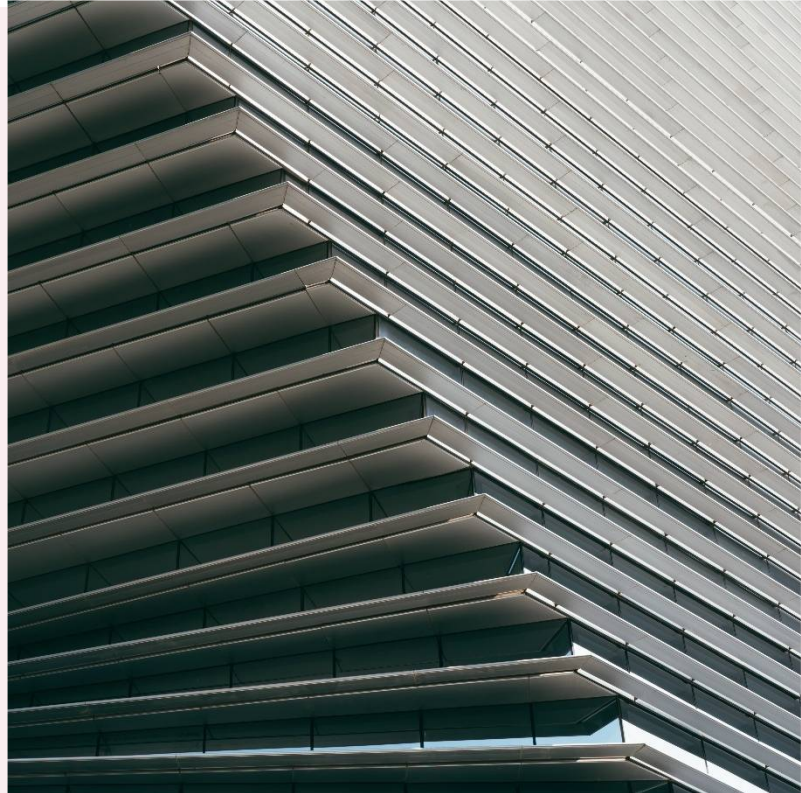


Consultation on employment status reform

21 October 2026



The government has launched a [consultation](#) on employment status. If adopted, the proposals would reshape how UK businesses classify their workforce. It would potentially become easier for individuals to be found to be workers, harder for businesses to rely on substitution clauses, and more costly to get status wrong.

Employment status dictates what statutory rights and obligations apply to the relationship between an individual and a company. Determining whether an individual is an employee, a worker or genuinely self-employed can involve much uncertainty and complexity. The consultation proposals seek to address this. The consultation also seeks views on a set of narrower proposals to extend protections to the genuinely self-employed. None of the proposals affect the separate employment status framework for tax.

In the longer term, the government is still contemplating creating a single status of worker, which would remove the current three-tier distinction between employees, workers and the self-employed. No further detail has been published on how this would work in practice, but it would represent a far more fundamental shift than the proposals addressed in this briefing, and is one we will continue to monitor.

This briefing explores the key proposals, the areas of legal uncertainty, and the practical implications.

Key issues

- 1 Worker status test: less emphasis on substitution, more emphasis on control
- 2 A reversed burden of proof: presumption of worker status
- 3 Higher financial stakes for repeat misclassification
- 4 A greater role for the Fair Work Agency
- 5 New protections for the genuinely self-employed
- 6 Areas of legal uncertainty and ambiguity

7 Preparatory and practical steps for employers

Worker status test: less emphasis on substitution, more emphasis on control

The government's view is that the statutory worker definition should place less emphasis on a requirement for personal service by the individual. A failure to meet the personal service test should not, on its own, prevent someone from being a worker. The principal mechanism proposed is to elevate the role of control in the statutory test. Under a revised test, an absence of personal service would no longer automatically defeat worker status if significant control is present.

If, as the consultation signals, control (especially control over pay) becomes more important in worker status determinations, likely risk factors pointing towards worker status include: non-negotiable rates; algorithmic allocation; performance monitoring; penalty systems; required branding; mandated routes, shifts or response times; restrictions on working for others; and the absence of independent customer relationships.

The consultation considers alternative options to a revised statutory test emphasising control. These include lowering the bar required to satisfy what the courts consider to be personal service. A key focus is in respect of substitution clauses. For example, stating that any right of substitution which is limited only by the need to show the substitute was as qualified as the contractor to do the work would still be consistent with personal service. This is currently a common and advisable feature of the terms of engagement from the hirer's perspective.

A further option mooted is to legislate that a right of substitution should not be the sole or overriding factor preventing someone from meeting the statutory worker test. This does not of itself amount to a significant reform. In practice, even at present, where a contract already includes a substitution clause, this is only one of many factors considered by the courts and tribunals, which scrutinise the factual reality closely. If a court concludes that a substitution clause is a sham or not genuine, its existence will not negate a worker relationship. Reliance on a substitution clause to defeat a claim of worker status is already inadvisable.

The government also asks whether the ability to set or negotiate pay should be treated as a key factor distinguishing workers from the genuinely self-employed.

If the proposal to amend the statutory definition of worker is taken forward, corresponding changes will be made to other legislation to maintain coherence across core employment rights such as holiday pay,

National Minimum Wage rights, trade union protections and part-time worker protections.

A reversed burden of proof: presumption of worker status

The consultation proposes a presumption of worker status in employment tribunal proceedings in relation to worker-derived statutory rights, mirroring the existing presumption for national minimum wage claims. The burden would shift to the engager to show that an individual is not a worker, for all rights that flow from worker status, including holiday pay, pension auto-enrolment and trade union detriment protection.

In cases where employee status is in issue there would be no presumption of employment status.

Higher financial stakes for repeat misclassification

It is proposed that repeated failure to recognise employment status will be treated as an aggravating factor. This would expose non-compliant employers to additional penalties of between £100 and £20,000 per claim, where a tribunal has already found similarly placed colleagues to be workers or employees.

The government's intention is 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.

A greater role for the Fair Work Agency

Employment status is not currently within the Fair Work Agency's enforcement remit. The consultation explores giving the Agency a civil proceedings power to bring status cases on an individual's behalf, particularly where evidence is inconclusive. It is unclear how this new civil proceedings power would interact with an individual's own right to bring a claim, including in cases where the Agency's view of status differs from the individual's own.

The government is also considering an online, non-binding self-assessment tool for employment status, modelled on HMRC's Check Employment Status for Tax (CEST) tool. As with CEST, a key question will be what evidential weight, if any, a favourable self-assessment result carries in a subsequent dispute, given the criticism CEST has faced on reliability grounds.

New protections for the genuinely self-employed

Separately from the worker status test, the government is consulting on a new right to a written statement for certain self-employed individuals, covering the engager's and individual's names, scope of work, expected duration, payment terms and termination terms, potentially subject to a minimum contract length or value threshold.

The consultation also considers extending the meaning of "worker" to include all self-employed individuals for specific rights and protections,

including blacklisting protections and the right not to be subjected to a detriment for removing oneself from serious and imminent danger.

Areas of legal uncertainty and ambiguity

The consultation leaves several practical questions unresolved. These are the ones we expect to generate the most dispute if the proposals proceed as currently framed.

Control: if the revised statutory test for 'worker' is taken forward, it would ask whether an individual is under a "significant level of direction or control". How much control is "significant"? This is likely to result in case-by-case litigation on where the line falls, until clear appellate authority clarifies the position.

The weight given to pay-setting power: The consultation floats treating the ability to set or negotiate pay as a key differentiating factor but has not said how this interacts with the control test, nor how it would apply to common structures such as commission, piece-rates or tiered fee schedules that are common in genuinely self-employed arrangements.

If any change to the worker definition is extended to other legislation, such as the Working Time Regulations 1998, it is unknown whether there will be transitional arrangements, or whether the changes would operate prospectively only. This matters for existing contractual arrangements and ongoing tribunal claims. Separately, because the proposals leave the tax status framework untouched, any IR35/off-payroll working analysis will still need to be carried out independently of the employment status position.

Timeframe: the [consultation](#) closes on 8 January 2027. No timeframe has been indicated for the government response or implementation timetable. It is understood that no parliamentary time has been set aside to progress any implementing legislation.

Preparatory and practical steps for employers

Where workforce models are currently designed around self-employed classification, but in reality, there is operational dependence, the combination of a broader worker test, reversed burden of proof, stronger penalties and enhanced state enforcement could substantially increase legal, financial and reputational risk.

The proposals are not yet law, and the government has not committed to a timetable for legislation. However, organisations with large self-employed or worker populations, or organisations seeking to acquire such companies, would benefit from reviewing current arrangements now to identify areas of exposure. Initial preparatory steps might include:

- identifying everyone engaged as self-employed, particularly where substitution clauses exist but are rarely or never used, and where the business exercises meaningful control over how, when or where the work is done;
- flagging arrangements where pay rates, schedules or performance are centrally set, since these are the features the consultation singles out as indicative of control;

- reviewing substitution clauses: test whether substitution rights reflect genuine operational practice, or exist mainly on paper to support a self-employment classification;
- strengthening documentation and record-keeping: keep evidence of the commercial reality of self-employed relationships, including invoicing practices, equipment ownership, ability to work for others and financial risk, since this evidence will become more important if the burden of proof shifts to the engager; and
- modelling the financial impact of extending holiday pay, pension auto-enrolment and National Minimum Wage to currently self-employed individuals who would likely be reclassified as workers under the proposed test.

For an overview of employment law in a large range of key jurisdictions see our easy-to-use digital guide:

[Clifford Chance Employment Law Guide App](#)

Access the web version or download from the App store / Google play.



Alastair Windass
Head of UK Employment, London

Email: alastair.windass@cliffordchance.com
Mobile: +44 207006 2458

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2026

Clifford Chance LLP is a limited liability partnership registered in England and Wales under no. OC323571. The firm's registered office and principal place of business is at 10 Upper Bank Street, London E14 5JJ. The firm uses the word "partner" to refer to a member of Clifford Chance LLP or an employee or consultant with equivalent standing and qualifications.

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest** • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague** • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, DC

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

**Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.



Chinwe Odimba-Chapman
Office Managing Partner for London /
Co-Regional Managing Partner for One
Europe, London

Email: chinwe.odimba-chapman@cliffordchance.com
Mobile: +44 207006 2406



Alistair Woodland
Co-head of Global Employment,
London

Email: alistair.woodland@cliffordchance.com
Mobile: +44 207006 8936



Amy Bird
Partner, London

Email: amy.bird@cliffordchance.com
Mobile: +44 207006 1830



Tania Stevenson
Knowledge Director, London

Email: [tania.stevenson
@cliffordchance.com](mailto:tania.stevenson@cliffordchance.com)
Mobile: +44 (0)20 7006 8938