

The Employment Rights Bill (“Bill”) has been described as many things, some more positive than others, but there can be no doubt that it will introduce significant changes to the employment law framework in the UK.

Although most of the changes in the Bill are not expected to come into force before 2026, and we are still waiting for details about several of the key reforms, there is sufficient information now available for insolvency practitioners (IPs) to start to consider how these changes might impact a proposed restructuring.

To help we have produced this briefing note in which we flag the key changes.

### Key Changes for Insolvency Practitioners – At a Glance<sup>1</sup>

Employment Rights			
Topic	Current Position	Proposals For Change	Considerations for Insolvency Practitioners
Unfair dismissal	As a general rule, employees must have at least two years’ service to bring an unfair dismissal claim (exceptions apply).	Two-year qualifying period will be removed.  There should be scope for employers to dismiss employees more easily during the “initial” period of employment (likely to be 9-12 months), with a “modified” test for unfair dismissal.  The government has indicated that these changes will be introduced in 2027.	Introducing a “day-one” right for unfair dismissal means that those with less than two years’ service cannot be dismissed without potential consequences, as may have previously been the case.  Although most dismissals pre- or post-appointment are redundancy-related, this change poses a greater risk of unfair dismissal claims being brought. It will not, however, alter the status of such claims – they will still be unsecured.
Dismissal and re-engagement (or “Fire and Rehire”)	No statutory prohibition on dismissal and re-engagement.  New statutory code of practice sets out the steps that employers should follow where the parties are unable to agree to changes to terms and conditions, and the employer goes down the dismissal and re-engagement route.	A change to the law on unfair dismissal, so that dismissals for failure to agree to restricted variations will be treated as automatically unfair, unless the employer can show that “the reason for the restricted variation was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which at the time of the dismissal were affecting, or were likely in the immediate future to affect, the employer’s ability to carry on the business as a going concern” and “in all the circumstances the employer could not reasonably have avoided the need to make the restricted variation”.  These proposals remain controversial, and they introduce a high bar for employers to satisfy.  There will be a different test for unfair dismissal purposes for non-restricted variations.	Very strict limitations on the ability of employers to change terms and conditions of employment in this manner.  If employees have been dismissed with a view to them being re-hired post sale, this change may prompt more claims than usual, reinforcing concerns for buyers of an insolvent business.  For buyers of the business, the ability to change terms and conditions of employment will be curtailed, although this change will not alter the position in respect of employees transferring under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). And in most cases where there is a sale of the business and assets of a company TUPE will usually apply.

<sup>1</sup> Note: There are numerous proposed changes in the Bill and not all are covered in this table. We have selected those which we have identified as most likely to impact IPs and a proposed restructuring but IPs should be aware that there may be other changes that might need to be taken into account on a specific matter.

Employment Rights			
Topic	Current Position	Proposals For Change	Considerations for Insolvency Practitioners
Collective redundancy consultation	<p>Obligation to consult collectively if an employer is proposing to dismiss as redundant 20 or more employees “at one establishment” within a 90-day period.</p> <p>The current maximum penalty that can be awarded by an Employment Tribunal for failure to consult is 90 days’ actual pay per affected employee.</p>	<p>The duty to consult collectively will be widened. It will be triggered where the employer proposes to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less (as is the case now), and (new bit) where the number of proposed redundancies across a number of establishments hits a certain threshold, which has not yet been determined.</p> <p>The current maximum penalty that can be awarded by an Employment Tribunal will be doubled, i.e. 180 days’ actual pay per affected employee.</p> <p>The government has also indicated that it will consult on doubling the minimum consultation period from 45 to 90 days, where an employer is proposing to dismiss as redundant 100 or more employees.</p>	<p>Multi-site employers will be significantly affected.</p> <p>Collective consultation will be triggered more frequently.</p> <p>The new rules apply per employer rather than across a corporate group.</p> <p>As is currently the case, it is not always possible in a restructuring to consult for the required period ahead of proposed redundancies, given the need for a business to enter a process quickly. Typically directors and/or IPs will do what they can to consult in the time available, and this is generally sufficient to mitigate the penalty that an Employment Tribunal will award if a claim for failure to consult collectively is brought but, as noted, the minimum period of consultation (for 100+ employees) is expected to increase to 90 days and the penalty for failure to consult will double.</p> <p>Although this is the case, the increased period and penalty is unlikely to alter current practice significantly, because time to consult will always be limited. Nevertheless, IPs should consider the changes and directors and IPs should comply as fully as they can with these new obligations. Note also, that although the penalty is increasing it will not alter the status of such claims – they will still be unsecured.</p>
HR1 forms	<p>Employers are obliged to notify the secretary of state via the HR1 form where they are proposing to dismiss as redundant 20 or more employees at one establishment within a 90-day period. The amount of notice depends on the number of proposed dismissals (i.e. either 30 or 45 days).</p> <p>It is a criminal offence to fail to provide this notification.</p>	<p>The obligation to notify the secretary of state via the HR1 form will be triggered in more situations, namely where an employer is proposing to dismiss as redundant within a period of 90 days or less at least the threshold number of employees (yet to be determined), or 20 or more employees at one establishment (in the wider circumstances outlined above).</p> <p>The notice must be given at least 30 or 45 days before the first dismissal takes effect. These time periods have not changed, although if the government increases the collective consultation period from 45 to 90 days for 100 or more employees (a matter for a future consultation exercise), these time periods will also presumably change.</p>	<p>In practice, this should not make much difference to IPs given that they are not personally liable for a failure to file a HR1 when making redundancies (confirmed in the case of <i>R (on the application of Palmer) (Appellant) v Northern Derbyshire Magistrates Court and another (Respondents)</i>) – although best practice is always to file one in any event.</p> <p>However, given that directors are responsible and potentially in breach of their duties if they fail to file, the need to file form HR1 in more situations (and potentially earlier than is currently the case) should be factored into any contingency planning around the business.</p>

Employment Rights			
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Zero hours workers and certain other workers on low minimum hours	No current statutory right to guaranteed hours.	Right to guaranteed hours if eligible workers regularly work more hours over a reference period (likely to be 12 weeks).  The government has confirmed that these provisions will be extended to agency workers.	This will also need to be factored into contingency planning around the business – don't assume that zero/minimum hours workers can be left out of the equation. As noted, there will be an obligation on a business to offer guaranteed hours to eligible workers.
"One-sided flexibility" for zero hours workers and certain other workers on low minimum hours	No current statutory protection for cancelled shifts, etc.	New obligations on employers to give notice of shifts, as well as reasonable notice of, and payments for, cancelled or delayed shifts.  The government has confirmed that these provisions will also be extended to agency workers.	As above, this new obligation may well need to be factored into contingency planning around the business.

Family-friendly Rights			
Topic	Current Position	Proposals For Change	Considerations for Insolvency Practitioners
Dismissal during pregnancy	Mothers have additional protection from redundancy during pregnancy, when on maternity leave and for a period after maternity leave.  Similar protection for adopters and those taking shared parental leave.	Additional protection from dismissal (i.e. not just in redundancy situations), while pregnant, on maternity leave and for a period after returning to work.  Additional protection for those returning from other types of leave including adoption leave and shared parental leave.	The additional obligations on employers may need to be factored into contingency planning around the business.
Statutory paternity leave	To be eligible, employees must have completed 26 weeks' continuous service.	A day one right, i.e. no qualifying period.  The Bill will also remove the restriction that prohibits employees from taking statutory paternity leave if they have already taken shared parental leave.	More employees will be eligible for statutory paternity leave. This may need to be factored into contingency planning around the business.
Statutory parental leave	To be eligible, employees must have completed a year of continuous service.	A day one right, i.e. no qualifying period.	More employees will be eligible for statutory parental leave. This may need to be factored into contingency planning around the business.

Miscellaneous			
Topic	Current Position	Proposals For Change	Considerations for Insolvency Practitioners
Employment tribunal time limits	Time limit for most Employment Tribunal claims is currently three months.	Time limits for most claims to be extended from three-to-six months.	Likely increase in claims.  The time limit for bringing claims often influences negotiations around indemnities, escrow periods, further assurance provisions, etc. and therefore an increase in time limits may need to be factored into negotiations.

## Background, progress, current status and future of the Bill

- The Bill was introduced to Parliament on 10 October 2024, making wide-ranging changes to employment law. Heralded by the government as “pro-growth, pro-business and pro-worker”, it is fair to say we are still waiting for those “pro-business” aspects!
- The latest version of the Bill is working its way through the Parliamentary process.
- In October 2024, the government launched a package of consultations on some of the more technical aspects of the Bill, including collective redundancies, strengthening statutory sick pay, the application of zero hours contract measures to agency workers and some of the trade union measures. These consultations closed in December, and on 4 March this year it published its responses to these consultations.
- On 7 July, further changes to the Bill were published for consideration by the House of Lords at Report Stage.
- Royal assent to the Bill is now expected in early autumn. The government recently set out its “[roadmap](#)” for implementation of the Bill. This sets out the “anticipated” commencement date for key provisions of the Bill.

This note sets out the position in England and Wales. Changes in Scotland and Northern Ireland may differ in matters of detail.

If you have any questions about the content of this guide, then please get in touch with one of our experts below.

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