

The Employment Rights Act 2025: (Yet More) Consultations

March 2026

The UK government continues to drip feed consultations in relation to measures contained in the Employment Rights Act (ERA) 2025. Its latest batch includes the much anticipated consultation on the new threshold for triggering collective redundancy consultation obligations, and another concerning the protection against detriment to be afforded to workers when taking industrial action.

We highlight the key points to be aware of below.

Consultation: [Threshold for Triggering Collective Redundancy Obligations](#)

Closing Date: 21 May 2026

Key Points: The ERA 2025 will widen the circumstances in which the obligation to consult collectively in redundancy scenarios will be triggered.

Currently, collective redundancy consultation obligations apply where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a 90-day period. In such circumstances, employers have a statutory duty to consult the affected employees' representatives about the proposed redundancies, and to notify the secretary of state (via the HR1 form).

Section 29 of the ERA 2025 will amend the collective redundancy framework such that employers will be required to fulfil collective consultation and notification obligations whenever they are "proposing to dismiss as redundant within a period of 90 days or less: (a) at least the threshold number of employees, or (b) 20 or more employees at one establishment," and it is the new threshold that is the subject of this consultation.

The ERA 2025 gives the government the power to set, via new regulations, the new threshold as a fixed number, as a percentage of employees, as the highest or lowest of two or more numbers (which may be fixed numbers or percentages) or some other way. It also gives the government the ability to set different thresholds for different descriptions of employer – mercifully, as you will see below, this does not appear to be on the cards.

The first part of the consultation seeks views on how the new threshold should be determined. It is seeking views on four different methods:

- **Method 1: A fixed number** – For example, if the threshold number were to be 250, collective redundancy consultation obligations would be triggered where an employer is proposing to dismiss as redundant 250 or more employees across its business within a period of 90 days. Introducing a single fixed number would be the simplest and clearest way to set the new threshold (and fortunately for employers, is the government's preferred option – see below for more details). The threshold number will, however, have to be set at a level that takes the varying sizes of employers into account. The government acknowledges that there is a tension to setting one single number that applies to employees working in smaller organisations without also leading to a threshold level that puts the largest employers in a constant state of consultation with employees just in the ordinary course of their business.
- **Method 2: A variable, percentage-based threshold** – For example, if the threshold number were 5%, this would mean that collective redundancy consultation obligations would be triggered where an employer was proposing to dismiss as redundant within a period of 90 days, 5% of its total employees across the business. This approach has the advantage of being simple to understand, but it would require an employer to calculate its total number of employees and then apply this percentage to that number; not necessarily therefore simple to apply. It could also lead to an employer inadvertently breaching the requirements if, for example, it had a fluctuating headcount. The consultation also suggests different ways for calculating the number of employees an employer has.
- **Method 3: A fixed number based on the number of employees that an employer has** – For example, for employers with up to 2,500 employees, the threshold number might be 250 or more redundancies, but for employers with 2,501 plus employees, the threshold number might be 500, etc.
- **Method 4: A combination of both fixed numbers and a percentage to tier the threshold** – For example, if the employer has fewer than 500 employees, collective redundancy obligations would be triggered whenever a fixed percentage of employees are proposed redundant across the entire business. Whereas, if an employer has 501 or more employees, collective redundancy obligations would be triggered whenever a fixed number of redundancies are proposed across the entire business. Such an approach would allow the government to tier the obligations but retain a "cap" on where collective redundancy obligations should trigger.

The second part of the consultation seeks views on the appropriate number at which to set the new threshold, which is apparently going to be between 250 and 1000 redundancies. This range has been developed following research into patterns of redundancy in the UK and business demographics.

In terms of the government's preferences for the new collective consultation threshold, it says it is minded to go for a single fixed number (so Method 1 above) within the range of 250-1000 proposed redundancies. It believes (and we agree) that a single fixed number would be the easiest way to ensure that employers understand their obligations, and that all parties can be certain about when collective redundancy consultation should be triggered. While collective consultation obligations will inevitably be triggered more frequently because of this change, setting the new threshold between 250 and 1000 should avoid larger employers being in a constant state of consultation with employees, a key concern of many large employers when these proposals were first announced.

A couple of points to flag. Single-site employers have nothing to fear from these changes, but multisite employers will need to look again at how they deal with redundancies across their business. This change will make things more difficult, both legally and practically, for multisite employers, and means that collective consultation will be triggered more frequently than is currently the case. These new collective consultation requirements will, however, still be specific to the "employer". Group companies are separate legal entities and will therefore be different employers for these purposes. Each group company will have to keep its own running total of proposed redundancies among its own staff and it need not count any redundancies proposed by any other group company, even where the two group companies both have affected staff at the same site.

Furthermore, the ERA 2025 makes it clear that where an employer triggers both the one establishment and the company-wide threshold, it will not be required to consult all the representatives of the employees together and it will not be required to consult with a view to reaching the same agreement with all the appropriate representatives. The consultation document states that employers will have flexibility to hold a single consultation exercise with representatives of all affected employees or have separate consultation discussions across different groups.

The responses to this consultation will inform future regulations. We would therefore encourage employers to share their views on these proposals. These changes are expected to come into force at some point in 2027.

Consultation: [Protection from Detriments for Taking Industrial Action](#)

Closing Date: 23 April 2026

Key Points: The ERA 2025 introduces a new provision in TULR(C)A, which makes it clear that workers have the right not to be subjected to a detriment by their employer for taking protected industrial action. This change seeks to address a loophole created by the Supreme Court's decision in *Secretary of State for Business and Trade v Mercer* [2024] in which it held that a worker who had been suspended to penalise her for participating in "protected" (i.e. lawful) industrial action was not protected from being subjected to a detriment for participation in trade union activities because of the precise wording of s.146 of TULR(C)A.

In this consultation, the government seeks views on whether it should prohibit all detriments for taking industrial action (the government's favoured option), or create a list of detriments that are prohibited and thereby tacitly allow certain others. It is also proposing to add protection against detriment for taking industrial action to the list of claims for which an Employment Tribunal can increase any award for a failure to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures. This would mean that if a claim were brought by an individual that they had experienced a detriment for taking industrial action, if the employer had unreasonably failed to follow the Acas Code where it applied, the amount the employer would have to pay could be increased by up to 25%.



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