



Department for  
Business, Energy  
& Industrial Strategy

# Code of Practice on Dismissal and Re-engagement

Consultation

Closing date: 18 April 2023

January 2023



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# Ministerial foreword

We have all faced significant challenges as a result of the COVID-19 pandemic. It caused widespread disruption to society and halted business activity. The government took decisive action to mitigate the impact of the virus and provided support to businesses through an unprecedented package of financial support. We now face new challenges such as the rising cost of living and inflation, which continue to put pressure on business operating models and the economy.

When specific cases of dismissal and re-engagement, also known as 'fire and rehire', attracted significant media attention and raised the profile of the practice during the pandemic, the government asked the Advisory, Conciliation and Arbitration Service (Acas) to conduct an evidence-gathering exercise to help us better understand the issue. The government then went further and asked Acas to produce new guidance to ensure that employers are clear on their responsibilities. This guidance was published in 2021. It clearly sets out the employer's responsibilities when considering making changes to employment contracts.

The government has been clear that threats of dismissal and re-engagement should not be used as a negotiation tactic. Dismissal and re-engagement should only be considered as an absolute last resort. We expect all employers to engage meaningfully with their workforces and representatives, whilst considering all available options.

The UK is a great place to start and grow a business and has a strong labour market. Its success is underpinned by balancing labour market flexibility and worker protections. It is vital that we continue to strike the right balance, whilst clamping down on poor practice.

We are publishing a new draft Statutory Code of Practice, which will clarify and give some legal force to accepted standards about how employers should behave when seeking to change employees' terms and conditions. It is important we take this further step to ensure that employers and employees are better equipped to manage change in a more balanced and collaborative way.

This consultation is an opportunity for the public and interested groups to share their views on the draft Code. Please do take the time to consider this consultation and the questions it poses.

**The Rt Hon Grant Shapps MP**

**Secretary of State for Business, Energy and Industrial Strategy**

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# General information

## Why we are consulting

The government is consulting to gather views on the draft Statutory Code of Practice on Dismissal and Re-engagement (the Code) in line with the statutory requirement to publish a draft of the Code, and consider any representations made in response, under section 204 of the Trade Union and Labour Relations (Consolidation) Act 1992. In accordance with the same legislation, the government consulted the Advisory, Conciliation and Arbitration Service (Acas) prior to preparing the Code.

The Code will promote good industrial relations by providing practical guidance, which will help employers and employees to manage the conflict which can arise when an employer wants to make changes to contractual terms, but employees are not willing to accept the changes proposed. It will include practical steps that employers should follow, with the aim of ensuring that dismissal and re-engagement is only ever used as a last resort, after fair and transparent consultations.

This is an opportunity for all interested individuals and groups to review the draft Code, consider its provisions and provide their views on it. The consultation will remain open for twelve weeks. We will analyse all submissions, and take the views expressed into account before publishing a government response and final version of the Code in due course.

## Consultation details

**Issued:** 24 January 2023

**Respond by:** 23:59 on 18 April 2023

**Enquiries to:**

[dismissalandreengagement@beis.gov.uk](mailto:dismissalandreengagement@beis.gov.uk)

**Consultation reference:** Statutory Code of Practice on Dismissal and Re-engagement

**Audiences:** Employers and employees, business representative groups, trade unions, those representing the interests of groups in the labour market and all other interested parties.

**Territorial extent:** This applies across Great Britain (England, Wales & Scotland)

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## How to respond

### Respond online at:

[beisgovuk.citizenspace.com/lm/draft-code-practice-on-dismissal-and-re-engagement](https://beisgovuk.citizenspace.com/lm/draft-code-practice-on-dismissal-and-re-engagement)

or

**Email to:** [dismissalandreengagement@beis.gov.uk](mailto:dismissalandreengagement@beis.gov.uk)

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

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# Policy Background

In 2020, specific cases of dismissal and re-engagement, also known as ‘fire and rehire’, attracted significant media attention and raised the profile of the practice. The government asked Acas to conduct a fact-finding exercise with stakeholders to better understand how this practice was being used, who was being impacted and how prevalent the practice had become during the pandemic.

Acas published their findings in June 2021<sup>1</sup>. They found that the practice of dismissal and re-engagement was not a new phenomenon but that the stakeholders they engaged with felt that it had become more prevalent during the pandemic. There was also concern that threats of dismissal were increasingly being used as a pressure tactic in the early stages of negotiations. Acas noted some views that, where this was happening during the pandemic, this may be linked to business challenges due to COVID-19 causing the timescale available to reach agreed solutions to be shorter than at other times.

The report found that while much of the attention on dismissal and re-engagement was driven by high-profile cases involving large employers and unionised workforces, its use was more widespread across a range of sectors, business sizes and across unionised and non-unionised workforces.

Participants described how the practice was used in a range of circumstances and for various reasons including:

- redundancy scenarios, both to minimise redundancies by cutting pay roll costs, and to enable the maximum reduction in head count by for example changes to the working hours for remaining staff;
- harmonising terms and conditions between staff;
- introducing flexibility into contracts;
- interrupting continuity of service; and
- negotiations around organisational responses to changes in consumer behaviour, sectoral change or changing operational needs.

Following the publication of their findings the government asked Acas to produce guidance for employers seeking to make changes to employment contracts, and this was published in November 2021<sup>2</sup>.

The guidance advised that organisations considering contract changes should fully consult with all affected staff and/or their representatives where appropriate in a genuine and meaningful way. The guidance highlighted that the practice of dismissal and re-engagement is an extreme step that can damage staff morale, productivity, working relations and can also lead to industrial action.

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<sup>1</sup> <https://www.acas.org.uk/fire-and-rehire-report/html>

<sup>2</sup> <https://www.acas.org.uk/changing-an-employment-contract/employer-responsibilities/if-employment-contract-changes-cannot-be-agreed>

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The government is now going further and proposing to issue a statutory code of practice under section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992.

The Code contains practical guidance that employers should follow if they are considering changes to terms and conditions where there is the prospect of dismissal and re-engagement.

A court or employment tribunal (or the Central Arbitration Committee) will take the Code into account when considering relevant cases, including unfair dismissal. Employment tribunals will have the power to increase an employee's compensation by up to 25% if an employer unreasonably fails to comply with the Code. They could also decrease any award by up to 25%, where it is the employee who has unreasonably failed to comply.

## Policy Objectives

The Code has been drafted to act as practical guidance that clarifies the steps employers should take when seeking to change contractual terms and conditions of employment where there is the prospect of dismissal and re-engagement.

The purpose of the Code is to ensure that an employer takes all reasonable steps to explore alternatives to dismissal and engages in meaningful consultation with trade unions, other employee representatives or individual employees in good faith, with an open mind, and does not use threats of dismissal to put undue pressure on employees to accept new terms, instead of seeking to find an agreed solution.

The UK has a robust labour market, underpinned by balancing a flexible labour market and worker protections. The Code has been carefully considered, reflecting the seriousness of the issue, and having to strike the right balance in affording businesses the flexibility to restructure their workforces where they need to, but also protecting individuals from bad practice.

Although there have been calls for the practice of dismissal and re-engagement to be banned outright, the government has judged that this would not be right as there are some situations in which dismissal and re-engagement can play a valid role as businesses may need the flexibility to use this option to save as many jobs as possible. We believe that this Code strikes the right balance between labour market flexibility and worker protections.

## Policy Scope

The Code is intended to promote good industrial relations through encouraging a genuine and open process when proposing a change to terms and conditions. It seeks to deter employers from using threats of dismissal during negotiations to put pressure on employees to accept new terms. It is not intended to cover every type of dispute or disagreement between employers and employees.



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The Code does not apply where an employee is dismissed because there is a genuine redundancy, as defined in the Employment Rights Act 1996. The government considers that this would be beyond the remit of the Code, which is designed to address situations where new terms of employment are, in substance, unilaterally imposed by an employer by dismissing and re-engaging the same or new employees or workers to perform the same roles. Where there is a genuine redundancy situation, there are well developed legal principles as to what is required in order to implement redundancies in a manner which does not amount to an unfair dismissal. The government considers that the standards in the Code should not affect those well settled principles.

As set out, the Code applies where an employer:

- considers that it wants to make changes to its employees' contracts of employment; and
- envisages that, if the employees do not agree to those changes, it might dismiss them and either offer them re-employment on those new terms or engage new employees or workers to perform the relevant roles on the new terms.

The Code applies both when existing employees are offered new terms, and when an employer instead engages new employees or workers in order to enforce new terms. It also applies both in scenarios where employees accept new terms of employment but also when they do not, avoiding inconsistency of treatment.

It is also a simpler proposition for employers to understand: if you are considering dismissal to effect changes to terms and conditions but still need the roles to be filled, you need to comply with the Code regardless of whether the roles might be filled by your existing staff or new hires.

The Code recognises that there are specific legal obligations which may overlap with the practical guidance set out in the Code, depending on the circumstances. Examples of these include: the obligation to conduct consultations with a recognised trade union or employee representatives when an employer proposes to make 20 or more employees redundant at a single establishment within a period of 90 days or less; and the obligation to provide particular types of information to a recognised trade union for collective bargaining purposes. Each of these other legal obligations have specific requirements of their own and should be adhered to.

It is important for good industrial relations that the employer engages in good faith with a view to managing conflict effectively and resolving any dispute openly and as collaboratively as possible.

## Policy Process

The Code sets out reasonable steps an employer should take to explore alternatives to dismissal, and to engage in meaningful consultation with trade unions, other employee representatives or the individuals to find an agreed solution.

The tables below set out an overview of the process steps in the Code which the employer should follow:

**Table A: Core steps**

<b>Step</b>	<b>Paragraph number in Code</b>	<b>Description of step</b>
1	15-17	Employer communicates that it wants to change the terms and conditions in employees' contracts.
2	18	Employer ensures compliance with specific legal information and consultation obligations beyond the scope of the Code.
3	20	Employees, or representative of employees, make clear that they are not prepared to accept the changes.
4	22-23	Employer re-examines its plans for changes to employment contracts in light of feedback from consultation.
5	24-36	Employer considers what information it could share with employees or their representatives which might help reach consensus.
6	37-42	Employer consults with employees or representatives.

The next steps for the employer will depend on how the changes in employment contracts are implemented:

**Table B: If changes are agreed**

<b>Step</b>	<b>Paragraph number in Code</b>	<b>Description of step</b>
7	44	Employer puts new terms to employees in writing.
8	47	Employer maintains good communication with employees as they adapt to new terms.

**Table C: If changes are not agreed and an employer considers unilaterally imposing new terms**

<b>Step</b>	<b>Paragraph number in Code</b>	<b>Description of step</b>
9	49-51	Employer ensures it is aware of the significant legal and other risks of this approach.
10	52-53	Employees who decide to work under protest make clear to employer that they do not agree to the changed terms.
11	54	Employer shares the changes in writing with the employee, explaining the nature and impact of the changes.
12	55	Employer continues to discuss changes with employee or representatives and should continue to assess whether it really needs to implement the changes.

**Table D: If changes are not agreed and an employer wishes to dismiss and re-engage employees on the new terms.**

<b>Step</b>	<b>Paragraph number in Code</b>	<b>Description of step</b>
13	57-59	Employer reassesses its analysis and considers again whether the changes are necessary.
14	60	Employer considers whether this is a redundancy scenario and complies with the relevant obligations.
15	61-63	Employer gives as much notice as possible of the dismissal and considers phased introduction of changes and any other practical support.
16	64	Employer sets out new terms of employment in writing.
17	65	Employer re-engages employees as soon as possible to preserve their continuity of service.
18	66-68	Employer continues to review the need for the change and monitors impact of the changes over time.

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# The Code

We encourage you to read the Code in full before responding to the consultation. We have set out a high-level description of each section below.

- Section A of the Code sets out the purpose, scope and legal status of the Code.
- Section B explains the role of trade unions and employee representatives acting on behalf of individual employees when an employer is considering making changes to contracts.
- Section C sets out factors for an employer to consider once it envisages that dismissals might be needed, to help assess whether the proposed contractual changes really are necessary.
- Section D explains the importance of the employer sharing appropriate information at an early stage and encourages the employer to consider what categories of information have been shared, and what further information could be provided.
- Section E sets out the employer's responsibilities for carrying out a full and thorough consultation process conducted in good faith.
- Section F sets out the considerations for the employer if the changes to the terms are agreed.
- Section G sets out the employer's responsibilities if it decides to impose unilaterally any new terms.
- Section H sets out the employer's responsibilities if it decides to dismiss employees and either re-engage them, or engage new employees or workers to perform the same roles on the altered terms.

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# Consultation questions

## Specific questions:

1. Paragraphs 6-10 of the Code set out the situations in which it will apply. Do you think these are the right circumstances?
2. If employees make clear they are not prepared to accept contractual changes, the Code requires the employer to re-examine its business strategy and plans taking account of feedback received and suggested factors. (Steps 3 – 4 in table A and paragraphs 20 – 23 of the Code). Do you agree this is a necessary step?
3. Do you have any comments on the list of factors which an employer should consider, depending on the circumstances, in paragraph 22 in the Code?
4. The Code requires employers to share as much information as possible with employees, suggests appropriate information to consider, and requires employers to answer any questions or explain the reasons for not doing so. (Steps 5 and 6 in table A and paragraphs 24 – 42 of the Code). Do you agree this is a necessary step?
5. Is the information suggested for employers to share with employees at paragraphs 25 and 33 of the Code the right material which is likely to be appropriate in most circumstances?
6. Before making a decision to dismiss staff, the Code requires the employer to reassess its analysis and carefully consider suggested factors. (Step 13 in table D and paragraphs 57 – 59 of the Code). Do you agree with the list of factors employers should take into consideration before making a decision to dismiss?
7. The Code requires employers to consider phasing in changes, and consider providing practical support to employees. (Step 15 in table D and paragraphs 61 - 63 of the Code). Do you agree?

## General questions:

8. Do you think the Code will promote improvements in industrial relations when managing conflict and resolving disputes over changing contractual terms?
9. Does the Code strike an appropriate balance between protecting employees who are subject to dismissal and re-engagement practices, whilst retaining business flexibility to change terms and conditions when this is a necessary last resort?
10. Do you have any other comments about the Code?

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## Next steps

Following the closure of this consultation, we will analyse the responses. We will publish the government response, and consider any views expressed and representations made before finalising the Code of Practice.

Government will bring the finalised Code into force when Parliamentary time allows.

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This consultation is available from: [www.gov.uk/government/consultations/draft-code-of-practice-on-dismissal-and-re-engagement](http://www.gov.uk/government/consultations/draft-code-of-practice-on-dismissal-and-re-engagement)

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