SQUIRE PATTON BOGGS

# UK Government Proposes Further Changes to Employment Rights Bill

UK – March 2025

## Over the last few months, the Employment Rights Bill has been making its way through the parliamentary process. It will shortly finish its time in the House of Commons and move on to the House of Lords for further consideration.

This week the government tabled a number of amendments to the Bill following recent consultations with business groups, trade unions, etc. The majority of these implement its responses to the various consultation exercises it issued last autumn, details of which were published earlier in the week (and which we cover in further detail below), but it has also thrown in a few more changes for good measure! While taking feedback on legislative measures into account is obviously laudable and more than some commentators thought likely, the impression of policy in other respects being made up as we go along is hard to shake.

The key changes put forward by the government include:

- **Collective redundancies** – In the initial version of the Bill, the government proposed removing the words "at one establishment" from s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992, which would have significantly widened the circumstances in which the duty to consult collectively about redundancies is triggered. It has taken a step back from this. Instead, the duty to consult collectively will be triggered (as is the case now) where an employer proposes to dismiss as redundant within a period of 90 days 20 or more employees at one establishment **AND** (new bit) where the number of proposed redundancies at more than one establishment hits a certain threshold, which has not yet been determined. In other words, the duty to consult collectively will still be widened, but not as much as was previously going to be the case. Further details are expected, including what the new threshold for this new duty will be. It might be a specified number, a certain percentage of employees or some other calculation.
- The government also proposes to make it clear that although consultation under s.188 must be carried out with all appropriate representatives, it need not be carried out with all appropriate representatives together or with a view to reaching the same agreement with all appropriate representatives. Site–specific arrangements would therefore seem to be acceptable, at least in principle.
- On the topic of collective redundancies, as per its response to the consultation below, the government will be increasing the maximum period for a protective award from 90 to 180 days, giving Tribunals the ability to impose higher protective awards on employers that breach their collective consultation obligations.
- **New duty on employers to keep records relating to annual leave and pay** – The Working Time Regulations 1998 (WTR) will be amended to place a new obligation on employers to keep "adequate" records to show they have complied with their obligations to provide statutory holiday and holiday pay to their workers. Such records must be kept for six years from the date on which they are made. It will be an offence, punishable with a fine, to fail to comply with this duty, as is the case for certain other breaches of the WTR. This is probably a useful catalyst for employers to check that they are calculating holiday pay correctly (through the inclusion of account for allowances, overtime, etc.), and to look again at whether the individuals they are treating as fully self-employed are actually workers and so entitled to holiday and pay after all.
- **Agency workers** – As per its response below, the Bill will extend to agency workers the (excruciatingly complicated!) zero hours contract provisions, including the right to guaranteed hours, reasonable notice in relation to shifts and the right to payments for shifts that are cancelled, moved or curtailed at short notice. Further details are to be set out in separate regulations, presumably when someone has worked out how to draft provisions which work across the whole panoply of working arrangements applicable to agency workers. In a separate development, the government has also proposed further (rather complicated – there is a theme here!) changes to the zero hour contract provisions.

- **Umbrella companies** – As per its response to the consultation below, umbrella companies will be included within the definition of an "employment business" in the Employment Agencies Act 1973 to ensure they can be regulated.
- **New power for the government to issue "notices of underpayment"** – Where an employer has failed to pay a worker an amount due under certain legislation (e.g. National Minimum Wage or Statutory Sick Pay), the government (in the guise of the new Fair Work Agency, we believe) will have a new power to issue a "notice of underpayment" requiring the employer to pay the amount due to the individual within 28 days. The government will not be able to issue such a notice if proceedings have already been brought in the Employment Tribunal and they have not been finally determined or discontinued. This new right will cover any underpayments in the previous six years. The government may specify different claim periods in relation to different underpayments, but these cannot look more than six years backwards. Such notices may relate to more than one individual and must also require the employer to pay a penalty to the government, again within 28 days, of double the amount due under the notice of underpayment, with a minimum penalty of £100 and a maximum of £20,000. This formula is obviously based on a similar one used for underpayment of the National Minimum Wage.
- **New power for the government to bring Employment Tribunal proceedings** – The government (again, in the form of the Fair Work Agency) would have the power, in a case where a worker has the right to bring an ET claim, to bring those proceedings in place of the worker. Any award made by a Tribunal would be made in the worker's favour. Such a power would not apply in circumstances where the government already has the power to issue a notice of underpayment (see above). Furthermore, the government will also have the power to provide, or arrange for the provision of, legal assistance to any person who is a party to civil proceedings in England, Wales or Scotland relating to employment or trade union law or the law of labour relations. The small matters of to whom, when, how and for what this assistance or those step-in rights may be exercised are sadly not explained. It looks a little like the extension of Legal Aid to the ET system, an option rejected by successive governments over the entirety of the ET regime since 1960 – something as prohibitively expensive and administratively unworkable. While it has been long trailed that the Fair Work Agency might step in to assist low-paid workers in collective claims for statutory minimum wage or holiday rights, the new proposals are potentially vastly wider. Very much one to watch for employers.
- **Trade unions** – As per its response to the consultation below, the government has introduced a flurry of further changes (many quite technical) that will amend the Trade Union and Labour Relations (Consolidation) Act 1992 to "modernise" it. The changes here are numerous and diverse and will be discussed in more detail in a future alert.
- **Statutory sick pay (SSP)** – As per its response below, the government will introduce a new rate of SSP for low earners. Employees who are unable to attend work due to sickness will receive the existing flat rate of SSP or 80% of their normal weekly earnings, whichever is lower. The government says it is confident that an 80% rate strikes the right balance between providing financial security to employees who need it, while limiting additional costs to businesses.
- **Redundancy or dismissal during or after pregnancy** – The government will have the power to make new regulations to introduce additional protection about redundancy or dismissal during or after pregnancy, such as the procedure to be followed by employers and the consequences of failing to follow them.

**Next Steps:** The Bill is due to have its Report Stage and a third reading over two days next week, 11 and 12 March. Amendments to the Bill can be made at Report Stage and indeed several other changes have been suggested to the Bill, but as they are not supported by the government, we do not expect them to progress.

We are also expecting further developments this year on some of the "chunkier" elements of the Bill, such as the new unfair dismissal rules, which remain regrettably obscure for provisions of such potential significance. We will of course keep you posted in relation to these.

Join us at our Employment Law Update Webinar on 27 March when we will bring you up to speed on latest developments in relation to the Employment Rights Bill. You can sign up for the webinar using the link here: Register for Hot Employment Law Issues - 2025 (UK)

Below is a short summary of the government's responses to public feedback on the four consultation documents it issued last autumn in relation to the Employment Rights Bill, plus one other consultation on umbrella companies issued under the Conservatives. As highlighted above, these proposed changes are reflected in this latest version of the Employment Rights Bill.

| Consultation | Response | Next Steps |
|---|---|---|
| **Making Work Pay: Collective Redundancy and Fire and Rehire**<br><br>This consultation sought views on increasing the protective award for an employer's failure to comply with its collective consultation obligations, and on applying interim relief to fire and rehire and collective redundancy scenarios.<br><br>Interim relief is currently only available in limited circumstances and gives an individual the ability to apply to an Employment Tribunal for an order that they continue to be employed pending final determination of their case. | In its response, the government says it will increase the maximum period of a protective award from **90** to **180** days, in an attempt to enhance the deterrent against employers deliberately ignoring their collective consultation obligations and ensuring it is not financially beneficial for them to do so.<br><br>In some good news for employers, the government has decided against applying interim relief to "fire and rehire" and collective redundancy scenarios on the basis that this would not be an effective remedy to strengthen compliance or deliver additional benefits. | This change has been made to the Employment Rights Bill.<br><br>The government has said it will also issue guidance on consultation processes for collective redundancies "in due course". |
| **Making Work Pay: Strengthening Statutory Sick Pay**<br><br>The Employment Rights Bill will introduce new provisions on SSP. Employees will either receive a specified percentage of their normal weekly earnings or the existing flat rate of SSP, whichever is lower.<br><br>This consultation sought views on what level the percentage rate should be set at for those low earners. | In its response, the government says it has decided to set the percentage rate at 80% of normal weekly earnings. This means that employees who are unable to attend work due to sickness will receive the existing flat rate of SSP, or 80% of their normal weekly earnings, whichever is lower. | This change has been made to the Employment Rights Bill.<br><br>This is potentially an extra cost to employers. It may be time to consider the overall cost of staff sickness and revisit the size or duration of contractual sick-pay schemes. |
| **Making Work Pay: Creating a modern framework for industrial relations**<br><br>This consultation sought views on proposals to update the legislative framework in which trade unions operate. | In its response, the government confirms it will be making a number of changes to modernise existing trade union legislation, including:<br><br>• Improving the process and transparency around trade union recognition, including streamlining the recognition process and strengthening protections against unfair practices.<br><br>• Simplifying the current information requirements on industrial action ballots and notices to employers, as well as ensuring trade unions provide a 10-day notice period for industrial action.<br><br>• Introducing e-balloting.<br><br>• Extending the expiry of the mandate for industrial action from 6 to 12 months.<br><br>• Abolishing the 10-year requirement for unions to ballot their members on the maintenance of a political fund. Unions will however be required to remind their members of their opt-out rights every 10 years. | A number of these changes have been factored into this latest version of the Bill. The government will also consult further on modernising the trade union framework following Royal Assent of the Bill, including the introduction of further secondary legislation.<br><br>It has also said it will launch a working group with trade unions and businesses on e-balloting "imminently". |

| Consultation | Response | Next Steps |
|---|---|---|
| **Making Work Pay: The application of zero hours contract measures to agency workers**<br><br>This consultation sought views on whether, and how, to apply the zero hours contract measures set out in the Employment Rights Bill to agency workers, recognising the need to apply these changes differently because of both the generally temporary nature of agency work and the tripartite relationship between an agency worker, the temporary work agency, and the end-user hirer. | In its response, the government confirms it will extend the zero hours contract measures set out in the Employment Rights Bill to agency workers, as to do otherwise might create a loophole in the government's plans to end "exploitative" zero hours contracts.<br><br>This means that qualifying agency workers will also be entitled to a guaranteed hours contract, reasonable notice of shifts and payments when shifts are cancelled, curtailed or moved at short notice.<br><br>Key changes include placing a responsibility on end-user hirers to make guaranteed hours offers to qualifying agency workers, but with scope for agencies or other intermediaries to do this in certain scenarios; placing the responsibility for providing qualifying agency workers with reasonable notice of shifts on both the employment agency and the end-user hirer; placing the responsibility to pay any short notice cancellation or curtailment payments on employment agencies, but with scope for agencies to recoup costs from end-user hirers in certain circumstances. | The government has tabled various changes to the Employment Rights Bill to reflect its proposals.<br><br>Further details will be set out in separate regulations, which will be the subject of a further consultation exercise. Something to look forward to.<br><br>There is a more than decent chance that these changes will be so cumbersome and complicated that they act as a deterrent to the use of agency workers at all. Sceptics may say that this is not simply shoddy drafting but actually the whole purpose of the exercise – to move people into (relatively) secure Schedule E employment wherever practicable. We couldn't possibly comment. |
| **Tackling non-compliance in the umbrella company market**<br><br>This consultation was issued in June 2023 under the previous Conservative government on policy options to regulate umbrella companies and to tackle non-compliance in the umbrella company market. | In its response, the government confirms it will legislate to ensure that umbrella companies are regulated for the purposes of employment rights to ensure that workers have comparable rights and protections when working through an umbrella company as when taken on directly by an employment business. | The government has amended the Employment Rights Bill to define and regulate umbrella companies for the purpose of employment rights.<br><br>As announced at the Autumn Budget 2024, the government will also legislate to move the responsibility to account for pay-as-you-earn (PAYE) from the umbrella company that employs the worker to the recruitment agency that supplies the worker to the end-user client where an umbrella company is used in a labour supply chain to engage a worker. Where there is no agency in a supply chain, this responsibility will sit with the end-user client. These changes are due to take effect from April 2026 and further details can be found here. |

If you have any questions about the Employment Rights Bill, please speak to your usual contact in the Labour & Employment team or one of the following:

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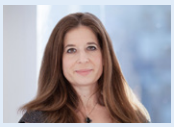

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