often

the case will not be pursued further, and there are currently no means for enforcement officers to test an individual's employment status in court.

The new civil proceedings power could go some way to remedying this gap in the existing system of state enforcement. It affords the Secretary of State the ability to act where there might be systemic breaches and therefore seek decisions from a tribunal on the application of employment legislation. This could be used in situations described above, where an enforcement officer is not able to make a conclusive determination of status but suspects bogus self-employment. The Secretary of State could consider bringing a case in place of an individual or group of individuals, to clarify their employment status where enforcement officers do not have enough information to confidently issue a Notice of Underpayment. It could also be used strategically to clarify other important points of law.

19. **How could the Fair Work Agency's civil proceedings and legal assistance powers best be used to determine employment status?** (Open text response)

Helping assess employment status

Currently guidance on GOV.UK explains the factors a court is likely to consider when determining an individual's employment status. The government could supplement the guidance by developing an interactive online assessment. This could be a questionnaire, designed on the basis of the information contained in the guidance, which an individual (or their employer) could fill out to help them assess what employment status they are likely to have. A similar tool exists for tax purposes, the Check Employment Status for Tax (CEST) tool. However, any online assessment for the rights framework would only provide a non-binding indication of employment status.

Asking key questions, based on the existing case law, would provide users with a non-binding indication of the employment status they are likely to have as a result. This means the user would be taken through the content of the existing guidance without having to read the entire page and make their own conclusion. Taking into consideration a range of factors that affect an employment status determination, with some being given more weight than others, and the possibility of uncertain edge cases, the online assessment could potentially also offer an estimate of how likely someone's suggested status is to be correct.

The online assessment would neither constitute nor be a substitute for legal advice and its results would be purely indicative, aiming to better inform the user so they are better placed to take action, rather than being equivalent to a court determination or something that could be used in evidence before a court.

20. **Do you think an online assessment would make it easier for individuals and employers/engagers to assess employment status?**
    a) Yes
    b) No
    c) Don't know

    Please explain (Open text response)

21. **Do you have other suggestions that you think would make employment status easier to assess for the purpose of enforcing employment rights?** (Open text response)

Chapter 3: strengthening protections for the self-employed

The self-employed make a huge contribution to the economy and can sometimes be overlooked and not given the support they need to thrive. The government's small business strategy 'Backing your business: our plan for small and medium-sized businesses' seeks to change this and highlights how the government is supporting small and medium-sized businesses, including the self-employed, to succeed across the UK.

There are now 4.4 million self-employed individuals in the UK (up from 4.2 million at the start of 2021), making up 15% of the workforce. While the proposals in this consultation for reform of employment status will seek to tackle pressing issues such as bogus self-employment and the use of substitution clauses to avoid core worker protections, more needs to be done to support the genuinely self-employed who work day in, day out as a core part of the economy. The government is taking forward the most significant legislation in a generation to tackle late payments, which will help ensure the self-employed and small businesses are paid on time, ending the scourge of late payments which cost the UK economy £11bn per year and close down 38 UK businesses every day.

The government is interested in developing a better understanding of the experiences of the self-employed and what they want and need to improve their working lives. In the Plan to Make Work Pay; the government committed to strengthening rights and protections to help self-employed individuals thrive in good quality self-employment. This included proposals to introduce a new right to a written statement for the self-employed, which would provide key information about their contracts. This could give self-employed individuals greater clarity and certainty so that they can be sure of what the key terms of engagement are and can be confident about crucial information such as how much they will be paid. The government is also seeking views on the proposal to ensure that self-employed individuals are protected from being blacklisted simply for being a member of a trade union. Lastly, the government is interested in views on whether there are areas where rights and protections could be extended to the self-employed in order to better protect their health and safety.

For each of these proposals, the government is seeking to better understand the difficulties faced by the self-employed that they would tackle; the benefits that taking forward these proposals would offer and the challenges it would pose; and, if they were to be progressed, how best to approach this. The government is also keen to understand the potential impacts on business of the proposals. The government is consulting on these proposals as we committed to exploring them in the Plan to Make Work but that is not the extent of our ambitions in this area. However, any reforms in this area will need to consider how to produce the desired benefits for the self-employed, whilst managing any unintended consequences.

Applying rights and protections to the self-employed

Extending the meaning of 'worker' for the specific rights

Considering introducing rights and protections to the self-employed is a challenging task given the nature of the relationship between someone who is self-employed and the organisation engaging their services. Additionally, there is huge diversity in the different ways that self-employed individuals carry out their work, so it is challenging to ensure that the intended groups are included in any extension of rights.

There is currently no definition of a self-employed individual in UK employment law. Instead, when the courts assess an individual's employment status for employment rights purposes, they will generally determine whether that individual meets the tests to be a limb (b) worker and/or an

employee. If they do not meet the conditions of either of the tests, then that individual (assuming they perform work) is considered self-employed for the purposes of employment rights. The government is keen to mitigate the risk that proposals to strengthen protections for the self-employed could add further complexity to the existing employment status framework.

One approach the government could take could be to extend the meaning of 'worker' for the specific rights and protections that the government is proposing to introduce. This approach would be similar to one already seen elsewhere in employment law whereby a specific right is extended to a relevant group. An example of this can be found with whistleblowing protections in the Employment Rights Act 1996 (originally introduced by the Public Interest Disclosure Act 1998), where section 43K provides for an extended meaning of 'worker' for whistleblowing protections. It includes some groups of specific self-employed people, including self-employed doctors, dentists, ophthalmologists and pharmacists working in the NHS.

For the rights being considered for extension to the self-employed, amendments could be made to the relevant employment legislation at the specific sections. Those who meet the criteria would gain access to those specific rights.

This would avoid the need to introduce a general definition in employment legislation and would clearly apply only for the purposes of the specific rights. It could also make it easier to apply the new rights and protections to targeted groups of the self-employed who would stand to benefit most. However, there is a risk that this approach could lead to a more complicated framework as it could result in each specific right being applied to different groups of self-employed people.

22. **Would you support an approach that would extend the meaning of 'worker' for each of the specific rights?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

23. **Are you aware of any ways the rights and protections could be provided to the self-employed other than by extending the meaning of worker for the specific rights?**
    a) Yes
    b) No
    c) Don't know

    If so, please explain. (Open text response)

Rights and protections in the Plan to Make Work Pay

Written statement

The government is seeking views on introducing a new right to a written statement for certain self-employed individuals, which could provide key details about each contract for services that they enter into. As the law currently stands, there is no requirement for anything about the terms of engagement between a self-employed individual and a business or organisation engaging their services to be in writing. This means that self-employed individuals can find themselves carrying out services for extended periods without having confidence in their key terms of engagement, including what they will be paid or what the payment terms are. The introduction of a written

statement for self-employed individuals could seek to ensure that both parties approach the engagement from a position of clarity and confidence.

There are potential benefits to be derived from having a written statement in place. From the outset, both parties would be clear on the key terms of each engagement. It would also give self-employed individuals an increased level of certainty in terms of financial planning by setting out the payment terms from the outset. This would make it harder for engagers to avoid the payment terms they have committed to and would support the wider action the government is taking to tackle late payments.

The introduction of a written statement could also go some way towards tackling the issue of bogus self-employment, where the claimed employment status does not match the reality of the working relationship either through a lack of understanding of employment status, or a deliberate choice by the engager to reduce their liabilities and obligations. With the key terms the two parties have agreed to written down, discrepancies could be more easily identified and evidenced where there are inconsistencies between what is contracted for and what is happening in practice. A written statement should allow either party, if there is any confusion, to better seek independent legal advice and to allow them to make informed decisions on the terms of engagement and any potential breach of contract.

Having a written statement in place would also provide a record of the existence of the engagement between self-employed individuals and those who engage their services. This could support enforcement efforts and help tackle issues such as illegal working.

In the event that enforcement officers need to understand who has been working for the engager, for example when investigating compliance with Right to Work checks, they may be able to use the written statement as a record of the engagement and this should support them with their enforcement work.

Introducing a requirement for a written statement for all self-employed individuals would go some way to ensuring a level playing field, however there is a risk that it would create unintended consequences.

The government is keen to avoid a situation where a self-employed individual providing services to a private individual falls within scope of the requirement and so a written statement is required. For example, the government would not want a private individual engaging a local window cleaner or landscaper to work at their home to have to provide them with a written statement.

However, where a self-employed individual is providing services to a business, it would seem reasonable to have the key information underpinning the contract for services to be set out in writing. For example, the make-up specialist who is being engaged by a production company on a TV production, or a dancer being asked to tour with an artist, or the IT contractor providing services to a business upgrading their systems. There are other examples where the government is interested in views on whether, and how, a written statement might apply: for example, where someone both sells goods and also provides services, or the private landlord who engages the services of a tradesperson to carry out one-off maintenance. There is huge diversity in self-employed working relationships, and the government is interested in views on who should be in scope of a right to a written statement.

There are clearly challenges and the potential for unintended consequences involved in introducing a right to a written statement for the self-employed. The extent of benefits and costs will depend on scope of any reform: both in terms of what is included in any future requirement and any qualifying criteria. The government is seeking to better understand these potential effects in more detail

through this consultation and will consider the whole range of responses, weighing the evidence on benefits and risks, before taking any further decisions.

What might be included in the written statement

The government recognises that self-employed individuals carry out their work in many different ways, and that there are not always consistent features across the working relationships between the self-employed and those who engage their services. However, taking the different working relationships into consideration, there is key information that is applicable to most, if not all self-employed contracts for services, and therefore the government believes could be reflected in a potential written statement.

These include:

- Engager's name
- Self-employed individual's name
- Scope of the work
- Expected period of the work
- Payment terms e.g. how much the self-employed individual will get paid and when
- Terms for termination
- Any further details the parties agree should be included in a written statement

Where a contract for services is being put in place it could be beneficial to have this key information in writing at the outset either in a simple statement or as part of a written contract to provide greater clarity for both parties. Where an engager provides a written contract and integrates the key information within that contract, then the intention is that the written contract would meet the requirement for a written statement. Engagers would not be expected to provide a separate written statement where they were already providing a written contract with the key information included.

24. **Are you aware of any evidence that the lack of a right to a written statement for the self-employed creates difficulties for individuals engaged on a self-employed basis?**

    a) Yes
    b) No
    c) Don't know

Please explain. (Open text response)

25. **Would you support the introduction of a new right to a written statement for the self-employed, which would provide key details about the contract?**

    a) Yes
    d) No
    b) Don't know

    Please explain. (Open text response)

26. **Do you think that the key information set out above covers the necessary terms of engagement that should be included in a written statement?**
    a) Yes
    b) No

c) Don't know

If not, please set out what other information should be included and why. (Open text response)

27. **Should a right to a written statement apply to all self-employed individuals, or are there specific groups it should (or should not) apply to?**
    a) All self-employed individuals
    b) Specific groups

    Please explain. (Open text response)

28. **Are there any common principles that the government should (or should not) apply to enable consistency as to who is in scope? Please explain.** (Open text response)

29. **Should there be a requirement to update the written statement where there are changes to the key information within the statement?**
    a) Yes
    b) No
    c) Don't know

    Please explain – e.g. should there be *de minimis* exceptions such as a minimum period between updates, or should some changes not require an update if they are only minor (what does minor mean in that case)? (Open text response)

Accessing the right to a written statement

Many existing employment rights have a form of qualifying criteria, in addition to meeting the employment status tests as a necessary condition for accessing relevant employment rights. For example, to qualify for statutory redundancy pay you need to be an employee, but you also need to have been working for your current employer for 2 years or more.

The government could consider applying qualifying criteria that self-employed individuals are required to meet to access the right to a written statement. This could help reduce the administrative burden for businesses where the benefits of a written statement for the self-employed would be limited, for example where the period of engagement is very short or the value of the contract is low, to limit the complexity of these engagements for both parties.

Period of engagement

A time frame could be applied to stipulate that only where a contract for services is due to last over a certain specified period of time would there be a requirement to provide a written statement. For contracts that are shorter than that specified period there would be no need to provide one. This would limit the administrative burden of providing a written statement where the contracts are for a short period of time. A timeframe could however present challenges where there are repeated short engagements and therefore a written statement may not be required and could leave some self-employed individuals who might otherwise benefit from the protections out of scope.

30. **Would you support the time period of a contract for services as a qualifying criterion for a right to a written statement?**
    a) Yes

b) No
c) Don't know

31. **What would be a reasonable qualifying time period?**
    a) 1 week
    b) 4 weeks
    c) 3 months
    d) Another timeframe – please set out timeframe and explain rationale (Open text response)

32. **Do you think using a timeframe could be problematic where there are repeated engagements and do you have any suggestions for these circumstances?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

Value of contract

Similar to the time frame, the value of the contract for services could be used as a qualifying criterion. Where the expected value of the contract exceeded a certain amount there would be a requirement to provide a written statement. In order not to create an overly complex or administratively burdensome system, the government could set a nominal value where contracts with a value above that specified amount would require a written statement. Where the contract was below that specified amount, a written statement would not be required.

33. **Would you support a nominal value of the contract as a qualifying criterion?**
    a) Yes
    b) No
    c) Don't know

    If so, what would an appropriate value be? (Open text response)

34. **What are the issues with using a nominal value? Please explain.** (Open text response)

35. **Are there alternative qualifying criteria that could be used? Please set out your thinking and rationale.** (Open text response)

36. **Are there any other ways to reduce burdens on business if introducing a right to a written statement? Please explain.** (Open text response)

Blacklisting

Blacklisting of trade unionists involves the systematic compilation of information on individual trade union members and the use of this information by employers and recruiters to discriminate against those individuals because of their trade union membership or because of their involvement in trade union activity. In 2010, regulations were made under the Employment Relations Act 1999 which prohibit the compilation, sale or use of blacklists.

This government is clear that blacklisting is unacceptable and has no place in modern employment relations. The government's Employment Rights Act 2025 modernises blacklisting legislation to make it fit for the 21st century by amending the Employment Relations Act 1999, so that further protections can be delivered by regulations, alongside practical guidance. The Act makes several key changes, which include:

- Enabling regulations to be made that extend prohibitions to lists that are not prepared for the purposes of discrimination, but that are subsequently used for that, extending to lists created by predictive technology.
- Extending the scope of the powers to ensure that prohibitions no longer have to be limited to employers or employment agencies.
- Providing a power for the Secretary of State to make regulations in relation to third party use of blacklists.

The Employment Relations Act 1999 (Blacklists) Regulations 2010 (the 'Blacklists Regulations 2010') provide protection to employees and workers. The definition of 'worker' for this purpose (section 13 of the Employment Relations Act 1999, which specifically references section 230 of the Employment Rights Act 1996) is wider than the definition of a general worker (defined in section 230 of the Employment Rights Act 1996) and includes agency workers.

Employment status considerations

While the Employment Rights Act 2025 is enabling the expansion of the scope of blacklisting protections, the self-employed are currently not covered by the existing protections set out in the Blacklists Regulations 2010.

However, sections 144 and 145 of the Trade Union and Labour Relations (Consolidation) Act 1992 do provide protection to those individuals who supply goods and services. A term in a contract is void if it is seeking to make trade union membership or non-membership a term of the contract.

There is also a prohibition on refusing to deal with a supplier/prospective supplier on grounds of union membership. As such, although the self-employed are not expressly protected by the Blacklists Regulations 2010, someone wishing to engage them in work is prohibited from refusing to engage with them on the grounds of their union membership. The recourse available to an individual in this situation would be contractual and/or legal action on grounds of breach of statutory duty. They do not, for example, have the ability to take the matter to an Employment Tribunal.

37. **Are the current protections for those workers who supply goods and services sufficient in practice to ensure they cannot be blacklisted?**
    a) Yes
    b) No
    c) Don't know

    If not, provide details of why these protections may be insufficient. (Open text response)

Blacklisting has historically been a particular issue in the construction industry where large numbers are not employed directly and may be considered self-employed. In some cases, bogus self-employment may be taking place; in others, people will be genuinely self-employed. For example, genuinely self-employed contractors are common in the offshore oil and gas sector.

Chapter 1 of this consultation considers a potential widening of the definition of a limb (b) worker in section 230 of the Employment Rights Act 1996, to place less emphasis on 'personal service'. This would, for example, extend the definition of a limb (b) worker to people who, under the current law, would otherwise be limb (b) workers but are classed as self-employed instead because they fail the substitution/personal service element of the test. Such an extension could bring some currently self-employed people within scope of the definition of a limb (b) worker and assist with tackling instances of bogus self-employment.

38. **If the definition of a limb (b) worker is widened, should this change also follow through to blacklisting legislation?**
    a) Yes
    b) No
    c) Don't know

    If so, please explain why. (Open text response)

The government is considering whether to extend blacklisting protections so that more self-employed individuals can benefit from blacklisting protections, and if so, how. There is currently no definition of a self-employed individual in UK employment law.

39. **If blacklisting protections are extended, what should be the scope of relationships between business and the self-employed that this applies to? Please explain.** (Open text response)

Health and safety

The Health and Safety at Work Act 1974 is the primary piece of legislation covering occupational health and safety in Great Britain. The scope of the legislation is wide, and it sets out the duties employers have towards employees. It also provides that employers should protect the health and safety of non-employees and others affected by the employer's business activities so that businesses must conduct their operations in a way that minimises risks to the public, visitors, contractors and anyone else who might be impacted by their activities, so far as is reasonably practicable. It therefore also provides protections to the self-employed.

The government is, however, interested in views on whether there are areas where rights and protections could be extended to the self-employed in order to better protect their health and safety.

One of those areas is the possibility of extending protections provided by section 44(1A) of the Employment Rights Act 1996 to self-employed individuals. Section 44(1A) protects workers from suffering detriment where they take appropriate steps to protect themselves or others from serious and imminent danger in the workplace. This enables workers to feel confident to remove themselves from serious and imminent danger in the workplace without having to face future consequences imposed by the employer.

There are industries and workplaces where many of the workforce are likely to be self-employed, for example in creative and cultural sectors, who may face significant health and safety risks but might fear that by taking action to protect themselves or others from those risks, they may be risking losing opportunities for future work. Extending the protections provided by section 44(1A) of the Employment Rights Act 1996 to people working in a self-employed capacity might, under circumstances such as those, provide greater protection to those individuals.

40. **Are you aware of any evidence that the self-employed are placing their health and safety at risk for fear of losing opportunities for future work?** (Open text response)

41. **Do you think the extension of section 44(1A) of the Employment Rights Act 1996 to self-employed individuals could help protect their health and safety?**
    a) Yes
    b) No
    c) Don't know

    If not, please explain why and any risks with extending the protections. (Open text response)

42. **Were the government to extend section 44(1A), should it apply to all self-employed individuals, or are there specific groups this should (or should not) apply to?**
    a) All self-employed individuals
    b) Specific groups

    Please explain. (Open text response)

A second area for consideration could be the strengthening of self-employed representation in the workplace by allowing self-employed individuals to become health and safety representatives when they are members of a trade union. Under the law as it stands, the Safety Representatives and Safety Committees Regulations 1977 ('the 1977 Regulations') grant rights to safety representatives, including the right to perform functions related to health and safety at work, such as inspecting the workplace and consulting with the employer on health and safety matters. Currently only employees, or non-employees who are members of Equity or the Musicians' Union are able to be health and safety representatives covered by the 1977 Regulations.

The government could consider amending the 1977 Regulations so that non-employees who are members of any other trade union can also be health and safety representatives covered by the 1977 Regulations. This could enable more self-employed individuals who are members of a trade union to take a proactive role in health and safety in the workplace.

43. **Are you aware of any issues resulting from only employees, or non-employees who are members of Equity or the Musicians' Union being covered by the 1977 Regulations?** (Open text response)

44. **Do you think amending the Safety Representatives and Safety Committees Regulations 1977 to enable non-employees who are members of any trade union to be health and safety representatives covered by the 1977 Regulations could be an effective way of strengthening protections for the self-employed?**
    a) Yes
    b) No
    c) Don't know

    If yes, please explain why including any benefits. (Open text response)

    If no, please explain why and any risks with extending the protections? (Open text response)

45. **Do you have any suggestions for ways to reduce burdens on business if the government proceeds with these reforms to health and safety protections?** (Open text response)

46. **Do you have any other suggestions for where rights and protections might be extended to the self-employed in order to better protect their health and safety?** (Open text response)

Next steps

The consultation will close on 11:55 pm on 8 January 2027. Following the closure of this consultation, we will analyse all responses and publish a government response in due course.

Summary of consultation questions

1. **Do you agree with the government's view that the worker definition should place less emphasis on personal service and that a failure to meet the personal service test should not on its own prevent someone from being a limb (b) worker?**
    a) Yes
    b) No
    c) Don't know

2. **What role do you think a contractual right to substitution should have as part of the limb (b) worker test? Please explain.** (Open text response)

3. **Should greater weight be given to the factual performance of personal work rather than whether there is a contractual power of substitution?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

4. **Do you think that the current way the courts look at whether the right to substitution is fettered/unfettered is an effective way of establishing personal service?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

5. **Do you agree that requiring control to be considered alongside personal service in step 2 could be an effective way of placing less emphasis on personal service?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

6. **Do you agree that the ability to set the rate of pay or negotiate pay is a key factor in differentiating between limb (b) workers and the self-employed?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

7. **Would you support lowering the bar required to satisfy what the courts consider to be personal service? For example, by stating that any right of substitution limited only by the need to show that the substitute was as qualified as the contractor to do the work would be consistent with personal service?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

8. **Do you think that this approach would be effective?**
    a) Yes
    b) No
    c) Don't know

    Please explain why, including any potential risks (Open text response)

9. **Are there any benefits to this approach over placing less emphasis on personal service by elevating control? Please explain.** (Open text response)

10. **Do you have suggestions of other ways the government could place less emphasis on personal service when the courts are determining employment status? Please explain.** (Open text response)

11. **If the definition of limb (b) worker is changed, do you agree that this change should also follow through in the Trade Union and Labour Relations (Consolidation) Act 1992 , the Working Time Regulations 1998, SI 1998/1833, the National Minimum Wage Act 1998 and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, SI 2000/1551 which uses the same or a similar definition?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

12. **Would you support renaming 'limb (b) worker'?**
    a) Yes
    b) No
    c) Don't know

13. **Do you have any suggestions for a term to replace 'limb (b) worker'?** (Open text response)

14. **Do you agree that the government should create a presumption of worker status by reversing the burden of proof?**
    a) Yes
    b) No
    c) Don't know

    Please explain (Open text response)

15. **Do you see any risks with this approach? Please explain.** (Open text response)

16. **Do you think there should be any conditions that need to be satisfied first before the reversed burden of proof applies, for example whether the facts indicate direction and control?**
    a) Yes
    b) No
    c) Don't know

    Please explain (Open text response)

17. **Do you agree that repeated failures to recognise employment status should constitute an aggravating factor in any breach of employment rights?**
    a) Yes
    b) No
    c) Don't know

18. **When a second claim is being brought would broadly similar facts be sufficient to constitute an aggravating factor in a breach?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

19. **How could the Fair Work Agency's civil proceedings and legal assistance powers best be used to determine employment status?** (Open text response)

20. **Do you think an online assessment would make it easier for individuals and employers/engagers to assess employment status?**
    a) Yes
    b) No
    c) Don't know

    Please explain (Open text response)

21. **Do you have other suggestions that you think would make employment status easier to assess for the purpose of enforcing employment rights?** (Open text response)

22. **Would you support an approach that would extend the meaning of 'worker' for each of the specific rights?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

23. **Are you aware of any ways the rights and protections could be provided to the self-employed other than by extending the meaning of worker for the specific rights?**
    a) Yes
    b) No
    c) Don't know

    If so, please explain. (Open text response)

24. **Are you aware of any evidence that the lack of a right to a written statement for the self-employed creates difficulties for individuals engaged on a self-employed basis?**
    a) Yes
    b) No

c) Don't know

Please explain. (Open text response)

25. **Would you support the introduction of a new right to a written statement for the self-employed, which would provide key details about the contract?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

26. **Do you think that the key information set out above covers the necessary terms of engagement that should be included in a written statement?**
    a) Yes
    b) No
    c) Don't know

    If not, please set out what other information should be included and why. (Open text response)

27. **Should a right to a written statement apply to all self-employed individuals, or are there specific groups it should (or should not) apply to?**
    a) All self-employed individuals
    b) Specific groups

    Please explain. (Open text response)

28. **Are there any common principles that the government should (or should not) apply to enable consistency as to who is in scope? Please explain.** (Open text response)

29. **Should there be a requirement to update the written statement where there are changes to the key information within the statement?**
    a) Yes
    b) No
    c) Don't know

    Please explain – e.g. should there be *de minimis* exceptions such as a minimum period between updates, or should some changes not require an update if they are only minor (what does minor mean in that case)? (Open text response)

30. **Would you support the time period of a contract for services as a qualifying criterion for a right to a written statement?**
    a) Yes
    b) No
    c) Don't know

31. **What would be a reasonable qualifying time period?**
    a) 1 week
    b) 4 weeks

c) 3 months
d) Another timeframe – please set out timeframe and explain rationale (Open text response)

32. **Do you think using a timeframe could be problematic where there are repeated engagements and do you have any suggestions for these circumstances?**
    a) Yes
    b) No
    c) Don't know

    Please explain. (Open text response)

33. **Would you support a nominal value of the contract as a qualifying criterion?**
    a) Yes
    b) No
    c) Don't know

    If so, what would an appropriate value be? (Open text response)

34. **What are the issues with using a nominal value? Please explain.** (Open text response)

35. **Are there alternative qualifying criteria that could be used? Please set out your thinking and rationale.** (Open text response)

36. **Are there ways to reduce burdens on business when introducing a right to a written statement? Please explain.** (Open text response)

37. **Are the current protections for those workers who supply goods and services sufficient in practice to ensure they cannot be blacklisted?**
    a) Yes
    b) No
    c) Don't know

    If not, provide details of why these protections may be insufficient. (Open text response)

38. **If the definition of a limb (b) worker is widened, should this change also follow through to blacklisting legislation?**
    a) Yes
    b) No
    c) Don't know

    If so, please explain why. (Open text response)

39. **If blacklisting protections are extended, what should be the scope of relationships between business and the self-employed that this applies to? Please explain.** (Open text response)

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    a) Yes
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    a) Yes
    b) No
    c) Don't know

    If yes, please explain why including any benefits. (Open text response)

    If no, please explain why and any risks with extending the protections? (Open text response)

45. **Do you have any suggestions for ways to reduce burdens on business if the government proceeds with these reforms to health and safety protections?** (Open text response)

46. **Do you have any other suggestions for where rights and protections might be extended to the self-employed in order to better protect their health and safety?** (Open text response)

Annex A: employment rights according to employment status

Table 1: overview of employment rights according to employment status

Worker/employee rights

Statutory right/protection	Employee	Limb (b) worker	Qualifying period
Unlawful deductions from wages	Yes	Yes	Day 1
National Minimum Wage/National Living Wage[4]	Yes	Yes	Day 1
Paid holidays	Yes	Yes	Day 1
Right to be accompanied at a grievance/disciplinary hearing	Yes	Yes	Day 1
Whistleblowing	Yes	Yes	Day 1
Discrimination, reasonable adjustments, and other protections under the Equality Act 2010 protections[5]	Yes	Yes	Day 1
Equal treatment for part-time workers	Yes	Yes	Day 1
Protection from detriment for trade union membership*	Yes	Yes	Day 1
Itemised pay slip	Yes	Yes	Day 1
Written particulars of employment	Yes	Yes	Day 1
Protection from detriment in certain health and safety cases	Yes	Yes	Day 1
Workplace pension scheme*	Yes	Maybe	Day 1
Right to join a trade union and participate in trade union activities*	Yes	Partial	Day 1

[4] National Minimum Wage applies to workers of school leaving age or over. National Living Wage applies to workers age 21 or over.

[5] The protections under the Equality Act 2010 apply according to the definitions within that Act. This consultation is not proposing any changes to the scope of protections under the Equality Act 2010.

Employee rights day 1

Statutory right/protection	Employee	Limb (b) worker	Qualifying period
Maternity leave and adoption leave	Yes	No	Day 1
Statutory bereavement leave	Yes	No	Day 1
Paternity leave	Yes	No	Day 1
Unpaid parental leave	Yes	No	Day 1
Time off for various activities and duties (paid and unpaid)	Yes	No	Day 1
Equal treatment for fixed-term contract staff	Yes	No	Day 1
Unfair dismissal (certain automatically unfair reasons)	Yes	No	Day 1
Breach of employment contract	Yes	No[6]	Day 1
Statutory Sick Pay*	Yes	May be entitled	Day 1
Right to request flexible working	Yes	No	Day 1

[6] Limb (b) workers can bring a claim for a breach of contract generally – it will just be the contract or provision of work or services that is relevant contract rather than the employment contract.

Employee rights with qualifying periods

Statutory right/protection	Employee	Limb (b) worker	Qualifying period
Minimum period of statutory notice to terminate a contract of employment	Yes	No	1 Month
Medical suspension pay	Yes	No	1 Month
Guarantee pay	Yes	No	1 Month
Shared parental leave	Yes	No	26 Weeks
Right to request time off for study or training	Yes	No	26 Weeks
Adoption pay, shared parental pay, paternity pay, maternity pay, bereavement pay*	Yes	May be entitled	26 Weeks
Unpaid parental leave	Yes	No	1 Year
Unfair dismissal (ordinary)	Yes	No	2 Years[7]
Written reasons for dismissal (in most cases)	Yes	No	2 Years[8]
Statutory redundancy pay	Yes	No	2 Years

*Further information on employment rights and statutory payments that have similar, but different eligibility criteria are as follows:

Discrimination, reasonable adjustments and other prohibited conduct under the Equality Act 2010

The Equality Act 2010 protects those in 'employment' (which for this purpose comprise employees, limb (b) workers and some self-employed people) from unlawful conduct such as discrimination, harassment and victimisation that applies to protected characteristics. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act applies to individuals who have an employment contract, an apprenticeship contract, or a contract to personally do work. The Equality Act employment protections also extend to a variety of wider work relationships beyond employment, such as job applicants and former employees, contract workers, police officers, partners, barristers and advocates, public office holders and those seeking or undertaking vocational training.

[7] From 1 January 2027, the qualifying period for unfair dismissal will reduce from two years to six months.
[8] There is no qualifying period where a woman is dismissed during pregnancy or during maternity leave or additional maternity leave. From 1 January 2027, the qualifying period for other cases will reduce from two years to six months.

Individuals who are covered by the Equality Act 2010 and are subject to discrimination or any other unlawful conduct because of a protected characteristic can make a claim in an employment tribunal.

This consultation is not proposing any changes to the scope of protections under the Equality Act 2010.

Workplace pension scheme

An employer must automatically enrol employees and limb (b) workers into a workplace pension scheme and make contributions to their pension if all of the following apply: you are aged between 22 and State Pension age, you earn at least £10,000 per year for that employer and you usually ('ordinarily') work in the UK.

Right to join a trade union and to participate in trade union activities

It is automatically unfair for an employer to dismiss an employee on the grounds of trade union membership or for participating in union activities at an appropriate time. It is also against the law to refuse to recruit a person as a limb (b) worker or employee because the person is a member of a trade union. Employers must not subject a limb (b) worker or employee to detriment for the purposes of preventing, deterring or penalising trade union membership or participation in union activities at an appropriate time.

Right to request time off for study or training

An employee has the right to request time off for study or training if all of the following apply: you work for an organisation with at least 250 employees, you have at least 26 weeks' continuous service, and the training helps you do your job better.

Statutory payments

All employees (and in limited cases some limb (b) workers) are eligible for Statutory Maternity Pay, Shared Parental Pay, Paternity Pay, Adoption Pay and Parental Bereavement Pay as long as they also meet other qualifying criteria and earn on average above the Lower Earnings Limit (£129 a week before tax). Statutory Sick Pay does not require individuals to earn above the Lower Earnings Limit.

Whether an individual can get these rights is determined by reference to criteria set out under the Social Security Contributions and Benefits Act 1992 and by reference to other relevant legislation. Whether a potential employer is an employer for Statutory Maternity Pay, Shared Parental Pay, Paternity Pay, Adoption Pay, Parental Bereavement Pay or Statutory Sick Pay purposes is linked to their obligation to pay secondary Class 1 National Insurance Contributions, rather than the employment rights framework.

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