SQUIRE PATTON BOGGS

The Employment Rights Act 2025

Impact on Insolvency Practitioners and Restructuring

UK – January 2026

The Employment Rights Act 2025 (the "Act") 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 many of the changes in the Act are not due to come into force until later in 2026 or 2027, insolvency practitioners (IPs) should 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[1]

Employment Rights			
Topic	**Current Position**	**Changes**	**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). The cap on the compensatory award for "ordinary" unfair dismissal is the statutory limit (currently £118,223) or 52 weeks' pay, whichever is lower.	New six-month qualifying period of service for unfair dismissal claims. Unfair dismissal compensation cap will be removed. Expected to come into force on 1 January 2027, with immediate effect.	It was previously proposed that a "day-one" right for unfair dismissal claims be introduced, removing the existing two year qualifying period entirely. However, the Act has instead reduced the qualifying period from two years to six months. Due to the removal of the cap on compensation awards, the value of any unfair dismissal claims will be increased. Although most dismissals pre- or post-appointment are redundancy-related, these changes pose a greater risk of unfair dismissal claims being brought. They will not, however, alter the status of such claims – they will still be unsecured.

1 Note: There are numerous proposed changes in the Act 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.

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Topic	**Current Position**	**Changes**	**Considerations for Insolvency Practitioners**
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". There is a different test for unfair dismissal purposes for non-restricted variations. Taking effect in October 2026.	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.
Collective redundancy consultation	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. The current maximum penalty that can be awarded by an Employment Tribunal for failure to consult is 90 days' actual pay per affected employee.	The duty to consult collectively will be widened taking effect in 2027. 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. The current maximum penalty that can be awarded by an Employment Tribunal will be doubled, i.e. 180 days' actual pay per affected employee. This change will take effect in April 2026. 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 in early 2026.	Multi-site employers will be significantly affected. Collective consultation will be triggered more frequently. The new rules apply per employer rather than across a corporate group. 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. 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.

Employment Rights			
Topic	**Current Position**	**Changes**	**Considerations for Insolvency Practitioners**
HR1 forms	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). It is a criminal offence to fail to provide this notification.	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). 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.	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 *R (*on the application *of Palmer) (Appellant) v Northern Derbyshire Magistrates Court and another (Respondents))* – although best practice is always to file one in any event. 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. By way of reminder, the HR1 form must now be submitted electronically via the GOV.UK website. Paper filings are no longer accepted.
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 also be extended to agency workers. Taking effect in 2027.	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. These provisions will also be extended to agency workers. Taking effect in 2027.	As above, this new obligation may well need to be factored into contingency planning around the business.

Family-friendly Rights			
Topic	**Current Position**	**Changes**	**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. Taking effect in 2027.	The additional obligations on employers may need to be factored into contingency planning around the business.

Family-friendly Rights			
Topic	**Current Position**	**Changes**	**Considerations for Insolvency Practitioners**
Statutory paternity leave	To be eligible, employees must have completed 26 weeks' continuous service.	A day one right, i.e. no qualifying period. The Act also removes the restriction that prohibits employees from taking statutory paternity leave if they have already taken shared parental leave. Taking effect in April 2026.	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. Taking effect in April 2026.	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**	**Changes**	**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.

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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