The workers covered and the workers missing from ERA2025 - An analysis

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"*We promised the biggest upgrade to workers' rights in a generation within the first 100 days—a promise made and a promise delivered.*"

PM Sir Keir Starmer, July 2025

‘I have said to this Committee before that having the three levels of status for employment and then two levels is confusing and allows people to engage in sharp practice, shifting workers around between those, and it needs to be addressed. … I know that there is discussion about having a further consultation. I think you can probably consult until the cows come home on this issue and it about time to do something about it’

Margaret Beels OBE, Director of Labour Market Enforcement at the Department for Business and Trade, January 2025

Structure

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5. The road to single worker status

1. What was promised on employment status

- Labour's Plan to Make Work Pay (2024) promised the introduction of a 'single worker status' that would provide:

(a) a transition towards a two-tier framework for employment status;

(b) a new, comprehensive, worker definition capable of capturing the breadth and diversity of employment relations in the UK;

(c) and an ad hoc regulation for the 'genuinely self-employed'.

Unlike in the 2021 New Deal paper, this was no longer a first 100-days pledge, and was subject to a consultation

2. Why it matters

- Excessive fragmentation and unpredictability of employment status landscape in UK labour law
- Multiple overlapping definitions: ERA 1996 (employee, limb-b worker, worker under s.43K), TULRCA 1992 (slightly different limb-b), NMWA 1998 (home worker – though different to the ERelA1999), Equality Act 2010 ('employment' and *Jivraj v Hashwani*), HSWA 1974…
- Particular complexities surrounding
  - 'limb-b worker' status – see *IWGB v CAC* [2023] UKSC 43 and personal service
  - employee status and mutuality of obligation – cf *HMRC v Professional Game Match Officials Ltd* [2024] UKSC 29 (but see final FTT decision May 2026 where referees were deemed to be self-employed)
    - Complexities around tax status (mutuality may be waning but unclear if, and to what extent, that transfers outside IR35/PSC case law)

3. Why the adoption of ERA2025 made the situation worse

- We'd been warned
  - 'this issue absolutely has to be addressed. I understand it is out for consultation. Many of the measures contained in the Bill would not be effective, unfortunately, if this issue was not grappled with' (Prof. S. Deakin, 2024, before HoC Public Bill Committee)
  - 'without clarification on the legal status of all those who work, the rights in the Bill are allocated piecemeal' (Chris Law MP, 2024)
- ERA2025 has introduced a plethora of new rights but it has attached them to employees and workers whose status is uncertain (e.g. provisions on pay and conditions of school support staff, bereavement leave, new rights on coll. redundancies, shorter qualifying period and removal of cap on UD…)

3. Why the adoption of ERA2025 made the situation worse (*continued*…)

- Gvt and Parliament were aware of the problem and in some cases took ‘remedial action’: E.g.
  - The new concept of ‘zero hours arrangement’ (new s.27BZ2(1)ERA1996)
    - ‘an arrangement (whether contractual or non-contractual) other than a worker’s contract’
    - an arrangement under which ‘(a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but (b) the employer is not required to make any work available to the individual, nor the individual required to accept it’.
    - Mutuality ☑ Personal Service ☒

3. Continued...

- Definition of ‘relevant contract’ in section 24 of the Act, in the context of non-disclosure agreements in discrimination and harassment cases, and introducing a new section 202A in ERA1996
  - SS can expand the category of workers to which NDA are not applicable to individuals who are not workers but have entered ‘any contract, other than a contract of employment, whether express or implied and (if express) whether oral or in writing, by which an individual undertakes to do or perform (whether personally or otherwise) any work or services for another party to the contract whose status is by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual’.
  - Personal service ☑ Mutuality ☒

3. Continued...

- Definition of ‘social care worker’ contained in Part 3, Chapter 2, of the Act. Section 42 defines a social care worker as a ‘a person who is employed wholly or mainly in, or in connection with, the provision of social care’
  - Personal service ☑ Mutuality ☑

4. Another Consultation – IER's views

Make Work Pay: employment status reform and protections for the self-employed - 14 October 2026

- Focus on
  - Personal Service Requirement
  - Rebuttable presumption of worker status
  - Some new rights to the genuinely self-employed
- Nothing on
  - Single worker status
  - New definitions of employee or worker
  - Understanding of who is a genuinely self-employed

5. The Road to Single Worker Status

- Not excluded but…
- ‘Oven ready’ proposal in Lord Hendy’s Status of Workers Bill
- If this consultation is acted upon: More confusion yet less likely to reach a solution that ‘grasps the nettle’
- This Parliament?
- New relationship with the EU?

Further reading

- Lord Hendy's 'IER Briefing on the Single Employment Status' (IER, April 2026)
- IER 'Employment Rights Act 2025 Factsheet – The Need for a Single Worker Status' (IER September 2026).
- N. Countouris, 'The Reform That Wasn't There—On the Perduring Necessity of a 'Single Worker Status' in UK Employment Law' (2026) ILJ
- IER submission to Government Consultation on 'Make Work Pay: employment status reform and protections for the self-employed' (forthcoming)