



Department for
Business, Energy
& Industrial Strategy



HM Treasury



HM Revenue
& Customs

Employment Status: Discussion Document - Response form

The consultation is available at: www.gov.uk/government/consultations/employment-status

The closing date for responses is Friday 1st June 2018

Please return completed forms to:

Employment Status Consultation

Department of Business, Energy and Industrial Strategy

Labour Markets, Level 1 Spur

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London

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Please be aware that we intend to publish all responses to this consultation.

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If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments: [Click here to enter text.](#)

Questions

Your name:

Your organisation if replying on their behalf (if applicable):

Your or organisation address:

	Please check a box from the list of options below that best describes you as a respondent:
<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

	Please indicate which part of the discussion document you are responding to:
<input checked="" type="checkbox"/>	Employment rights
<input type="checkbox"/>	Tax
<input type="checkbox"/>	Both rights and tax

Question 1 (Chapter 4, page 21 in discussion document)

Do you agree that the points discussed in this chapter are the main issues with the current employment status system?

Yes No Not sure

Are there other issues that should be taken into account?

Yes No Not sure

Comments: Click here to enter text.

Question 2 (Chapter 5, page 22 in discussion document)

Would codification of the main principles – discussed in chapter 3 – strike the right balance between certainty and flexibility for individuals and businesses if they were put into legislation?

Yes No Not sure

Please explain why/why not: Click here to enter text.

Currently some unscrupulous employers are trying to avoid providing employment status and conferring rights thereby avoiding costs to themselves. Codification will bring certainty to individuals and businesses, while allowing businesses the flexibility they require if done at the right level.

Question 3 (Chapter 5 page 23 in discussion document)

What level of codification do you think would best achieve greater clarity and transparency on employment status for i) individuals and ii) businesses – full codification of the case law, or an alternative way?

- i) individuals, please state: Full codification
- ii) businesses, please state: Full codification

Question 4 (Chapter 5 page 23 in discussion document)

Is codification relevant for both rights and/or tax?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 5 (Chapter 5 page 23 in discussion document)

Should the key factors in the irreducible minimum be the main principles codified into primary legislation?

Yes No Not sure

Comments: [Click here to enter text.](#)

Regulations can provide the level of detail that will be needed to flesh out the principles.

Question 6 (Chapter 5 page 24 in discussion document)

What does mutuality of obligation mean in the modern labour market?

Please state: Mutuality of obligation should mean – at least in principle – that the employer could have offered work and the worker could have accepted it. That is that the possibility of obligations being met could have been met.

Question 7 (Chapter 5 page 24 in discussion document)

Should mutuality of obligation still be relevant to determine an employee's entitlement to full employment rights?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 8 (Chapter 5 page 24 in discussion document)

If so, how could the concept of mutuality of obligation be set out in legislation?

Please state: Not sure

Question 9 (Chapter 5 page 25 in discussion document)

What does personal service mean in the modern labour market?

Please state: The service must be delivered by the individual and that substitution rights do not exist (except in limited cases usually specified by the courts.)

Question 10 (Chapter 5 page 25 in discussion document)

Should personal service still be relevant to determine an employee's entitlement to full employment rights?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 11 (Chapter 5 page 25 in discussion document)

If so, how could the concept of personal service be set out in legislation?

Please state: Not sure

Question 12 (Chapter 5 page 25 in discussion document)

What does control mean in the modern labour market?

Please state: Control should mean that the employer is able to exercise sufficient ability to intervene in how, whether or when the work is undertaken.

Question 13 (Chapter 5 page 25 in discussion document)

Should control still be relevant to determine an employee's entitlement to full employment rights?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 14 (Chapter 5 page 25 in discussion document)

If so, how can the concept of control be set out in legislation?

Please state: Not Sure

Question 15 (Chapter 5 page 26 in discussion document)

Should financial risk be included in legislation when determining if someone is an employee?

Yes No Not sure

Please explain why/why not: Because financial risk is a good indicator of self-employment and provides a barrier to the incorrect use of self-employment.

Question 16 (Chapter 5 page 26 in discussion document)

Should 'part and parcel' or 'integral part' of the business be included in legislation when determining if someone is an employee?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 17 (Chapter 5 page 26 in discussion document)

Should the provision of equipment be included in legislation when determining if someone is an employee?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 18 (Chapter 5 page 26 in discussion document)

Should 'intention' be included in legislation when determining if someone is an employee in uncertain cases?

Yes No Not sure

Comments: In the case of disputed status, the original intention of both parties can provide evidence of the relationship as originally agreed.

Question 19 (Chapter 5 page 26 in discussion document)

Are there any other factors that should be included in primary legislation when determining if someone is an employee?

Yes No Not sure

Comments: [Click here to enter text.](#)

And what are the benefits or risks of doing so?

Please state: Our responses have largely been to support codification of the existing system, which we believe is essentially fit for purpose.

Question 20 (Chapter 5 page 27 in discussion document)

If government decided to codify the main principles in primary legislation, would secondary legislation: i) be required to provide further detail on top of the main principles; and ii) provide sufficient flexibility to adapt to future changes in working practices?

i) be required to provide further detail on top of the main principles:

Yes No Not sure

Comments: [Click here to enter text.](#)

ii) provide sufficient flexibility to adapt to future changes in working practices

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 21 (Chapter 5 page 27 in discussion document)

Would the benefits of this approach be outweighed by the risk of individuals and businesses potentially needing to familiarise themselves with frequent changes to legislation?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 22 (Chapter 6 page 29 in discussion document)

Should a statutory employment status test use objective criteria rather than the existing tests?

Yes No Not sure

Comments: [Click here to enter text.](#)

What objective criteria could be suitable for this type of test?

Please state: [Click here to enter text.](#)

Question 23 (Chapter 6 page 30 in discussion document)

What is your experience of other tests, such as the Statutory Residence Test (SRT)? What works well, and what are their drawbacks?

Please state: We do not have previous experience of this test.

Question 24 (Chapter 6 page 30 in discussion document)

How could a new statutory employment status test be structured?

Please state: Not sure

Question 25 (Chapter 6 page 31 in discussion document)

What is your experience of tests, such as the Agency Legislation tests for tax, and how these have worked in practice? What works well about these tests in practice, and what are their drawbacks?

Please state: [Click here to enter text.](#)

Question 26 (Chapter 6 page 31 in discussion document)

Should a new employment status test be a less complex version of the current framework?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 27 (Chapter 6 page 32 in discussion document)

Do you think a very simple objective or mechanical test would have perverse incentives for businesses and individuals? Could these concerns be mitigated? If so, how?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 28 (Chapter 6 page 32 in discussion document)

Are there alternative ways, rather than legislative change, that would better achieve greater clarity and certainty for the employment status regimes (for example, an online tool)?

Yes No Not sure

Please state: [Click here to enter text.](#)

Question 29 (Chapter 6 page 33 in discussion document)

Given the current differences in the way that the employed and the self-employed are taxed, should the boundary be based on something other than when an individual is an employee?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 30 (Chapter 7 page 34 in discussion document)

Do you agree with the review's conclusion that an intermediate category providing those in less certain casual, independent relationships with a more limited set of key employment rights remains helpful?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 31 (Chapter 7 page 35 in discussion document)

Do you agree with the review's conclusion that the statutory definition of worker is confusing because it includes both employees and Limb (b) workers?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 32 (Chapter 7 page 35 in discussion document)

If so, should the definition of worker be changed to encompass only Limb (b) workers?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 33 (Chapter 7 page 35 in discussion document)

If the definition of worker were changed in this way, would this create any unintended consequences on the employee or self-employed categories?

Yes No Not sure

If yes, please state: [Click here to enter text.](#)

Question 34 (Chapter 7 page 36 in discussion document)

Do you agree that the government should set a clearer boundary between the employee and worker statuses?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 35 (Chapter 7 page 36 in discussion document)

If you agree that the boundary between the employee and worker statuses should be made clearer:

- i. Should the criteria to determine worker status be the same as the criteria to determine the employee status, but with a lower threshold or pass mark? If so, how could this be set out in legislation?

Yes No Not sure

Please state: [Click here to enter text.](#)

- ii. Should the criteria to determine worker status be a selected number of the criteria that is used to determine employee status (i.e. a subset of the employee criteria)? If so, how could this be set out in legislation?

Yes No Not sure

Please state: This would seem to be less complex than (i) above.

- iii. Or, is there an alternative approach that could be considered? If so, how could this be set out in legislation?

Yes No Not sure

Please state: [Click here to enter text.](#)

Question 36 (Chapter 7 page 36 in discussion document)

What might the consequences of these approaches be?

Please state: Not sure

Question 37 (Chapter 7 page 37 in discussion document)

What does mutuality of obligation mean in the modern labour market for a worker?

Please state: An agreement between two parties where one party agrees to undertake work and the other party agrees to pay for that work.

Question 38 (Chapter 7 page 37 in discussion document)

Should mutuality of obligation still be relevant to determine worker status?

Yes No Not sure

Please explain why/why not: [Click here to enter text.](#)

Question 39 (Chapter 7 page 37 in discussion document)

If so, how can the concept of mutuality of obligation be set out in legislation?

Please state: Not sure

Question 40 (Chapter 7 page 37 in discussion document)

What does personal service mean in the modern labour market for a worker?

Please state: The work is carried out by one party and is not normally delegated to another person

Question 41 (Chapter 7 page 37 in discussion document)

Should personal service still be a factor to determine worker status?

Yes No Not sure

Please explain why/why not: To make clear the distinction between worker and self-employed person

Question 42 (Chapter 7 page 37 in discussion document)

Do you agree with the review's conclusion that the worker definition should place less emphasis on personal service?

Yes No Not sure

Please explain:

Question 43 (Chapter 7 page 38 in discussion document)

Should we consider clarifying in legislation what personal service encompasses?

Yes No Not sure

Please explain: [Click here to enter text.](#)

Question 44 (Chapter 7 page 38 in discussion document)

Are there examples of circumstances where a fettered (restricted) right might still be consistent with personal service?

Yes No Not sure

Please state: [Click here to enter text.](#)

Question 45 (Chapter 7 page 39 in discussion document)

Do you agree with the review's conclusion that there should be more emphasis on control when determining worker status?

Yes No Not sure

Please explain: [Click here to enter text.](#)

Question 46 (Chapter 7 page 39 in discussion document)

What does control mean in the modern labour market for a worker?

Please state: Provision of a job description defining the supply, nature of work and how it is carried out, regular supervision or appraisal, assessment of the quality of

the work, provision of policies and procedures detailing how work is to be undertaken.

Question 47 (Chapter 7 page 39 in discussion document)

Should control still be relevant to determine worker status?

Yes No Not sure

Please explain: [Click here to enter text.](#)

Question 48 (Chapter 7 page 39 in discussion document)

If so, how can the concept of control be set out in legislation?

Please state: By having one or more of the elements identified in section 46

Question 49 (Chapter 7 page 39 in discussion document)

Do you consider that any factors, other than those listed above, for 'in business in their own account' should be used for determining worker status?

Yes No Not sure

Please state: [Click here to enter text.](#)

Whether the person is liable for claims of negligence or not meeting the terms of the contract. Where there is no ongoing relationship between the hirer and the person.

Question 50 (Chapter 7 page 39 in discussion document)

Do you consider that an individual being in business on their own account should be reflected in legislation to determine worker status? If so, how could this be defined?

Yes No Not sure

Please state: [Click here to enter text.](#)

Question 51 (Chapter 7 page 39 in discussion document)

Are there any other factors (other than those set out above for all the different tests) that should be considered when determining if someone is a worker?

Yes No Not sure

Please state: Click here to enter text.

Question 52 (Chapter 7 page 40 in discussion document)

The review has suggested there would be a benefit to renaming the Limb (b) worker category to 'dependent contractor'? Do you agree? Why / Why not?

Yes No Not sure

Please explain why/why not: It is much clearer

Question 53 (Chapter 8 page 43 in discussion document)

If the emerging case law on working time applied to *all* platform based workers, how might app-based employers adapt their business models as a consequence?

Please state: App-based employers will find a way to pay only for work carried out

Question 54 (Chapter 8 page 43 in discussion document)

What would the impact be of this on a) employers and b) workers?

- a) Employers - please state: It would threaten the viability of the business model
- b) Workers - please state: It would reduce the opportunities for workers

Question 55 (Chapter 8 page 43 in discussion document)

How might platform-based employers respond to a requirement to pay the NMW/NLW for work carried out at times of low demand?

Please state: Platform-based employers may decide to cease trading as costs would be too great

Question 56 (Chapter 8 page 43 in discussion document)

Should government consider any measures to prescribe the circumstances in which the NMW/NLW accrues whilst ensuring fairness for app-based workers?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 57 (Chapter 8 page 43 in discussion document)

What are the practical features and characteristics of app-based working that could determine the balance of fairness and flexibility, and help define what constitutes 'work' in an easily accessible way?

Please state: Clarity in the agreement between the worker and the app-based employer on the nature and hours of work and the arrangements for payment.

Question 58 (Chapter 8 page 43 in discussion document)

How relevant is the ability to pursue other activities while waiting to perform tasks, the ability of workers to refuse work offered without experiencing detriment, requirements for exclusivity, or the provision of tools or materials to carry out tasks?

Please state: Highly relevant

Question 59 (Chapter 8 page 43 in discussion document)

Do you consider there is potential to make use of the data collected by platforms to ensure that individuals can make informed choices about when to log on to the app and also to ensure fairness in the determination of work for the purposes of NMW/NLW?

Yes No Not sure

Comments: [Click here to enter text.](#)

Question 60 (Chapter 9 page 44 in discussion document)

Do you agree that self-employed should not be a formal employment status defined in statute? If not, why?

Yes No Not sure

Please explain why/why not: [Click here to enter text.](#)

Clarity over self-employed status will benefit the individual, and reduce the risk of employees being incorrectly treated as self-employed.

Question 61 (Chapter 9 page 45 in discussion document)

Would it be beneficial for the government to consider the definition of employer in legislation?

Yes No Not sure

Please explain why/why not: [Click here to enter text.](#)

Question 62 (Chapter 10 page 46 in discussion document)

If the terms employee and self-employed continue to play a part in both the tax and rights systems, should the definitions be aligned? What consequences could this have?

Yes No Not sure

Please explain: [Click here to enter text.](#)

Question 63 (Chapter 10 page 47 in discussion document)

Do you agree with commentators who propose that employment rights legislation be amended so that those who are deemed to be employees for tax also receive some employment rights? Why / Why not?

Yes No Not sure

Please explain why/why not: [Click here to enter text.](#)

Question 64 (Chapter 10 page 47 in discussion document)

If these individuals were granted employment rights, what level of rights (e.g. day 1 worker rights or employee rights) would be most appropriate?

Please state: [Click here to enter text.](#)

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

[Click here to enter text.](#)