

EMPLOYMENT LAW

Traditional employment versus the gig economy: does one size really fit all?

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Introduction

The increasing focus on ‘limb b workers’ has led to the call for reform with respect to employment status. Section 230(3)(b) of the Employment Rights Act 1996 defines a ‘worker’ as an individual that undertakes “*any other contract [to that of a contract of employment], whether express or implied.*” This definition goes on to term a ‘limb b’ worker as those who undertake personal performance of work or services for another party to the contract whose status is not that of a client or customer, as you may not have clients or customers as a worker. The recent and rapid rise in ‘limb b workers’ has transformed the UK’s traditional economy into a more flexible labour market, epitomised by “business models which depend on exercising a large degree of control over supposedly independent contractors.”¹ This is more commonly known as the ‘gig economy’. For evidence of this rise, one need only refer to Uber’s ever-expanding UK driver base, growing from 60,000 in 2021,² to over 100,000 in 2023.³ Further, the range of jobs caught by this definition continues to widen, from Uber drivers to freelance writers and task-based workers.

The history of the ‘worker’ definition

This phenomenon has experienced slow and gradual development. The current definition originates from the dynamic of control, tracing back to the Master and Servant Act 1823, where it was made a criminal offence for a workman to be disobedient, and calling for strikes was made punishable as an aggravated breach of contract. Following the Slavery Abolition Act 1833, UK law would not experience a landmark piece of employment legislation until 1963, when the right to be given a contract of employment and the right to a minimum statutory notice of termination was introduced.⁴ Following World War II, trade unions had enjoyed a command of respect and influence.⁵ It is perhaps pertinent to understand, therefore, that the policy focus of UK law had shifted, placing a greater focus on the rights and protection of its workers. The existing laws on individual employment rights were later codified in the Employment Rights Act 1996. Despite a steady stream of provisions and amendments thereafter, such as the embodiment of some employment rights in the Human Rights Act 1998 and the Working Time (Amendment) Regulations 2007, the next shift in legal focus would not be seen until the recent withdrawal from the European Union and the onset of the Coronavirus pandemic.

Despite the relative functionality of the current definition, the recent UK government appears to have elected for change. Due to the relatively chronological correspondence between Brexit and the global Coronavirus lockdown, the process of creating and passing new laws slowly ground

¹ IDS Employment Law Brief, ‘Contracts of employment’ (2021) 1144 IDS Employment Law Brief 3.

² Natasha Bernall, ‘Uber has lost in the Supreme Court. Here’s what happens next’ (*Wired*, 19 Feb 2021) <<https://www.wired.com/story/uber-loses-gig-economy-case/>> accessed 8 February 2025.

³ Andrew Brem, ‘The Impact of Uber in the UK’ (*Uber Newsroom*, 20 September 2023) <<https://www.uber.com/en-GB/newsroom/the-impact-of-uber-in-the-uk-2/>> accessed 8 February 2025.

⁴ Contracts of Employment Act 1963.

⁵ See Phil Tinline, ‘Can UK trade unions recover their post-war power?’ (*Economics Observatory*, 28 March 2023) <<https://www.economicsobservatory.com/can-uk-trade-unions-recover-their-post-war-power/>> accessed 9 February 2025.

to a near halt, in sacrifice of the Retained EU Law (Revocation and Reform) Act 2023 and the Coronavirus Act 2020. Aside from Brexit's impact,⁶ and perhaps more powerfully, during the peak of the Coronavirus pandemic in April 2020, the Office for National Statistics reported that 46.6 per cent of employed people in the UK assumed some level of work from home.⁷ Notably, in March 2020, UberEats enjoyed a 30 per cent increase in customer signups, alongside an inundation of applications to become drivers.⁸ This appears to indicate the early establishment of the gig economy, with people adopting more flexible working patterns and relying upon those operating under more freelance circumstances. The breadth of the s.230 definition appears to have reached its limit; "no construct, however perfect, is capable of addressing all the vagaries inherent in the patterns of working life in the context of the demands in a modern economy".⁹ Nevertheless, common law guidance as to status can appear misaligned, often proving to be a question of fact on a case per case basis. In 2021, the decision in *Uber BV v Aslam*¹⁰ drew media and legal attention to this growing issue.

This article will discuss the likelihood of enduring reform to UK employment status. Focus will primarily be attributed to the proposals and actions of the Labour government between 2024 and early 2025. Between the Labour manifesto and the Employment Rights Bill, at the Committee Stage in the House of Lords at the time of writing, the initial promises will be highlighted and assessed against their later concretisation. This will be supplemented by a critical comparison of the common law treatment of employees and workers, as well as providing a brief political and historical context to understand whether any similar reform has been previously attempted. The article will conclude by analysing the main findings and providing an alternative suggestion for reform.

The first steps towards change

The current UK government's call for reform have been noted in their most recent manifesto,¹¹ and the King's Speech 2024.¹² Although it is understood that a manifesto does not amount to a wholly accurate representation of the views of a party, it remains effective for the purpose of highlighting key party philosophies. As the gig economy continues to dilate the scope of employment options, the current UK government aims to unify the definitions and rights of 'employees' and 'workers' and distinguish these from the truly self-employed. The present government feels that the current system has "contributed to the rise of bogus self-employment" and allowed some employers to exploit "the complexity of the UK's framework to deny people their legal rights."¹³ This was seen in *Pimlico Plumbers Ltd v Smith*,¹⁴ which will be examined below.

⁶ See House of Commons, 'Volume 726: Retained EU Law (Revocation and Reform) Bill' (*Hansard*, 18 January 2023) <[https://hansard.parliament.uk/Commons/2023-01-18/debates/BD8058AD-784A-4E34-A21D-58B05D7DC48C/RetainedEULaw\(RevocationAndReform\)Bill](https://hansard.parliament.uk/Commons/2023-01-18/debates/BD8058AD-784A-4E34-A21D-58B05D7DC48C/RetainedEULaw(RevocationAndReform)Bill)> accessed 9 February 2025.

⁷ Department for Business and Trade, 'Impact Assessment: Making Flexible Work the Default' (*Gov.UK*, 21 October 2024) <https://assets.publishing.service.gov.uk/media/6712491cb40d67191077b36d/impact-assessment-make-flexible-working-the-default-where-not-unreasonable_.pdf> accessed 9 February 2025.

⁸ Marco Chiappetta, 'UberEats Demand Soars Due To COVID-19 Crisis' (*Forbes*, 25 March 2020) <<https://www.forbes.com/sites/marcochiappetta/2020/03/25/uber-eats-demand-soars-due-to-covid-19-crisis/>> accessed 9 February 2025.

⁹ Robert Upex, 'Workers and the gig economy: an appraisal of the Supreme Court's decision in the Uber case' (2021) 26(1) *Coventry Law Journal* 25, 38.

¹⁰ [2021] UKSC 5.

¹¹ Labour Party, 'Labour's Plan to Make Work Pay' (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 12 February 2025.

¹² Prime Minister's Office, 10 Downing Street and His Majesty King Charles III, 'The King's Speech 2024' (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 12 February 2025.

¹³ Prime Minister's Office, 10 Downing Street and His Majesty King Charles III, 'The King's Speech 2024' (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 12 February 2025.

¹⁴ [2018] UKSC 29.

This ‘complexity’ has resulted in widespread confusion for our rising gig economy population, unable to confidently declare themselves as workers. This is further aggravated upon the discovery of many more non-identical ‘worker’ definitions within English law. Within the Employment Rights Act itself, s.43K extended the meaning of worker for those who are not “worker[s] as defined by s.230(3)”. Section 296 of the Trade Union and Labour Relations (Consolidation) Act 1992 slightly broadens the core s.230 definition, imparting an ulterior consideration of employment under government departments.¹⁵ Further, the National Minimum Wage Act 1998 introduced supplementary definitions for agency workers,¹⁶ and home workers who are not otherwise “workers.”¹⁷ Interestingly, as the gig economy continues to exacerbate these weaknesses, the s.230 definition appears to have remained the central tool by which the law attempts to address this pitfall. This definition is therefore the likely focus of the current government’s ambitions and would presumably form the crux of any reforms. It would be remiss to ignore that the Labour Party aims to deliver “*for working people*.”¹⁸ Following the Labour Party winning a parliamentary majority in the 2024 general election,¹⁹ clarity for these ‘working people’ seemed to lie just over the horizon. Between Labour’s Plan to Make Work Pay,²⁰ and the King’s Speech 2024,²¹ many potential routes to reform have been suggested, from attempting to remove the need for “knowledge of complex legal tests and an encyclopaedic knowledge of case law”²² to “enhanc[ing] employment rights”, supposedly marking “the biggest upgrade to workers’ rights in a generation.”²³ As these plans have since been refined against reality, it is pertinent to analyse and compare the differences between these propositions and the law as it currently stands. Despite any artificiality as to the credibility of the above comments, Labour has since published a ‘Next Steps’ article, detailing the proposed delivery of their initial plan to ‘Make Work Pay’.²⁴

The Employment Rights Act, from which the s.230 definition is drawn, was introduced under John Major’s Conservative government.²⁵ Two textual amendments to s.230 were later implemented under David Cameron’s Coalition and Conservative governments respectively.²⁶ Section 230(7) was inserted by the Children and Families Act 2014 and protected disclosures,²⁷ and regulations prohibiting discrimination because of a protected disclosure,²⁸ were substituted into s.230(6) by the Small Business, Enterprise and Employment Act 2015. As the government majority continues to shift back and forth, s.230(3) remains wholly unchanged. Therefore, it is arguable that the current proposals for reform are sorely necessary, with the prospect to facilitate a substantial transformation to UK employment status. However, this will be no easy feat; a

¹⁵ Trade Union and Labour Relations (Consolidation) Act 1992, s.296(1)(c).

¹⁶ National Minimum Wage Act 1998, s.34.

¹⁷ Note 29, s.35.

¹⁸ Labour Party, ‘About Us’ (*Labour*, 2025) <<https://labour.org.uk/about-us/>> accessed 24 March 2025

¹⁹ House of Commons Library, ‘General election 2024 results’ (*UK Parliament*, 24 September 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-10009/>> accessed 24 March 2025.

²⁰ Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 24 March 2025.

²¹ Prime Minister’s Office, 10 Downing Street and His Majesty King Charles III, ‘The King’s Speech 2024’ (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 24 March 2025.

²² Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 24 March 2025.

²³ Prime Minister’s Office, 10 Downing Street and His Majesty King Charles III, ‘The King’s Speech 2024’ (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 24 March 2025.

²⁴ Labour Party, ‘Next Steps to Make Work Pay’ (*UK Government*, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 24 March 2025.

²⁵ UK Government, ‘Past Prime Ministers: The Rt Hon Sir John Major KG CH’ (*Gov.UK*, 7 November 2019) <<https://www.gov.uk/government/history/past-prime-ministers/john-major>> accessed 25 March 2025.

²⁶ UK Government, ‘Past Prime Ministers: The Rt Hon Lord Cameron’ (*Gov.UK*, 18 July 2024) <<https://www.gov.uk/government/history/past-prime-ministers/david-cameron>> accessed 25 March 2025

²⁷ Employment Rights Act 1996, 47B (3).

²⁸ n.45, 49B (10).

harmonisation of this sprawling legal landscape will certainly require a thoroughly holistic and prudent approach, to support the inherently flexible and ever-dynamic UK employment structure.

Traditional employment vs the gig economy and the UK employment status framework

This section will now assume a more modern focus, analysing Labour's two key pledges as outlined in their manifesto. A critical comparison of the legal treatment of traditional employees and gig economy workers will first be provided, giving rise to the current complexion of UK employment status. The 1968 case of *Ready Mixed Concrete*²⁹ is commonly regarded as a cornerstone of employment STATUS law, and the resulting test is usually the first tool employed by the courts. Briefly, this test asks questions regarding provisions consistent with a contract of employment to determine whether the claimant may be considered an employee. However, as UK law provides rights to the employee based upon this status, but separately determines taxation as a different status, this area of law appears far from clear. This has led to the introduction of countless provisions and amendments to clarify this position, considering the bargaining power of both parties, as seen in *Autoclenz*,³⁰ the mutuality of obligations between parties,³¹ and the correlation between engagements between the parties and a contract of employment.³² As this scope has become more disproportionate and unclear, it is possible that the general understanding of rights entitlement may suffer and the risk of exploitation from employers may increase, despite the protection seemingly afforded to them.

The infancy of the gig economy at common law

It is fair to say that the current UK employment status framework has been operational. This does not appear surprising, in consideration of the fact that the current s.230 definition that we rely upon repealed s.8(2) Wages Act 1986. It would, therefore, appear a foregone conclusion that such a definition would support traditional employment structures, drawing influence from the basis of 'regular', salaried employment. It would also be remiss to ignore the law's generosity regarding all those caught under this definition, whether they be employees, workers or the genuinely self-employed. In totality, the concept of traditional employment, one which the UK has been familiar with for near one hundred years, has been under the protective lock and key of the English legal system, emboldening the rights of the 'little man' against the 'all-powerful employer'. Nowhere has this been more evident than in the leniency of the courts in relation to personal injury claims. In the case of *Lane v Shire Roofing*,³³ despite numerous factors pointing towards self-employment, such as the use of his own tools and the onus of his own taxation, the courts determined Mr. Lane to be nearer an employee of Shire Roofing. Section 2 of the Health and Safety at Work Act 1974 provides the duty of an employer to "ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees". When Mr. Lane fell off a ladder during a job for Shire Roofing, the courts held that "there [were] many factors to be taken into account in answering this question" of labelling an employer/employee relationship,³⁴ evidencing the flexibility of the law to appease policy considerations in favour of the more traditional worker. This case challenges, and certainly appeared to broaden, the scope of what constitutes 'employment'. This case appeared to present the label of 'employee' as a relatively malleable attribution, able to be bent to the mould of the case, one factorial consideration from tipping the balance between 'employee' and 'self-employed'. In many ways, this ambiguity armed the 'little man' with a thin veil of bargaining equality against the employer.

²⁹ *Ready Mixed Concrete (South East) Ltd v Ministry of Pensions and National Insurance* [1968] 2 QB 497 (QBD).

³⁰ *Autoclenz Ltd v Belcher* [2011] UKSC 41.

³¹ *Airfix Footwear Ltd v Cope* [1978] ICR 1210 (EAT).

³² *Revenue and Customs Commissioners v Professional Game Match Officials Ltd* [2024] UKSC 29.

³³ *Lane v Shire Roofing* [1995] IRLR 493 (CA).

³⁴ *Lane v Shire Roofing* [1995] IRLR 493 (CA), 421.

This soft spot does not yet appear to have completely worn thin. More recently, the Supreme Court demonstrated that it is more than willing to extend the scope of whistle blower protection for employees.³⁵ In *Royal Mail Group Ltd v Jhuti*,³⁶ particular focus was attributed to unfair dismissal;³⁷ the corporate bluff was defeated, thus allowing the true unfairness of the claimant's dismissal to be understood in full. It is, therefore, concluded that the great love between the law and traditional employment has empowered the courts to, more often than not, stand in the corner of the 'little man' throughout the years. A similar conclusion was drawn in the Employment Law Review 2024, believing that the clarification of employment status was still considered to stand as the "gateway" to statutory employment rights;³⁸ further reflecting the court's positive affirmation of rights for the employee. That is not to say that workers, historically an afterthought of the s.230 definition, have not benefited from the court's generosity. Despite claims that a plumber carrying out plumbing and maintenance work on behalf of a plumbing company was a self-employed independent contractor, the courts determined in *Smith v Pimlico Plumbers*,³⁹ that Smith was a 'worker' within s.230(3)(b). The court's focus on control and dependence on the employer in this case would set an early precedent for the looming gig economy. Aside from this, this case again demonstrated the court's favour towards those caught by the longstanding s.230 definition, particularly within the context of the potential denial of rights. Therefore, one need not look far to see the tenured relationship between the law and 'traditional employment'.

Thus, until and around 2020, change appeared both largely unnecessary and almost completely unforeseeable.

Although some reports seem to allude to the onset of a gig economy from as early as 2017,⁴⁰ the general consensus appears to be that following the Coronavirus pandemic and the UK's decision to leave the European Union this development of a gig economy is now enjoying full force. The evidence is somewhat speculative and far scattered, but by way of example, Deliveroo, a staple of the gig economy stereotype, had approximately 30,000 riders in 2017,⁴¹ but now report a surplus of 180,000.⁴² Therefore, it is certainly fair to theorise that such indicators give rise to the conclusion that the gig economy is planting its roots in the UK. But what of the fabled s.230 definition?⁴³

Does our new economic backbone share in the great reliance previously enjoyed by traditional employment? Currently, this does not appear to be the case. The discrepancies in the loose definition of a 'gig economy worker' appear to be somewhat of a hindrance. Two of the most identifiable problems lie in common supplements to the *Ready Mixed Concrete* test.⁴⁴ In *Yewens v Noakes*,⁴⁵ control was at the forefront of considerations, leading Bramwell LJ to determine that a "servant is a person subject to the command of his master as to the manner in which he shall do his work." As explained above, the support provided by digital platforms is one characterisation of the gig economy. However, workers often determine their own schedule, location and workload.⁴⁶ It is certainly arguable that, by this measure, the application of control is near

³⁵ Public Interest Disclosure Act 1998, s.5.

³⁶ *Royal Mail Group Ltd v Jhuti* [2019] UKSC 55; [2020] IRLR 731

³⁷ Employment Rights Act 1996, s.43A.

³⁸ IDS Employment Law Brief, 'Employment law Review 2024' (2024) 1178 IDS Employment Law Brief 21

³⁹ *Pimlico Plumbers Ltd v Smith* [2018] UKSC 29.

⁴⁰ Department for Business, Energy and Industrial Strategy, 'Characteristics of those in the gig economy' (*Gov.UK*, February 2018).

<https://assets.publishing.service.gov.uk/media/5aa69800e5274a3e391e38fa/The_characteristics_of_those_in_the_gig_economy.pdf> accessed 9 March 2025.

⁴¹ BBC, 'Deliveroo makes huge loss on food delivery business' (*BBC*, 21 September 2017)

<<https://www.bbc.co.uk/news/business-41347817#:~:text=Heavy%20investment',140%20cities%20around%20the%20world.%22>> accessed 9 March 2025

⁴² Deliveroo, 'Locations' (*Deliveroo*, 2025) <<https://careers.deliveroo.co.uk/locations/>> accessed 9 March 2025.

⁴³ Employment Rights Act 1996, s.230.

⁴⁴ *Ready Mixed Concrete (South East) Ltd v Ministry of Pensions and National Insurance* [1968] 2 QB 497 (QBD).

⁴⁵ *Yewens v Noakes* (1880) 6 QBD 530 (CA), Bramwell LJ.

⁴⁶ Deliveroo, 'The Rider Life' (*Deliveroo*, 2025) <<https://riders.deliveroo.co.uk/en/the-rider-lifestyle>> accessed 9 March 2025.

fictitious, and the way workers conduct their work certainly does not appear to be at the command of anyone but themselves. In *Stevenson Jordan v MacDonald*,⁴⁷ integration was instead the focus of Denning LJ's conclusion, providing that "under a contract for services, [a worker's] work, although done for the business, is not integrated into it but is only accessory to it." Due to the near exclusive provision of short-term contracts and freelance work, the gig economy seems to lend itself to the idea of quick cash grabs, allowing workers to drop in and out of business structures without the need for 'integration'. Such considerations certainly appear to leave 'gig economy workers' left on their backs, with very little concrete protection. It appeared simply a matter of time before this would be challenged.

The decision in Uber

This eventually arrived via the case of *Uber BV v Aslam*. This case reached the Supreme Court when Uber appealed against the Court of Appeal's finding that their private hire vehicle drivers were 'workers' under s.230(3) Employment Rights Act. Uber, having defined themselves as a technology provider, argued that their drivers were independent contractors, with their service simply acting as a 'booking agent'. This therefore allowed them to assert that the direct contract existed only between the driver and the passenger.⁴⁸ Conversely, the drivers attempted to emphasise five specific aspects that they felt determined them as 'workers'. These aspects mainly focused on control, particularly as their full remuneration is fixed by Uber, and the only degree of control they retained in this sense was their choice of when and how much they work.⁴⁹ All drivers also must accept the standard written form of agreement and the terms on which they transport passengers.⁵⁰ The driver's third argument considered multiple heads of control, as it was understood that drivers are not informed of the passenger's intended destination until the request is accepted, providing no chance to decline. This was coupled with Uber's determination of the rate of acceptance and cancellation of trip requests. Tribunal evidence provided that "a driver whose percentage rate of acceptances falls below [80 per cent]... (or whose cancellation rate exceeds a set level) receives an escalating series of warning messages which, if performance does not improve, leads to the driver being automatically logged off the Uber app and shut out from logging back on for ten minutes."⁵¹ The final forms of control argued were that of the vetting of the type of cars permitted by Uber, provided for through their integral and wholly owned technology,⁵² and their specific prohibition on communication with passengers after the trip ends, except in circumstances to communicate any lost property.⁵³ It was ultimately ruled that the Employment Tribunal at first instance was correct in their determination that Uber's drivers were workers;⁵⁴ this conclusion had been reached at every stage of proceedings. Despite the earlier supposition that 'gig economy workers' are not well protected under the current framework, the court certainly managed to make do with the 'limb b' definition, providing a positive precedent for the future of the gig economy. However, this decision once again provided otherwise inaccessible rights to the victors of this case, as Uber's drivers were entitled to basic employment rights hereafter.

In many ways, the scope of employment status and treatment of workers appears largely unaffected by the conclusion of this case, despite the relative delicacy seen in the Court's approach. However, the rejection of the classic contractual approach of employment disputes in this case has seemingly muddled the unknown waters of the legal approach to the gig economy. Adams-Prassl also theorised "whether Uber also marks a complete rejection of contractual

⁴⁷ *Stevenson Jordan & Harrison v MacDonald & Evans* [1952] 1 TLR 101 (CA), Denning LJ.

⁴⁸ *Uber BV v Aslam* [2021] UKSC 5.

⁴⁹ At 446.

⁵⁰ *Uber BV v Aslam* [2021] UKSC 5, 446.

⁵¹ *Uber BV v Aslam* [2021] UKSC 5.

⁵² At 447.

⁵³ At 448.

⁵⁴ At 457.

approaches”.⁵⁵ As the legal capabilities of the gig economy are beginning to be tested by the law, Lord Leggatt’s judgment certainly appears to stand as a general guidance. Lord Leggatt’s attempts to harmonise contract and statute to bridge the sparsity in definition appears necessary, to allow mutual reinforcement to defeat “evasive stratagems... of a contractual nature”.⁵⁶ This decision has gone some way to highlight the proficiencies and deficiencies of the current law, and its adaptability in the face of change.

The law is not faultless, nor is it blameless, despite its reliance on man-made progression. The law’s partiality toward employees and workers has already been suggested. However, it is possible that this view ignores a stronger desire of the courts to prevent “employers exploiting the complexity of the UK’s framework to deny people their legal rights.”⁵⁷ Through this lens, the court’s approach to gig economy workers thus far shares a somewhat comforting similarity to that of traditional employment. Unfortunately, the inherent difficulties appear to render the work of the law somewhat ineffectual. A starkly apparent drawback that may be concluded is that of a question of sustainability. Aside from any current difficulties within the law in relation to the gig economy, the lack of substantive definition within employment legislation has been in question since 2017. The Taylor Review of Modern Working Practices, widely regarded as a significant contribution to the sphere of employment, proposed that the “minimalistic approach to legislation” should be replaced “with a clearer outline of the tests for employment status, setting out the key principles in primary legislation, and using secondary legislation and guidance to provide more detail.”⁵⁸ In consideration of the date of publishing alone, despite the numerous recommendations following this paper, the sustainability of the current employment law framework certainly leaves a lot to be desired. Drawing from this school of thinking, Pitt has commented on Deliveroo’s attempts to describe their riders as self-employed; the very feat that landed Uber in the Supreme Court. She wrote disapprovingly of their unhampered ability to find “a simple method by which to undermine employment protection rights and... a method against which neither the provisions of ILO Recommendation 198 nor the EU Platform Work Directive would necessarily be proof.”⁵⁹ It stands to reason, therefore, that the fresh ambiguity of the gig economy further distorts the reality and workability of this framework. Curiously, the unprecedented tenure of this framework has warranted a degree of solemn respect and surprise from the law and commentators alike, but the gig economy now appears to have dealt a final and fatal blow to the s.230 definition.

The ‘Make Work Pay’ pledges

The current Labour government appears to have taken heed to the warnings cautioned above. Before and throughout their tenure in power thus far, the adopted course of action has certainly appeared promising. From as early as Labour’s manifesto to ‘Make Work Pay’, published in May 2024,⁶⁰ two main pledges appear to have been submitted to the public. The first relates to employment rights. The Labour Party appear to acknowledge the presence of the gig economy, suggesting that “the lengthy wait for basic rights means the risk of moving jobs falls too heavily on the individual”⁶¹ leading to their bid to introduce “basic individual rights from day one for all workers, ending the current arbitrary system that leaves workers waiting up to two years to access

⁵⁵ Jeremias Adams-Prassl, ‘*Uber BV v Aslam*’: “[W]ork relations... cannot safely be left to contractual regulation” (2024) 51(4) *Industrial Law Journal* 955, 963.

⁵⁶ At 964.

⁵⁷ Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 10 March 2025.

⁵⁸ Department for Business and Trade and Department for Business, Energy & Industrial Strategy, ‘Good Work: The Taylor Review of Modern Working Practices’ (*Gov.UK*, Crown Copyright 2017) <<https://assets.publishing.service.gov.uk/media/5a82dcde5274a2e87dc35a4/good-work-taylor-review-modern-working-practices-rg.pdf>> accessed 10 March 2025.

⁵⁹ Gwyneth Pitt, “The simple things you see are all complicated”: thoughts on Deliveroo’ (2024) 53(4) *Industrial Law Journal* 784, 794.

⁶⁰ Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 25 March 2025.

⁶¹ Note 89.

basic rights of protection against unfair dismissal, parental leave and sick pay.”⁶² The current system appears to be somewhat ‘arbitrary’, particularly in consideration of the fact that each of the rights noted have individual and differing standards. Should a claimant wish to pursue unfair dismissal, they must be an employee, and under the respondent company’s employ for a minimum of two years.⁶³ This right is not available to workers. Parental leave is available to “an employee who satisfies specified conditions” after one year of employment.⁶⁴ However, Shared Parental Leave is an exclusive employee right, whilst Statutory Shared Parental Pay remains available to both employees and workers.⁶⁵ Under the Social Security Contributions and Benefits Act 1992, “statutory sick pay shall not be payable for the first three qualifying days in any period of entitlement”.⁶⁶ Despite this delay in access, statutory sick pay may only be claimed by employees and agency workers.⁶⁷ In *National Union of Professional Foster Carers v Certification Officer*,⁶⁸ it was suggested that the Government should consider introducing “bespoke legislative provision for the position of foster carers [regarding] rights appropriate to their very unusual role.” Although application of the Trade Union and Labour Relations (Consolidation) Act to foster carers was of central focus in this case,⁶⁹ it appears fair to draw the conclusion that, using the above words of Underhill LJ, a revised employment status with a broader catch-all scope, focusing on the relational dealings between parties, may be of greater benefit than the current three-tier employment status. Any potential reform would bear the burden of the consideration of a great number of varying employment rights, statutory provisions and common law verdicts. It is therefore asserted, in light of Labour’s government first pledge, that this current definition is ultimately not fit for purpose. In consideration of the support of the Taylor Review,⁷⁰ and the belief of many that “for some time now...in Britain we have been in danger of evolving a two-tier labour force”,⁷¹ burying our heads in the sand has simply paved the way to this inevitable juncture. The call for change does not appear to have fallen upon deaf ears.

The current Labour government has made clear its intentions.

The Labour Party’s second proposition was that of a comprehensive and calculated shift towards “a single status of worker and transition towards a simpler two-part framework for employment status which will differentiate between workers and the genuinely self-employed.”⁷² It was suggested that the law would thereafter stand equipped to “adapt to changing forms of employment and guard against a minority of employers using novel contractual forms to avoid legal obligations”,⁷³ allowing for an “[evaluation of] the way flexibility of ‘worker’ status is used and understood across the workforce”.⁷⁴ The law currently accommodates a three-tier employment status. Section 230 defines an employee under subsection (1) and a worker under subsection (3). Self-employment is not specifically defined. It is instead determined through the application of many different common law decisions, such as the test for a personal service or

⁶² Note 89.

⁶³ Employment Rights Act 1996, s.108.

⁶⁴ Employment Rights Act 1996, s.75E(1).

⁶⁵ Department for Business and Trade, ‘Shared Parental Leave and Pay’ (*Gov.UK*, 2025) <<https://www.gov.uk/shared-parental-leave-and-pay/eligibility-for-birth-parents>> accessed 27 March 2025.

⁶⁶ Social Security Contributions and Benefits Act 1992, s.155(1)

⁶⁷ Department for Work and Pensions, ‘Statutory Sick Pay (SSP)’ (*Gov.UK*, 2025) <<https://www.gov.uk/statutory-sick-pay/eligibility>> accessed 27 March 2025.

⁶⁸ *National Union of Professional Foster Carers v Certification Officer* [2021] ICR 1397, 1445.

⁶⁹ Trade Union and Labour Relations (Consolidation) Act 1992, s.296.

⁷⁰ Department for Business and Trade and Department for Business, Energy & Industrial Strategy, ‘Good Work: The Taylor Review of Modern Working Practices’ (*Gov.UK*, Crown Copyright 2017) <<https://assets.publishing.service.gov.uk/media/5a82dcdce5274a2e87dc35a4/good-work-taylor-review-modern-working-practices-rg.pdf>> accessed 10 March 2025.

⁷¹ Aaron Baker, Ian Smith and Owen Warnock, *Smith & Wood’s Employment Law* (16th edn, OUP 2023).

⁷² Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 27 March 2025.

⁷³ Note 101.

⁷⁴ Note 101.

substitution clause, as a contract of employment requires personal service,⁷⁵ and is often distinguished against traditional employment; a contract ‘of’ employment or services against a contract ‘for’ services.⁷⁶ These somewhat tenuous differentials have produced no end of seemingly varying and contradictory results. In *Johnson v Transopco UK Ltd*,⁷⁷ an Employment Appeals Tribunal concluded that Johnson was not a worker of Transopco, despite owing them an obligation of personal service. This case again demonstrates a misalignment in common law, displaying the court’s focus on the factual grounds on which the claim is brought. A similar view was provided in an article within an issue of the IDS Employment Law Brief, deeming this case to be “a useful reminder that the question of ‘worker’ status turns on its own facts”.⁷⁸ This was also likened to the earlier decision of the Supreme Court in *Uber*, noting that it “remains possible for taxi app operators to devise a business model that does not involve employing drivers”.⁷⁹ A two-tier employment status, therefore, should it address the transparent and widespread inconsistencies between the multitudinous common law and statutory provisions, would likely benefit the UK employment structure. Clarity and centrality in one ‘catch-all’ provision would certainly, at the very least, mitigate the complications brought about by the deficiencies of the s.230 definition.

It would be, therefore, ultimately unfair to surmise that the problems outlined above have been ever-present; however, it does appear that this area of the law has fallen foul of the classic criticism of failing to ‘keep up to date’. The contemporary nature of the gig economy, in its infancy, has already garnered legal and media attention, pointing fingers at the deficiencies of the law. Nevertheless, it is conversely arguable that the warning signs are evident. Should the Labour government stay true to their intentions to “*move towards a single status of worker and transition towards a simpler two-part framework for employment status*”,⁸⁰ it is arguable that the surging population of gig economy workers may potentially be equipped with the ability to defeat those previously discussed fears and risks.

The reality of reform

Following Labour’s victory in the general election on 4 July 2024,⁸¹ the King’s Speech was published soon after, on 17th July.⁸² The King made early mention of the new government’s commitment to “ban exploitative practices”⁸³, as well as the intention to “work in close partnership with trade unions and businesses to deliver [the Labour Party’s] New Deal”.⁸⁴ The King’s prompt comment regarding ‘exploitative practices’ was interesting, as, although similar phraseology was adopted by the Labour Party in their belief that “some employers [are] exploiting the complexity of the UK’s framework to deny people their legal rights,”⁸⁵ this comment did not appear to be a driving factor in the call for change. Instead, combatting bogus self-employment appeared to be at the forefront of Labour’s focus. Nevertheless, such a comment

⁷⁵ *Express & Echo Publications Ltd v Tanton* [1999] IRLR 367 (CA).

⁷⁶ Employment Rights Act 1996, s.230(2).

⁷⁷ *Johnson v Transopco UK Ltd* [2022] EAT 6; [2022] ICR 691.

⁷⁸ IDS Employment Law Brief, ‘Taxi driver working through app not a “worker”’ (2022) 1146 IDS Employment Law Brief 10.

⁷⁹ IDS Employment Law Brief, ‘Taxi driver working through app not a “worker”’ (2022) 1146 IDS Employment Law Brief 10.

⁸⁰ Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 10 March 2025.

⁸¹ House of Commons Library, ‘General election 2024 results’ (*UK Parliament*, 24 September 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-10009/>> accessed 28 March 2025.

⁸² Prime Minister’s Office, 10 Downing Street and His Majesty King Charles III, ‘The King’s Speech 2024’ (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 28 March 2025.

⁸³ Note 15.

⁸⁴ Prime Minister’s Office, 10 Downing Street and His Majesty King Charles III, ‘The King’s Speech 2024’ (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 28 March 2025.

⁸⁵ Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 28 March 2025.

remains harmonic with Labour's pledges to clarify and refine the current three-tier employment status. The 'New Deal' references the realisation of Labour's proposal of the amalgamation of employment rights. It was also implied that the above excerpts from the King's Speech would materialise in the form of an Employment Rights Bill. A newly introduced Bill, should it remain focused on the pledges of the Labour Party, be an effective solution to the shortcomings previously discussed. Of course, status is not the primary, nor only, consideration within the sphere of employment. As has been evident, the law in this area exists as an intricate and self-supportive framework. Should the Labour Party's initial aims remain at the spearhead of any Employment Rights Bill, this may present itself as the greatest opportunity in a decade to address the shortcomings of the s.230 definition. Recently, a number of additional difficulties have risen to prominence within UK Employment Law. Particularly, fire and rehire practices have been thrust toward the attention of the media following the Insolvency Service's investigations as to whether "any offences had been committed by P&O when it dismissed 786 employees on 17 March [2022] ...contrary to s.194(1) of the 1992 Act."⁸⁶ Further, zero-hour contracts are also likely to feature in any upcoming Bill. It would be narrow-minded to fail to acknowledge the outstanding and seemingly separate challenges that persist in almost all far-reaching corners of employment law. However, in *Addison Lee Ltd v Gascoigne*,⁸⁷ an overlap between zero-hours contracts and status was raised and addressed by an Employment Appeals Tribunal. Under Regulation 2 Working Time Regulations (an equivalent definition of worker to s.230, the argument of the existence of "a true 'zero hours contract' where there is no such [limb (b) mutuality of] obligation" was dismissed. Therefore, UK employment status, and indeed the previously termed 'self-supportive' framework as a whole, may stand to benefit tremendously from a new Employment Rights Bill, should these areas, which may initially appear disparate, be addressed as a collective, with the intention to unify and harmonise the existing conflict within the law.

The Labour Government's next step towards reform was the aptly named 'Next Steps to Make Work Pay' paper, published on 10 October 2024.⁸⁸ This paper had the intention of setting out "the next steps [the Labour Party] intend to make in [their] mission to effect change and make work pay".⁸⁹ Understandably, many issues troubling UK employment law were addressed, in accordance with the Labour Party's original manifesto. Both zero-hour contracts and fire and rehire practices were addressed in tandem with unfair dismissal, supposedly the key forces in ending employers' unfair leverage of "one-sided flexibility."⁹⁰ The recurring theme of 'exploitation' resurfaced within this paper, contextualising "exploitative practices,"⁹¹ now taken to mean "exploitative zero hours contracts".⁹² Until this point, endorsement of the original pledges as first presented by the Labour Manifesto has appeared stable; that is, until we reach the 'Wider reforms' portion of this paper. It is at this point that the Government makes clear its intention to "consult on a simpler framework that differentiates between workers and the

⁸⁶ Julian Harris, 'Insolvency Service decides against prosecuting P&O over redundancies' (2022) 43(11) Company Lawyer 373, 373.

⁸⁷ *Addison Lee Ltd v Gascoigne* [2018] ICR 1826.

⁸⁸ Labour Party, 'Next Steps to Make Work Pay' (*UK Government*, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 29 March 2025.

⁸⁹ Note 125.

⁹⁰ Labour Party, 'Next Steps to Make Work Pay' (*UK Government*, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 29 March 2025.

⁹¹ Prime Minister's Office, 10 Downing Street and His Majesty King Charles III, 'The King's Speech 2024' (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 29 March 2025.

⁹² Labour Party, 'Next Steps to Make Work Pay' (*UK Government*, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 29 March 2025.

genuinely self-employed”, aside from the Employment Rights Bill.⁹³ This minor comment could present itself to be a major oversight. The research presented thus far is in no way completely exhaustive but quantifiably demonstrates the complications of the question of status. Simply, where the relevant employment rights are being addressed, why should the definition to which these rights are attached be cast aside for another day? At a brief glance, this paper certainly proves to any reader that the Labour Party have furthered their original propositions to bring about “basic individual rights from day one for all workers... [such as] basic rights of protection against unfair dismissal, parental leave and sick pay.”⁹⁴ In fact, a great deal of relevant rights that apply inconsistently between employees and workers have been addressed, such as a potential “new right to bereavement leave”⁹⁵ and “the enforcement of holiday pay policy”.⁹⁶ However, in the same vein, it appears that the catalogue of rights presented is incomplete, neglecting to mention the right to time off for dependants,⁹⁷ by way of example. Should this fail to be rectified as an exclusive employee right,⁹⁸ the future-proof nature of these plans is jeopardised. The Labour Party voiced their concerns as to “employers using novel contractual forms to avoid legal obligations” in their manifesto.⁹⁹ For as long as this fault remains unaddressed, such employers will capitalise on the law’s inability to act retroactively, meaning that the “working people”¹⁰⁰ that the Labour Party seeks to protect will remain unshielded. As recently as 2023, on Appeal, an Employment Tribunal was found to have erred when determining whether an individual operating several companies was a worker in consideration of a written agreement between the service companies and a putative employer.¹⁰¹

Therefore, until a completely holistic scrutiny and revision of the law regarding status is complete, the s.230 definition is dwarfed by the shadow of its risks. A similar criticism may be drawn from a later commitment to “strengthen protections for the self-employed through a right to written contract; extending blacklisting protections and extending health and safety protections”.¹⁰² It is unclear as to whether these supplementary considerations will be tackled individually or as a bundle of rights; what is clear is that for every rung added this becomes an increasingly long and tiresome ladder to climb. Countouris criticised this section of the paper in a similar fashion, indicating that a new approach to status requires “more than just tinkering with existing definitions. The new category of worker must include the bulk of all existing employment relationships and those that may emerge in the future”.¹⁰³ Therefore, it could be argued that the shortcomings of this paper stand as the first hurdle that the Labour government has failed to jump. It certainly appears as though the audacious promises made by their manifesto have wavered, giving way to a more cautionary approach with the parliamentary majority now in hand. Coupling the relevant rights and definitions would result in the greatest chance of comprehension, due to their co-dependency. The differences in definition between workers and the self-employed need not exist if not for the separate bundles of rights entitled to each, and,

⁹³ Labour Party, ‘Next Steps to Make Work Pay’ (*UK Government*, 10 October 2024)

<https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 29 March 2025.

⁹⁴ Note 130.

⁹⁵ Labour Party, ‘Next Steps to Make Work Pay’ (*UK Government*, 10 October 2024)

<https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 29 March 2025.

⁹⁶ Note 132.

⁹⁷ Employment Rights Act 1996, s.57A.

⁹⁸ Department for Work and Pensions, ‘Time off for family and dependants’ (*Gov.UK*, 2025)

<<https://www.gov.uk/time-off-for-dependants>> accessed 30 March 2025.

⁹⁹ Labour Party, ‘Labour’s Plan to Make Work Pay’ (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 30 March 2025.

¹⁰⁰ Note 136

¹⁰¹ *Plastic Omnium Automotive Ltd v Horton* [2023] EAT 85; [2023] ICR D3.

¹⁰² Labour Party, ‘Next Steps to Make Work Pay’ (*UK Government*, 10 October 2024)

<https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 30 March 2025.

¹⁰³ Nicola Countouris, ‘Waiting for Godot’ - The Employment Rights Bill 2024 and the ‘single status of worker’ omission’ (*IER*, 11 March 2025) <<https://www.ier.org.uk/comments/waiting-for-godot-the-employment-rights-bill-2024-and-the-single-status-of-worker-omission/>> accessed 30 March 2025.

inversely, without being able to differentiate these rights, how can we be so sure in our characterisation of who is a worker and who is not? Should this Bill manage to funnel the wide array of currently available provisions, a brighter future for the complexion of employment status within the UK is foreseeable. However, should this Bill seek only to carry out menial maintenance work on a definition that is otherwise struggling to stay afloat, then it is submitted that this new Employment Rights Bill will simply become a greater hindrance than help.

The Employment Rights Bill revelation

Between the ‘Next Steps’ paper and the current version of the Employment Rights Bill, the ‘Get Britain Working’ White Paper was published on 26 November 2024.¹⁰⁴ The White Paper will not be individually dissected but may be sporadically referred to throughout the analysis of the Bill. The White Paper undertook a slightly different focus, concentrating on increasing the working population of the UK, forming a salient part of “wider government action to spread opportunity and fix the foundations of our economy... strengthening employment rights through [the Labour Party’s] Plan to Make Work Pay”.¹⁰⁵ At the time of writing, this Employment Rights Bill is at the Committee Stage in the House of Lords, with the most recent version being dated 14 March 2025.¹⁰⁶ The Labour Party have neglected to mention the s.230 definition throughout the entirety of this 310-page Bill. It appears needless to note that the Labour Party have failed to discuss a factor that has already been determined to sit “outside of the Employment Rights Bill”.¹⁰⁷ This would certainly be a fair comment, had a significant portion of this Bill not been dedicated to “amend[ing] the Seafarers’ Wages Act 2023 [and] to make provision for the implementation of international agreements relating to maritime employment”.¹⁰⁸ Thus, it is asserted that a singular paragraph within the ‘Next Steps to Make Work Pay’ paper was attributed to “ensur[ing] that we never see a scandal like that of P&O Ferries ever again”.¹⁰⁹ The Labour Party promised to “strengthen workers’ rights at sea and implement international conventions relating to seafarer employment” via amendment¹¹⁰. Such considerations were thereafter omitted by the White Paper.

At a distance, this somewhat sudden pivot in focus could easily be mistaken as evidence of progress. However, upon closer inspection, this is more plausibly a diversion of attention. The entirety of Part 3, Chapter 3 has been designated to reform maritime conventions.¹¹¹ Aside from a single amendment to the Seafarers Wages Act, most of this Chapter is focused on inserting international agreements relating to maritime employment after s.84 of the Merchant Shipping Act. A brief review of s.84 demonstrates that this section has remained unamended since its publication in 1995.¹¹² As previously noted, s.230 has been amended; the former likely appears, to the untrained eye, as a milestone change. In both actuality and in law, this instead proves to be an ‘easy fix’. The initial injection of positivity provided by the Labour Party’s manifesto appeared to provide employees, workers and the self-employed with politically ideal, but largely unrealistic, expectations as to their future security. However, now forming the government

¹⁰⁴ Department for Work and Pensions, HM Treasury and Department for Education, ‘Get Britain Working White Paper’ (Gov. UK, 26 November 2024) <<https://www.gov.uk/government/publications/get-britain-working-white-paper>> accessed 1 April 2025.

¹⁰⁵ Department for Work and Pensions, HM Treasury and Department for Education, ‘Get Britain Working White Paper’ (Gov. UK, 26 November 2024) <<https://www.gov.uk/government/publications/get-britain-working-white-paper>> accessed 1 April 2025.

¹⁰⁶ Employment Rights HL Bill (2024-25) 81.

¹⁰⁷ Labour Party, ‘Next Steps to Make Work Pay’ (UK Government, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 1 April 2025.

¹⁰⁸ Employment Rights HL Bill (2024-25) 81.

¹⁰⁹ Labour Party, ‘Next Steps to Make Work Pay’ (UK Government, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 1 April 2025.

¹¹⁰ Labour Party, ‘Next Steps to Make Work Pay’ (UK Government, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 1 April 2025.

¹¹¹ Employment Rights HL Bill (2024-25) 81, Part 3, Chapter 3.

¹¹² Note 152.

majority, Labour's flame already appears to be flickering. Aside from this peculiar focus, zero hours workers, unfair dismissal and dismissal for failing to agree to variations of contracts (fire and rehire practices) were all addressed within this Bill. Zero hours workers may now stand to enjoy the "right...to be offered guaranteed hours".¹¹³

The absence of any obligation to provide work has historically characterised the zero hours contract. Should this Bill be enacted in its current state, an employer will thereafter be required to make "a guaranteed hours offer to a worker"¹¹⁴ subject to a number of exceptions to this duty.¹¹⁵ Schedule 3 reviews unfair dismissal. The proposed repeal of s.108 Employment Rights Act is momentous, removing the qualifying period of employment for an unfair dismissal claim. Despite the initially substantial advantage that this repeal would provide to employees, employers are thereafter provided with a specific set of circumstances in which they may dismiss an employee within their initial period of employment.¹¹⁶ Dismissal for failing to agree to variations of contracts is addressed under Part 1, Clause 26.¹¹⁷ A statutory code of practice on dismissal and re-engagement, permitted by s.203 Trade Union and Labour Relations (Consolidation) Act,¹¹⁸ was published in July 2024.¹¹⁹ This Bill appears to concretise this code of practice, translating the expectation of employers to take "all reasonable steps to explore alternatives to dismissal"¹²⁰ into non-application where "the employer could not reasonably have avoided the need to make the variation".¹²¹ However, flexibility appears to have been provided to financially disadvantaged small businesses, with these new propositions being disregarded where "the reason for the variation was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties" that may affect an employer's ability to "carry on the business".¹²² This, unsurprisingly, displays the Labour Party's forecasted tendencies to protect the "*working people*,"¹²³ providing the target audience with a 'get-out clause'. This Bill could positively legislate the future of UK employment status, with the Labour Party appearing to have largely maintained the trajectory of their promises. The "current arbitrary system" surrounding basic protection rights,¹²⁴ has been substantially addressed, and an "[extension to] the time limit for bringing claims to Employment Tribunals",¹²⁵ has been realised, stretching from three to six months.¹²⁶

However, with each of the above rights, the inclusion of exceptions and circumstances only appears to complicate and frustrate the 'catch-all' plausibility of any new worker definition. The intention to 'future-proof' these provisions is admirable, however this sacrifice appears to weigh heavy on the general and consistent application of these rights. Each of these seemingly minor 'ifs and buts' are starting to accumulate, and we are beginning to lose sight of the original 'one-size-fits-all' capacity of this reform. Legal commentators do not appear to be the only ones to

¹¹³ Employment Rights HL Bill (2024-25) 81

¹¹⁴ Note 155, Part 1, Clause 1.

¹¹⁵ Note 155, Part 1.

¹¹⁶ Employment Rights HL Bill (2024-25) 81

¹¹⁷ Note 160, Part 1, Clause 26.

¹¹⁸ Trade Union and Labour Relations (Consolidation) Act 1992, s.203.

¹¹⁹ Dismissal and re-engagement: code of practice (2024) <<https://www.gov.uk/government/publications/dismissal-and-re-engagement-code-of-practice/code-of-practice-on-dismissal-and-re-engagement-issued-by-the-secretary-of-state-under-section-203-of-the-trade-union-and-labour-relations-consolidat>>

¹²⁰ Dismissal and re-engagement: code of practice (2024) <<https://www.gov.uk/government/publications/dismissal-and-re-engagement-code-of-practice/code-of-practice-on-dismissal-and-re-engagement-issued-by-the-secretary-of-state-under-section-203-of-the-trade-union-and-labour-relations-consolidat>>

¹²¹ Employment Rights HL Bill (2024-25) 81.

¹²² Note 165.

¹²³ Labour Party, 'Labour's Plan to Make Work Pay' (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 4 April 2025.

¹²⁴ Labour Party, 'Labour's Plan to Make Work Pay' (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 4 April 2025.

¹²⁵ Labour Party, 'Next Steps to Make Work Pay' (*UK Government*, 10 October 2024) <https://assets.publishing.service.gov.uk/media/6707a5eb92bb81fcdbe7b62b/next_steps_to_make_work_pay.pdf> accessed 4 April 2025.

¹²⁶ Employment Rights HL Bill (2024-25) 81.

bear the burden of this confusion. During the first sitting of this Bill on 26 November 2024, a Scottish National Party MP, Chris Law, raised what he believed to be “a fundamental issue” with the Bill, following the first parliamentary debate regarding the proposed two-tier employment status. His comments concerned the relationship between “zero-hours contracts and the different legal categories of a worker”.¹²⁷ Having acknowledged the supposed universality in the application of labour law, it was questioned whether a new clause was required to ensure that all rights contained within the Bill apply to “any individual who is engaged by another to provide labour and is not, in the provision of that labour, genuinely operating a business on his or her own account”.¹²⁸ These comments, upon reflection, seemingly foreshadowed the difficulties now evident in the interpretation of this Bill. Without a concurrently developing worker definition, we remain “*without clarification on the legal status of all those who work, [meaning that] the rights in the Bill are allocated piecemeal*”.¹²⁹ The intended simplicity of this new definition will inevitably be distorted and diluted, due to the complexity and abundance of exclusions and exceptions attached to all the aforementioned rights. Therefore, this Bill has had the resultant impression of a sidestep, providing equal and contrary measures of development and regression, rather than a step towards clarity for employment status within the UK.

An ulterior consideration

At this point, it appears fair to conclude that Labour have acted quickly, perhaps even hastily, regarding this Employment Rights Bill. Having secured a landslide victory at the July 2024 general election¹³⁰, Labour have somewhat fast-tracked this Bill, through to the Committee Stage in the House of Lords by March 2025.¹³¹ Thus far, the stages of legislation have only been followed for a matter of months. Admittedly, although the pace perhaps feels somewhat brisk, this process has conformed to a relatively standard timeframe. However, it is with the understanding of this bill’s potential context with which the revelation of its pace turns on its own facts. This bill, as Labour have made clear, intends to largely usurp the current three-tier employment status framework, entrenched as it is within the UK legal system. This author believes that, for the evidential flaws and unanswered questions that already appear to have permeated this Bill, such a piece of legislation, intended to be wholly and radically transformative, warrants a greater level of commitment and scrutiny than that of a slapdash charge to Royal Assent. This Bill, despite its admirable intention and purpose, is highly unlikely to clarify the legal ambiguity that the UK employment complexion currently suffers from. Section 230(3) has remained in its original semblance since its introduction in 1996. Problems have arisen and have been left unaddressed. Calls for reform have been hollow and unsettled, inevitably carving a wider mould to be filled by any reformative action.

There is undoubtedly a need for reform. However, this author foresees an incommensurate balance of large-scale disruption in exchange for fractional success in Labour’s current policies. In an aging building, unfit for its purpose, close to collapse, would the sense lie in its complete detonation, or pursuing a safer, piecemeal deconstruction, more akin to breaking it down to build it back up? The latter certainly appears more logical. Therefore, this author surmises that steady implementation may allow this Bill to enjoy the level of success that was originally implied with its drive for change. The first, and arguably most rational, step in this process would regard the focal change proposed; the unification and merging of the definition of both employee and worker. Simply, this is a necessary foundation, and once in place, would allow those affected to better understand the direction and vision of this bill. Further, as the Labour government appear keen to avoid the further exploitation of “the complexity of the UK’s framework to deny people

¹²⁷ Public Bill Committee, *Employment Rights Bill First Sitting Official Report* (First Sitting, House of Commons, 26 November 2024) c192.

¹²⁸ Note 171, c193.

¹²⁹ Note 171, c192.

¹³⁰ House of Commons Library, ‘General election 2024 results’ (*UK Parliament*, 24 September 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-10009/>> accessed 8 April 2025.

¹³¹ Employment Rights HL Bill (2024-25) 81.

their legal rights,”¹³² it is asserted that a readily available definition may clarify the position of these newly termed ‘workers’, leave little room for misinterpretation and, with the execution of the following procedure, exploitation. However, this step may not be realised without this elusive, transformative new ‘worker’ definition that has been so heavily discussed but has yet to come to fruition.

Gradual implementation

This article supposes that rights should be grouped, bound by their similarities, and implemented successively, until the Bill has been enacted in full force. Relying solely upon the scope of rights discussed within this piece, it is submitted that three groups of rights may be sequentially imposed. The first group may be categorised as the “*basic individual rights from day one for all workers*”,¹³³ including unfair dismissal, parental leave and sick pay. This group has already been provided by the Labour government, now seeking to remove the qualifying periods attached to each. Providing these rights to our newly defined population of ‘workers’ would allow the Labour government to demonstrate their support, providing an accountable standard of rights, to which every ‘worker’ now has access. Further, the unique benefit of this approach may also be appreciated at this point, as, with only partial implementation, an early indication as to the success of the Bill may be understood. This provides a certain quality of adaptability to the remaining stages, as each step may thereafter be taken in the knowledge of the successes and shortcomings of each previous step. Following this assertion, the next implementation should consider rights pertaining to ‘the expectations of the employer’, such as the new principles of dismissal for failing to agree to variations of contracts. Enforcing these expectations at the second stage of proceedings may achieve one of Labour’s original aims; to defeat the inherent and preventable exploitation of workers.

This method of implementation is hallmarked by its simplicity; a multi-step, one-at-a-time process. As Labour fear for the “complexity of the UK’s framework,”¹³⁴ the gradual progression and release of each bundle of rights offers this Bill an aspect of generalised readability. Providing the working population, the largest demographic of the Bill, with even a fundamental understanding of their updated rights may, in part, diminish the perception of complexity that employers have previously lauded over workers, as Labour term it. Upon the select rights addressed by this article, the final group to be implemented may be named the ‘transformed rights.’ This would bring those rights that have been substantially changed into force, including the zero hours contracts, which now supposedly provides the “right...to be offered guaranteed hours”.¹³⁵ Having largely changed in substance, these rights perhaps stand to be the most ambiguous upon implementation, and therefore the least predictable. The retrospective dimension of this process again proves its value here. By introducing these rights at the final stage, a metaphorical game of damage limitation can be played, as the reaction of the framework to each of the previous steps has been understood in turn, and this invaluable information can be factored in and utilised to support the incorporation of these newly classified rights.

Briefly straying from the time frame in which this article writes from, by November 2025, the bill has passed through every stage in the House of Commons and the House of Lords, currently awaiting Royal Assent. The Labour government have also now introduced an ‘implementation roadmap’, indicating that a process of gradual implementation, as previously discussed, will

¹³² Prime Minister's Office, 10 Downing Street and His Majesty King Charles III, ‘The King’s Speech 2024’ (Gov. UK, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 8 April 2025.

¹³³ Labour Party, ‘Labour’s Plan to Make Work Pay’ (Labour, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 8 April 2025.

¹³⁴ Prime Minister's Office, 10 Downing Street and His Majesty King Charles III, ‘The King’s Speech 2024’ (Gov. UK, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 8 April 2025.

¹³⁵ Employment Rights HL Bill (2024-25) 81.

“deliver its new package of workers’ rights through the plan to Make Work Pay”¹³⁶. Despite some ambiguity, the earlier House of Commons briefing on this new Bill also alluded to the “majority of reforms” taking effect “no earlier than 2026.”¹³⁷ It is thus concluded that this method of implementation, having always presented itself as an apparent solution to the government and commentators alike, now appears to stand as the favoured course of action. Despite the inevitable hindrances that shadow any large-scale procedural upheaval, including this new employment rights Bill, it is argued that the framework would thereafter enjoy a much stronger position with the foundational definitions and rights already in place. Any rectifications would likely only require amendment, as opposed to complete upheaval, defeating a fatal flaw that negates the Labour government’s current procedure. In totality, this provides a more cautionary and safe approach for the new Employment Rights Bill. The current trajectory, implementing the Bill in its entirety, lends itself to a brutally simple dichotomy. The bill will either sink or swim. As this article has sought to highlight, this bill has the potential to remedy a great number of the issues that plague UK Employment Law and should not be condemned to fail simply for a handful of serious but amendable oversights. The proposed process of gradual implementation does not fall victim to such a harsh reality and instead may keep itself afloat until calmer waters are reached. However, it would be remiss for this article to ignore the potential difficulties that this process may face. Primarily, such a gradual and repetitive procedure is likely to carry several logistical intricacies.

Nevertheless, should these complications be overcome, this method provides, as previously discussed, a significant number of otherwise inaccessible benefits. Should any of the stages already in effect require amendment, they may be subject to a delay, until the implementation process is concluded. It is pertinent to note, however, that any such amendments may be rendered unnecessary by several mitigating factors. By one measure, any problems may be resolved by a later introduction. Further, the risk of early deficiencies in these new definitions is arguably reduced with each step taken, as this process is intelligent, understanding and improving from the successes and shortcomings of each previous step. It is implied by the ‘catch-all’ nature of this bill that the Labour government does not foresee the need for amendments so soon after implementation, however, this article believes that such a proposition is too idealistic. Therefore, a piecemeal implementation of this Employment Rights Bill may provide greater support to both the bill itself and the fragile UK Employment Law framework. However, this article remains inflexible in its position that a concurrent ‘worker’ definition would play the pivotal role in the success of this bill.

It is therefore submitted that harmonious reform to UK employment status may be further away than first predicted. Broadly speaking, the Labour Party’s decision to address a new single worker definition aside from the current Employment Rights Bill appears to be a confusing and potentially costly mistake. For all affected by the implementation of this new Bill, whether they be self-employed, working within traditional employment or under the emerging gig economy, as has been the focus of this paper, it is unclear how near and absolute any protection will be. The scope of those rights, provisions and qualifying periods previously supposed to land within a new ‘catch-all’ definition appears to be widening, as the possibility of its realisation becomes ever-narrower. Following this extensive review of potential reform, this article will conclude by ultimately deciding whether, in relation to UK employment status, one size really does fit all.

¹³⁶ Department for Business and Trade and others, ‘Roadmap unveiled to boost rights for half of all UK workers and provide certainty to employers’ (*Gov.UK*, 1 July 2025) <<https://www.gov.uk/government/news/roadmap-unveiled-to-boost-rights-for-half-of-all-uk-workers-and-provide-certainty-to-employers>> accessed 11 November 2025.

¹³⁷ Patrick Brione and Stephanie Cunningham, ‘Employment Rights Bill 2024-25 Research Briefing’ (*House of Commons Library*, 23 October 2024) <<https://researchbriefings.files.parliament.uk/documents/CBP-10109/CBP-10109.pdf>> accessed 11 November 2025.

Conclusions and recommendations

Following an analysis of Labour's propositions as to the future of UK employment status, supplemented by a brief history of the development of its definition, alongside an evaluation of its current condition, it is concluded that the gig economy's already fragile legal foundation is not fit for purpose. Reform appears essential to the future of the gig economy. However, this proves to be a promise much easier made than kept. All the previously discussed definitions, rights and common law decisions must be harmonised by any potential reform, should this action wish to be comprehensive and enduring. This article will now reassert the conclusions previously reached, assessing their contribution to this work's focal question, before suggesting a further potential supplement to the current reformative action. Thereafter, a conclusion will be drawn as to whether one size fits all regarding potential reform to UK employment status.

The Labour government's first steps towards change were then established. Labour's most recent manifesto,¹³⁸ and the King's Speech 2024,¹³⁹ were assessed, noting the accuracy of their focus toward the key issues plaguing UK Employment Law at the time of their publishing. The extent of inconsistently applicable definitions, rights and common law verdicts within UK Employment Law were clarified, and the dated nature of s.230(3) was understood. This section concluded by providing a brief political explanation to this legal issue, noting that the Employment Rights Act itself was introduced by a Conservative government, and s.230(3) provides this current Labour government with a chance, although difficult, to positively brand this otherwise antiquated section of legislation.

A critical comparison was then drawn in the article between traditional employment and the gig economy, considering the suitability and scope of the current definition. The greatest difference between employees and workers lies in the definitions and associated rights. Despite this disparity, the courts have seemingly approached new and novel contractual forms in much the same manner as 'traditional' employment. This approach was challenged in the landmark decision in *Uber*. The Supreme Court took an unorthodox but familiar approach,¹⁴⁰ finding Uber drivers to be workers and granting basic but otherwise inaccessible employment rights.¹⁴¹ The recency of the gig economy is reflected in its infancy in law; the *Uber* case managed to reach the Supreme Court, demonstrating the legal merit in Uber's argument¹⁴². This comparison was drawn to contextualise the two main proposals submitted to the public by the Labour government. The Labour government detailed plans to shift towards a two-tier UK employment status framework and a resultant amalgamation and clarification of specific 'worker' and 'employee' exclusive rights. This section determined that although uniformity in common law treatment lends itself to the impression that one size may fit all, the difficulty with which this is provided to workers suggests the need for further legal clarification, leading to inevitable differences in definitions.

Focus was then given to the reality of Labour's largely idealistic visions of reform. The final steps in the chronology of Labour's proposals for reform thus far were analysed. Despite a relatively consistent continuation of their initial promises, the decision to "consult on a simpler [definition] framework" aside from the current Bill stands as a noticeable oversight. Likely slowed by the debate as to whether all employment rights should be accessible to the distinctive 'employee' and 'worker', a lack of concurrent definition has caused confusion amongst legal commentators and politicians.¹⁴³ Therefore, gig economy workers will remain unsure as to their

¹³⁸ Labour Party, 'Labour's Plan to Make Work Pay' (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 13 April 2025.

¹³⁹ Prime Minister's Office, 10 Downing Street and His Majesty King Charles III, 'The King's Speech 2024' (*Gov.UK*, 17 July 2024) <<https://www.gov.uk/government/speeches/the-kings-speech-2024>> accessed 13 April 2025.

¹⁴⁰ See *Lane v Shire Roofing* [1995] IRLR 493 (CA).

¹⁴¹ *Uber BV v Aslam* [2021] UKSC 5.

¹⁴² Note 190, 426.

¹⁴³ See Public Bill Committee, *Employment Rights Bill First Sitting Official Report* (First Sitting, House of Commons, 26 November 2024).

status for the duration of this omission. An alternative process of implementation was then discussed, highlighting potentially superior benefits to the current approach. Despite Labour's idealistic attempts, the evident flaws in approach suggest an inherent contradiction to the plausibility of one size fitting all for UK employment status.

Supplementing the reformative action

These conclusions point toward one very clear suggestion for reform. A grandiose and sweeping proposition would be both unrealistic and unfair, as the Bill is at the Committee Stage in the House of Lords at the time of writing. However, in the same vein, there remains chance to amend this Bill.¹⁴⁴ This article has already suggested a process of steady implementation for this bill. However, the conclusion that continues to be drawn, and therefore stands as a logical supplementary amendment, is the provision of a concurrent 'worker' definition, before this Bill receives Royal Assent, as this would largely remedy the shortcomings previously highlighted. This arguably minor adjustment would provide sorely needed context as to the application of the amended rights as previously reviewed. It is reasserted that the Labour government's approach has been largely pragmatic and comprehensive. However, a 'worker' definition that can be anticipated and understood by legal professionals, politicians, and, most importantly, gig economy workers, may prove to be the conclusive component to this Bill. Aside from the exclusion of a small number of relevant employment rights, a lack of 'worker' definition could defeat the intended 'future-proof' nature of this Bill; employers will continue "exploiting the complexity of the UK's framework,"¹⁴⁵ until clarity is provided. This amendment would also avoid the statutory backlogs caused by the EU law retainment process.¹⁴⁶ Therefore, a 'one size fits all' approach to UK employment status would appear more probable should the originally intended definition, unifying both 'workers' and 'employees', be introduced alongside the current Employment Rights Bill, providing protection, security and clarity to an otherwise straddling population of gig economy workers.

As already noted, reform to UK employment status appears much easier said than done. The chronological approach to the Labour government's current proposals, supplemented by a holistic dimension of the history and current position of UK employment status taken throughout this article has consistently demonstrated that, despite any desire to simplify and uniform, such a proposition does not appear feasible. The current Labour government's Employment Rights Bill stands as a commendable effort towards the realisation of this proposal. However, this does not render their attempts faultless. The unanswered questions, shortcomings and confusion highlighted by this article underscore the presence of entrenched and extensive difficulties in UK employment status, that have inadvertently been exacerbated by decades of legal ambiguity. It would be imprudent to believe that one bill, drafted and potentially enacted within the first year of this Labour government, would conclusively defeat the myriads of complications previously raised. It is maintained that the nature of these issues that have previously plagued UK Employment Law are inescapable and will inevitably re-emerge in different novel forms in future, no matter how inarguably simple the definition or how copious the protection. Therefore, it is ultimately concluded that UK employment status cannot definitively exist in a 'one size fits all' format.

¹⁴⁴ UK Parliament, 'Making laws: House of Lords stages' (*UK Parliament*, 2025)

<<https://www.parliament.uk/business/lords/work-of-the-house-of-lords/making-laws/>> accessed 13 April 2025.

¹⁴⁵ Labour Party, 'Labour's Plan to Make Work Pay' (*Labour*, 24 May 2024) <<https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>> accessed 13 April 2025.

¹⁴⁶ Leigh Gibson and Graeme Cowie, 'The end of REUL? Progress in reforming retained EU law' (*UK Parliament*, 2 February 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-9957/>> accessed 13 April 2025.