

## What is the current policy/legal framework?

Employees must have worked for their employer for a minimum of two years before they qualify for the right to claim 'ordinary' unfair dismissal at a tribunal.

This does not apply to most of the 'automatically unfair' reasons for dismissal (for example, pregnancy, whistleblowing, or trade union membership). In those cases, employees can bring a claim to tribunal from day one, and in some circumstances before they have started work.

It also does not apply to dismissals due to an employee's political beliefs or affiliation, or their membership of a reserve force.

The right to written reasons for dismissal on request is subject to a 2-year qualifying period, except where the dismissal takes place during pregnancy, maternity leave or adoption leave.

British probation periods are contractual, not statutory, and are often unique to a specific employer's employment terms and conditions. Employers use these periods to ensure the compatibility of a new employee with their role. Probation may also be tied to an employee's access to perks such as a staff discount, access to a pension scheme and job security, as an employee's notice period is usually lengthened after passing probation.

## Policy Intent

Extension of employee protections against unfair dismissal to day one of employment will strengthen employment rights and end one sided flexibility in the workplace, increasing job security for employees in England, Scotland, and Wales.

The Government recognises the importance of ensuring that a job is a good fit for both the employee and the employer through the establishment of a 'statutory probationary period.' This will ensure businesses retain the confidence to hire employees.

These changes will help to ensure that newly hired employees are not fired arbitrarily and will help drive up standards in workplaces.

## How will it work?

The Government is repealing the two-year qualifying period for employee protections against unfair dismissal, ensuring that every employee is protected from day one of starting work. Existing rights that already provide protection without any qualifying period will not be affected.

These changes will not prevent employers fairly dismissing employees. The Government is committed to ensuring businesses can operate probationary periods fairly and transparently. We will establish a 'statutory probation period' to ensure that employers retain the ability to ensure that the job is a good fit for both the employee and the employer. The Government's preference is that this period lasts for the initial nine months of employment. During this period, a less onerous process with lighter touch standard will allow businesses to fairly dismiss someone who is not right for the job. The two-year qualifying period for the right to written reasons for dismissal on request will also be repealed, with employees qualifying for this right instead after the statutory probation period has

concluded. If an employee who was dismissed during the statutory probation period because they were not right for the job successfully brings a claim for unfair dismissal, there may be a lower cap on the compensatory award that an employment tribunal can make. As usual, the tribunal will consider what is fair in determining the award, taking into consideration the financial amount lost by the claimant, with a reference to salary and benefits.

The Government is committed to consulting on implementation of unfair dismissal reforms. Several aspects of implementation will be consulted on, including the length of the statutory probation period, and how the 'lighter touch standards' for dismissal will operate. We will also consult on the unfair dismissal compensatory award regime for dismissals during that period.

Employers will retain the ability to run separate contractual probation periods of any length they choose, as well as to choose what non-statutory entitlements the employee can access during that period. In some circumstances contractual probation periods for some roles are longer than 9 months at present.

Employers will still be able to fairly dismiss people beyond the 9-month period, but it will be governed by existing provisions on dismissal rather than by the lighter touch standards. Setting clear performance expectations at the outset of an employee's job will ensure employees understand the standards they are required to meet.

## Key Stats

- Between January 2023 and December 2023 around 9 million employees (31% of all employees) had been working for their employer for less than two years, so had only very limited protection against unfair dismissal.<sup>1</sup>
- 84% of businesses have a probation policy (excluding microbusinesses with 0-9 employees)
- 34% of microbusinesses operate a probation policy, and
- Out of all businesses that have a probation policy, 94% operate probation periods of 6 months or shorter.<sup>2</sup>

## Common questions

*What does the Government mean by 'lighter touch' dismissal standards/ process during a probationary period?*

- The lighter-touch standards will allow employers to more easily dismiss someone who is not right for the job, during the statutory probation period. The Government will consult on what those standards should be.
- As a starting point, the Government is inclined to suggest that the process, for example, should consist simply of holding a meeting with the employee to explain the concerns about their performance (at which the employee could choose to be accompanied by a trade union representative or a colleague). *What do the Government's plans mean for probation periods?*

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- The Bill introduces a statutory probation period, during which the Government proposes to legislate for a lighter-touch standard for an employer to meet to dismiss an employee who is not suitable for the job.

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<sup>1</sup> According to Annual Population Survey statistics, between January 2023 and December 2023

<sup>2</sup> According to the ONS Business Insights and Conditions Survey Wave 121 data, between the period of 16-29 September 2024

- The legislation does not regulate the contractual probationary periods that employers already operate. Our changes will allow employers to continue to assess employees' performance during a probationary period.