



# **Make Work Pay:**

## **Fire and Rehire: changes to expenses, benefits, and shift patterns**

**Launch date: 4 February 2026**

**Closing date: 1 April 2026**

## Foreword

The government is dedicated to building a pro-worker and pro-business economy. This means fostering the best possible environment for private enterprise, while strengthening job security and reducing the costs associated with staff turnover.

That's why we introduced the Employments Rights Bill within our first 100 days in office. Together with the government's Plan to Make Work Pay, this will bring our employment rights legislation into the 21st century, extending the employment protections already given by the best British companies to millions more workers across the country. This matters because emerging technologies are reshaping how, where, and when we work. At the same time, the global economy is still reeling from the effects of COVID-19 and the on-going war in Ukraine. Prices have risen and businesses have had to respond in turn – often changing the terms and conditions they offer their employees.

Now, the vast majority of responsible businesses seek every opportunity to engage with their staff when such changes are required, to try to find solutions. Across the country employers go beyond their legal obligations to consult with employees where new ways of working need to be adopted.

But some employers have exploited a gap in the law to abuse the practice of fire and rehire - to force through unreasonable changes on employees. This allows unscrupulous employers to get an unfair advantage over those responsible businesses who treat their employees with respect. Businesses who follow proper, transparent processes when updating their terms should not be disadvantaged for doing so.

That is why the Employment Rights Act 2025 will set a floor for all businesses by introducing legal rights which prevent the use of fire and rehire to change core terms. This is a common-sense reform. Responsible employers will still be able to make non-core changes to employment contracts where necessary, provided they act reasonably and follow a fair process. We're seeking your views on two types of changes that may need to be made: changes to employment expenses and benefits in kind, and changes to shift patterns. We want to understand the right balance between extra legal protections and giving employers, employees, and employee representatives the space to come to agreement on these arrangements.

In helping us shape these reforms, you will be bringing an end to an unfair, unjust business practice. But you will also be helping us build an economy which rewards the overwhelming majority of firms who do the right thing and treat their employees with respect. So, thank you for your participation in this consultation. We look forward to reading your responses.



**The Rt Hon Peter Kyle MP**

*Secretary of State for Business and  
Trade and President of the Board of  
Trade*

A handwritten signature in blue ink that reads "Peter J. Kyle".

**Kate Dearden MP**

*Minister for Employment Rights and  
Consumer Protection*

A handwritten signature in blue ink that reads "Kate Dearden.".

# Contents

<b>Make Work Pay:</b>	<b>1</b>
<b>Fire and rehire: changes to expenses, benefits, and shift patterns</b>	<b>1</b>
Foreword	2
Contents	4
Introduction	5
The Plan to Make Work Pay: the Employment Rights Act 2025	5
Fire and rehire	6
Why we are consulting now	8
Consultation details	12
Territorial extent	12
How to respond	12
Confidentiality and data protection	13
Quality assurance	14
<b>About you</b>	<b>15</b>
<b>Consultation</b>	<b>17</b>
Principles for establishing the scope of restricted variations	18
Section 1: Expenses and benefits or payments in kind	19
Section 2: shift patterns	32
<b>Next steps</b>	<b>45</b>

# Introduction

## The Plan to Make Work Pay: The Employment Rights Act 2025

The Plan to Make Work Pay sets out an ambitious agenda to deliver our Plan for Change by ensuring employment rights are fit for a modern economy, empowering working people and contributing to economic growth.

The government will build a Britain for all on the firm foundations of security, respect and opportunity. That means creating an economy that delivers for businesses and for working people. The phased approach to implementing the Employment Rights Act 2025 provides clarity and time to prepare. This legislation will increase security at work, thereby reducing the costs to businesses of unplanned employee turnover, increasing retention of skilled workers to boost productivity, and promoting fair competition rather than a race to the bottom on employment practices, thus contributing to greater economic growth. This is a win-win for employers, employees and a more competitive British economy.

The government will continue to undertake comprehensive engagement on the implementation of certain key sections of the Employment Rights Act 2025, including on the proposed exercise of powers to make secondary legislation inserted into the Employment Rights Act 1996 by section 28 of the Employment Rights Act 2025 (relating to fire and rehire) during this consultation<sup>1</sup>. The government has committed to delivering these changes in partnership with businesses, trade unions, public sector employers and civil society. That's why we're undertaking a consultation with these groups on key changes.

Stakeholder insights are vital. We're committed to working in partnership with businesses and trade unions to ensure the reforms in the Employment Rights Act 2025 are not just ambitious, but achievable.

As we move into the implementation phase, this consultation on fire and rehire will play a critical role in shaping how the Make Work Pay reforms are delivered, ensuring they are practical and take account of the needs of employers and employees alike.

By delivering this change together, we'll back businesses who do the right thing and give hardworking people the job security and opportunities they deserve.

---

<sup>1</sup> The reference to the Employment Rights Act 2025 can be found at the following link: [Employment Rights Act 2025](https://www.legislation.gov.uk/ukpga/2025/36/section/28/enacted)<https://www.legislation.gov.uk/ukpga/2025/36/section/28/enacted>

## Fire and rehire

“Fire and rehire” refers to the process of an employer dismissing an employee and then re-employing them (or someone else) under a new contract, usually with less favourable terms and conditions. Employers might engage in fire and rehire if employees are not willing to accept changes in terms which the employer considers necessary.

Employees faced with fire and rehire often have no choice but to accept the revised terms or face dismissal. The prospect of fire and rehire can be used unreasonably as a threat or negotiation tactic to ensure negotiations proceed according to the terms set by an employer, as reported by some participants in an Acas (Advisory, Conciliation and Arbitration Service) [fact-finding exercise](#)<sup>2</sup>.

Currently employers may use fire and rehire without it being an unfair dismissal where they can demonstrate that they have a fair reason for dismissal (which includes having a sound business reason for seeking to change a contract of employment) and that they acted reasonably in deciding to dismiss for that reason. Employers may seek to use fire and rehire to respond to economic changes, change working practices or harmonise terms and conditions.

Acas issued [guidance on changing employment contracts](#)<sup>3</sup>, including guidance on what to do if agreement cannot be reached. As this guidance sets out, fire and rehire is an extreme step that has risks for the employer, and Acas can work with employers and employee representatives to find alternatives. While negotiations on complex changes may be challenging, disagreements may generate new ideas and lead to productive solutions.

The government has also issued a [Code of Practice on Dismissal and Re-engagement](#)<sup>4</sup> (fire and rehire) which came into force on 18 July 2024. The code provides practical guidance of reasonable steps that employers seeking to change contractual terms and conditions should consider before using dismissal and re-engagement. These include meaningful, good-faith consultation with employees or their representatives for as long as possible, early contact with Acas for advice, and the consideration of alternatives to dismissal and re-engagement.

However, the Code of Practice did not change the law and some employers still use the threat of fire and rehire to force detrimental contract changes on employees. The government has been clear that unscrupulous fire and rehire practices have no place in our economy. The practice of fire and rehire and the threat of its use provides undue bargaining power to the employer in employer-employee relationships. The option of fire and rehire can incentivise businesses in general to pay less or provide lesser employment terms and conditions to employees. In turn, this can lead to negative effects on society, such as lower standards of living, health and wellbeing.

---

<sup>2</sup> The reference to the dismissal and re-engagement (fire-and-rehire): a fact-finding exercise can be found on page 11 at the following link <https://www.acas.org.uk/research-and-commentary/fire-and-rehire>

<sup>3</sup> The reference to guidance on changing employment contracts is available at this link: <https://www.acas.org.uk/changing-an-employment-contract/employer-responsibilities/if-employment-contract-changes-cannot-be-agreed>

<sup>4</sup> The reference to the Code of Practice on Dismissal and Re-engagement is available at this link: <https://www.gov.uk/government/publications/dismissal-and-re-engagement-code-of-practice/code-of-practice-on-dismissal-and-re-engagement-issued-by-the-secretary-of-state-under-section-203-of-the-trade-union-and-labour-relations-consolidat>

That is why the Employment Rights Act 2025, will introduce important new protections to prevent unscrupulous fire and rehire practices. The Act, will, once commenced, make it an automatic unfair dismissal where an employee is dismissed or replaced in order to make changes to core terms in their employment contract (protected as ‘restricted variations’). These include:

- Reductions to pay
- Where pay is linked to measures of work done (such as targets), changes to those measures/targets
- Changes to pensions
- Changes to total hours
- Reduction to leave entitlement
- Changes to shift patterns which are specified in regulations
- The inclusion in a contract of employment of a term enabling the employer to make any of the above changes without the employee’s agreement.

A dismissal in order to make one of these restricted variations will be automatically unfair unless the employer is in severe financial difficulty and has no reasonable alternative. These terms have been identified because they could have a significant impact on employees if they are changed without agreement. Of course, these types of contract changes will still be possible if they are agreed with the individual employee or are agreed and incorporated into contracts via collective bargaining (rather than forced through using fire and rehire). This will make sure that vulnerable employees are no longer unilaterally forced into accepting disadvantageous terms which they would not otherwise have consented to.

Dismissals related to changes in non-core terms—such as location or job role—will not be automatically unfair but will be subject to enhanced protections for ordinary unfair dismissal. The government is reducing the qualifying period for ordinary unfair dismissal claims from 2 years to 6 months. This 6-month qualifying period will apply to claims brought by employees where an employer uses fire and rehire to make non-restricted variations to contracts. However, these changes will be subject to separate enhanced protections that seek to ensure employers engage in meaningful consultation with employees and their representatives when making such changes. The enhanced protections for ordinary unfair dismissal will come into force on 1 January 2027.

## **Why we are consulting now**

The government is considering making regulations under powers in the Employment Rights Act 2025 in relation to two kinds of potential restricted variations:

### **1. Employment Expenses and Benefits in Kind**

The government has the power to make regulations which exclude certain expenses and benefits or payments in kind from the scope of the restricted variation for a reduction or removal of “any sum payable to an employee in connection with the employment” (under new section 104I(5)(b) of the Employment Rights Act 1996 which is to be inserted by section 28 of the Employment Rights Act 2025).

An employer would not trigger an automatic unfair dismissal if they dismissed an employee in order to make a change to any expenses or benefits in kind which were excluded from scope as part of these regulations. However, employees would still be able to bring a case for ordinary unfair dismissal if they were dismissed in this way, and a Tribunal would need to take into account certain factors (listed in new section 104J(5) of the Employment Rights Act 1996 which is to be inserted by section 28 of the Employment Rights Act 2025) in considering any such claim.

### **2. Shift Patterns**

The government has the power to make regulations which specify which variations to “the timing or duration of a shift” will be considered a restricted variation (under new section 104I(5)(e) of the Employment Rights Act 1996, which is to be inserted by section 28 of the Employment Rights Act 2025).

An employer would trigger an automatic unfair dismissal if they dismissed an employee in order to make a change to the timing or duration of a shift only if it was a type of shift change that meets the conditions in these regulations.

In common with the other restricted variations in the fire and rehire protections, it will only be an automatic unfair dismissal if an employee is dismissed in order to make a restricted variation to an employment contract, if the employee did not agree to the restricted variation. Non-contractual changes, such as changes to policies outside of the employment contract, will not be affected. The measure also does not affect changes to contract terms which are covered by existing variation clauses, or where contract changes are agreed and made via collective bargaining, as in these cases the term may be able to be validly changed without recourse to fire and rehire.

In its approach to these regulations, the government will be aiming to balance the protection of employees from significant detrimental changes, alongside the legitimate interests of businesses in adapting to operational needs. Many businesses will take every proportionate step to engage with their workforce when changes need to be made to employment terms. Setting proportionate rules to prevent good employers being undercut by those few who would exploit employees creates a level playing field that is good for business, good for employees and good for growth.

## NOT GOVERNMENT POLICY – SUBJECT TO CONSULTATION

These regulations are an important part of making sure that these new protections achieve that proportionality. For example, some expenses and benefits in kind may not be integral to the employment relationship and changes may have a limited effect on employees that could be outweighed by a business' need to make organisational changes. Restricting changes to shift patterns similarly requires careful consideration of the balance between protecting employees from unfair unilateral changes, with the legitimate interests of a business in adapting to changing circumstances and customer needs.

This consultation is split into two sections:

- **Section 1:** seeking views on which expenses and benefits in kind should be excluded from the scope of the restricted variation of reductions to pay.
- **Section 2:** seeking views on whether there are any types of changes to shift patterns which should be protected as a restricted variation.

This consultation document contains proposals for setting the scope of these categories, and the government is keen to hear views on the impacts of these proposals on both employees and employers, as well as understanding alternative options to these proposals and the impacts they might have on key stakeholders.

Please note: the regulations proposed to be made following this consultation would need to be approved by both Houses of Parliament before they are made by the government.

## **Key terms**

<b>Availability Windows</b>	A period during which an employee must be available to work under their employment contract and whose shift will be scheduled during this period, but the shift will not necessarily cover the whole window.
<b>Benefits in Kind</b>	Non-cash benefits provided by employers to employees which form part of the remuneration package as a “perk”. These are usually taxable as employment income and commonly include private use of a company vehicle or private health insurance.
<b>Employment Expenses</b>	Costs incurred by an employee in connection with carrying out their duties of employment, which may be paid or reimbursed by the employer. These typically include costs incurred on train tickets for corporate events or subsistence when traveling for work. Most employment expenses are not subject to Income Tax and National Insurance.
<b>Fire and Rehire</b>	“Fire and rehire” refers to the process of an employer dismissing an employee and then re-employing them (or someone else) under a new contract, usually with less favourable terms and conditions. Employers might engage in fire and rehire if employees are not willing to accept changes in terms which the employer considers necessary.
<b>Restricted variation</b>	<p>A change to certain core terms in an employment contract. The Employment Rights Act 2025 will, once commenced, make it an automatic unfair dismissal where an employee is dismissed or replaced in order to make a restricted variation to their employment contract. Restricted variations include:</p> <ul style="list-style-type: none"><li>• Reductions to pay</li><li>• Where pay is linked to measures of work done (such as targets), changes to those measures/targets</li><li>• Changes to pensions</li><li>• Changes to total hours</li><li>• Reduction to leave entitlement</li><li>• Changes to shift patterns which are specified in regulations</li></ul> <p>A dismissal in order to make one of these restricted variations will be automatically unfair unless the employer is in severe financial difficulty and has no reasonable alternative.</p>

**Share Scheme** A plan that gives employees the opportunity to acquire shares or other securities by reason of their employment, often as part of their remuneration package, providing benefits for both employees and employers.

## **Consultation details**

**Issued:** 4 February 2026

**Respond by:** 11:59 pm on 1 April 2026

**Enquiries and responses to:** [Fireandrehire@businessandtrade.gov.uk](mailto:Fireandrehire@businessandtrade.gov.uk)

### **Consultation reference:**

Make Work Pay: Fire and Rehire

### **Audiences:**

- businesses
- employers
- employees
- trade unions
- business groups or representatives
- non-governmental organisations
- all other interested parties

### **Territorial extent**

The measures under new section 104I of the Employment Rights Act 1996 (to be inserted by section 28 of the Employment Rights Act 2025) extend and apply to England and Wales, and to Scotland.

### **How to respond**

**Respond online** – [https://ditresearch.eu.qualtrics.com/jfe/form/SV\\_0TZ33cB9Ec9swT4](https://ditresearch.eu.qualtrics.com/jfe/form/SV_0TZ33cB9Ec9swT4)

or

**Email to:** [Fireandrehire@businessandtrade.gov.uk](mailto:Fireandrehire@businessandtrade.gov.uk)

or

### **Write to:**

Fire and rehire Policy, Employment Rights Directorate  
Department for Business and Trade

Old Admiralty Building  
Admiralty Place  
London  
SW1A 2DY

When responding, please state whether you are responding as an individual or representing the views of an organisation. Please also specify which consultation you are responding to, as the government is running various consultations at the same time.

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 are trialling Artificial Intelligence (AI) solutions to support the delivery of our functions. Unless made expressly clear to you, we will not solely use AI to either make or inform decisions about you. We will apply effective data minimisation techniques to all such uses of your data.

Your responses, including any personal data, may be shared with a third-party provider, or other government department or organisation acting on behalf of the Department for Business and Trade under contract or an equivalent agreement, for the purpose of analysis and summarising responses for us and they may use technology, such as artificial intelligence. *Further detail on how AI is used, including its scope and safeguards and third-party sharing is available in our Privacy Notice.*

An anonymised version of responses in a list or summary of responses received, and in any subsequent review reports may be published. We may also share your personal data where required to by law. You can leave out personal information from your response entirely if you would prefer to do so.

Wherever possible avoid including any additional personal data in free-text responses beyond that which has been requested or which you consider it necessary for DBT to be aware of.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#)<sup>5</sup>.

We will publish a government response on GOV.UK.

## **Quality assurance**

This consultation has been carried out in accordance with the governments [consultation principles](#)<sup>6</sup>. If you have any complaints about the way this consultation has been conducted, please email: [enquiries@businessandtrade.gov.uk](mailto:enquiries@businessandtrade.gov.uk)

---

<sup>5</sup>The reference to the privacy policy can be found at the following link:  
[www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance)

<sup>6</sup> The reference to the consultation principles can be found at the following link:  
<https://www.gov.uk/government/publications/consultation-principles-guidance>

## About you

Please provide the following information to help us understand the context of your response:

**Question 1: Please indicate whether you are responding as:**

- ☐ An academic
- ☐ An employer
- ☐ An employee, worker or individual
- ☐ A legal representative
- ☐ A business representative organisation or trade body
- ☐ A trade union or staff association
- ☐ A voluntary sector organisation
- ☐ Other (please expand below)

**(Free text box)**

- ☐ Prefer not to say

**Question 2:** If responding as an employer, business, business owner or business representative, approximately what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?

- ☐ Micro (fewer than 10 workers)
- ☐ Small (11 to 50 workers)
- ☐ Medium (51 to 250 workers)
- ☐ Large (250+ workers)
- ☐ Don't know
- ☐ Prefer not to say
- ☐ Not Applicable

**Question 3:** Which region are you located in?

- ☐ North-East
- ☐ North-West
- ☐ Yorkshire and The Humber

- ☐ East Midlands
- ☐ West Midlands
- ☐ East of England
- ☐ London
- ☐ South-East
- ☐ South-West
- ☐ Wales
- ☐ Scotland
- ☐ Northern Ireland
- ☐ Don't know
- ☐ Prefer not to say

**Question 4: What sector are you based in?**

- ☐ Accommodation & food service activities
- ☐ Activities of households as employers; undifferentiated goods and services-producing activities of households for own use
- ☐ Administrative & support service activities
- ☐ Arts, entertainment and recreation
- ☐ Agriculture, forestry and fishing
- ☐ Construction
- ☐ Education
- ☐ Electricity, gas, steam and air conditioning supply
- ☐ Financial & insurance activities
- ☐ Human Health and social work activities
- ☐ Information & communication
- ☐ Manufacturing
- ☐ Mining and quarrying
- ☐ Production
- ☐ Professional, scientific and technical activities
- ☐ Public administration & defence; compulsory social security
- ☐ Real estate activities

- ☐ Services Sector
- ☐ Transportation & storage
- ☐ Water supply; sewerage, waste management and remediation activities
- ☐ Wholesale and retail trade; repair of motor vehicles and motorcycles
- ☐ Other service activities (please expand below)

**(Free text box)**

- ☐ Don't know
- ☐ Prefer not to say

## **Consultation**

The Employment Rights Act 2025 will make fire and rehire an automatic unfair dismissal in relation to specified restricted variations to employment contracts. These restricted variations were identified as having the potential to significantly impact employees if they are changed to their detriment. They include reductions in pay, as the government's view is that a reduction to a contractually agreed level of pay should not be forced on an employee through fire and rehire. Under the Employment Rights Act 2025, the scope of this restricted variation can be narrowed through regulations, and we are seeking views on this as part of this consultation, as further set out in section one below.

The Employment Rights Act 2025 also confers a power on the Secretary of State to specify in regulations that changes to the timing or duration of a shift which meet conditions specified in regulations will be a restricted variation. Any such regulations made under this power would make the specified variations to shift patterns a restricted variation under the fire and rehire measure in the Employment Rights Act 2025, meaning that fire and rehire dismissals to make such changes would generally be automatically unfair in those circumstances (unless a narrow exemption for financial difficulties is met). We are seeking views on making regulations under this power as part of this consultation, as further set out in section two below.

These new automatic dismissal protections for restricted variations to employment contracts are to be inserted in new section 104I of the Employment Rights Act 1996 by the Employment Rights Act 2025. Both sections of this consultation seek views to determine the scope of the above-mentioned restricted variations in this section.

The Employment Rights Act 2025 gives the Secretary of State the power to make other regulations in relation to fire and rehire, specifically to:

- Add to the list of restricted variations for which a dismissal would be automatically unfair

- Specify further factors which an employment tribunal should consider when determining the fairness of a dismissal for a restricted variation that has met the financial difficulties exemption
- Specify further factors which an employment tribunal should consider when determining the fairness of a dismissal for a non-restricted variation
- Specify further factors which an employment tribunal should consider when determining the fairness of a dismissal for replacement of an employee with a non-employee that has met the financial difficulties exemption.

These powers are not in scope of this consultation. The government considers that the current scope of the restricted variations and factors for employment tribunals to consider are sufficient, however we intend to keep this under review.

## **Principles for establishing the scope of restricted variations**

In preparing the consultation proposals in this document, the government has been led by the following principles:

1. The regulations made following this consultation should maintain the policy intent that key terms and conditions should not be able to be unilaterally changed under threat of dismissal (unless the employer is facing severe financial difficulties, and could not reasonably have avoided the need to make the change). Key terms are those which are integral to the relationship between the employer and the employee.
2. The changes made through the regulations should afford employers sufficient flexibility to make variations to support business performance. The government previously tabled amendments to the fire and rehire protections in the Employment Rights Bill, during its parliamentary passage (which were accepted) to make sure they are practical and fit for the modern world of work. The changes proposed in this consultation would build on this so that all businesses can benefit from a level playing field of employee rights and employees are properly protected from unscrupulous practices of fire and rehire.
3. Regulations should provide certainty to both employees and employers on how the law would work in practice and reduce the scope for disputes or abuse.

This consultation is split into two sections:

- **Section 1:** Expenses and benefits in kind
- **Section 2:** Shift patterns

## **Section 1: Expenses and Benefits or Payments in kind**

A restricted variation under new section 104I of the Employment Rights Act 1996 (to be inserted by section 28 of the Employment Rights Act 2025) includes subsection (5)(a): a reduction of, or removal of an entitlement to, any sum payable to an employee in connection with the employment. This restricted variation protects any sum that is required to be paid to an employee under the terms in their employment contract, such as base pay, contractual additional rates, contractual sick pay, contractual expense payments, as well as many other types of remuneration.

Other restricted variations under new section 104I could also be considered as relating to pay or benefits:

- Changes to targets or commission under subsection (5)(b) - where the amount of any sum payable to an employee in connection with the employment is determined by reference to a measure of the amount of work done by the employee (including a measure referable to results achieved by the employee), a variation of that measure
- Subsection (5)(c) - a variation of any term or condition relating to pensions or pension schemes

However, this section of the consultation relates only to section 104I(5)(a), sums payable to an employee in connection with their employment. It considers whether some (or all) expenses and benefits or payments in kind should be excluded from the scope of the restricted variation of “any sum payable to an employee in connection with the employment” for these purposes, under the power in section 104I(6).

The amount of remuneration to be paid for work done is a vital part of an employment contract. As a general principle, the amount of an employee’s core contractual pay should not be reduced through fire and rehire. There may be situations where an employer will need to update pay arrangements, such as to keep up to date with working practices in their sector. In general, such changes should be arrived at through negotiation with employees and their representatives, including trade unions where relevant.

In particular, employers may need to make reasonable operational adjustments to the way they cover employees’ expenses for costs incurred while on the job, or any benefits in kind which the company offers. The government’s view is that employers should have flexibility to update contracts in this way, in the interests of the business. For example, a provider of a benefit in kind may make changes to their terms which makes the continued provision of the benefit unfeasible, or the costs of expenses may rise in a way that the business had not foreseen. Alternatively, an employer may need to standardise expenses or benefits provision across the business to correct inconsistencies and avoid a two-tier workforce to improve morale and cohesion. These changes may not be universally popular but could be important for the good of a company and the workforce.

The government is therefore considering making regulations to restrict the reference to a ‘sum payable’ in the legislation by excluding:

- Certain (or all) expenses incurred by an employee
- Certain (or all) benefits or payments in kind

The effect of this would be that the excluded expenses and benefits or payments in kind could be reduced or removed by an employer through a dismissal (fire and rehire), without triggering the automatic unfair dismissal provisions of new s104I of the Employment Rights Act 1996 (to be inserted by section 28 of the Employment Rights Act 2025).

It is important to note that this proposal would only relate to changes to contracts made through fire and rehire. Employers' ability to change employment conditions through other means (for example, through valid variation clauses, or through the provision of non-contractual benefits) is not affected by section 28 in the Employment Rights Act 2025.

## **Expenses**

Expenses are costs incurred by an employee in connection with carrying out their duties of employment, which may be paid or reimbursed by the employer. This can be said to not have the same character as pay which may be described as remuneration given to employees in exchange for work done. This remuneration is integral to the employment relationship and a core part of the employment contract. Whereas, when an employer pays a sum in relation to expenses, this sum is intended to compensate the employee for a cost incurred while carrying out their duties of employment.

It may therefore be less necessary to give expenses the same high protections as other types of sums payable as these types of changes are less likely to have the same consequences for an employee as a change to their regular salary payment. In many circumstances, the benefits of updating expenses and benefits policies across a workforce may outweigh the consequences of a change for individual employees.

The government also understands that expenses and benefits in kind are often included in separate policies and are perhaps not included or only incorporated by reference in employment contracts. In other cases, the language of contracts gives employers flexibility to alter terms relating to expenses or benefits in kind. In these cases, these terms are less likely to be changed through fire and rehire, and so there would be less need to protect changes to these terms by including them in scope of a "restricted variation" in the fire and rehire measure. Nevertheless, employees may rely on the payment or reimbursement of certain expenses to be able to continue in their role:

- **Travel expenses** - employees may rely on reliable reimbursement of these costs to continue in roles which require travel between work locations or other work-related travel. In common with the tax rules applicable for these types of expenses, these will not typically be paid for commuting from an employee's home to their place of work. In some cases, this may be payable as a mileage allowance.

However, travel expenses encompass a very broad range of arrangements. The government considers that employers should have flexibility to make reasonable operational changes to update arrangements for travel expenses to suit changing circumstances. We therefore consider that an outcome which, for example, prevented an employer from reducing the maximum permissible limit for business class travel

would not be desirable. This would restrict employers' flexibility to make reasonable operational decisions without a proportionally significant benefit to employees. It could be very challenging to distinguish between the types of travel expenses which should be brought into scope of the fire & rehire measure, and those which should not.

- **Accommodation** - employees may rely on reliable reimbursement of these costs where their role requires a period of work away from home. Many employers will typically reimburse all or part of the employee's accommodation costs as accommodation expenses. However, the government also considers that employers should have flexibility to make reasonable operational changes to accommodation expenses to adapt to changing circumstances or for standardising terms across a workforce, for example.

This consultation therefore seeks views on what, if any, expenses should be in scope of the restricted variation of sums payable. Any expenses that are included in scope in order to protect vulnerable employees would need to be sufficiently precise to allow adequate flexibility to employers who need to make changes to other expenses for the benefit of their business and their employees.

### **Benefits or payments in kind**

The list of benefits and payments in kind offered by employers is long and varied. It stretches from participation in share schemes, through to the provision of medical insurance and company cars, to gym memberships and discount vouchers. Some of these may be enough to persuade an employee to take up employment with a company where they would not otherwise have done so. Others may not be considered valuable by many employees.

Employees may rely on certain benefits to be able to continue in their role, and/or certain benefits may make up a significant aspect of the employee's remuneration:

- **Long term accommodation** – an employee may not be able to make alternative arrangements and may expect that the provision of long-term accommodation will be honoured if it is a contractual benefit. For example, residential care home-staff, agricultural employees, boarding school staff or camp supervisors may have long-term accommodation provided as part of their employment contract.

However, employers should have flexibility to make reasonable operational changes. Changes in a business' circumstances may mean that previously specified accommodation is no longer relevant to the needs of the business, either because the type or location of work associated with the role has changed. Changing market availability, rising costs or the end of a lease may also require an employer to change an accommodation offer.

- **Certain share schemes** – where an employee is entitled to share allocations or options, they may rely on the value of these benefits and see this is a core part of their pay.

Share schemes may be offered by employers to recruit employees, incentivise employees to stay with the company, or to give them a stake in the business to motivate performance. They may take several forms, including direct share allocations or share option grants e.g. through the four tax-advantaged share schemes (Enterprise Management Incentives, Share Incentive Plan, Company Share Option Plan, and Save-As-You-Earn) and/ or through non-tax advantaged share schemes such as restricted stock units or growth shares.

In some cases, employees may rely on the value of these awards and, if they take the form of a commitment to predictable future awards of new assets, they may have a character similar to pay for the present purposes. For example, if an employee's contract contains a commitment to a share scheme in addition to their salary or regular pay, this may have induced them to take the role over alternatives, and they may structure their life around the expectation of this further income.

However, most types of share schemes will not involve a commitment to a predictable allocation of awards that would have this sort of character. Share schemes may typically take the form of discretionary bonuses from a limited pool of shares, or shares may be acquired through voluntary schemes which employees may choose to participate in at their discretion.

The government understands that, where commitments to this type of arrangement are included in employment contracts, the terms are typically drawn to give the employer sufficient flexibility in certain circumstances to make necessary changes. Reference to the arrangements in a contract may often be very brief, with details set out in a separate agreement. It may therefore be that fire and rehire is not commonly used to make changes to such arrangements, because there is already ability to make changes outside of the employment contract without using fire and rehire. However, the government welcomes views on this as part of this consultation.

Other types of arrangements giving rise to benefits which an employee might reasonably wish to protect include Employee Benefits Trusts (EBTs), which employers may use to provide benefits to employees. The employee may receive payments or incentives on a basis determined by the trustees under the terms of the trust, which the employee may consider to be part of their pay.

One type of arrangement under which employees may have an interest in the performance of their company is the Employee Ownership Trust (EOT) corporate ownership model. Under the EOT model, a company is held by trustees of the EOT who are required to exercise shareholder control and take decisions affecting the company

in the interests of the employees. Entitlement to benefit from EOT ownership is unlikely to be included in employment contracts. Instead, employees would derive their rights from the separate terms of the EOT, putting EOTs out of scope of the current measure.

This consultation therefore seeks views on what, if any, contractual benefits and payments in kind should be in scope of the restricted variation of a reduction or removal of a sum payable to an employee, because they have the character of pay for the present purposes (i.e., that they are included in employment contracts and make up a significant aspect of the employee's remuneration, meaning that an employee may have structured their life around the expectation of this further income). Any benefits and payments in kind included in scope would need to be sufficiently well defined to give employers sufficient flexibility to make changes to other benefits and payments in kind not in scope, as part of making reasonable operational adjustments where needed for the benefit of their business and employees.

## **Options**

The government has identified two options for excluding expenses and benefits in kind from the definition of sums payable, for consideration in this consultation, alongside being open to alternative views on other expenses and benefits that should be included.

### **Option 1 – All expenses and benefits or payments in kind are excluded from the restricted variation of sums payable to an employee in connection with the employment**

Under this option, a dismissal made in order to make a change to an employment contract to reduce or remove any expenses and benefits or payments in kind would not be an automatic unfair dismissal. Employers would retain some ability to dismiss employees to make changes to the contractual expenses and benefits offered, recognising the range of reasons this might be necessary and the potential benefits for the business and the workforce as a whole.

If an employee considers that a dismissal relating to changes to expenses or benefits is unfair, they may be able to bring a claim for unfair dismissal with the enhancements in new section 104J(5) which will be inserted into the Employment Rights Act 1996 by the Employment Rights Act 2025. An employer would need to demonstrate they had acted fairly in all the circumstances, and a tribunal would take into account factors including the reason for the change, and whether the employer consulted with affected employees beforehand (including with relevant trade union representatives). An employer who uses fire and rehire to reduce expenses to a level where an employee is now out of pocket when doing their job making it difficult for the employee to continue in employment, or who removes expenses completely with the same effect, will likely find it difficult to demonstrate to an employment tribunal that it acted reasonably and fairly in dismissing the employee for failing to agree to the change, although all cases will depend on their particular facts.

### **Option 2 - All expenses and benefits or payments in kind are excluded apart from certain types of: share schemes, travel expenses and accommodation.**

Under this option, dismissals made in order to reduce or remove contractual commitments to certain travel or accommodation expenses would be automatically unfair, as would dismissals to reduce or remove benefits or payments in kind which are long term accommodation arrangements and certain share schemes included in an employment contract as a benefit or payment in kind. Such dismissals would be automatically unfair unless the employer can rely on a narrow exemption for financial difficulties.

This option would include only certain types of these expenses and benefits or payments in kind. The government does not consider it would be proportionate to include all types of expenses and benefits in kind within the above categories in scope of the measure, as employers should be able to make reasonable operating decisions related to their expenses and benefits in kind policies. Accordingly, the government considers that expenses or

benefits should only be included in scope through this option if they can be clearly delimited as having an equivalent character to pay and form part of an employee's remuneration package. The government considers there should be a relatively high bar for inclusion, expenses or benefits might have the character of pay if they would make up a significant aspect of the employee's remuneration, meaning that an employee may have structured their life around the expectation of this further income. This would ensure that such protections only go as far as necessary to protect employees from fire and rehire in relation to core contractual terms, while employers retain reasonable operating flexibility to change (through dismissal where necessary) other expenses and benefits in kind which are out of scope.

The government is therefore seeking views in this consultation as to which types of share schemes, travel expenses and accommodation expenses would have the character of pay, such that their removal or reduction in employment contracts would have a severely detrimental impact on employees.

## **Proposal**

The government is minded to (subject to considering views received as part of this consultation) make regulations in line with option 1 above, so that all expenses and benefits in kind are excluded from the scope of the restricted variation of sums payable to an employee in connection with the employment. This will give necessary flexibility to employers, recognising the alternative protections available to employees for unfair dismissals made in order to make changes to expenses and benefits in kind (including new section 104J(5) of the Employment Rights Act 1996, to be inserted by section 28 of the Employment Rights Act 2025).

**Question 1- Which of the following options regarding expenses and benefits in kind protections do you agree with?**

- ☐ Option 1: All expenses and benefits in kind should be excluded from the restricted variation of sums payable to an employee in connection with the employment (and therefore not be subject to higher protections from fire and rehire)
- ☐ Option 2: Certain expenses and benefits in kind should be protected from the restricted variation of sums payable to an employee in connection with the employment (and therefore subject to higher protections from fire and rehire)
- ☐ None of the above
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 2- If the government were to pursue option 2, which expenses and benefits in kind should be protected (and therefore subject to higher protections from fire and rehire)? (Select all that apply)**

- ☐ Mileage
- ☐ Other travel expenses incurred in performance of duties, not including commuting
- ☐ Accommodation expenses incurred in performance of duties
- ☐ Long term accommodation offered as a benefit in kind
- ☐ Share scheme and ownership arrangements
- ☐ Other expenses and benefits in kind should be protected (please expand below)
- ☐ Don't know
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 3- If share schemes were to be protected, which types should be in scope of the restricted variation of sums payable for these purposes (and therefore subject to higher protections from fire and rehire)?**

- ☐ Direct share allocations
- ☐ Participation in schemes which allow employees to buy shares from a company reserve
- ☐ None should be included in scope
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 4- In your view, how common is it for expenses and benefits in kind to be part of core contractual terms (without a contract variation clause that would allow the employer to change these terms)?**

- ☐ Very common
- ☐ Common
- ☐ Occasionally
- ☐ Rarely
- ☐ Very Rarely
- ☐ Never
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 5- In your view, which expenses and benefits in kind are commonly part of core contractual terms (not including those which can be changed via a contract variation clause that would allow the employer to change these terms)?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 6- In your view, how important are expenses and benefits in kind, which are granted in employment contracts to employees?**

- ☐ Very Important
- ☐ Important
- ☐ Moderately Important
- ☐ Slightly Important
- ☐ Not Important
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 7- In your view, how common is it, specifically, for share schemes to be part of contractual terms without a contract variation clause that would allow the employer to change these terms?**

- ☐ Very common
- ☐ Common
- ☐ Occasionally
- ☐ Rarely
- ☐ Very Rarely
- ☐ Never
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 8- In your view, how important are share schemes, where these form part of the employment contract, to employees?**

- ☐ Very Important
- ☐ Important
- ☐ Moderately Important
- ☐ Slightly Important
- ☐ Not Important
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 9- In your opinion, what would be the impact on employees of excluding all expenses and benefits in kind from the automatic unfair dismissal protections of the fire and rehire measure?**

***This would mean that employers would be able to dismiss employees to remove contractual entitlements to expenses and benefits in kind, without triggering an automatic unfair dismissal. However, ordinary unfair dismissal protections would still apply, as explained in the consultation document.***

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 10- In your opinion, what would be the impact on employers of including travel expenses, accommodation expenses and share scheme expenses in scope of the restricted variation for sums payable (and therefore subject to higher protections from fire and rehire)?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 11- Do you believe that the proposals discussed in this consultation relating to expenses and benefits in kind will have an impact on individuals with a protected characteristic under the Equality Act 2010?**

***Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.***

☐ Yes

☐ No

☐ Don't know

☐ Other (please expand below)

☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 12- Where you have identified potential negative impacts in your response to question 11, are there ways to mitigate these?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 13- Is there anything else you would like to share your reflections on, that was not covered by the previous questions (e.g. broader risks or alternative options)?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

## **Section 2: Shift Patterns**

Shift patterns can vary significantly depending on the sector, the type of work done and between businesses. Common shift patterns include the traditional 9-5 and night shifts, split shifts (segmented shifts with a significant break between), and rotating patterns like the 4 on 4 off (4 12-hour shifts with 4 days off), the DuPont schedule (a four-week cycle of alternating 12-hour day and night shifts), and other patterns involving several days or nights of work followed by several days off.

These various shift patterns may be included in contracts in a number of ways, with some contracts setting out a clear regular shift pattern, while others might refer to availability windows during which an employee might be scheduled to work according to a certain rota procedure, and yet others simply specifying expected notice periods and procedures to be followed in assigning shifts. The variability of shift patterns means that creating common rules applicable to all arrangements is challenging.

Employers need flexibility to make reasonable operational changes to their schedules to secure the success of their business. A business may need to respond to shifting market or consumer preferences, the needs of a new large customer, changes in production or service delivery, technological changes, or it may simply need to extend its operating hours to remain competitive. Reasonable operational changes will require employers, their workforce and their representatives to work together to adapt as far as possible to changing circumstances.

However, some shift changes may affect an employee's ability to continue in their role. A very significant change in an employee's schedule can have a potentially profound effect on their life. The government is therefore considering whether it is necessary to protect employees against the use of fire and rehire to make certain significant changes to contractual shift patterns.

If certain changes to shift patterns are included in the scope of the fire and rehire measure as a restricted variation, this would not affect any flexibility which an employer has already written into contracts but would only restrict the use of fire and rehire to make these changes. So, if an employee's contract does not specify a set shift pattern and requires a manager to follow certain rules in setting and changing shift patterns, the manager is still able to set and change shift patterns subject to the terms of the contract. Similarly, if a contract includes terms which allow employers to make reasonable changes to any shift patterns or availability windows set out in the contract, this flexibility can still be exercised subject to the terms of the contract. The measure would not introduce any new restrictions in these circumstances. In addition, changes to contractual shift patterns will still be possible if they are agreed with the individual employee or are agreed and incorporated into contracts via collective bargaining arrangements (rather than forced through using fire and rehire).

On the other hand, if certain changes to contractual shift patterns are not included as a restricted variation, employees would still be entitled to ordinary unfair dismissal protections, if they were dismissed in order for their employer to change shift patterns that have been written into their contract. In this case, an employer would need to show that they had acted reasonably and fairly in all the circumstances when dismissing the employee, and as part of this a tribunal would need to consider various factors which will be in new section 104J of

the Employment Rights Act 1996, to be inserted by section 28 of the Employment Rights Act 2025, including whether the employer had consulted with the employee and any relevant trade unions.

Unions and employee representatives have told us that consideration should also be given to the notice which an employer commits to giving to its employees of changes to shift patterns. Changes to these commitments could be detrimental to employees if they reduced the amount of notice to which an employee is entitled below a reasonable level. The Employment Rights Act 2025 will separately introduce a right to reasonable notice of shifts and shift changes for eligible workers. These workers will be able to bring a tribunal claim where they do not feel this has happened. These provisions are not in scope of this consultation.

## **Challenges**

Discussions with business and union stakeholders have highlighted a number of challenges with attempting to specify restricted variations to shift patterns in regulations:

- As noted above, the types of shift patterns, availability arrangements and scheduling procedures vary considerably. It may not be possible to identify common restrictions that are applicable to all situations without causing greater confusion among employers and employees.
- Some employees benefit from the possibility of changing their shifts; under some arrangements employees can get higher rates for changing their hours. The government should not inadvertently dissuade employers from offering such flexibility.
- Depending on an employee's individual circumstances, even a small change in the times they are expected to work can have a significant effect on their arrangements and may require them to make alternative arrangements for caring responsibilities etc. However, this must be balanced with the need for employers to make reasonable business decisions. There are occasions when a business may need its employees to make reasonable adjustments to their schedule. It may therefore not be possible to identify a level of protection that both assures individuals that their prior commitments cannot be affected by schedule changes to their detriment, while giving employers the necessary flexibility for them to succeed and grow.

## **Options**

In light of these challenges and the need to balance employee's needs with business burden, the government has identified two options for the treatment of shift pattern changes under the fire and rehire measures in the Employment Rights Act 2025, alongside being open to alternative views on other shift patterns that should be included.

### **Option 1: Shift changes from day to night working (or vice versa), and weekday to weekend working (or vice versa), will be restricted variations**

Under this option a narrow category of shift changes would be restricted variations to allow employers to retain flexibility to make the majority of shift pattern changes (through dismissal where necessary), while preventing changes that would have extreme effects on an employee from being forced through via fire and rehire.

These most extreme shift changes have been identified as changes from:

- day to night working (or vice versa)
- weekday to weekend working (or vice versa)

Employees who are not currently working these patterns would need to make significant adjustments if a change were imposed on them through fire and rehire.

There is already a concept of “night work” in other legislation. The Working Time Regulations 1998 and the Agency Workers Regulations 2010 define this as work during the period between 11pm and 6am, although other times may be specified through relevant agreements, for example, another definition of nighttime hours provided it lasts at least seven hours and includes the hours between midnight and 5am. This option would make it a restricted variation to require an employee to work new hours during the period 11pm to 6am if they were not already obligated to do so before.

It is the government's intention that weekend working would simply be defined to have the meaning of work on a Saturday or Sunday.

Under this option it would be a restricted variation to fire an employee to make a change to a shift which introduces a requirement to work in the night/daytime, or to work on weekends/weekdays, where there was no such requirement before. It would not be a restricted variation if shifts are changed so that an employee works more hours at night or on the weekend (so long as their contract is not being changed to require them to work more (or fewer) hours overall, which will already be a restricted variation under the provisions to be inserted by the Employment Rights Act 2025). This ensures that we give employers with business models requiring night and weekend working the flexibility to continue to make contract changes and avoid this group being disproportionately affected by the change as against other employers.

Changes from day to night working (or vice versa) and from weekday to weekend (or vice versa) working have been identified because they represent a significant change to an employee who does not currently work in this way. For example, those with caring

responsibilities may have weekday-only or weekend-only shift patterns to accommodate for those responsibilities and would be unable to work a significantly different pattern. As a result, the government considers that contractual changes of this type should always be agreed with employees individually or via collective bargaining and should not be achieved through fire and rehire.

However, we acknowledge that there may be more situations where employers may reasonably need to require employees to work on weekends where they had not previously, or vice versa. For example, an employer may extend opening times to the weekend or additional weekdays in order to meet customer demand or improve their level of service. This consultation seeks views on whether employers should have further flexibility in relation to weekday to weekend working (or vice versa).

Having said that, the government notes that there are specific protections for night workers and those obliged to work on Sundays. The Working Time Regulations 1998 include specific protections for night workers, for example by requiring employers to ensure that night workers do not work more than an average of 8 hours in a 24-hour period. Additionally, before someone starts working at night, their employer must offer a free health assessment to see if they are fit to work nights before they become a night worker and on a regular basis after that.

There are also separate restrictions on certain workers being obliged to work on Sundays, and rules set out for those who are required to [work on Sundays](#)<sup>7</sup>. Under Part IV of the Employment Rights Act 1996, all shop and betting shop employees can also opt out of Sunday working unless Sunday is the only day they have been employed to work on. They can opt out of Sunday working at any time, even if they agreed to it in their contract. The government is therefore seeking views on the impacts of introducing this option alongside these existing protections.

Under this option, it would also be an automatic unfair dismissal (subject to the financial difficulties exemption), for an employer to use fire and rehire to introduce a new variation clause into an employee's contract which enabled the employer to make the specified restricted variations to shift patterns without the employee's agreement.

An employee who is dismissed in order to make any other change to the timing or duration of their shift would, however, benefit from enhanced ordinary unfair dismissal protections under new section 104J(5) of the Employment Rights Act 1996, to be inserted by section 28 of the Employment Rights Act 2025. In this case, an employer would need to show that they had acted reasonably and fairly in all the circumstances when dismissing the employee, and as part of this a tribunal would need to consider various factors including whether the employer had consulted with the employee and any relevant trade unions.

Finally, the government acknowledges that there may be other situations of shift pattern changes which, like day to night working, could have a significant impact on employees. The government considers such changes should be agreed with an employee and not imposed

---

<sup>7</sup> The reference to Sunday working is available at this link: <https://www.gov.uk/sunday-working>

using fire and rehire. This consultation seeks further views of such examples that should be considered under this option.

**Option 2: No types of shift pattern changes are in scope of the restricted variation of the timing or duration of a shift.**

Under this option, dismissals related to changes to the timing or duration of a shift would not give rise to automatic unfair dismissal under the fire and rehire measure. An employee who is dismissed in order to make a change to the timing or duration of their shift would, however, benefit from separate enhanced ordinary unfair dismissal protections, as described above.

It is the government's understanding that in many instances of fire and rehire which involve changes to shift patterns, it is common that the employer may also include changes to one of the other restricted variations in the measure, for example a change to the total number of hours worked or a reduction in pay. A dismissal to make a package of changes to employment contracts would still be an automatic unfair dismissal in such instances, if the employer dismisses the employee in order to make changes to the contract that include one or more restricted variations alongside the change to shift patterns (unless the financial difficulties exemption applies). This is provided for by new section s104I(2)(b)(ii) and s104I(4)(b) of the Employment Rights Act 1996, to be inserted by section 28 of the Employment Rights Act 2025.

**Other options considered**

The government also considered whether it would be practical to restrict variations to shift patterns in other ways. These included restrictions based on a change to a specified number or proportion of scheduled hours. Under these alternatives, dismissals made in order to change hours above a certain threshold limit would be automatically unfair (unless the financial difficulties exemption applies). In each case the alternative would have been impractical or burdensome to apply.

Firstly, we considered whether it would increase fairness to include a restricted variation to change a certain proportion of an employee's shifts. For example, it could be a restricted variation to change more than 50% of an employee's shifts.

However, an option based on a change of a proportion of total shifts could introduce unfairness between employees working different shift patterns.

It would also be challenging for employers and employees to calculate the threshold, reducing clarity and increasing the risk of misunderstandings and avoidable disputes. There are also many situations where employers reasonably need to make changes to scheduled working days, which could be restricted by some versions of this option.

We considered similar issues regarding a potential restricted variation for changes to shift patterns of a fixed number of hours. For example, it could be a restricted variation to dismiss an employee for failing to agree to change to a shift of more than, say 3 hours or 6 hours. But significant design and fairness problems remain. It is not clear that it would be possible

to establish a fixed number of hours which could be applied as a fair threshold across the variety of different circumstances in different industries and business models, and so these decisions are best left to negotiation between employees, their representatives and employers. Furthermore, the model would still pose significant administration problems for employers and employees.

Finally, we considered whether it would be appropriate to restrict variations to contractual shifts which would have a substantial detrimental impact on employees. However, the government considers that this option would lead to less certainty for employers and employees, as it will not always be straightforward to assess whether there has been a “significant detriment”. This is likely to lead to an increase in litigation, creating uncertainty for both employers and employees and putting further strain on the tribunal system. The uncertainty involved could be severely limiting for employers making scheduling decisions across a workforce.

## **Proposal**

The government is minded to (subject to considering views received as part of this consultation) make regulations in line with option 1 above, under which a narrow list of changes to the duration or timing of a shift would be a restricted variation. This will give necessary flexibility to employers, while protecting employees from being fired in order to make extreme changes to their shift patterns which could have significant consequences for them.

**Question 14 - Which of the following options regarding shift changes do you agree with?**

- ☐ Option 1 - Only include the proposed narrow list of shift changes (day-night, night-day, weekday-weekend, and weekend-weekday)?
- ☐ Option 2 - No types of shift pattern changes are in scope of the restricted variation of the timing or duration of a shift.
- ☐ Other types of shift pattern changes should be protected as a restricted variation
- ☐ None of the above
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 15 - Do you agree with the proposed definition of night-time working (any time 11pm-6am)?**

- ☐ Yes
- ☐ No
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 16 - If answered no, don't know or other to question 15, what do you think the definition of night-time working should be?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 17 - Do you agree that changes from weekday to weekend and weekend to weekday shifts should be included in this list of protected shift changes?**

- ☐ Yes both
- ☐ Weekday to weekend only
- ☐ Weekend to weekday only
- ☐ Neither
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 18 - Do you agree that changes from day to night and night to day shifts should be included in this list of protected shift changes?**

- ☐ Yes both
- ☐ Day to night only
- ☐ Night to day only
- ☐ Neither
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Our current understanding (subject to change based on consultation feedback) is that some employment contracts do not include fixed shift patterns i.e. on what days and at what times the employee will work their hours, but instead set out availability windows i.e. a period during which an employee must contractually be available to work and whose shift will be scheduled during this period however it will not provide the exact timing of the shifts.**

**Question 19 – Do you think that the government should consider whether there are certain kinds of changes to contractual availability windows which should be protected from being changed through fire and rehire?**

- ☐ Yes
- ☐ No
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 20 – If you answered yes to question 19, which changes to contractual availability windows should be protected?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 21 – In your opinion, how common is it for shift patterns (specific days and times) to be specified in employment contracts or as a contractual term?**

- ☐ Very common

- ☐ Common
- ☐ Occasionally
- ☐ Rarely
- ☐ Very Rarely
- ☐ Never
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 22 – In your opinion, how common is it for there to be a flexibility clause in an employment contract that would allow the employer to change an employee's shift patterns without the employee's agreement?**

- ☐ Very common
- ☐ Common
- ☐ Occasionally
- ☐ Rarely
- ☐ Very Rarely
- ☐ Never
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 23 – What would the impact on employees be of only protecting the proposed narrow list of shift changes (day-night, night-day, weekday-weekend and weekend-weekday)?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 24 – What would be the impact on employers of only protecting the proposed narrow list of shift changes (day-night, night-day, weekday-weekend and weekend-weekday)?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 25 – In your opinion, are there any concerns or risks you think should be considered with protecting the proposed narrow list of shift changes (day-night, night-day, weekday-weekend and weekend-weekday)?**

- ☐ Yes
- ☐ No
- ☐ Don't know
- ☐ Other (please expand below)
- ☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 26 – Do you believe that the proposals discussed in this consultation relating to shift changes will have an impact on individuals with a protected characteristic under the Equality Act 2010?**

*Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.*

☐ Yes

☐ No

☐ Don't know

☐ Other (please expand below)

☐ Prefer not to say

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 27 – Where you have identified potential negative impacts in your response to question 26, are there ways to mitigate these?**

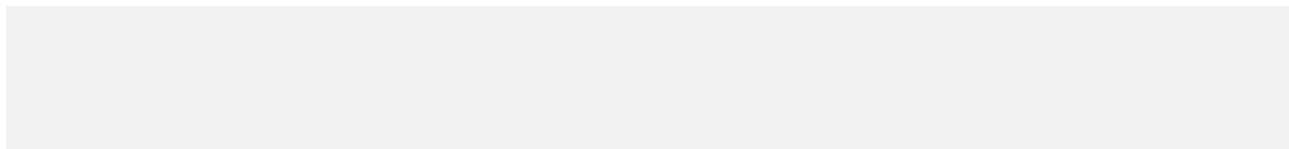
Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]

**Question 28 – Is there anything else you would like to share your reflections on, that was not covered by the previous questions (e.g. broader risks or alternative options)?**

Please explain your answer below and where appropriate provide any additional evidence which helps to support your point.

[FREE TEXT BOX]



## **Next steps**

This consultation will close at 11:59pm 1 April 2026. Following the closure of this consultation, we will analyse all of the responses before publishing a government response.

Responses to this consultation will inform the secondary legislation relating to the matters set out in this consultation. The government intends to bring forward the secondary legislation later in 2026/2027. The government will also be updating the Code of Practice on dismissal and re-engagement issued by the Secretary of State under section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992. The government intends to launch a public consultation on the revised version of this code later in 2026.

## **Legal Disclaimer**

Whereas every effort has been made to ensure that the information in this document is accurate the Department for Business and Trade does not accept liability for any errors, omissions or misleading statements, and no warranty is given or responsibility accepted as to the standing of any individual, firm, company or other organisation mentioned.

## **Confidentiality**

Information you provide, including personal data, may be disclosed in accordance with UK legislation (UK General Data Protection Regulation (**UK GDPR**), the Data Protection Act 2018 (**DPA**), the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIR**)).

If you want the information you provide to be treated confidentially, please be aware that in accordance with the FOIA and EIR, public authorities are required to comply with a statutory regime and code of practice which deals with, amongst other things, obligations of confidence.

In view of this, it would be helpful if you could explain to us why you wish that information to be treated confidentially. If we receive a request for disclosure of information that has been provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

If you are providing a response on behalf of a third party, you must ensure you obtain their consent prior to submission.

## **Copyright**

© Crown Copyright 2026

You may re-use this publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence visit: [www.nationalarchives.gov.uk/doc/open-government-licence](http://www.nationalarchives.gov.uk/doc/open-government-licence) or email: [psi@nationalarchives.gov.uk](mailto:psi@nationalarchives.gov.uk)

Where we have identified any third-party copyright information in the material that you wish to use, you will need to obtain permission from the copyright holder(s) concerned.

This document is also available on our website at [gov.uk/dbt](http://gov.uk/dbt)

Any enquiries regarding this publication should be sent to us at [enquiries@businessandtrade.gov.uk](mailto:enquiries@businessandtrade.gov.uk)

## **Privacy Notice**

We will only process your personal data for purposes which are compatible with those specified in this privacy notice below.

The lawful basis we are relying on to process your personal data is article 6(1)(e) of the UK General Data Protection Regulation (**UK GDPR**), which allows us to process personal

data when this is necessary for the performance of our public tasks in the exercise of our official authority. Where special category data is provided and therefore processed, we rely on Article 9(2)(g) UK GDPR, which allows us to process special category data where there is substantial public interest.

If your personal data is used for research purposes, we will apply suitable safeguards, such as anonymisation, pseudonymisation, and data minimisation, to ensure that your data is processed only when necessary, and always in a lawful and secure manner.

Compatible research purposes may include analysis to further DBT policy development, or to analyse public consultation responses or similar requests for information from the public.

We are trialling Artificial Intelligence (AI) solutions to support the delivery of our functions. In accordance with data protection law and ICO guidance, we will not use AI alone to make decisions about you, or to inform decisions about you, unless this has been made expressly clear to you in advance. Any use of AI will be subject to appropriate human oversight.

We will apply effective data minimisation techniques to all uses of your personal data, ensuring that only the minimum necessary information is processed.

Your responses, including any personal data, may be shared with:

- a third-party provider,
- another government department, or
- an organisation acting on behalf of the Department for Business and Trade under contract or an equivalent agreement that safeguards your personal information in line with DBT requirements.

These parties may use technology, including artificial intelligence, for the purpose of analysing and summarising responses, but only in accordance with DBT's agreed terms and applicable data protection law.

We will not:

- sell or rent your data to third parties
- share your data with third parties for marketing purposes

We may publish a list or summary of responses in an anonymised form, including in any subsequent review reports. "Anonymised" means that all information which could identify you has been removed, so that individuals cannot be identified from the published data. We may also share your personal data where required to by law.

You can leave out personal information from your response entirely if you would prefer to do so.

Wherever possible please avoid including any additional personal data in free-text responses beyond that which has been requested or which you consider necessary for DBT to be aware of.

We will only retain your personal data for as long as:

- it is needed for the purposes of the consultation;

- it is needed to archive in the public interest, or scientific, historical, or statistical research, in accordance with Article 89 UK GDPR and the Data Protection Act 2018 (DPA);
- the law requires us to.

This generally means that we will hold your personal data for at least one year.

### **Your Rights Under Data Protection Law**

Under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA), when your personal data is processed on the basis that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority (Article 6(1)(e)), and, where relevant, for reasons of substantial public interest (Article 9(2)(g)), you are entitled to exercise the following rights:

- **Right of Access:** You can request copies of the personal data we hold about you.
- **Right to Rectification:** You can ask us to correct any personal data you believe is inaccurate or incomplete.
- **Right to Restriction:** You can request that we restrict the processing of your personal data in certain circumstances (for example, if you contest its accuracy or object to its processing).
- **Right to Object:** You can object to the processing of your personal data where it is processed on the basis of public task, in certain circumstances.
- **Right to Data Portability:** In some cases, you may request that your personal data is provided to you or another organisation in a structured, commonly used and machine-readable format.
- **Right to Erasure:** You can request that we erase your personal data in certain circumstances (for example, if it is no longer necessary for the purposes for which it was collected).
- **Right not to be subject to automated decision-making:** You have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal or similarly significant effects.

Please note that these rights are subject to certain conditions and exemptions under data protection law. If you wish to exercise any of these rights, or would like more information, please contact the Data Protection Officer at [data.protection@businessandtrade.gov.uk](mailto:data.protection@businessandtrade.gov.uk).

You can also submit a complaint to the Information Commissioner's Office (ICO) at:

Information Commissioner's Office Wycliffe House:

Water Lane, Wilmslow, Cheshire, SK9 5AF

W: <https://ico.org.uk/> Tel: 0303 123 1113