

## Appropriate protections from Fire and Rehire for changes to Pay and Shift Patterns

<b>Lead department</b>	Department for Business and Trade
<b>Summary of proposal</b>	The proposal is to protect specified shift pattern changes from fire and rehire and removing protections on certain expenses and benefits in kind. These aim to restrict employers use of fire and rehire whilst maintaining necessary flexibility for employers.
<b>Submission type</b>	Options Assessment – 15 <sup>th</sup> October 2025
<b>Legislation type</b>	Secondary legislation
<b>Implementation date</b>	
<b>RPC reference</b>	RPC-DBT-25091-OA(1)
<b>Date of issue</b>	17 <sup>th</sup> November 2025

### RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The OA is broadly sufficient but would be improved by a more thorough assessment of the options against critical success factors and expanded comparative appraisal to strengthen the options identification and justification for the preferred way forward.

<sup>1</sup> The RPC opinion rating is based only on the robustness of the rationale, options identification (including SaMBA) and justification for preferred way forward, as set out in the [Better Regulation Framework guidance](#). RPC ratings are fit for purpose or not fit for purpose.

## RPC summary

Category	Quality <sup>2</sup>	RPC comments
Rationale	<b>Green</b>	The OA sets out the problem under consideration and argument for intervention sufficiently, using supporting evidence and an economic theory base. The OA sets out partially SMART objectives and a sufficient theory of change.
Identification of options (including SaMBA)	<b>Green</b>	The OA provides a limited longlist of options that link clearly to the problem being addressed. The OA should explain how these options were identified and include a systematic process to demonstrate how the longlist was generated. The OA would be improved by providing justification for why regulatory intervention is required and why other alternatives to regulation would not be appropriate. The OA would be improved by using critical success factors systematically and referencing the SMART objectives, to demonstrate stronger justification for the shortlisted options. The SaMBA would be improved by directly addressing what share of the costs to business could be faced by small and micro, and medium-sized businesses and should include consideration of mitigations for SMBs.
Justification for preferred way forward	<b>Green</b>	The OA contains a partial quantitative, and limited qualitative, assessment of key costs and benefits, supported by detailed calculations, inputs and assumptions in the evidence base section, with acknowledgement of uncertainties and limitations. The OA provides sufficient information to indicate why the department favours the preferred option over the alternatives, identifying key impacts, but should provide more explicit comparative consideration of the options and justification for the selection of preferred option.

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

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Regulatory Scorecard	<b>Weak</b>	The OA provides a sufficient assessment of impacts on total welfare, businesses and households, though provides a limited assessment and explanation of impacts on the business environment, trade and investment, and natural capital and decarbonisation.
Monitoring and evaluation	<b>Satisfactory</b>	The OA includes a sufficient monitoring and evaluation framework that includes key research questions, explores possible data collection and how each of these could enable DBT to assess the impacts of this proposal alongside the Employment Rights Bill.

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## Summary of proposal

The Department for Business and Trade proposes to specify which variations to the timing or duration of a shift are to be a restricted variation and to exclude the reduction or removal of specified expenses/benefits in kind from being a restricted variation. Restricted variations are those changes to core contractual terms which are protected from fire and rehire unless the employer is in severe financial difficulties and has no reasonable alternative. Provisions on fire and rehire were included within the Employment Rights Bill and proposed to make fire and rehire automatically unfair dismissal, unless the employer is in severe financial difficulties and has no reasonable alternative, for the restricted variations of:

- Pay reductions
- Changes to measures of work done determining pay
- Pension changes
- Total hours changes
- Reductions to leave entitlement
- Specified shift pattern changes

The OA includes a longlist of options that were initially considered across two issues:

### **Exclude expenses and benefits in kind from the scope of pay for fire and rehire protections (1)**

- Option 1a – Do nothing
- Option 1b – Exclude all expenses and benefits in kind from the scope of pay
- Option 1c – Protect only certain expenses and benefits in kind and exclude others

### **Include specific shift patterns in the scope of fire and rehire protections (2)**

- Option 2a – Do nothing
- Option 2b – Protect only egregious shift changes from day to night working and weekday to weekend working
- Option 2c – Protect changes of specified number or proportion of scheduled hours
- Option 2d – Protect changes to the timing or duration of a shift that would have a significant detriment for the employee

From the longlist of options 3 were discarded. DBT then considered a shortlist of 4 options and 4 combinations of them, including one from each issue.

### **Exclude expenses and benefits in kind from the scope of pay for fire and rehire protections (1)**

- Option 1A – Exclude all expenses and benefits in kind from the scope of pay
- Option 1B – Protect only certain expenses and benefits in kind and exclude others

### **Include specific shift patterns in the scope of fire and rehire protections (2)**

- Option 2A – Protect only egregious shift changes from day to night working and weekday to weekend working
- Option 2B – Do nothing

The OA states that it expects the net impact on total welfare to be positive, with the number of instances of fire and rehire expected to reduce. Most of the monetised costs to businesses are transfers to households and therefore cancel each other out at a societal level. For the preferred option the OA presents a net present social value (NPSV) of -£123 million over 10 years, within a range of -£36 million to -£210 million, an equivalent annual net direct cost to business (EANDCB) of £52 million, and an equivalent annual net direct cost to households of -£44 million.

## Rationale

### Problem under consideration

The OA explains fire and rehire (including “fire and replace”), current law, and the framework proposed under the Employment Rights Bill. The OA cites findings from an Acas fact-finding exercise with stakeholders to demonstrate the situations in which fire and rehire is used, alongside limited but relevant prevalence indicators in the section on the impact of no intervention: a 2022 YouGov survey suggesting ~12,100 businesses and ~125,000 workers affected annually (noting pandemic context) and a Business Insights and Conditions Survey wave reporting 3.4% of businesses changed contracts in the last 12 months, with dismiss-and-rehire too rare to publish. The OA uses these to suggest that fire and rehire is relatively rare but impactful on those affected. The OA acknowledges that evidence on the prevalence of fire and rehire is limited.

### Argument for intervention

The OA argues that there are equity and efficiency cases for intervention. It states that the problem under consideration is that the practice and threat of fire and rehire (and fire and replace) provides employers with undue bargaining power in employer-employee relationships. DBT supports this with economic theory that power asymmetry in bargaining can also create quasi-rents that the more powerful party (the employer) can capture. This can therefore incentivise the more powerful player (the employer) to act strategically, which can lead to a less optimal outcome socially, by paying less or providing lesser employment terms and conditions which in turn can lead to lower standards of living, health and wellbeing.

The OA states that the Government does not think that the current laws and statutory code of practice on fire and rehire strike the right balance between protections for employees and flexibility for employers to restructure where they genuinely have no alternative.

While the OA sets out a theoretical rationale for intervention, the evidence base (as covered in the problem under consideration section and acknowledged by DBT) is limited and may overstate the prevalence of fire and rehire, as much of the cited data is from the pandemic period. The description of the practice of fire and rehire as

'rare' raises questions about the proportionality of regulatory intervention. Nonetheless, the OA makes a strong case for intervention on equity grounds, and the potential deterrent effect of the proposed measures may be significant even if actual instances are few.

### **Objectives and theory of change**

The OA states this intervention seeks to extend protections to employees who are subject to fire and rehire for a specified list of shift changes. The policy objective is to prevent employers imposing unreasonable shift pattern changes while giving employers flexibility for necessary operational adjustments.

The OA states this intervention seeks to exclude certain expenses and benefits in kind from the restricted variation of pay and so permit these being reduced or removed by fire and rehire without triggering an automatic unfair dismissal. The policy objective is to provide employers with some flexibility to respond to changing conditions while maintaining crucial protections to core elements of employee pay

The OA states the intended outcomes are to reduce the occurrence of fire and rehire, prevent certain forced changes to shift patterns, and increase employer flexibility to change expenses and benefits in kind.

The OA provides three partially SMART objectives:

- Reduce the number of employers engaging in, or threatening to engage in, the practice of fire and rehire to change shift patterns each year
- Reduce the number of employees affected by or threatened by the practice of fire and rehire to change their shift patterns each year
- Employer flexibility to make reasonable changes to expenses and benefits policies (that are out of scope of the protections)

These objectives would be improved by providing quantifiable targets and clear timeframes. The third objective should be more clearly defined and measurable.

The OA describes a logical change process by which the objectives will be met, through inputs, outputs, outcomes, impacts and risks, acknowledging that the intended outcomes will be affected by the Employment Rights Bill (ERB) and this proposal.

## **Identification of options (inc. SaMBA)**

### **Identification of the 'longlist' of options**

The OA includes a longlist of options that were initially considered across two issues (1) exclude expenses and benefits in kind from the scope of pay for fire and rehire protections and (2) include specific shift patterns in the scope of fire and rehire protections. These options are limited but do link clearly to the problem being addressed.

The OA should explain how these options were identified, ideally through following a process similar to the 'strategic options framework filter' set out in the Green Book for the options longlist, to demonstrate how the longlist was generated.

### **Consideration of alternatives to regulation**

The OA states that non-regulatory options were considered at the inception of this policy but were discarded in favour of legislation in form of the ERB which this is a continuation of, seeking to adjust the policy introduced in the ERB. The OA then states that non-regulatory options were therefore not considered here and would not achieve the intended outcomes of the policy proposals. The OA would be improved by providing justification for why regulatory intervention is required and why other alternatives to regulation would not be appropriate, in the absence of other non-regulatory options.

### **Justification for the shortlisted options**

The OA provides limited but sufficient explanation for why the department discarded the 'do nothing' option for issue 1, and the 'changes of specified number or proportion of scheduled hours are protected and the changes to the timing or duration of a shift that would have significant detriment for the employee are protected' option for issue 2. The OA would be improved by assessing the longlist against the Green Book's critical success factors systematically to narrow it to a longlist and providing more explicit reference to the proposal's SMART objectives, to demonstrate stronger reasoned justification for the shortlisted options.

### **SaMBA and medium-sized business (MSB) assessment**

The OA argues the exempting smaller businesses would see the policy fail to meet intended outcome to end the practice of fire and rehire for changes to core terms except where the employer meets the narrow exception for financial difficulties. The OA says that small businesses are the least likely to engage in the practice according to the YouGov survey and less likely to offer benefits in kind according to the 2023 HMRC survey, but the OA estimates workers employed by small and micro businesses represent over a third of the estimated number of workers affected by fire and rehire per annum. The OA would be improved by directly addressing what share of the costs to business could be faced by small and micro, and medium-sized businesses.

The OA acknowledges that smaller businesses may face proportionately higher burdens and be less able to offset the costs or invest in productivity improvements to help manage increased labour costs. If under the preferred option an exemption is not applied and there are disproportionate burdens on SMBs, then the OA should also include consideration of mitigations for SMBs.

## **Justification for preferred way forward**

### **Appraisal of the shortlisted options**

The OA provides assessments of the NPSV and provides EANDCB figures for each of the four combinations assessed:

- Option 1A and Option 2A
- Option 1A and Option 2B
- Option 1B and Option 2A
- Option 1B and Option 2B

The OA contains a partial quantitative assessment of key costs and benefits, supported by detailed calculations, inputs and assumptions in the evidence base section, with acknowledgement of uncertainties and limitations. The OA also acknowledges non-monetised benefits and provides some limited comparison of how these compare between some of the options.

### **Selection of the preferred option**

The analysis in the OA provides sufficient information to indicate why the department favours the preferred option over the alternatives and provides a detailed, but partial, quantitative assessment of the costs and benefits, identifying key impacts. The OA would be improved by providing more explicit comparative consideration of the options and justification for the selection of preferred option.

## **Regulatory Scorecard**

### **Part A**

#### **Impacts on business including non-monetised and distributional impacts**

DBT expects the proposal to have a negative impact on business. The OA states that the cost of some shift changes being included as restricted variations outweighs the benefits of some expenses and benefits in kind from being excluded from restricted variations. The OA provides an estimated EANDCB of £52m and states that there are uncertain non-monetised impacts through potential improved productivity from improved wellbeing and morale, or reduced productivity from reduced business flexibility to change shifts. DBT also expects no significant or adverse distributional impacts.

#### **Impacts on households, individuals or consumers including non-monetised and distributional impacts**

DBT expects the proposal to have positive impacts on households. The OA estimates an equivalent annual net direct cost to households (EANDCH) of -£49.5m with benefits from preventing fire and rehire for specified shift changes exceeding those from losing fire and rehire protections on certain expenses and benefits in kind. The department expects positive non-monetised impacts including better physical and mental wellbeing and improved productivity, though those made redundant may suffer long term 'scarring' through increased future incidence of unemployment and lower subsequent earnings. DBT also expects positive

distributional impacts, though evidence on characteristics of those subject to fire and rehire practices is limited.

### **Total impacts including non-monetised and distributional impacts**

DBT expects the net impact on total welfare to be positive though estimates an NPSV of -£123m over 10-year appraisal period. The proposal is expected to reduce the number of instances of fire and rehire. Most of the monetised costs to businesses are transfers to households and therefore cancel each other out at a societal level, but there are additional recruitment costs where businesses make existing workers redundant and recruit new workers. DBT expects the policy to lead to potentially significant unquantified benefits, including higher wellbeing and productivity. The OA acknowledges evidence on fire and rehire is limited and analysis subject to a number of assumptions, and that those made redundant may suffer longer term 'scarring' through increased future unemployment incidence, lower subsequent earnings, though this is considered not to be likely or large impact. The OA cites a TUC online poll that suggests fire and rehire practices affect more vulnerable workers, to argue therefore that strengthening protections will improve equality and fairness.

## **Part B**

### **Business environment**

The OA states that the proposal will have a neutral impact on the UK business environment. The OA provides some discussion of expected impacts on different aspects of the business environment and consideration of the number of affected businesses. The OA should outline further how the proposal could affect the business environment.

### **Trade and investment**

The OA states that the proposal will have no impact on trade and is a minor practice which will not affect UK international competitiveness. The OA should include further explanation and justification for this assessment.

### **Natural capital and decarbonisation**

The OA states that the proposal will have no impact on natural capital and decarbonisation. The OA should include explanation and justification for this assessment.

## **Monitoring and evaluation**

### **Monitoring and evaluation**

The OA states that the Government will undertake proportionate monitoring and evaluation of reforms implemented through the ERB and associated secondary

legislation to determine whether it has met its objectives and will consider undertaking a review of this policy within 5 years of it taking effect.

The monitoring and evaluation (M&E) framework sets out some initial high-level evaluation questions that could assess whether the aims and objectives of the policy have been met, and the extent of any unintended consequences arising from the Bill:

- To what extent, have changes to the fire and rehire Bill measure impacted the prevalence of the practice?
- To what extent, have changes to the fire and rehire Bill measure impacted the use of fire and rehire as a threat in employer-employee negotiations?
- To what extent have the measures caused increased employee job security?
- In what ways have the measures achieved their intended outcomes and impacts?
- In what ways have the measures produced or contributed to any unintended consequences?

The OA says the department will also need to evaluate the economic impact of the Bill measure, including its costs and benefits, and provides initial questions that could be included in the evaluation:

- What costs have been incurred by employers?
- What benefits have been generated by the implementation of this Bill measure for both employers and employees?
- What is the nature and scale of direct costs incurred by businesses?
- What is the nature and scale of indirect costs incurred to businesses and the wider economy as a result of this Bill measure?

### **Data collection**

Alongside the 'SMART' objectives for the proposal, the OA sets out potential data collection that could be undertaken together with use of and changes to existing data sources. The OA then considers how this data collection could be undertaken, potential uses and limitations. The OA would be improved by demonstrating, at least, consideration of the difficulty of attributing causal impacts on areas considered in the evaluation questions to this proposal.

### **Post-implementation review (PIR)**

The OA does not include a commitment to complete a post-implementation review of the policy within five years of implementation, though does say the department will consider undertaking a review of this policy within 5 years of it taking effect. The M&E framework provides a reasonable basis from which a PIR could be completed.

### **Regulatory Policy Committee**

For further information, please contact [enquiries@rpc.gov.uk](mailto:enquiries@rpc.gov.uk). Follow us on X [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](https://www.linkedin.com/company/rpc-gov-uk/) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).