

# United Kingdom: Push-back on day-one unfair dismissal rights and other Employment Rights Bill developments

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Employment Rights Bill

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## In brief

Last night (28 October 2025), the House of Lords once again voted against the government, notably in relation to unfair dismissal rights. Making protection from unfair dismissal a day-one right is a key government policy, supported by the House of Commons. The Lords have now twice changed this, to make the right subject to a six-month qualifying period (down from the current two years). The government is likely to be very resistant to abandoning this manifesto pledge, but we await its response.

## Key takeaways

### Next steps

The Bill will now have to return to the House of Commons once again, to debate these latest developments. This is part of the process known as “ping pong”. We do not yet have a timescale for this, but it is clear that it will delay the completion of the Bill. The government will no doubt be keen to insist on keeping its key policy pledges but, at the same time, will not want to unduly delay the entire Bill due to a deadlock.

### Unfair dismissal rights

The government's and House of Commons' choice is to make protection from unfair dismissal a day-one right. This would come with a statutory probationary period — potentially up to nine months long — during which a lighter touch standard of fairness would apply, although the all-important details of this are subject to consultation and further regulations. The House of Lords' position is that there should be a six-month qualifying period (down from the current two years), again with rules on probationary periods.

The House of Lords' objection to the day-one right approach is founded on widely expressed concerns that the policy would be economically damaging, might inhibit hiring, will add pressures to an already overstretched employment tribunal system, and the lack of certainty about the probationary period rules (in addition, potentially, to political considerations).

During the Lords' debate, other countries were cited as examples of jurisdictions that have a six month qualifying period (or similar), including Germany and Sweden. The German legal framework affords employers with flexibility in how they manage terminations during the first six months, provided that the termination is not "abusive" (e.g., discriminatory). In Sweden, where a probationary period of up to six months has been validly agreed, there is no requirement to show "just cause", although (as in Germany) the dismissal must not be discriminatory.

In our experience, UK employers use the probationary period (typically between three to six months but rarely nine) to assess an employee's performance and make a decision regarding continued employment. In some cases, it is apparent that the nature of the role has not met the employee's expectations and that a discussion needs to take place regarding the scope of the role and whether there is an alignment between the parties about what the job entails. There can also be complexities where an employee experiences periods of sickness absence or takes family leave during the probationary period.

Employers currently have flexibility as to how that probationary period is managed, provided that they do not act in a manner that engages rights that do not require a qualifying period (e.g., discrimination and whistleblowing). A six month qualifying period would therefore dovetail with market practice, although it would not be consistent with the government's election pledge to provide day one rights.

## Guaranteed hours offers (GHOs)

The Bill will create an obligation to make a GHO to a zero hours or certain low hours workers, subject to yet-to-be agreed rules on issues such as trigger points and reference periods.

The House of Lords previously sought to make this into a right for the worker to request guaranteed hours, as opposed to an obligation on the employer to offer. The Commons rejected this and the Lords has now passed a new proposal: it wants to create a requirement to send a written notice of the right to receive a GHO, and the worker would then be entitled to decline to receive the offer and, importantly, any future notices or offers.

The Lords also wants the government to be required to pay specific regard to the specific characteristics and requirements of seasonal work when making GHO-related regulations.

## Trade union matters

The Lords continues to insist that:

- Members of a trade union should not, by default, have to contribute to the union's political fund. The Lords want to retain the current position that such contributions are only made on an opt-in basis.
- Industrial action ballots should continue to be subject to a 50% turnout threshold in order to be valid.

## Heritage railways!

Although unlikely to be of interest to many readers, for completeness, we also mention the final Lords amendment. This would be to require certain government bodies to produce guidance on children working for a heritage railway or tramway.

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