



HL Bill 8 of 2023–24

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

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The [Employment and Trade Union Rights \(Dismissal and Re-engagement\) Bill \[HL\]](#) is a private member's bill introduced by Lord Woodley (Labour). It aims to tighten the rules around the use of fire and rehire practices by employers, including by providing affected workers with additional protections. It is scheduled for second reading in the House of Lords on 1 March 2024.

Other private members' bills have been introduced on the subject in previous sessions. In the 2022–23 session, Lord Woodley introduced a bill which was identical in effect; this did not proceed to second reading. In addition, a similar bill was introduced in the House of Commons in the 2021–22 session.

In March 2022, the government committed to introducing a code to give legal force to government expectations that employers should behave fairly and reasonably when seeking to change employees' terms and conditions. A draft code of dismissal and re-engagement was published on 24 January 2023. Consultation on this draft code closed on 18 April 2023. The government has committed to publish a final version of the code in Spring 2024.

This briefing provides information and commentary on private member's bills seeking to address fire and rehire. It also examines reaction to the government's draft code.





I. Introduction and purpose

Speaking to the purpose of the bill, Lord Woodley said:

The abhorrent practice of fire and rehire—when employers dismiss staff and offer to re-employ them on worse pay, terms and conditions, or use the threat of dismissal to force staff to agree to worse pay, terms and conditions—has a long history. However, since the outbreak of Covid-19, it has spread through our economy like a virus itself, making a mockery of the limited employment rights protecting workers in this country.

My Employment and Trade Union Rights (Dismissal and Re-engagement) Bill will tackle this abuse by enshrining best practice into law, forcing employers to consult with unions genuinely and properly at the earliest stage and to provide them with all relevant information, all under threat of injunction. The bill gives employees the right to claim automatic unfair dismissal if this best practice is not followed (unless the company is facing imminent collapse). The bill also exempts unions from the statutory long, drawn-out and onerous procedural requirements for industrial action if its purpose is to protect members from fire and rehire. This will enable them to react promptly to such a threat to their members' livelihoods.¹

¹ Text provided by Lord Woodley to the House of Lords Library.



2. Policy background

2.1 What is ‘dismissal and re-engagement’?

The Advisory, Conciliation and Arbitration Service (Acas) said that the practice of dismissal and re-engagement, more commonly known as ‘fire and rehire’, involves an employer dismissing workers then re-employing them on changed terms and conditions or threatening to do so as part of a negotiation about terms and conditions.²

Both Acas and the Trades Union Congress (TUC) have reported that the practice increased during the Covid-19 pandemic.³ However, Acas has also pointed to a lack of large-scale surveys or quantitative data showing the prevalence of fire and rehire tactics by employers or sector.⁴

There have been several high-profile reports alleging the practice. For example, the BBC has recently drawn attention to several companies which it said were involved in high-profile disputes about alleged fire and rehire tactics, including British Airways, British Gas, bus company Go North West, Jacobs Douwe Egberts and Tesco.⁵

² Advisory, Conciliation and Arbitration Service, ‘[Dismissal and re-engagement \(fire-and-rehire\): A fact-finding exercise](#)’, 8 June 2021.

³ As above; and Trades Union Congress, ‘[“Fire and rehire” tactics have become widespread during pandemic—warns TUC](#)’, 25 January 2021.

⁴ Advisory, Conciliation and Arbitration Service, ‘[Dismissal and re-engagement \(fire-and-rehire\): A fact-finding exercise](#)’, 8 June 2021.

⁵ Ben King, ‘[Fire and rehire: What is it and why is it controversial?](#)’, BBC News, 24 November 2023. The House of Commons Transport Committee described British Airways’ proposed actions as a “national disgrace”: House of Commons Transport Committee, ‘[The impact of the coronavirus pandemic on the aviation sector](#)’, 13 June 2020, HC 268 of session 2019–21, p 27.



In March 2022, P&O Ferries, owned by DP World made almost 800 of its workers redundant, without prior consultation. The company also announced plans to use third-party agency workers to crew its ships as part of a new operating model. However, in parliamentary debates concerning the recent employment practices at P&O Ferries the government argued that dismissals at P&O “were not a case of fire and rehire—just fire”.⁶

In November 2023, cruise firm Carnival UK was accused of plans to dismiss and re-engage more than 900 seafarers on its P&O Cruises (a separate entity to P&O ferries) and Cunard fleet. On 24 November 2023, the company committed instead to consult with the seafarers union.⁷

The Chartered Institute for Personnel and Development (CIPD) argues that while there have been several high-profile cases of ‘fire and rehire’ in recent years, these are not typical of most employers. It points to a 2021 survey of 2,000 employers which found that one in five employers (22%) made changes to employees’ terms and conditions of employment between March 2020 and July 2021. The survey found that, while 19% changed terms and conditions through consultation, negotiation and voluntary agreement, just 3%—the equivalent of 42,960 employers in the UK business population—did so through dismissing staff and rehiring them on new terms.⁸

⁶ Department for Business, Energy and Industrial Strategy, ‘[New statutory code to prevent unscrupulous employers using fire and rehire tactics](#)’, 29 March 2022.

⁷ Gwyn Topham, ‘[Cruise firm Carnival UK withdraws threat to fire and rehire more than 900 staff](#)’, Guardian, 24 November 2023.

⁸ Chartered Institute for Personnel and Development, ‘[CIPD welcomes new statutory code of practice on ‘fire and rehire’](#)’, 27 April 2023.



2.2 Current legal position

The CIPD has stated that fire and rehire is legal in the UK.⁹ However, it said that some legal protections were in place for employees. These include provisions around:

- wrongful dismissal, which is a failure to comply with conditions in the employment contract
- unfair dismissal, which requires the employer to act in a reasonable way and that the dismissal should be for a potentially fair reason
- the employer being required to undertake a meaningful consultation before going ahead with the changes

In November 2021, Acas published guidance for employers on fire and rehire.¹⁰ Acas said the practice was “an extreme step that can seriously damage working relations and has significant legal risks for organisations”. The guidance stated that companies considering using fire and rehire should “fully consult with all affected staff and their representatives in a genuine and meaningful way”.

2.3 Government position

The government has stated that it will not introduce a ban on the practice of fire and rehire. For example, in November 2023 the parliamentary under secretary of state at the Department for

⁹ Chartered Institute for Personnel and Development, [‘Fire and rehire: Guidance for employers’](#), 4 December 2023.

¹⁰ Advisory, Conciliation and Arbitration Service, [‘Acas publishes advice to help employers avoid fire and rehire practices’](#), 11 November 2021.



Business and Trade, Kevin Hollinrake, argued “we do not think that completely banning fire and rehire is the right thing to do because there are some situations in which companies need to restructure quickly”.¹¹ However, the government has described using the threat of fire and rehire as a negotiating tactic as “completely unacceptable”.¹²

However, it has committed to introducing a statutory code on hire and rehire. In March 2022, following the controversial actions by P&O Ferries, the government stated that there was a need for greater clarity around employers’ obligations when proposing changes to employment terms.¹³ As a result, it promised to bring in a code to “clarify and give some legal force to government expectations that employers should behave fairly and reasonably when seeking to change employees’ terms and conditions”. In particular, it said the code would set out the need for employers to hold “fair, transparent and meaningful consultations”. The government also said it believed the code would “act as a deterrent, particularly to those employers seeking to use the threat of fire and rehire as a negotiation tactic”.

A draft code of dismissal and re-engagement was published on 24 January 2023.¹⁴ Consultation on this draft code closed on 18 April 2023. The government has committed to publish a final version of the code in spring 2024.¹⁵

¹¹ [HC Hansard, 30 November 2023, col 1040.](#)

¹² Department for Business, Energy and Industrial Strategy, ‘[New statutory code to prevent unscrupulous employers using fire and rehire tactics](#)’, 29 March 2022.

¹³ As above.

¹⁴ Department for Business and Trade, ‘[Draft code of practice on dismissal and re-engagement](#)’, 24 January 2023.

¹⁵ [HC Hansard, 30 November 2023, cols 1039–40.](#)



The CIPD has noted that while the draft code would not be legally binding, it would be admissible in certain tribunal claims.¹⁶

Commenting on the code itself, CIPD stated:

Within the draft guidance, emphasis is placed on employers' providing as much notice as possible of proposed changes. Employers are asked to undertake consultations in 'good faith' and with an 'open mind'. Emphasis is placed on the employers' obligation not to use a threat of dismissal to pressure employees to accept new terms. The draft guidance calls for consultations to be seen as an ongoing process, where employees' inputs are considered. Indeed, the consultation 'should continue for as long as possible'. Under the draft code tribunals can increase the award to the claimant or defendant by 25% if a party is seen as in breach of the code.¹⁷

3. Provisions in the bill

The bill consists of four clauses. Its main measures would be achieved by amending the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996.

3.1 Consultation and provision of information

Clause 1 would impose new duties on employers to consult employees and trade unions and to disclose information to them.

¹⁶ CIPD, ['Fire and rehire: Guide for employers'](#), 4 December 2023.

¹⁷ As above.



The duties would apply to companies with 50 or more employees where there is a “real threat to continued employment”, and where the company has either decided to make at least 15 employees redundant or is considering measures that will lead to “substantial changes” in terms and conditions for at least 15 people. Commenting on an earlier, identical, private member’s bill introduced by Barry Gardiner (Labour MP for Brent North) in 2021, the House of Commons Library said these circumstances could cover a range of situations that do not specifically meet the definition of fire and rehire, for example reactions to a pandemic, a natural disaster or a financial crisis.¹⁸

If these conditions are met, the bill would impose a duty to consult with all “appropriate representatives” of employees, such as trade unions. The consultations should take place “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”.

The bill would also require employers to disclose certain information to employee representatives. This information includes anything “without which the appropriate representatives would be to a material extent impeded in carrying on consultation with the employer”.

The bill would give representatives the right to appeal to the Central Arbitration Committee, a government body that seeks to resolve labour disputes, if they believe that the employer has failed to consult

¹⁸ House of Commons Library, [‘Employment and Trade Union Rights \(Dismissal and Re-engagement\) Bill’](#), 18 October 2021, pp 14–15.



or failed to disclose information that it should have released.¹⁹ The committee may refer the dispute to Acas if appropriate.

If the employer's decisions or anticipated measures affect at least 50 employees, rather than at least 15, the bill would also impose a duty on the employer to notify the government of its proposals.

One subsection of clause 1 addresses fire and rehire directly and applies to all employees (therefore it is not restricted to companies of at least 50 employees). It states that any employee, or their representative, would have the right to apply to an employment tribunal for a remedy if an employer offers or proposes to offer re-engagement on different terms to an employee:

- it has dismissed or proposes to dismiss for reasons other than conduct or capability, or
- in relation to whom it has made or proposes to make substantial changes in work organisation or in contractual relations.

3.2 Clause 2: Employee contractual protections

Clause 2 would provide enhanced contractual protections for those subject to fire and rehire.

First, the clause states that any change to an employment contract would be void if it “was obtained under threat of dismissal” and is “less favourable to the employee than the pre-existing provision”

¹⁹ Central Arbitration Committee, [‘About us’](#), accessed 31 January 2024.



unless all the provisions of clause 1 of the bill (for example, consultation and disclosure of information) are met.

The second section of clause 2 deals with employment contracts that state the employer has the right to change an employee's terms and conditions without the consent of the employee. The bill would amend the Employment Rights Act 1996 so that employers may not unilaterally use such provisions to make an employee's terms less favourable.

Clause 2 would also provide for a lower threshold for employees to claim unfair dismissal in the case of fire and rehire. It would remove one of the arguments currently in the Employment Rights Act 1996 that an employer can make to show that such a dismissal was fair, namely that there is "some other substantial reason". Employers would therefore have to show that the dismissal was fair because at least one of the following reasons applied:

- the employee lacked competence or qualifications
- bad conduct on behalf of the employee
- the job was no longer needed
- the person could no longer work in that position without breaking the law

Again in relation to Barry Gardiner's earlier bill, the House of Commons Library commented that this change would make it "very difficult for employers to use fire and rehire tactics without the employee being able to claim for unfair dismissal".²⁰ A person subject

²⁰ House of Commons Library, '[Employment and Trade Union Rights \(Dismissal and Re-engagement\) Bill](#)', 18 October 2021, p 18.

to fire and rehire would also not have to have been employed for two years to make a claim for unfair dismissal.

Clause 2 would also change the rules around the remedies in the case of unfair dismissal due to fire and rehire. It would make the principal remedy either reinstatement (the employee returns to their previous job) or re-engagement (the employee is re-employed by the employer on terms specified by the employment tribunal). The third form of remedy available to the tribunal, compensation, would be available only in cases where the employer is likely to become insolvent.

3.3 Clause 3: Industrial action over fire and rehire

Clause 3 would make it easier for a trade union to organise industrial action in cases of threatened fire and rehire.

Currently, employees and trade unions are only immune from prosecution for breach of contract during industrial action if the union has carried out a properly conducted ballot and given appropriate notice to the employer. Clause 3 would remove these obligations in cases where the employer aims 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”.

3.4 Clause 4: General provisions

Clause 4 states that the bill’s extent would be the same as the existing legislative provisions that it amends. In practice, this means



the bill extends to England, Scotland and Wales, as policy on employment law in Great Britain (but not in Northern Ireland) is reserved to the UK government.²¹

The bill would come into force 90 days after receiving royal assent.

4. Commentary

4.1 Previous bills and parliamentary debates

In the 2022–23 session, Lord Woodley introduced a bill which was identical in effect, but this did not proceed to second reading.²²

Barry Gardiner (Labour MP for Brent North) introduced a bill in the House of Commons in the 2021–22 session that was also identical in effect to Lord Woodley’s later bills of the 2022–23 and 2023–24 parliamentary sessions.²³ Introducing the second reading debate, Mr Gardiner emphasised that the bill would not impose an outright ban on fire and rehire, because such a ban could prevent a company facing collapse from implementing “the only way of preserving those jobs and continuing the enterprise”.²⁴ He reported that business groups and trade unions also opposed a ban.

²¹ House of Commons Library, ‘[Employment and Trade Union Rights \(Dismissal and Re-engagement\) Bill](#)’, 18 October 2021, p 14.

²² UK Parliament. ‘[Employment and Trade Union Rights \(Dismissal and Re-engagement Bill \[HL\]](#)’, 31 October 2023.

²³ UK Parliament, ‘[Employment and Trade Union Rights \(Dismissal and Re-engagement\) Bill](#)’, 4 May 2022.

²⁴ [HC Hansard, 22 October 2021, col 1052.](#)



Mr Gardiner quoted a November 2020 survey for the TUC that suggested that 9% of workers said that in the previous nine months they had either been fired or rehired, or they had been threatened with being fired and rehired.²⁵ He also stated that fire and rehire has occurred in the public sector as well as the private sector. The second reading debate was adjourned and not completed, leaving no frontbench contributions.

Gavin Newlands (SNP MP for Paisley and Renfrewshire North) also introduced a bill dealing with dismissal and re-engagement in the House of Commons in the 2022–23 session.²⁶ However, the text of the bill was not published and it did not receive a second reading.

In a Westminster Hall debate on the subject in June 2022, the shadow minister for business and industrial strategy, Justin Madders, argued that a statutory code of practice, as the government proposed, would not prevent fire and rehire from happening in the future. Instead, he called for a legislative response “along the lines suggested” in Mr Gardiner’s bill.²⁷ Responding, the then parliamentary under secretary of state for business, energy and industrial strategy, Paul Scully, said that the government aimed to strike a balance between workers’ protections and having “flexibility” in the labour market.²⁸ He argued that the Acas guidance and the forthcoming statutory code would eliminate the “most egregious” examples of fire and rehire.

²⁵ [HC Hansard, 22 October 2021, col 1044](#). The survey results were published by the TUC at: Trades Union Congress, “[“Fire and rehire” tactics have become widespread during pandemic—warns TUC](#)”, 25 January 2021.

²⁶ UK Parliament, ‘[Employment \(Dismissal and Re-engagement\) Bill](#)’, 24 June 2022.

²⁷ [HC Hansard, 15 June 2022, cols 165–7WH](#).

²⁸ [HC Hansard, 15 June 2022, col 168WH](#).



4.2 External comment

In October 2020, Alan Bogg, professor of law at the University of Bristol, argued that the legal position was “far too permissive [...] in allowing ‘dismissal and re-engagement’ without effective independent scrutiny of the employer’s decision-making”.²⁹ He proposed a number of reforms, including that unfair dismissal legislation should specify that dismissals are unfair where the employer had reasonable economic alternatives open to it such that it could have avoided the result.

In response to the government’s draft code, the TUC argued that it was not an adequate response to the escalating use of fire and rehire, leaving legal loopholes to the use of the practice intact. It was critical of the code’s scope and stated that unfair dismissal laws needed to be strengthened and sanctions for not complying with existing employment laws should be toughened.³⁰

Acas welcomed the policy objective of the draft code, noting that the government “has clearly paid close attention to the principles of good practice” set out in Acas’s own non-statutory guidance on changing employment contracts. However, it called for further work on several areas, including:

- appropriate standards of reasonableness at the earliest and final stages of a dismissal and re-engagement process

²⁹ Alan Bogg, [‘Firing and rehiring: An agenda for reform’](#), Institute of Employment Rights, 9 October 2020.

³⁰ TUC, [‘Code of practice on dismissal and re-engagement consultation: TUC response’](#), August 2023.



- the intended scope of the code
- the order of the steps set out in the code, which Acas argued did not reflect in several important respects the real-world realities of consultation and negotiation and may unintentionally result in encouraging poor practice
- the length, complexity and much of the language used in the code, meaning it is likely to be inaccessible to many of its intended users
- greater clarity around certain expectations and the consequences of certain actions that are set out in the code³¹

³¹ Advisory, Conciliation and Arbitration Service, [‘Draft code of practice on dismissal and re-engagement: Acas response’](#), 18 April 2023.

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