



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

1 Victoria Street

London

SW1H 0ET

Tel: 0207 215 4586

Email: EmpStatusBEIS-HMT-HMRC@beis.gov.uk

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

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

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: Marsha Bull

Your organisation if replying on their behalf (if applicable): Society of London Theatre and UK Theatre

Your or organisation address: 32 Rose Street, London WC2E 9ET

I write on behalf of the Society of London Theatre (“SOLT”) and UK Theatre Association (“UK Theatre”) in response to this Employment Status consultation.

SOLT and UK Theatre are the trade associations and members’ organisations representing the interests of those engaged in the production and presentation of medium to large-scale dramatic and lyric theatre in the UK. Both memberships are drawn from subsidised and commercial theatre.

The combined box office income of SOLT and UK Theatre’s memberships was more than £1 billion across London and the rest of the UK, with 34 million tickets sold, in 2016.

SOLT represents approximately 220 London-based producers, theatre owners and managers, including all the major subsidised theatrical organisations in London. UK Theatre represents approximately 230 theatres, concert halls, dance companies, producers and arts centres throughout the UK. UK Theatre also operates as a professional organisation, supporting over 1,300 individuals working professionally in theatre and the performing arts in the UK.

We have responded to the questions which are relevant to our sector.

	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

	Please check a box from the list of options below that best describes you as a respondent:
<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 type="checkbox"/>	Employment rights
<input type="checkbox"/>	Tax
<input checked="" 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:

- *A key issue leading to misclassification of employment status is that there is a lack of awareness amongst some businesses and individuals of the employment status system*

itself, eg what the statuses are, applicable tests, why employment status is relevant, implications of interpreting the rules incorrectly, the fact that individuals and businesses cannot simply choose which status to apply. Therefore, we believe that steps need to be taken to increase awareness and provide more user-friendly information, including examples, to assist businesses and individuals to apply the employment status rules correctly.

- *Whilst we understand why clarity is desired, the current system allows for flexibility. It is crucial to maintain flexibility because the system applies to all industries, including those with standard and atypical working arrangements, and it, therefore, has to be sufficiently adaptable to work for the vast number of different scenarios which will arise. As acknowledged in the consultation document, the current approach allows the courts to be flexible and adapt to changes in the labour market, but it also means they can take into account the practices in different industries and the varying arrangements between individuals and engagers.*
- *In respect of businesses, this chapter refers to how unscrupulous businesses can use the current rules to miscategorise those they engage as self-employed. Whilst we appreciate that some businesses may do this, we believe that the lack of awareness and lack of easy-to-read detailed guidance on the employment status rules leads to some businesses inadvertently applying the current rules.*

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.](#)

We strongly believe that codification of the main principles in legislation would not achieve certainty or flexibility and would, therefore, not actually assist businesses or individuals to correctly categorise employment status.

If the principles were codified, to apply to the varied arrangements across all industries, including those with standard and atypical working arrangements, they would need to be drafted in a broad, rather than prescriptive manner. The legislation would, therefore, still require interpretation, in the same way that the current case law does, so this would not make the rules easier to understand and apply.

Even if the principles were drafted in a broad, rather than prescriptive manner, the flexibility which is currently available to allow the courts to make decisions taking into

account the circumstances, would potentially be reduced. Maintaining flexibility is crucial if the same rules are to apply to the varying arrangements which could arise.

Additionally, we would argue that not all of the principles which are relevant to consider when assessing employment status are apt for inclusion in legislation, eg whether someone is “part and parcel” of, or “integrated” within, an organisation can be a good indicator of status but it works best to provide examples of how that may be the case, rather than to define the term “part and parcel” or “integrated” in legislation.

We do not, therefore, believe that codification would actually move the situation forward and achieve clarity.

We think that detailed, user-friendly guidance with a list of questions or factors to consider based on the main principles from case law, together with various examples as to how they may apply to different arrangements and in different industries (following sector-specific input) would be of more practical assistance. This is particularly if it is combined with raised awareness of the employment status system itself. This guidance would also be easier to amend than legislation as and when case law develops or when new models of working arise.

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: *See answer to ii) below.*
- ii) businesses, please state: *As referred to in our answer to question 2, we strongly believe that codification of the main principles in legislation would not achieve the required certainty or flexibility for individuals or businesses. We believe that detailed, user-friendly guidance with a list of questions or factors to consider based on the main principles from case law, together with various examples as to how they may apply to different arrangements and in different industries (following sector-specific input) would be of more practical assistance for both individuals and businesses and would be easier to amend.*

If the decision is made to codify the main principles, we strongly believe that this should only include the basic principles from case law in order to allow the required flexibility and that there should be supporting guidance to aid understanding.

Question 4 (Chapter 5 page 23 in discussion document)

Is codification relevant for both rights and/or tax?

Yes No Not sure

Comments: As referred to above, we do not believe that codification will achieve the required certainty or flexibility in either case.

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: We strongly believe that codification in legislation is not the answer. If the decision is made to codify the main principles, we do not believe that codifying solely the 3 factors referred to as the “irreducible minimum” will provide clarity on employment status for individuals and engagers as there are other criteria which potentially make up the overall picture of the case, and which could affect the employment status of the individual concerned. A list of the key factors which could be relevant to determining employment status would provide a more complete picture for individuals and businesses but we do not believe that all of these factors are appropriate to include in legislation. One option is to include the “irreducible minimum” but make it clear that, if that test is satisfied, it is necessary to consider other relevant factors and to then refer to guidance or a code of practice which contains the potentially relevant factors from the case law.

Question 6 (Chapter 5 page 24 in discussion document)

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

Please state: The meaning can be interpreted in different ways depending on the circumstances of the case.

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: *We believe that mutuality of obligation is still a relevant factor to consider when assessing employment status, although it will remain key to consider the whole picture, including other factors, when determining status.*

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: *If it is included in legislation it should represent the meaning derived from case law.*

Question 9 (Chapter 5 page 25 in discussion document)

What does personal service mean in the modern labour market?

Please state: *We think the meaning remains the same in the modern labour market, but how that is interpreted and what factors are considered in a particular case should depend on the circumstances.*

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: *We believe that it is still relevant as personal service is, and should remain, a pre-requisite of employee and worker status. However, where there is personal service, it should not automatically be the dominant factor in determining employment status. It should be clear that it will be considered with other relevant factors, because many self-employed people are engaged because of their specific skills, therefore, requiring personal service, but the nature of the arrangement with them points towards self-employment.*

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: *If it is included in legislation it should represent the meaning derived from case law.*

Question 12 (Chapter 5 page 25 in discussion document)

What does control mean in the modern labour market?

Please state: *We think that this still requires a general assessment of how independent the individual is from the business, but how it is interpreted and what factors are considered in a particular case should depend on the circumstances.*

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: *We believe that control is still a relevant factor to consider when assessing employment status, although it will remain key to consider the whole picture, including other factors, when determining status.*

Question 14 (Chapter 5 page 25 in discussion document)

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

Please state: *If it is included in legislation it should represent the meaning derived from case law.*

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: *Please see our response to question 5. We believe that financial risk should be one of the potentially relevant factors to be included in guidance or a code of practice.*

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: *Please see our response to question 5. We believe that "part and parcel" or "integral part" should be one of the potentially relevant factors to be included in guidance or a code of practice.*

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: *Please see our response to question 5. We believe that the provision of equipment should be one of the potentially relevant factors to be included in guidance or a code of practice.*

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: *Please see our response to question 5. We believe that intention should be one of the potentially relevant factors to be included in guidance or a code of practice.*

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: Click here to enter text.

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: *We believe that additional detail would be required but that guidance would be more appropriate than secondary legislation due to the nature of the information required to assist individuals and engagers and the need to have sufficient flexibility to make changes. This is particularly in light of the comment in paragraph 5.28 that it is fully expected that changes would require scrutiny by Parliament.*

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

Yes No Not sure

Comments: *Please see our response to (i) above.*

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: We believe that the existing tests are still appropriate to use. We are strongly against any test that includes factors which are stated to automatically classify an individual as an employee. For example, the location could be a neutral factor in a case where it is dictated by the services required. Again, for example, a successful self-employed person may retain a client for a long period, but there may be other factors pointing towards self-employed status, such as providing services to others and being in control of the provision of the service. In these circumstances the length of engagement should not automatically lead to a finding of employee status. The particular circumstances and complete picture should always be considered when determining employment status.

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 experience of other tests. Please see our response to question 22.*

Question 24 (Chapter 6 page 30 in discussion document)

How could a new statutory employment status test be structured?

Please state: *Please see our response to question 22.*

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: *We do not have experience of these tests.*

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: Whilst we can see the advantage of less complexity, as is acknowledged in paragraph 6.4 of the consultation document, the complex nature of the current approach allows the system to apply to the vast number of different circumstances which exist and will arise, and the case law provides the necessary flexibility to adapt to evolving working practices. Both flexibility and the ability of the system to work for all is crucial, so we do not believe that there should be a simpler test.

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: Please see our response to question 26.

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: *Please see our answer to question 2.*

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: Those who fall into the category of "worker" often have fewer obligations and more flexibility in their relationship with the business, which is often for the benefit of both parties, eg individuals may have other commitments and businesses may have fluctuations in work, so it is crucial that the "worker" category remains for the benefit of both individuals and businesses. It is also right that these individuals have fewer employment rights than those who owe more obligations to the business, have a stronger contractual commitment to the business and have less flexibility.

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: *It is simply saying that all employees are workers.*

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: *We do not think this is required.*

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: *It may lead some to believe that employees are no longer entitled to worker rights, ie that workers are entitled to different, rather than limited, employment rights.*

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: *The distinction can be unclear in some cases but we believe that this requires further guidance on, and awareness of, the distinction rather than legislative change.*

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: *We think that with the right guidance the current definition of worker still works.*

- 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: *We think that the current definition still works.*

- 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: *As we consider the current test to still be relevant, we think that determining worker status using reduced criteria could result in someone achieving worker status when they should not, or failing to qualify when they should, as the reduced criteria may fail to take into account factors which are relevant to whether someone should fall into that intermediate category or not.*

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: *The meaning can be interpreted in different ways depending on the circumstances of the case.*

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: *Whether there is mutuality of obligation during an assignment can be relevant to determining whether a contract exists. Whether there is mutuality of obligation between assignments is relevant to distinguishing between an employee and a worker.*

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: *We do not think it should be set out in legislation, guidance is more appropriate.*

Question 40 (Chapter 7 page 37 in discussion document)

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

Please state: *We think the meaning remains the same in the modern labour market, but how that is interpreted and what factors are considered in a particular case should depend on the circumstances.*

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: *If someone does not have to provide their services personally then they should not be considered to be a worker. If they are required to*

provide their services personally then it is just one of the factors to consider when assessing their status.

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: Personal service is a relevant factor for the reasons made in our response to question 41 but, when considering personal service to assess whether someone is a worker or self-employed, this should not be the dominant factor as, in the modern labour market many self-employed people are hired for their particular skills, meaning that personal service is required, but the other elements of the arrangement reflect self-employed status.

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: We do not think it should be set out in legislation and that guidance is more appropriate.

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: We think that there will be but we do not have specific examples of this to provide.

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: *We consider the current emphasis on control to be appropriate.*

Question 46 (Chapter 7 page 39 in discussion document)

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

Please state: *We think that this still requires a general assessment of how independent the individual is, and can be, from the business, but how it is interpreted and what factors are considered in a particular case should depend on the circumstances.*

Question 47 (Chapter 7 page 39 in discussion document)

Should control still be relevant to determine worker status?

Yes No Not sure

Please explain: *It can be helpful to distinguish between workers and the self-employed.*

Question 48 (Chapter 7 page 39 in discussion document)

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

Please state: *We do not think it should be set out in legislation, guidance is more appropriate. In practice control can be interpreted in different ways and with varying emphasis on some elements of control depending on the role and industry.*

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: *Whether they are responsible for their continued professional training and development, whether they have their own insurance, and whether they are registered as self-employed with HMRC.*

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: *To be more prescriptive than the current definition of worker could result in the definition not applying effectively to all industries and roles as being in business on their own account can have different meanings depending on the context. Also, there is, as the consultation documents refers to in paragraph 7.26, a risk of manipulation of the system.*

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: *We do not consider that this change would add any clarity for those assessing whether this category of status applies.*

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: *N/A*

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: *N/A*

b) Workers - please state: *N/A*

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: *N/A*

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: *N/A*

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: *N/A*

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: *N/A*

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: *N/A*

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: *We do not believe that a separate definition is required as the current definitions are sufficient to determine who is self-employed and as far as we are aware the lack of a definition of self-employed is not causing difficulties. We agree with the point made in paragraph 9.3 of the consultation document and think that there is a risk that any new definition of self-employed may not be sufficiently wide enough to cover all self-employed people and that there could, therefore, be a situation where an individual does not fall within any of the 3 categories.*

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: *We are not aware of the current definition of employer for employment law rights creating any problems.*

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: *We strongly believe that the two systems should not be aligned. The rules do not need to, and should not, be the same as they exist to achieve different purposes with different processes for enforcement. In relation to tax there are special rules and exemptions which have been created, some of which through tax case law, solely for the purposes of tax so it is crucial that these are not eroded by the position under employment law.*

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: *The rules in relation to deemed employment status for tax are specifically designed for the tax system and issues relating to tax avoidance so it is not appropriate for these rules to be applied to the employment rights system. As referred to above, we strongly believe that the rules do not need to, and should not, be the same as they are set up to achieve different purposes.*

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: *Please see response to question 63. These individuals should not be granted employment rights as the rules deeming them to be employees for tax are aimed at achieving a different purpose which is specifically related to tax avoidance.*

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.

Whilst we understand that clarity is desired, it is crucial that a high degree of flexibility is maintained to enable the system to be adapted and interpreted so that it works for the vast number of arrangements in every industry. Whilst the complex nature of the current system sometimes makes it difficult to assess status, we agree that it allows for the nuances of different situations and the development of new ways of working, which is vital to retain.

Whilst we appreciate the desire to have all information in one place in legislation, employment status will continue to be a highly fact-specific area which requires consideration of the whole picture in the particular case and so we do not believe that legislation is the answer for resolving employment status issues. This information needs to be accessible and adaptable so we consider guidance to be a better and more practical alternative.

Differences are sometimes required and this is the case for the tax and employment systems, because they are designed to achieve different purposes, so it is neither necessary nor desirable for the two systems to be aligned.

We also believe that the Government should be careful to ensure that the rise in the gig economy, and the issues associated with it, do not result in changes for the benefit of those performing that type of work at the expense of everyone else.