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UK Government Issues Four New Consultations on Employment Rights Bill Changes

30 October 2025

In line with its implementation roadmap, the government has started to issue consultations in relation to some of the reforms contained in the Employment Rights Bill. It has kicked off with four new consultations covering:

- Enhanced dismissal protections for pregnant women and new mothers
- The right of trade unions to access workplaces
- The duty to inform workers of their right to join a trade union
- Bereavement leave, including pregnancy loss.

The first one will be of most interest and concern to employers, bringing with it yet further potential changes to the test for unfair dismissal – this time for a specific group of employees.

We highlight the key points to be aware of below.

Employment Rights Bill Update: On 28 October, the House of Lords failed to agree to the latest version of the Bill and in fact proposed further changes, some of which were previously rejected by the House of Commons (including a proposal to introduce a six-month qualifying period for unfair dismissal, as opposed to 'Day One' rights). This means we remain in 'parliamentary ping pong', with the Bill now passing back to the House of Commons for further consideration. No details yet on when this will happen. Only once agreement has been reached on the terms of the Bill will it receive Royal Assent and become an Act of Parliament. We will of course keep you updated.

Consultation: Enhanced dismissal protections for pregnant women and new mothers

Closing Date: 15 January 2026

Key Points: The Employment Rights Bill gives women greater protection against dismissal during or after a protected period of pregnancy. This consultation seeks views on the circumstances in which it may be fair for employers to dismiss such employees during this time.

It should be remembered that dismissals because of, or for reasons connected with, pregnancy or maternity leave are already unlawful. These new proposals take things one step further and would provide that a pregnant woman or new mother cannot be fairly dismissed at all, except in very narrow circumstances.

The government is seeking feedback on two broad options:

- Introducing a new general test of fairness so that employers will still be able to rely on one of the five potentially fair reasons for dismissal, but they will also be required to meet a new stricter standard when relying on that reason to dismiss a pregnant woman or new mother, e.g. they will have to show that it was necessary to dismiss them to avoid serious harm to the business.
- Narrowing the scope of, and/or removing, some of the fair dismissal reasons altogether. So, for example, the 'conduct' ground would be narrowed, such that it would only be possible to dismiss a pregnant woman or new mother if she has committed an act of gross misconduct. Other suggestions include removing 'capability' as a fair reason and removing 'some other substantial reason' (SOSR), which would prevent dismissals based on any other grounds which do not fall within the list of reasons that remained.

Both options suggest that it will become practically impossible to dismiss such employees fairly during this period.

Neither proposal seems remotely well thought through from the practical perspective. The first ignores the vanishingly small likelihood that most individual employees by themselves will do "serious harm to the business" by their conduct, their absence, their continued presence on the payroll, etc. Bigger businesses in particular could find themselves dealing with people who behave or perform really quite poorly, without being able to do anything at all about it. In any event, the extent of any harm to the business is already one of the factors properly considered by an Employment Tribunal (ET) in assessing the fairness of a dismissal. It goes to the issue of whether the employer acted reasonably in all the circumstances of the case, in relying on its reasons as sufficient to justify the dismissal. It is also unclear from the consultation who decides what constitutes "serious harm", or the extent of likelihood required. Is that the employer in the light of its own unmatched knowledge of its own business in the moment, or an ET a year or more later, in breach of all the principles around their not being entitled to second-guess employers?

It would be interesting to see how the employer's inability to dismiss for anything behavioural short of gross misconduct could affect the fairness of others' dismissal. If two employees engaged in the same conduct, but only one can be dismissed, will that make that dismissal unfair? If you can't dismiss, can you still warn? And if you can do that, but can't follow through, why should the employee take any heed of your warnings?

In terms of dismissals that would currently fall under SOSR, would this mean that attitude issues, personality clashes and losses of trust and confidence become things the employer just has to live with, regardless of the peripheral damage to colleagues and management?

These proposals would also mean that employers will have to navigate yet another test for the fairness of a dismissal (let's not forget there is already going to be a new test for fairness when dismissing employees during the new "statutory probation period").

The consultation also explores when such additional protections should start – from the day the employee starts work, after an initial period of employment (e.g. between three to nine months) - or end. It acknowledges that if these enhanced dismissal protections are granted from day one, employers could be required to retain and pay employees throughout pregnancy, maternity leave and for at least six months thereafter, even in cases where at the moment a fair dismissal (or a dismissal during probation) would or might otherwise have occurred. It is concerned that if it introduces a qualifying period for such rights, this will complicate things even further and is not consistent with the existing protections against dismissal for pregnant women and new mothers (e.g. enhanced redundancy protection and automatic unfair dismissal), which are all accessible from day one of employment. This is however a gigantic non-sequitur, since none of the existing rights have the effect of obliging the employer to keep an employee it does not need, or whose conduct or performance does not justify it.

This is definitely a consultation that employers should consider engaging with to ensure the government is aware of the difficulties these proposals are likely to create at a time when employers will also be navigating the other changes to unfair dismissal. The aims of the consultation are without doubt admirable on a big-picture basis – who doesn't want to protect pregnant women and new mothers from being treated unfairly? – but back on Earth, these proposals would genuinely seem to risk making things more (rather than less) difficult for many women. As the consultation itself acknowledges, these protections could (*could?*) have unintended consequences. If employers believe there are too many legal, procedural or practical difficulties when it comes to managing the dismissals of pregnant women and new mothers, they will simply avoid hiring women of childbearing age. The new protections for this group could also create ill-feeling in the workplace, if their colleagues believe they have protection against dismissal that others lack, even where that dismissal is for no reason obviously connected to their pregnancy or maternity. They could be absent and late more often, perform poorly, behave more inappropriately, cooperate less, resist reasonable management instructions, keep their roles at the expense of others who outscore them right across a redundancy selection matrix, all on an extended basis and without any adverse consequences. It is hard to see that this would go unremarked-upon even in the most forbearing of workplaces.

The current legal framework around discrimination on these grounds is strong, and such a wholesale change in the unfair dismissal provisions seems a big jump. Previous research suggested that pregnant women and new mothers were at greater risk of being made redundant, hence the introduction in 2024 of the additional protections in a redundancy situation. Maybe we really need to see whether these changes have made a difference before making further substantial changes in this area.

These new proposals go far beyond removing the disadvantages associated with pregnancy or maternity in the workplace. The concern must be that they may be based on relatively limited empirical evidence that employers actually discriminate on these grounds, as opposed to surveys which indicate that a substantial proportion of working mothers feel disadvantaged on those grounds and/or leave their positions within a short period after returning from leave, but without going into why or (as between employee and employer) whose reasonable expectations of the return to work were not met and on what grounds. Where is the analysis of ET judgments, or the thinking behind settlements reached, which is properly required to show these new measures to be necessary?

The government is seeking views on whether these enhanced dismissal protections should also cover other parents besides pregnant women and new mothers.

Currently, these measures are expected to come into force during 2027.

Consultation: Bereavement, leave, including pregnancy loss

Closing Date: 15 January 2026

Key Points: Currently, under the statutory Parental Bereavement Leave and Pay regime, only employees who lose a child have the right to take up to two weeks' paid leave from work for bereavement.

The Employment Rights Bill will introduce a new statutory day-one right to unpaid bereavement leave for certain employees who experience a bereavement, including pregnancy loss before 24 weeks. It sets out the statutory minimum requirements for such leave, including a minimum leave period of one week and a window of at least 56 days from the bereavement for the employee to take the leave. This consultation seeks views on the specifics of this new right, including eligibility criteria, the total duration of leave (one week/two weeks/an alternative period), when and how such leave should be taken, notice and evidence requirements and the types of pregnancy loss that will be in scope. The responses to the consultation will be used to inform the design of the implementing regulations.

This new right is expected to come into force in 2027.

Consultation: Right of trade unions to access workplaces

Closing Date: 18 December 2025

Key Points: As things currently stand, trade unions do not have a general independent right of access to workplaces.

The Employment Rights Bill will introduce a new statutory right for trade union officials to have a right to access workplaces under "access agreements" entered into between employers and "qualifying trade unions", namely those with a certificate of independence. They will have the right to meet, support, represent, recruit or organise workers (whether or not they are members of a trade union), as well as to facilitate collective bargaining. These new rights will not cover organising industrial action. Access means both physical entry into a workplace and the ability to communicate (by any means) with workers – this will therefore include digital access. The Bill also contains detailed provisions on the process that trade unions must follow to request such access, and how disputes between the parties will be dealt with by the Central Arbitration Committee (CAC).

This consultation seeks views on how this new right should work in practice, e.g. the information that should be included in a union's request for access (and the employer's response), including the format and manner of such notices, how long employers will have to respond to a union's request, the length of any negotiating period, as well as how the CAC will make decisions concerning access, etc.

The Employment Rights Bill also provides that the CAC can impose a fine for non-compliance with these new access arrangements. The government is seeking views on the maximum value of the fine. Its preference would be to introduce two maximum penalty amounts – a standard cap of £75,000, and a higher maximum for repeated breaches (probably £150,000).

The government will consult in Spring 2026 on a new statutory Code of Practice on trade union rights of access, which will set out best practice and practical guidance.

According to the government's implementation roadmap, this new right will come into force in October 2026.

Consultation: Duty to inform workers of their right to join a trade union

Closing Date: 18 December 2025

Key Points: The Employment Rights Bill will introduce a new obligation for employers to inform workers in writing of their right to join a trade union. This consultation seeks views on how this new duty should work in practice, what the statement should say, how it should be given and how often the statement should be delivered.

The government considers that the statement should include the following information: a brief (factual and explanatory) overview of the functions of a trade union (e.g. to represent workers and negotiate with employers on pay, terms and conditions, and in the event of redundancies); a summary of the statutory rights in relation to union membership (e.g. that workers should not suffer a detriment based on their decision to join or not join a union); a list of all trade unions that the employer recognises (if any) and a signpost to a gov.uk webpage with a list of current trade unions.

In terms of the form of the statement, the government is considering whether the statement should be a standard statement provided by the government, or one drafted by employers in line with the content requirements set out above. Its preference is for a standard statement that employers would issue, adding only workplace specific details. It believes this should reduce administrative burdens on employers and help ensure a clear and accessible statement is delivered to all workers.

The Bill requires employers to provide new workers with the written statement at the start of their employment. The government's preference in the consultation document is that this statement would be issued directly to new workers alongside the statement of employment particulars, but it is also seeking views on whether employers should instead be entitled to provide the information indirectly, e.g. via notice boards, intranets, etc. In terms of reminding existing staff of this new right, the government is consulting on how frequently this should happen (every six months, annually or on a sector-specific basis), as well as the form in which this should take. The government's preference would be for this information to be provided annually, which would align with wider business and HR cycles, such as annual appraisals, etc.

The government's intention is for this new duty on employers to start by October 2026.

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