

[AS INTRODUCED]

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Make provision for the creation of a single status for workers by amending the meaning of “employee”, “worker”, “employer” and related expressions in the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996 and cognate legislation; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## 1 Amendments to the Trade Union and Labour Relations (Consolidation) Act 1992

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- (2) Omit section 145F(3). 5
- (3) Omit section 151(1B).
- (4) Omit sections 295 (meaning of employee and related expressions) and 296 (meaning of worker and related expressions) and insert—

### “295 Meaning of worker and related expressions

- (1) In this Act— 10
  - (a) “worker” and “employee” both mean an individual who—
    - (i) seeks to be engaged by another to provide labour,
    - (ii) is engaged by another to provide labour, or
    - (iii) where the employment has ceased, was engaged by another to provide labour, 15
 and is not, in the provision of that labour, genuinely operating a business on his or her own account;
  - (b) an “employer” in relation to a worker or employee is—
    - (i) every person or entity who engages or engaged the worker or employee, and 20
    - (ii) every person or entity who substantially determines terms on which the worker or employee is engaged at any material time;

- (c) “employed” and “employment” mean engaged as an “employee” or as a “worker” under paragraph (a) above;
- (d) “contract of employment” means a contract, however described, whereby an individual undertakes to do or perform any labour, work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual, and any reference to the contract of an employee or a worker shall be construed accordingly. 5
- (2) It is for a person who is claimed to be the employer and contests that claim to show in any legal proceedings that – 10
- (a) he or she is not the employer, or
- (b) the person providing the labour is not an employee, a worker, employed, or in employment, as the case may be.
- (3) For the avoidance of doubt, the foregoing provisions apply to employment for the purposes of a government department, except for members of the armed forces. 15
- (4) For the avoidance of doubt, where a worker or employee provides labour through a personal service company the employer is the third party for whom the labour is performed. 20
- (5) A “personal service company” means a company –
- (a) in which the worker or employee is a director, or a substantial shareholding is held by the worker or employee, by himself or herself or by or with a member of the family of the worker or employee, or by or with a third party for whom the labour is or was performed, or a nominee or nominees of such a third party; and 25
- (b) which has contracted with the worker or employee to provide his or her labour to a third party or parties nominated by the company; and 30
- (c) in relation to which the terms and conditions on which the worker or employee is or was engaged to perform the labour are or were substantially determined by any third party for whom the labour is or was to be performed, by itself or jointly with another person or entity; and 35
- (d) in which the status of any third party for whom the labour is or was to be performed is not in practice that of a client or customer of the profession or business undertaking carried on by the worker or employee.
- (6) The Secretary of State may by regulations designate as “workers” other persons engaged in work, and designate as “employers” other entities engaged in the provision of work, after consultation with organisations which appear to the Secretary of State to represent such persons and entities. 40
- (7) This section has effect subject to sections 68(4), 116B(10) and 235.” 45

## 2 Amendments to the Employment Rights Act 1996

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) Omit subsections (1) to (5) of section 230 (employees, workers etc.) and insert—
- “(1) In this Act—
- (a) “worker” and “employee” both mean an individual who— 5
- (i) seeks to be engaged by another to provide labour,
- (ii) is engaged by another to provide labour, or
- (iii) where the employment has ceased, was engaged by another to provide labour,
- and is not, in the provision of that labour, genuinely operating 10  
a business on his or her own account;
- (b) an “employer” in relation to a worker or employee is—
- (i) every person or entity who engages or engaged the worker or employee, and
- (ii) every person or entity who substantially determines 15  
terms on which the worker or employee is engaged at any material time;
- (c) “employed” and “employment” mean engaged as an “employee” or as a “worker” under paragraph (a) above;
- (d) “contract of employment” means a contract, however described, 20  
whereby an individual undertakes to do or perform any labour, work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual, and any reference to the contract of an employee 25  
or a worker shall be construed accordingly.
- (2) It is for a person who is claimed to be the employer and contests that claim to show in any legal proceedings that—
- (a) he or she is not the employer, or
- (b) the person providing the labour is not an employee, a worker, 30  
employed, or in employment, as the case may be.
- (3) For the avoidance of doubt, the foregoing provisions apply to employment for the purposes of a government department, except for members of the armed forces.
- (4) For the avoidance of doubt, where a worker or employee provides 35  
labour through a personal service company the employer is the third party for whom the labour is performed.
- (5) A “personal service company” means a company—
- (a) in which the worker or employee is a director, or a substantial 40  
shareholding is held by the worker or employee, by himself or herself or by or with a member of the family of the worker or employee, or by or with a third party for whom the labour is or was performed, or a nominee or nominees of such a third party; and

- (b) which has contracted with the worker or employee to provide his or her labour to a third party or parties nominated by the company; and
  - (c) in relation to which the terms and conditions on which the worker or employee is or was engaged to perform the labour are or were substantially determined by any third party for whom the labour is or was to be performed, by itself or jointly with another person or entity; and 5
  - (d) in which the status of any third party for whom the labour is or was to be performed is not in practice that of a client or customer of the profession or business undertaking carried on by the worker or employee. 10
- (6) The Secretary of State may by regulations designate as “workers” other persons engaged in work, and designate as “employers” other entities engaged in the provision of work, after consultation with organisations which appear to the Secretary of State to represent such persons and entities.” 15

### **3 Extent, commencement and short title**

- (1) This Act extends to England and Wales and Scotland.
- (2) This Act comes into force at the end of the period of three months beginning with the day on which it is passed. 20
- (3) This Act may be cited as the Status of Workers Act 2021.



# Status of Workers Bill [HL]

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*Lord Hendy*

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Ordered to be Printed, 26th May 2021.

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