New consultation launched on employment status reforms

On 14 October 2026, the Government launched a new consultation on proposals for reforming the employment status framework and improving protections for the self-employed.

What is the current employment status framework?

There are three main types of employment status for employment law purposes:

- **Employees:** these are individuals working under a contract of employment. They receive the greatest level of protection in terms of employment rights, and, in turn, are subject to the highest level of control by the employer and have a broad set of obligations and responsibilities to the employer.

- **Workers:** there are individuals who work under a contract where they agree to work personally for another party to the contract (whose status is not that of a client or customer of any profession or business undertaking carried on by the individual). They benefit from some but not all employment rights (e.g. they are entitled to

paid annual leave and discrimination and whistleblower protection, but they are not entitled to claim unfair dismissal). They often have more flexibility than employees in terms of when and how they work.

- **Self-employed:** these individuals are engaged to provide a service to a client, often by way of a consultancy agreement. They have the lowest level of employment protection but the greatest degree of flexibility. For example, they do not necessarily have to provide the service personally and may have the right to send a substitute. The presence of a substitution clause in a contract tends to mean the individual is not a worker (for which personal service is needed). However, such clauses must be genuine and not included merely as a means to avoid worker or employee status.

Confusingly, the tax status framework operates on the basis of an individual being either employed or self-employed – there is no middle ground of worker status for tax purposes. The proposals for reform set out in the consultation concern only the employment status framework.

What are the problems with the current framework?

The key concern is that the tripartite framework is confusing for individuals and can make it difficult for them to

determine their own employment status. As well as understanding the relevant legislation (which is further complicated by the fact that different definitions are used for different purposes), there is a significant body of caselaw surrounding employment status. This can be challenging for individuals who wish to bring a claim in the Employment Tribunal, because the burden is on them to demonstrate their employment status using principles derived from caselaw in a highly fact-sensitive analysis meaning the outcome is uncertain.

Another concern is that the current framework permits unscrupulous employers to leverage the uncertainty and deliberately misclassify workers as self-employed to avoid their employment law obligations. In particular, there is a concern that substitution clauses are being used to avoid worker status, even where the individual is subject to a high degree of control and does not have the flexibility that is a hallmark of a truly self-employed individual. This means they miss out on worker status protection, such as paid annual leave and the right to be paid the National Minimum Wage or to be auto enrolled into a pension scheme.

What are the proposals for reform?

Views are sought on the following proposals:

- Changing the worker status test to place less emphasis on personal service. This would mean that the presence of a genuine substitution clause would not necessarily

trump other factors pointing towards worker status, for example, that they are subject to a significant degree of control by the employer.

- Changing the burden of proof in Employment Tribunal claims so that there is a presumption of worker status, rather than requiring the individual to prove their status. This would mean the burden would be on the employer to displace that assumption i.e. to show that the individual is, in fact, self-employed.

- Introducing penalties for employers who repeatedly misclassify their workforce and giving an enforcement role in employment status cases to the new Fair Work Agency.

- Improving protection for the self employed by introducing a new right to a written statement of terms (covering matters such as the scope of work, payment terms and termination provisions) and also extending certain health and safety and anti-blacklisting protections to them.

What does this mean for employers?

At present, these are just consultation proposals and there is nothing for employers to do. The consultation closes on 8 January 2027, with the Government's response likely to follow in the Spring or Summer of 2027. It is unlikely that any legislative reform would take effect until the latter half of 2027 or early 2028.

Should the proposed change to the worker status test be taken forward this will mean that individuals who are subject to a high degree of control by the employer will be more likely to acquire worker status, even where they have a true right to send a substitute. Although this measure is primarily targeted at protecting low paid and insecure workers, it will have wider ramifications. For example, a highly paid self-employed consultant who is required to work at certain times and is subject to the employer's policies and standards of behaviour may acquire worker status and the associated employment protections. In turn, this could have a knock-on effect on how the employer treats that individual for tax purposes. If the employer then elects to treat them as employed for tax purposes, this may lead the individual to push for full employment status in light of the fact they are to be taxed as an employee. From 1 January 2027 employees with 6 months' service will have the right to bring a claim for unfair dismissal to which no cap on compensation applies, thereby raising the stakes for organisations subject to claims for employee status.

At this point, the Government is not taking forward a previously announced plan to move towards a single employment status of worker only, although this is said to remain a long-term goal.

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

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.