

ADDRESSING THE WORKING RIGHTS OF FOOD DELIVERY DRIVERS

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EXECUTIVE SUMMARY

Gig economy work has merged as a new sector of work within the UK economy. Gig economy work ranges from couriers to private hire drivers to food delivery drivers. This policy brief is specifically focused on food delivery drivers, who, according to the CIPD, constitute one fifth of the gig economy [1] working population.

Despite their role, food delivery drivers are not viewed as workers by the law. This has substantial implications on their ability to access key labour rights and protections regarding wages and working hours.

The UK government must make stronger efforts to offer protection and labour rights for food delivery drivers.

The recommendations proposed in this policy brief will address the need to amend the worker status definition to ensure food delivery drivers are entitled to labour law rights, which can in turn help address working hours and wages.

[1] James Cockett, 'The True Story of the UK Gig Economy' (CIPD, 12 October 2023) <<https://www.cipd.org/uk/views-and-insights/thought-leadership/cipd-voice/uk-gig-economy/>> accessed February 29 2024.

KEY ISSUES

1. Worker Status

Current Legal Framework: As per Section 230(3) of the Employment Rights Act (ERA) 1996, a worker is an individual who works under a contract of employment or any other contract which involves the individual personally performing the work or service to the other 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 [2]”.

Key Issue: Food delivery organisations such as UberEats, Just Eat and Deliveroo classify their drivers as self-employed or independent contractors[3].

As seen in *Uber v Aslam*, the Uber drivers were viewed as workers due to them personally performing the work for Uber and due to the control Uber had over the drivers in terms of driving activity and fares [4]. Unlike Uber drivers, food delivery drivers can substitute their work to other delivery drivers and have flexibility to join other delivery organisations. This means they are precluded from offering personal services [5] and lack degrees of supervision and control over their work. Despite this flexibility, food delivery drivers are not entitled to any form of labour protection or benefits such as minimum wage, fixed working hours, holiday or sick pay or collective bargaining. This can lead to significant exploitation of delivery drivers as they will need to take on more shifts and longer shifts to maintain their living conditions.

"All we are asking is to be seen as humans and not machines. We are not delivery machines."

-Diorge, Deliveroo Driver [6]

[2]Employment Rights Act 1996, s. 230(3).

[3]Jim Armitage, 'Amazon? Uber? Deliveroo Just Eat? What employment terms are your drivers on?' (The Standard, 17 March 2021) <<https://www.standard.co.uk/business/amazon-uber-deliveroo-just-eat-what-employment-terms-are-your-drivers-on-b924592.html>> accessed 12 March 2024.

[4]Uber BV and others (Appellants) v Assam and others (Respondents) [2019] UKSC 2019/0029.

[5]Independent Workers Union of Great Britain (Appellant) v Central Arbitration Committee and another (Respondents) [2021] EWCA Civ 952.

[6] Jemma Dempsey and Faarea Masud, 'Deliveroo and Uber Eats riders strike on Valentine's Day' (BBC, 14 February 2024) <<https://www.bbc.co.uk/news/business-68274158>> accessed 2 March 2024.

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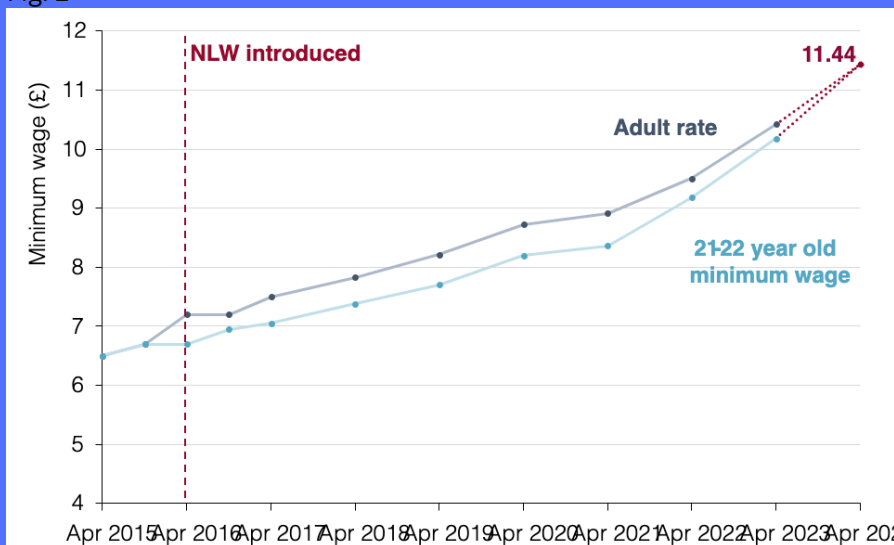
2. Wages

Current Legal framework: The National Minimum Wage Act 1988 was introduced to create a statutory minimum hourly wage for workers and employers. Currently, there is no definition for self-employment in the NMW framework meaning most delivery drivers are not paid the national living wage as delivery drivers are categorised as self-employed and not classified as 'workers' based on the judgement of the Deliveroo case [7].

Issue: The lack of employment status given to delivery drivers means they have less wage protection and often work for low pay and are excluded from employment benefits. At the moment uber pays a minimum of £2.80 and Deliveroo £3.15 [8] which does not compensate for extra costs incurred such as fuel or vehicle maintenance causing delivery drivers to struggle to make a living.

Companies like Deliveroo have entered into agreements with GMB trade union which ensures that drivers are paid at least a minimum wage however this is not the same for all delivery apps suggesting there is a lack of incentive for businesses to provide better support for delivery drivers[9]. More employment protections are vital to ensure there is a minimum wage for delivery drivers to improve job security.

Fig. 1



[7] Rebecca Harris, 'Deliveroo Drivers are not workers' (AccountingWEB 13 December 2023) < <https://www.accountingweb.co.uk/tax/business-tax/deliveroo-riders-are-not-workers> > accessed 1 March 2024.

[8] James McAllister, 'Delivery Drivers to stage fresh strikes every Friday and bank holiday until demands are met' (RestaurantOnline 23 February 2024) < <https://www.restaurantonline.co.uk/Article/2024/02/23/deliveroo-just-eat-and-uber-eats-delivery-drivers-to-stage-strikes-every-friday-and-bank-holiday-until-demands-over-pay-are-met> > accessed 9 March 2024.

[9] Callum Cant, 'Be warned: Deliveroo's victory over its riders shows just how vulnerable British workers are' (Theguardian 23 November 2023) < <https://www.theguardian.com/commentisfree/2024/feb/14/food-delivery-drivers-valentines-day-strike-deliveroo-uber-eats> > accessed 10 March 2024.

[10] Figure from 'Low pay commission summary of evidence 2023' (GovUK 21 November 2023) < <https://www.gov.uk/government/publications/minimum-wage-rates-for-2024/low-pay-commission-summary-of-evidence-2023> > accessed 10 March 2024.

KEY ISSUES

3. Working Time

Current Legal Framework: The Working Time Regulations 1998 established that workers aren't entitled for overtime pay unless they've worked for more than 48 hours in a week. While the Great Britain domestic rules for drivers sets out the maximum number of daily driving hours a delivery driver can work as 11 hours and it is not recommended that delivery drivers work more than 12 hours on any given day [11]. However, food delivery workers do not have access to these rights provided to other workers under The Employee Rights Act 1996. As a result, workers in this category don't have access to statutory protection in the form of maximum work hours, rest breaks, overtime payment, sick pay and pay for waiting periods [12].

Issue : Those undertaking food delivery work are often those that are already in a vulnerable position such as illegal immigrants and other minorities. The inability to access crucial statutory protection, subjects food delivery workers to long working hours that are often irregular, leading to burn out and safety hazards [13]. This combined with a lack of job security within the gig economy exacerbates the existing power imbalance between platforms and food delivery workers.



“You have to work the peak hours, or you don't make anywhere near enough money.” [14]

-Anonymous

[11] Working Time Regulations 1998, SI 1998/1833.

[12] Service Club, 'How Many Hours Can a Delivery Driver Work?' (Service Club, 8 August 2022) <<https://serviceclub.com/how-many-hours-can-a-delivery-driver-work/>> accessed 13 March 2024 .

[13] Rt Robert Jenrick MP Minister of State for Immigration, 'Illegal Working in the Food Delivery Industry' (www.gov.uk/home-office, 14 November 2023).

<https://assets.publishing.service.gov.uk/media/655389d43718980013d296b8/Minister_public_letter_to_online_delivery_platforms-FINAL_PDF.pdf> accessed 10 March 2024.

[14] Cant (n.9).

RECOMMENDATIONS

- 1. Extend Worker Rights to Food Delivery Drivers:** While the food delivery drivers are considered independent contractors, the UK government must amend the worker status definition to account for gig economy workers. The worker status definition must encourage and address flexibility to reduce the emphasis on substitution rights. This is necessary to enable food delivery drivers to have access to basic worker rights regarding working hours or minimum pay.
- 2. Clarify Employment Status:** Ensure that delivery drivers are properly classified as employees if they meet the criteria outlined in the definition of a worker in the Employment Rights Act 1996, section 230 (3) , entitling them to rights and protections such as minimum wage, holiday pay, and rest breaks.
- 3. Enforce strict regulations:** regarding maximum working hours, rest breaks, and time off between shifts to prevent driver fatigue and promote safety.
- 4. Ensure that delivery drivers receive fair compensation:** for all hours under national health requirements waiting times, and monitor compliance with minimum wage requirements.
- 5. Support efforts for collective bargaining and union representation:** to give delivery drivers a stronger voice in negotiating fair wages, working conditions, and job security. Uber has now recognised the GMB trade union for its drivers, which means the drivers can practise and provide avenues for recourse in case of disputes.

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