Employment Rights Bill

Transcript prepared for HR & Compliance Centre by Callisto Connect.

Stephen Simpson: It's important to say that the Government has always maintained that most of the reforms won't take effect until 2026 at the earliest. And realising that the reforms to unfair dismissal are among those causing the biggest concern for employers, the Government does say that the unfair dismissal and probationary period changes won't take effect until at least autumn 2026.

Robert Shore: Hello everyone. My name is Robert Shore, and today we're going to be discussing everybody's favourite subject in HR, the Employment Rights Bill, and what's been going on with that in the six months since it was published, in October 2024. And to do this, I am joined by my colleague Stephen Simpson, principal editor at Brightmine. Hello Stephen.

Stephen Simpson: Hi Robert.

Robert Shore: We're going to be rolling through a bit of history, we're going to be catching us all up on where we stand on the bill. So Stephen, let's begin at the top, shall we? What's the background to the Employment Rights Bill?

Stephen Simpson: The employment Rights Bill is the Labour Government's major overhaul of employment law in England, Wales and Scotland. Just a reminder that in parallel there's a separate bill that will redraw employment law in Northern Ireland called the Good Jobs Employment Rights Bill.

Robert Shore: And this is one of Labour's highest profile undertakings in government so far?

Stephen Simpson: Yes. So, during the 2024 General Election campaign the introduction of the Employment Rights Bill was one of the major promises from Labour, with the aim really being to modernize labour law and swing the dial back in favour of workers' rights after what Labour would say were 14 years of relatively sparse employment law enhancements under the previous Tory Government.

Robert Shore: Okay. Now, which parts of the employment lifecycle are most affected by the elements in the Employment Rights Bill?

Stephen Simpson: Among the specific parts of the employment lifecycle affected are probationary periods, flexible working requests, zero- and low-hours contracts, shift working, bereavement leave, statutory sick pay,

paternity leave and ordinary parental leave, anti-harassment measures, suitable alternative employment in a redundancy situation, and collective redundancy consultation.

Other high-profile public areas of concern for employers are also impacted, such as gender pay gap reporting and their relationships with trade unions. So it covers a lot of things.

Robert Shore: Yes, yes. There's plenty there, isn't there? So, the timetable, how long all of this has taken, when it's going to end – let's talk about that. So, what's the legislative timetable been so far?

Stephen Simpson: Before it won the General Election in July 2024, Labour pledged to introduce the bill within its first 100 days in office, which it duly did, publishing the first draft of the bill on 10 October 2024. Let's call that Version 1 of the bill. Thus began the bill's long journey through parliament.

In the meantime, the Government launched four consultations related to the bill, on 21 October, with those consultations running until early December. The consultations were in force for parts of the proposals in the bill, that is statutory sick pay, collective redundancy consultation generally and fire and rehire specifically, industrial relations generally and trade union recognition specifically, and guaranteed hours for agency workers. The Government's responses to these consultations were published on 4 March 2025.

Robert Shore: Right. And the parliamentary stages for the passage of a bill, this can be quite...I always forget. So can you just explain them to us?

Stephen Simpson: Sure. So there are five stages in the House of Commons, all of which have completed as of when we were recording this in mid-April 2025.

Those five stages are first reading, second reading, committee stage, report stage and third reading. So I'd say the most important of these is the committee stage, which started on 26 November and ended on 16 January. This is the stage where the most detailed examination of the bill took place, with the public bill committee having 24 sessions. A total of 264 amendments were tabled to the bill at this stage, with 149 of these all Government amendments agreed to by the committee and added to the bill. The remaining 115 were all proposed by the opposition but for one reason or another didn't make it through.

So, shortly after the end of the House of Commons committee stage, Version 2 of the Employment Rights Bill was published.

Robert Shore: So, apart from the sheer volume of proposed amendments, why is the committee stage in the House of Commons so important?

Stephen Simpson: So, this is the stage where outside evidence is entered, with the public bill committee hearing evidence from both the employer side – like the CBI, British Chamber of Commerce and the Federations of Small Businesses – and also the employee side, including the TUC, RMT, UNISON and UNITE.

So importantly for our audience, the public bill committee also heard from the CiPD with Ben Willmott, it's head of public policy, giving evidence about the potential impact on the HR profession.

Robert Shore: And the bill is now in the House of Lords?

Stephen Simpson: Yes. Further amendments were made at subsequent House of Commons stages. So that's the version of the bill that was submitted to the House of Lords, the complete text of which was published on 14 March 2025. Let's call that Version 3.

So that version has ballooned from around 150 pages from Version 1 to around 300 pages for Version 3. The stages in the House of Lords generally mirror those of the House of Commons. So a reminder that the five stages in the House of Lords will be first reading, second reading, committee stage, report stage and third reading. At the time of recording, in mid-April 2025, the bill has had its first and second readings in the House of Lords, and it's moving onto the committee stage in the House of Lords next.

That committee stage is the third of five stages in the House of Lords. It's due to begin on 29 April 2025. There are then two final stages. The eleventh and penultimate stage is called 'consideration of amendments', and the twelfth and final stage is 'Royal Assent', at which point of course the bill becomes the Employment Rights Act 2025.

Robert Shore: Now, you mentioned there that somebody giving evidence about the potential impact on the HR profession, which is good that that's been heard. Are there any particular challenges for HR, would you say, in keeping track of the bill's progress?

Stephen Simpson: I'd say one of the big challenges for HR is the way in which the bill was introduced by the Labour Government in the first place. Within that very tight timeframe of 100 days of being in office.

This approach, I'd say, has not been particularly helpful for HR, as the initial version now feels incomplete with literally hundreds of amendments made since then. In essence, the Government set a self-imposed deadline for the publication of the bill, i.e. within those first 100 days in office, which it did meet, but it does mean that even the most conscientious HR professionals who want to start preparing as far in advance as possible are finding it difficult to do so, with

some proposals holding as they were in Version 1 of the bill but still needing to be substantially fleshed-out, some of the original proposals being altered, and some substantial new proposals being added.

Robert Shore: Let's take those three categories in turn then. Unaltered proposals that need fleshing out, altered proposals and substantial new proposals. Which proposals are largely unaltered from the first draft that was published last October, October 2024?

Stephen Simpson: The big one that's basically not changed is the removal of the two-year service requirement to bring an unfair dismissal claim, plus the accompanying introduction of a statutory probationary period.

Robert Shore: Okay. So remind us what the key features of that proposal are.

Stephen Simpson: Under these proposals, employees will be able to bring a claim for unfair dismissal from Day 1 of starting their employment. Employers will have to follow a modified statutory procedure to dismiss and employee during an initial period of employment.

We still don't have a whole lot of information about how this is going to work in practice. We do know that this statutory probationary period will be set at a number of months, somewhere between three months and nine months, with the Government stating its preference that it should be set at nine months.

We also need more detail on what the dismissal process during the probationary period will look like. It is expected to be a light-touch process, perhaps with the requirement to hold a meeting with the employee to explain concerns about performance, at which the employee could be accompanied by a trade union rep or a colleague.

Robert Shore: Right. So when will we know more?

Stephen Simpson: We're expecting a public consultation, which will ultimately result in regulations to provide more information on these issues and implement the fine detail of these proposals.

Robert Shore: Okay. Flexible working proposals there. They're also unchanged, I think, from the first draft that was published last October.

Stephen Simpson: That's right. The flexible working proposals have also basically stayed the same. The right to request flexible working legislation will continue to allow employers to turn down requests for flexible working if the reason for doing so falls within the widely drafted list of acceptable business reasons to refuse requests.

However, under the bill employers will not be able to refuse requests unless that refusal is reasonable. Importantly, employers are also required to write to the employee stating the grounds for refusing

their request and explaining why the employer considers that decision to be reasonable.

Robert Shore: Okay. So what additional information are employers waiting on at this point?

Stephen Simpson: As with most of the proposals in the bill, we'll need secondary legislation to implement the changes, plus an updated version of the ACAS code of practice on handling requests for flexible working. In particular, we'll need to see if either the secondary legislation or updated ACAS code flesh out what counts as a reasonable refusal of a flexible working request.

Robert Shore: And what about changes to harassment laws?

Stephen Simpson: They are also largely unchanged from the first draft of the Employment Rights Bill. The requirement on employers to take reasonable steps to prevent sexual harassment of their workers in the course of their employment is being extended so that employers must take all reasonable steps, not just reasonable steps, to prevent sexual harassment.

Robert Shore: And the bill also includes provisions around third-party harassment.

Stephen Simpson: Yes. In essence, the bill includes provisions to protect staff from harassment by a third party, for example a customer or a client. The employer will be liable for third-party harassment of an employee if it occurs during employment and the employer fails to take all reasonable steps to prevent it. This won't be limited to just sexual harassment but it will extend to harassment on other grounds, such as age, disability, race and religion.

Robert Shore: Okay. And there again, what additional information are employers waiting on?

Stephen Simpson: Here there won't need to be a lot of secondary legislation. But what employers will need is guidance on what constitutes all reasonable steps to prevent harassment, in particular what specific steps will an employer have to take to prevent third-party harassment and what measures are likely to be deemed reasonable. We know that these steps are, for example, likely to include conducting risk assessments, developing and publishing anti-harassment plans or policies, and taking steps related to the reporting of harassment and the handling of complaints.

But employers need some certainty as to what anti-harassment steps they will be expected to take.

Robert Shore: Yes. So that's three proposals then, around unfair dismissal, flexible working and harassment, that have largely stayed the same. What

about the proposals now that have substantially changed in that period?

Stephen Simpson: The proposals related to collective redundancy consultation have certainly shifted significantly. A reminder that the original proposal was to change the trigger point for collective redundancy consultation obligations to kick in.

Currently the duty to collectively consult arises where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days. 'One establishment' in this context means the specific site or workplace where the employee carries out their duties. For example, in retail that would be a specific store. The original proposal was to remove the words 'at one establishment', which in practice would have meant collective consultation triggering where 20 or more redundancies are proposed across the whole business.

Robert Shore: Okay. So what is the updated proposal now, and why do you think it's been altered so significantly?

Stephen Simpson: There were concerns that the original proposal would have had big consequences for large, multi-site employers where it's not always easy to track redundancies. In reality, in large organisations one part of the organisation is not necessarily in sync with other parts. So you could potentially see redundancies proposed in multiple different parts of the business but those parts being unaware of what the others parts are doing.

Robert Shore: Yeah. So what is the new proposal?

Stephen Simpson: So, the new proposal is that the phrase 'at one establishment' will be retained and the collective redundancy consultation obligations will be triggered if either there are 20 or more people being made redundant in one establishment, or another threshold is reached where employees are being made redundant at more than one establishment. So this other threshold is still to be confirmed. For example, it may be a specific percentage of employees across the whole organisation.

Robert Shore: And are there any other changes to the collective redundancy consultation proposals?

Stephen Simpson: The proposals also now provide that employers will not be required to consult all appropriate representatives together or reach the same agreement with them all. This is in recognition that the employer may be consulting on redundancies that are completed unrelated to each other.

And the other headline change is that the maximum period of the protective award for a failure to consult increases to 180 days' pay, up from 90 days' pay.

Robert Shore: Mm. Quite substantial, isn't it? So, linked to collective redundancy consultation, what about the fire and rehire proposals?

Stephen Simpson: Those are largely unchanged so far, with one notable exception. It remains the case that the Employment Rights Bill will make it automatically unfair to dismiss someone if their principal reason is that they refuse to agree to a variation of contract or if the employer's principal aim is to recruit someone else under new terms to do the same job, or to rehire the same employee on new terms.

There is a narrow exception where the employer will be able to engage in the practice of fire and rehire if it can show that the business is in current financial difficulties or imminently will be in financial difficulties. Even then, the employer needs to act fairly, in particular when it comes to consultation.

Robert Shore: You mentioned there's one area where the original fire and rehire proposals have changed. What's that?

Stephen Simpson: That's right. The Government consulted on the possibility of allowing claimants to seek what's called 'interim relief' in unfair dismissal cases related to fire and rehire, as really an initial disincentive against employers using the practice. That essentially means that the tribunal could require an employer to continue to pay a claimant whom the tribunal is likely to win their unfair dismissal fire and rehire claim pending the case being heard.

It will be a relief to employers to hear – and probably also to a large number of employment lawyers as well – that this proposal has been dropped. It was deemed just too difficult for the Government to implement and in any event, very burdensome on employers, not to mention the employment tribunal system, which is already stretched, of course.

Robert Shore: What about changes to the proposals seeking to address the one-sided flexibility of zero- or low-hours contracts?

Stephen Simpson: Yes, there have been some significant changes in that area too. A reminder that the bill will give qualifying zero- or low-hours workers the right to be offered guaranteed hours in line with the number of hours they regularly worked, after the end of each set reference period. Those workers will also have the right to reasonable notice of shift changes, with employers required to pay them compensation for any shifts cancelled at short notice.

Robert Shore: So what's changed?

Stephen Simpson: So, two big amendments really jump out at me. Firstly, agency workers were previously excluded from these proposals. However, it is now proposed that the measures will extend to agency workers. It's expected that it will be the end-user's (i.e. the employer's) responsibility to make a guaranteed hours offer to a qualifying agency worker, although regulations may impose obligations on agencies themselves as well in certain circumstances which are still to be clarified.

Both the agency and the end-hirer will have responsibility for providing a qualifying agency worker with reasonable notice of shifts, and in successful employment tribunal claims a tribunal will be able to apportion liability based on the parties' responsibilities. The agency will have responsibility for paying the agency worker for any short-notice cancellations or changes to shifts, although it looks like the agency will be able to recoup from the end-user the cost of this where they have pre-existing arrangements with that end-user.

Robert Shore: Okay. So that's the first big change. What is the second?

Stephen Simpson: The second big change is the addition of a new provision to allow employers to agree a collection agreement with one or more trade unions to contract out of the rights to guaranteed hours and reasonable notice of shifts.

So, I think this could create a strong incentive for employers in low-wage sectors to enter collective bargaining arrangements with the union, given widespread concern about the complexity and practical difficulty of applying these new rules.

Robert Shore: Right, let's get onto trade unions. There are numerous changes to the trade union provisions. Can you pick out a few of the key ones?

Stephen Simpson: Yes. It's good to provide a reminder that the bill will make numerous changes to create a more modern framework for industrial relations and to strengthen trade union rights.

Among the key proposals are two provisions to facilitate trade union access to the workplace. The first is a requirement for employers to give new staff a written statement that they have the right to join a trade union at the same time that they are provided with a written statement of terms and conditions.

Also, the bill introduces a right for trade unions to have access to the workplace, on appropriate notice, to meet, represent, recruit or organise workers and to facilitate collective bargaining.

Importantly, the amendments to the bill make is clear that this will include virtual access as well as physical access. Exactly what this entails will need to be clarified in secondary legislation.

Robert Shore: Right. And is there to be further consultation on some of the other trade union proposals?

Stephen Simpson: Yes. The Government confirmed in its consultation response on creating a modern framework for industrial relations that there would be further consultation on three areas – so, regulations to repeal the 50% industrial action ballot turnout threshold; lowering admissibility requirements for the statutory trade union recognition ballot process; and finally allowing for trade union ballots to be conducted electronically, which has been on the trade union agenda for many years, of course.

Robert Shore: And are there any entirely fresh proposals for HR to wrap its head around?

Stephen Simpson: The big new change to make the headlines is the addition of the extension of the time limit for bringing most types of tribunal claim from three months to six months. Currently most employment tribunal claims, including those for unfair dismissal, discrimination and unlawful deductions from wages, must be brought within three months of the date of the dismissal or of the act complained of.

Robert Shore: Okay. And what practical impact will this have on employers?

Stephen Simpson: Employers are going to have to factor in the extra time for bringing tribunal claims into their thinking when assessing the risks of both recruiting staff in the first place and also dismissing them if things don't work out, as they will have a longer window to bring a claim. This, alongside the removal of the two-year qualifying period to bring an unfair dismissal claim, will make employers more cautious than ever in their recruitment and termination decision-making.

Robert Shore: And the extension of time limits will, we think, increase claim numbers?

Stephen Simpson: I think so. The extra time to bring a claim may increase claim numbers, and it would be placing an additional burden on the already struggling tribunal system. This means claims will take longer than ever to be heard and decided, which may affect employers' decision-making when it comes to potentially settling tribunal claims, for example.

One other thing to remember with the extension of the time limits is that your organisation may have record retention periods, such as recruitment or termination records, that have their basis in the three-month time limit. So records are retained in case there is a tribunal claim. For example, if you retain records for six months, say the original three-month time limit plus a three-month buffer period, consider extending that to nine months. If you normally retain

recruitment or termination records for nine months, say, consider extending the reference period to twelve months and so on.

Robert Shore: Good advice, good advice. We've covered quite a lot already but Stephen, are there any other new proposals you think we ought to be highlighting?

Stephen Simpson: One important additional proposal to highlight is that the Government has indicated its willingness to expand bereavement leave. The bill is extending statutory bereavement leave to cover bereavements generally, rather than just parents whose child dies, which is currently covered by the right to parental bereavement leave.

Robert Shore: Okay. So actually, yes, just remind us who is currently entitled to parental bereavement leave.

Stephen Simpson: Parental bereavement leave covers employees who suffer the loss of a child under the age of 18. This includes parents who suffer a stillbirth after 24 weeks of pregnancy, but it doesn't currently include pregnancy loss before 24 weeks of pregnancy, in other words a miscarriage. The Government is expected to extend the right to bereavement leave to miscarriages that occur before 24 weeks.

So this is really good news, as no family-related leave or bereavement leave at all is available in this scenario, which I've always thought is a really unsatisfactory gap in employment rights. So this change will essentially introduce miscarriage bereavement leave for parents.

Robert Shore: Oh, now we mustn't forget to talk about the proposals that were introduced that appear to have been made to vanish since then. So what about the proposal to introduce the right to disconnect? That appears to have been quietly dropped.

Stephen Simpson: That's right. We haven't had official confirmation from the Government but there has been widespread press reports that the Government has quietly dropped the much-trumpeted right to disconnect. This wasn't included in the first version of the Employment Rights Bill but there was the suggestion that it would be added later. Whether or not we still see something in this area – for example, a non-statutory code of practice – remains to be seen, but it does seem to have been quietly dropped.

Robert Shore: Mm. Okay. So finally, Stephen, how do you see the overall progress of the bill so far?

Stephen Simpson: Six months ago when it was first launched in October 2024, we suggested that the bill was likely to take between nine to twelve months to get Royal Assent, and even then there would need to be

much secondary legislation. The Government is still on course for that sort of timeline. For example, nine months from last October is July 2025, so that seems the most likely period for it to receive Royal Assent, especially as the parliament summer recess starts on Monday 21 July.

I would expect the Government to want to see the bill through by then, to change from being the Employment Rights Bill to the Employment Right Act 2025.

Robert Shore: And then all of the changes come into force straight away? No. No, they don't. We're not expecting the major changes to come into force straight away. Everybody breathe. What are we expecting?

Stephen Simpson: No, it's important to say that the Government has always maintained that most of the reforms won't take effect until 2026 at the earliest. And realising that the reforms to unfair dismissal are among those causing the biggest concern for employers, the Government does say that the unfair dismissal and probationary period changes won't take effect until at least autumn 2026.

Robert Shore: Stephen, thank you so much, as ever. I think that's a very useful summary of what was, what is and what will be, in relation to this really key piece of legislation.

We have supporting materials on our website. We have some links to those in the show notes here. All that it remains for me to say is, until next time.

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