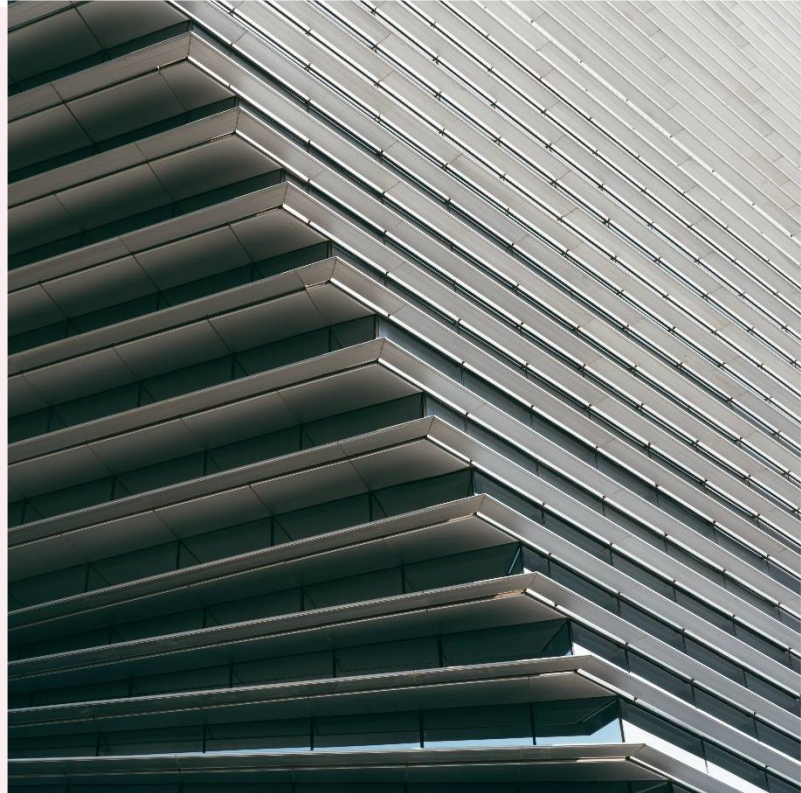


Enhanced dismissal protections for pregnant women and new mothers

26 October 2026



The government has published its [response](#) to its consultation on enhanced dismissal protections for pregnant women and new mothers. It confirms the government will legislate to strengthen the legal test for dismissals during pregnancy, maternity leave and the six-month return-to-work period and will extend comparable protections to other forms of family leave. This may result in more complex workforce planning once the new regime takes effect in October 2027.

This briefing examines the practical implications of the new enhanced dismissal protections, the implementation timetable, areas of continuing uncertainty, and the preparatory steps that employers can take.

Key issues

- 1 Legal test for fairness of dismissal during the protected period
- 2 Scope and duration of protection
- 3 Timeframe
- 4 Preparatory steps employers can take now

Legal test for fairness of dismissal during the protected period

All five of the existing fair reasons for dismissal (capability, conduct, redundancy, statutory prohibition and some other substantial reason) will be retained. However, during the 'protected period' the current band of reasonable responses test for unfair dismissal will be replaced with the proportionality test that is a defence to a number of discrimination claims under the Equality Act 2010 (often referred to as the 'objective justification' test). Under this approach, an employer will be required to demonstrate

that dismissal is a proportionate means of achieving a legitimate business aim.

The government expects that dismissal could still be justified where continued employment would, for example, pose a health and safety risk to customers, staff or the public; would have a significantly detrimental effect on the business; or would have a serious negative impact on the wellbeing of others.

The proportionality test requires employers to show that dismissal is a proportionate way of achieving their legitimate aim. This ordinarily means considering whether there are reasonably viable, less discriminatory alternatives to dismissal, for example, workplace adjustments, temporary measures, or identifying a suitable alternative role, before pursuing dismissal.

Government guidance will set out how to approach complying with the test in practice, including the expectation that employers will consider alternatives to dismissal where appropriate. Whether this guidance will carry any legal weight in the employment tribunal remains to be seen. What is proportionate in practice will vary according to the circumstances and until a clear body of case law emerges there will remain uncertainty for employers.

In capability cases, it is a legitimate aim for an employer to maintain minimum standards of performance. What is less clear is whether an employer can distinguish capability issues genuinely unrelated to pregnancy, childbirth or post-birth recovery (such as performance issues that pre-existed the pregnancy) from those that arise during the protected period, when assessing alternatives to dismissal. What is clear is that in the future it will be important to keep clear records of capability concerns throughout employment and to act on them promptly.

Where an employee with enhanced dismissal protection is made redundant (there being no suitable alternative role available), the fairness of that dismissal will be tested against the new objective justification test. Other employees made redundant in the same exercise will still be tested against the existing range of reasonable responses test. It remains to be seen whether this difference in standard is likely to encourage tribunals to scrutinise an employer's commercial and business rationale more closely for protected employees than for the wider workforce.

Scope and duration of protection

The enhanced dismissal protections are a 'day one' right. They apply once an employee has informed their employer that they are pregnant and continue throughout maternity leave and for six months following the end of leave.

The existing maternity redundancy protections, which oblige the employer to offer the employee alternative employment where available if their job becomes redundant during the protected maternity period, remain in

place. Broadly speaking, the additional maternity redundancy protected period ends 18 months from the date of birth.

As such, the enhanced dismissal protection period and the redundancy protection period may differ, depending on the length of maternity leave.

The enhanced dismissal protections will also apply to employees taking shared parental leave, neonatal care leave and bereaved partner's paternity leave. Protections will apply during the period of leave and for six months following the end of leave where six or more continuous weeks of leave is taken.

Timeframe

The new regime takes effect in October 2027. The consultation response is silent on transitional provisions. It is therefore unclear whether a dismissal taking effect after the implementation date, where the employer began the dismissal process beforehand, will be judged under the new objective justification test or the old range of reasonable responses test.

Preparatory steps employers can take now

Employers will need to monitor the development of government and Acas guidance, and draft regulations when published, to refine internal policies ahead of the October 2027 implementation date. Initial consideration should be given to:

- reviewing and updating existing disciplinary, capability, redundancy and dismissal policies to reflect the new objective justification dismissal test;
- revising HR record-keeping systems to track the relevant enhanced dismissal protection trigger and end dates for leave-takers (maternity, adoption, shared parental, neonatal care, bereaved partner's paternity);
- introducing robust documentation practices that record decision-making, efforts to redeploy affected employees, consideration of workplace adjustments and alternatives to dismissal, and the rationale for any dismissal during the protected period, since this evidence will be central to demonstrating proportionality;
- raising staff and management awareness of the new protections through revised handbooks, onboarding materials, internal communications and training on handling performance, conduct and redundancy processes involving pregnant employees and new parents.

[Make Work Pay: enhanced dismissal protections for pregnant women and new mothers](#)



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