

Employment and Trade Union Rights (Dismissal and Re-engagement) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Barry Gardiner MP, are published separately as Bill 15-EN.

Employment and Trade Union Rights (Dismissal and Re-engagement) Bill

[AS INTRODUCED]

CONTENTS

- 1 Procedure for handling dismissal and re-engagement
- 2 Protection of contracts of employment
- 3 Duties of trade unions
- 4 Extent, commencement and short title

[AS INTRODUCED]

A

B I L L

TO

Amend the law relating to workplace information and consultation, employment protection and trade union rights to provide safeguards for workers against dismissal and re-engagement on inferior terms and conditions; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Procedure for handling dismissal and re-engagement

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- (2) After Chapter I (collective bargaining), insert—

“CHAPTER 1A

5

PROCEDURE FOR HANDLING DISMISSAL AND RE-ENGAGEMENT

Duties of employer to consult representatives and disclose information

187A Duty of employer to consult representatives

- (1) This section applies to an employer where, in an undertaking or establishment with 50 or more employees, in the light of recent or envisaged events and the economic situation affecting the employer, there is a real threat to continued employment within the undertaking, and one or both of the following matters apply—
 - (a) decisions may have to be taken to terminate the contracts of 15 or more employees for reasons other than conduct or capability, or
 - (b) anticipatory measures are envisaged which are likely to lead to substantial changes in work organisation or in contractual relations affecting 15 or more employees.
- (2) The employer shall consult with a view to reaching an agreement to avoid decisions being taken to terminate contracts of employment, or to introduce changes in work organisation or in contractual relations.

- (3) The consultations under subsection (2) shall take place with all the persons who are appropriate representatives of any of the employees who are or may be affected by those matters that apply.
- (4) The consultation shall begin as soon as is reasonably practicable and in any event in good time for any agreement to be reached so as to avoid decisions being taken to terminate contracts of employment or introduce changes in work organisation or in contractual relations. 5
- (5) In this section, “appropriate representatives” has the same meaning as in section 188(1B) (and the requirements for the election of employee representatives in section 188A apply). 10
- (6) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.
- (7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of this section, the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances. 15
- (8) Where the threat to continued employment emanates from a person controlling the employer (directly or indirectly), or a decision leading to the termination of the contract of an employee for reasons other than conduct or capability or a decision leading to substantial changes in work organisation or in contractual relations is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement. 20 25

187B Duty of employers to disclose information

- (1) An employer to which section 187A applies shall, for the purposes of the consultation provided for in section 187A, disclose to the appropriate representatives, on request, the information required by this section. 30
- (2) The information to be disclosed is all information relating to the employer's undertaking (including information relating to use of agency workers in that undertaking) which is in the employer's possession, or that of an associated employer, and is information— 35
- (a) without which the appropriate representatives would be to a material extent impeded in carrying on consultation with the employer, and
- (b) which it would be in accordance with good industrial relations practice that the employer should disclose to them for the purposes of the consultation. 40

- (3) A request by appropriate representatives for information under this section shall, if the employer so requests, be in writing or be confirmed in writing.
- (4) In determining what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by ACAS, but not so as to exclude any other evidence of what that practice is. 5
- (5) Information which an employer is required by virtue of this section to disclose to appropriate representatives shall, if they so request, be disclosed or confirmed in writing. 10
- (6) The employer is not required to disclose any information or document to a person for the purposes of this section where the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the undertaking. 15
- (7) If there is a dispute between the employer and an employee or an appropriate representative as to whether the nature of the information or document which the employer has failed to provide is such as is described in subsection (6), the employer, employee or appropriate representative may apply to the Central Arbitration Committee for a declaration as to whether the information or document is of such a nature. 20
- (8) If the Committee makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, be seriously harmful or prejudicial as mentioned in subsection (5) the Committee shall order the employer to disclose the information or document. 25
- (9) An order under subsection (8) shall specify –
- (a) the information or document to be disclosed;
 - (b) the person or persons to whom the information or document is to be disclosed; 30
 - (c) any terms on which the information or document is to be disclosed; and
 - (d) the date before which the information or document is to be disclosed. 35

Complaint of failure to consult or disclose information

187C Complaint to Central Arbitration Committee

- (1) An appropriate representative may present a complaint to the Central Arbitration Committee that an employer has failed to comply with a requirement of section 187A or section 187B. The complaint must be in writing and in such form as the Committee may require. 40

- (2) If on receipt of a complaint the Committee is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the complaint to ACAS and shall notify the appropriate representative and employer accordingly, whereupon ACAS shall seek to promote a settlement of the matter. If a complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the Committee of its opinion. 5
- (3) If the complaint is not referred to ACAS or, if it is so referred, on ACAS informing the Committee of its opinion that further attempts at conciliation are unlikely to result in a settlement, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its findings. 10
- (4) On the hearing of a complaint any person who the Committee considers has a proper interest in the complaint may be heard by the Committee, but a failure to accord a hearing to a person other than the appropriate representative and employer directly concerned does not affect the validity of any decision of the Committee in those proceedings. 15 20
- (5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify –
- (a) each failure in respect of which the Committee finds that the complaint is well-founded,
 - (b) the steps that should be taken by the employer to rectify each such failure, and 25
 - (c) a period or period (not being less than one week from the date of the declaration) within which the employer ought to take those steps.
- (6) On a hearing of a complaint under this section a certificate signed by or on behalf of a Minister of the Crown and certifying that particular information could not be provided except by disclosing information the disclosure of which would have been against the interests of national security shall be conclusive evidence of that fact. A document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved. 30 35

187D Application for injunction pending rectification of failure

- (1) This section applies if a declaration of the Central Arbitration Committee under section 187C finds a complaint wholly or partly well-founded. 40
- (2) An appropriate representative may apply to the Court for an injunction to subsist until the employer can satisfy the Committee that the steps under section 187C(5)(b) have been completed within the specified period or periods under section 187C(5)(c) –

- (a) to compel the employer to take those steps within the period or periods, or
- (b) to render void any dismissal or changes in work organisation or in contractual relations.

Complaint of offer of re-engagement on different terms following dismissal or change in conditions or failure to comply with sections 187A or 187B 5

187E Complaint to employment tribunal

- (1) This section applies where an employer—
 - (a) offers or proposes to offer re-engagement on different terms to an employee— 10
 - (i) it has dismissed or proposes to dismiss for reasons other than conduct or capability, or
 - (ii) in relation to whom it has made or proposes to make substantial changes in work organisation or in contractual relations; or 15
 - (b) has failed to comply with any of the obligations set out in sections 187A or 187B.
- (2) Any affected employee or their appropriate representative may make a complaint to the employment tribunal.
- (3) If the tribunal finds the complaint well-founded it shall make a declaration to that effect. 20

187F Award of compensation

- (1) An employee, or the appropriate representative of an employee, whose complaint under section 187E has been declared to be well-founded may make an application to an employment tribunal for an award of compensation to be paid by the employer. 25
- (2) The amount of compensation awarded shall, subject to the following provisions, be such as the employment tribunal considers just and equitable in all the circumstances having regard any loss sustained by the complainant which is attributable to the dismissal or substantial changes in work organisation or in contractual relations to which the complaint related. 30

Duty of employer to notify Secretary of State

187G Duty of employer to notify Secretary of State in certain circumstances

- (1) This section applies to an employer to which section 187A applies in relation to 50 or more employees at one establishment or undertaking. 35
- (2) The employer shall notify the Secretary of State, in writing, of the matters under section 187A(1) that apply and any related proposals not later than the end of whichever is the longer of—

- (a) 45 days, and
- (b) the notice period necessary to terminate lawfully the employment of all those employees who may be affected by any such matter before any decision to put into effect that matter is reached. 5
- (3) A notice under this section shall—
- (a) be given to the Secretary of State by delivery or by sending it by post, at such address as the Secretary of State may direct in relation to the establishment where employees who may be affected are employed, 10
- (b) where there are representatives to be consulted under section 187A(2), identify them and state the date when consultation with them under that section began or will begin, and
- (c) be in such form and contain such particulars, in addition to those required by paragraph (b), as the Secretary of State may direct. 15
- (4) After receiving a notice under this section from an employer the Secretary of State may by written notice require the employer to give them such further information as may be specified in the notice.
- (5) Where there are representatives to be consulted under section 187A(2) the employer shall give to each of them a copy of any notice given under subsection (3). The copy shall be delivered to them or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office. 20 25
- (6) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (5), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances. Where the decision regarding the matters is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements. 30 35

187H Failure to notify

- (1) An employer who fails to give notice to the Secretary of State in accordance with section 187G commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 40
- (2) Proceedings in England or Wales for such an offence shall be instituted only by or with the consent of the Secretary of State or by an officer authorised for that purpose by special or general directions of the Secretary of State. An officer so authorised may prosecute or conduct proceedings for such an offence before a magistrates' court. 45

- (3) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. 5
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with their functions of management as if they were a director of the body corporate.” 10

2 Protection of contracts of employment

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After Part IIA (zero hours workers) insert—

“PART 2B

15

PROTECTION OF CONTRACTS OF EMPLOYMENT

27C Restrictions on variation of employment contracts

- (1) Any variation to an employment contract is void if it—
- (a) was obtained under the threat of dismissal, and
 - (b) is less favourable to the employee than the pre-existing provision, 20
- unless the employer has complied with all its obligations under, and arising from, sections 187A to 187G of the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to any person employed under the contract. 25
- (2) In subsection (1)(b), the definition of “less favourable” shall be determined by the perception of a reasonable employee in the position of the affected employee.

27D Unilateral variation of employment contracts

- (1) Any provision in an agreement (whether an employment contract or not) is void in so far as it purports to permit the employer to vary unilaterally one or more terms within an employment contract where the variation is less favourable to the employee than the pre-existing provision. 30
- (2) In subsection (1), the definition of “less favourable” shall be determined by the perception of a reasonable employee in the position of the affected employee.” 35

- (3) In Chapter I (right not to be unfairly dismissed), after section 104G insert—

“104H Refusal of variation of contractual terms

In relation to an employee who claims to have been unfairly dismissed in circumstances in which the reason (or, if more than one, the principal reason) for the dismissal is that the employee has refused to agree to a variation of contractual terms—

- (a) section 98(1)(b) shall not apply save that it shall be for the employer to show that the reason for the dismissal fell within section 98(2);
- (b) section 108(1) shall not apply.

104I Matters for consultation under section 187C of the Trade Union and Labour Relations (Consolidation) Act 1992

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the Central Arbitration Committee has made a declaration under section 187C of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the employer and employee, and the employer has not complied with the steps in that declaration, or
- (b) the employer has failed, in respect of the employee, to comply with a provision of a collective agreement applicable to a matter for consultation under section 187A of the Trade Union and Labour Relations (Consolidation) Act 1992.”

- (4) In section 116 (unfair dismissal: choice of order and its terms), after subsection (3) insert—

“(3A) If an employee has been unfairly dismissed and the reason (or, if more than one, the principal reason) the dismissal is unfair is one specified under section 104H or 104I, the tribunal may only find that it is not practicable for—

- (a) the employer to comply with an order for reinstatement under subsection (1)(b), or
- (b) the employer (or a successor or an associated employer) to comply with an order for re-engagement

if the employer (or if appropriate a successor or an associated employer) would be likely to become insolvent within three months if such an order was made.”

- (5) In section 128(1)(a)(i) (interim relief pending determination of complaint), for “or 103A” substitute “103A, 104H or 104I”.

- (6) In section 129(1)(a)(i) (procedure on hearing of application and making of order), for “or 103A” substitute “103A, 104H or 104I”.

3 Duties of trade unions

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.

(2) In section 219 (protection from certain tort liabilities), after subsection (4) insert—

5

“(5) But subsection (4) does not have effect in relation to any act in contemplation or furtherance of a trade dispute which relates wholly or mainly to proposals by an employer to vary terms and conditions of employment of two or more employees accompanied by the threat (explicit or implied) of dismissal if that variation is not agreed.”

10

4 Extent, commencement and short title

(1) Any amendment made by this Act has the same extent as the provision amended.

(2) This Act comes into force at the end of the period of 90 days beginning on the day on which it is passed.

15

(3) This Act may be cited as the Employment and Trade Union Rights (Dismissal and Re-engagement) Act 2021.

Employment and Trade Union Rights (Dismissal and Re-engagement) Bill

[AS INTRODUCED]

A

B I L L

TO

Amend the law relating to workplace information and consultation, employment protection and trade union rights to provide safeguards for workers against dismissal and re-engagement on inferior terms and conditions; and for connected purposes.

*Presented by Barry Gardiner
supported by Robert Halfon, Gavin Newlands,
Christine Jardine, Caroline Lucas, Sammy Wilson,
Ben Lake, Andy McDonald, Dawn Butler,
Darren Jones and Bell Ribeiro-Addy.*

Ordered, by The House of Commons, to be
Printed, 16th June 2021.

© Parliamentary copyright House of Commons 2021

*This publication may be reproduced under the terms of the Open Parliament Licence, which is published at
www.parliament.uk/site-information/copyright*

PUBLISHED BY THE AUTHORITY OF THE HOUSE OF COMMONS