Employment Rights Bill latest: important changes made to the proposals on collective consultation

Earlier this month, the Government published its response to the consultation on strengthening remedies for breaches of the collective redundancy consultation rules. Alongside that, it published various amendments to the Employment Rights Bill, including some important amendments to the collective consultation proposals. In this briefing, we bring you up to speed on the latest developments and what they mean for employers.

What's the background?

Currently, collective redundancy consultation is triggered where there is a proposal to dismiss as redundant 20 or more employees assigned to one "establishment" within a 90-day period. In this context, "establishment" has been held by the courts to mean the local unit where the employee works, not the business as a whole. A failure by an employer to comply with these obligations may lead to a protective award of a sum not exceeding 90 days' gross pay per employee. This award is intended to penalise the employer for breaching the statutory requirements and deter others from doing so. The amount of the award is determined by the Employment Tribunal according to what is just and equitable but, usually, the more serious the breach, the higher the protective award.

Initially, the Bill proposed to change the law to trigger collective consultation where there are 20 or more proposed redundancies within 90 days across an entire business rather than in just one establishment. This would mean that collective consultation would be triggered more frequently. This raised the question of whether the consultation would need to be conducted with all the employee representatives at the same time even where the redundancies were in different locations and unrelated. You can read more about the initial proposals in our briefing here.

Shortly after the Bill was published, the Government published a consultation looking at options for strengthening the remedies available for a breach of the collective consultation rules. The options under consideration were:

- Raising the protective award to 180 days' gross pay or removing the cap altogether. In either case, the Tribunal would retain discretion as to the amount of the protective award, based on what it determines to be just and equitable in light of the severity of the employer's breach.

- Extending the remedy of interim relief to affected workers. Where interim relief is granted by a Tribunal it will order the employer to reinstate the claimant to their previous role or re-engage them in a different role pending the determination of the unfair dismissal claim at the final hearing. Where the employer is not willing to do this, the Tribunal will make a

"continuation order", meaning the employer is ordered to pay the claimant as if their employment contract was still continuing, until the final hearing. Sums paid under a continuation order are irrecoverable regardless of the outcome of the final hearing. This makes interim relief a potentially very valuable remedy for claimants, and a burdensome one for employers.

You can read more about the consultation in our briefing here.

What's the latest?

The Government has put forward a number of key amendments to the Bill in this area.

1. Collective consultation will be triggered where there is a proposal to dismiss as redundant within a 90-day period either 20 or more employees assigned to one establishment (i.e. the current position), or a "threshold number of employees" across the wider workforce. This threshold number will be defined in regulations but may be *either* a specified number of redundancies *or* an overall percentage of the workforce. For example, if the threshold were to be set at 10% of the workforce, and the employer employed 500 employees across different sites, then a proposal of 50 or more redundancies across the whole business within a 90-day period would trigger collective consultation even where

fewer than 20 redundancies were proposed at any one site.

2. Employers will be required to notify employee representatives in writing of the total number of proposed redundancies across the business and at which establishments. However, employers will not be required to consult all such representatives together, nor undertake consultation with a view to reaching the same agreement with all of them. These changes mean that all employee representatives will be entitled to information about the proposed redundancies across the entire business, but employers will have flexibility about how the consultation process is conducted.

3. The trigger for providing the Secretary of State with advance notice of proposed collective redundancies via the HR1 form will be aligned with the new collective consultation thresholds in the Bill.

4. In terms of remedies, the maximum protective award will rise from 90 to 180 days' gross pay per employee. However, interim relief will not be extended to protective award claims.

In due course, the Government will also publish new guidance for employers on collective consultation which will reflect these changes. It also plans to consult on additional ways to strengthen employee rights in collective redundancy situations.

What does this mean for employers?

These changes represent good and bad news for employers. The retention of the words "at one establishment" is a concession to business and means collective consultation will not be triggered where a multi-site employer proposes small pockets of redundancies at different sites *provided that* the total numbers do not exceed the new threshold. Clearly, the level at which the new threshold is set will be important – the lower it is, the more likely that collective consultation will be required.

Further, the fact that consultation will not have to be conducted with all the employee representatives at the same time, nor with a view to reaching the same agreement, means that even where collective consultation is triggered by multiple pockets of smaller redundancies across different sites, there is flexibility in how that process operates. The new guidance will be an important reference document for employers in this situation.

The doubling of the maximum protective award to 180 days' pay significantly increases the risk to employers of failing to comply with the statutory requirements for collective consultation. However, the Employment Tribunal will retain discretion to set the award at a figure which reflects the severity of the breach, which means minor breaches should not incur an award at the upper end of the scale. "Buying out" protective award claims will now be more costly and therefore less attractive for employers, meaning they may choose to comply with the statutory requirements and conduct a collective consultation process.

Government Response to Consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire, 4 March 2025

Employment Rights Bill: Amendment Paper, 4 March 2025

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.