

## Government 4-year deliberation on employment status yields nothing



# Employment Status consultation

## Government Response

After responses to a formal [Government consultation on Employment Status](#) spent four years at the back of a digital cupboard going out of date, the Government finally dusted them off, publishing a 32-page response which concluded by stating, "Now is not the right time to overhaul the employment status frameworks for rights and for tax."

Worse still, the report is based on outdated responses from status experts four years ago because the law has moved on, following crucial judgments from the Court of Appeal and Supreme Court.

Dave Chaplin, CEO of [IR35 Shield](#), which specialises in status matters related to tax, and who contributed to the consultation, said: "Whilst the decision to not legislate soon is right, the Government needs to start a formal process now that leads to a positive outcome. For now, however, as previous Governments have done, this topic is being filed into the "too difficult to deal with" drawer."

### Questionable reasons for the delay

The original consultation was launched on 7th February 2018, with closing submissions required by 1st June 2018. Acknowledging the inherent complexity of status, the consultation page on the Government website stated at the time, "We're seeking views on how to make the employment status rules for employment rights and tax clearer for individuals and businesses."

Despite acknowledging the widely accepted issues of complexity and lack of clarity with employment status, the Government chose to do nothing for four years and then declared in their response: "Whilst such reform could help bring clarity in the long term, it might create cost and uncertainty for businesses in the short term, at a time where they are focusing on recovering from the pandemic."

Chaplin says: "This is a surprising reason, especially against the backdrop of Government introducing the Off-payroll reforms in April 2021, which forced 60,000 businesses to assess the status of some half a million freelancers."

### The law has moved on

The report is based on a consultation document and submissions written four years ago. However, since then, the law has considerably moved on, questioning the validity of its content.

Chaplin says: "12 days after the closing date for submissions to the consultation, we had the Supreme Court ruling on Pimlico Plumbers. We also had the significant case of Uber in February 2021, the Court of Appeal case for Atholl House, more recently in April 2022, and many others. The answers status experts gave four years ago, including my own, would not be the same today. The consultation process needs to start again."

One surprising claim is the assertion that "For tax, the majority of status cases are simple and clear" and "This lack of clarity can create

fiscal risk for the Exchequer, where individuals are misclassified (intentionally or unintentionally) as self-employed."

These claims in the report may have been drafted earlier this year because they appear divorced from reality. In early 2022, the off-payroll rules were scrutinised by the National Audit Office (NAO) and the Public Accounts Committee, where [MPs probed public sector's £263 million of IR35 errors](#) and commented that [structural problems remain with IR35](#).

## The Report and Government response

The report summarised all of the respondents' views, from which key themes emerged:

- There are issues with the current employment status system.
- Reasons for reform are to increase simplicity, certainty and clarity.
- Reform should involve taking time to develop proposals fully.
- Enforcement needs to be tougher to clamp down on unscrupulous employers.
- Codification of status tests into legislation was inappropriate.
- The statutory definition of worker is confusing and not easy to understand.
- Self-employment should not be defined in the statute.
- Workers deemed as employees for tax should also receive employment rights.

The Government response, in the back of the report:

- Recognised that employment status is at the core of employment law and the tax systems.
- Dismissed views that Worker status should be removed to align with tax.
- Acknowledgement that reform was needed but that there was no overall consensus on what action the Government should take.
- Confirmation that in 2018 in the Good Work Plan, the Government had committed to legislate to improve the clarity of employment status tests.
- We believe that our three-tiered employment status framework for rights provides the right balance for the UK Labour Market

However, despite the report signalling that Government needs to act, it said that "the benefits of creating a new framework for employment status are currently outweighed by the risk associated with legislative reform. Whilst such reform could help bring clarity in the long term, it might create cost and uncertainty for businesses in the short term, at a time where they are focusing on recovering from the pandemic."

Chaplin suggests this is a failure by Government to finally tackle the longstanding issues in this area: "On the one hand, they want growth, which can only be obtained by introducing policies to enable the economy to gallop ahead. Instead, we have this mess, which has poured glue on the economy, because firms don't have certainty."

## Doing nothing, for now, is perhaps best

Referring to the contents of the response and some of the [accompanying guidance](#) published the same day, Chaplin says: "Ironically, Government are claiming that employment status is simple in most cases because both the response and the guidance contains claims around status that are misaligned with the law, demonstrating that they don't fully understand it themselves."

"One only has to read the [Atholl House ruling](#) to see how badly Government interprets the law on status, with some of its arguments being described as 'myopic'. In the Atholl House case, HMRC sought to narrow the case law to be akin to an objective test, which this response says would not be appropriate."

"In one sense, whilst doing something nothing right now is the right idea, that might be the best outcome because each time they act, they make it worse. The off-payroll working rules being a prime example."

## What's next?

The opening paragraph of the response claims that "This Government is committed to building a high skilled, high productivity, high wage economy that delivers on our ambition to make the UK the best place in the world to work and grow a business."

Chaplin concludes: "Ambition is one thing. Action is another. We need a Government to be brave and fix this problem."

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