



Department for
Business, Innovation,
Science and Trade

Code of Practice: Dismissal and Re-engagement

Issued by the Secretary of State under section 205 of the Trade Union and Labour Relations (Consolidation) Act 1992

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Preamble

The government is committed 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 brings 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.

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 used the practice of fire and rehire and fire and replace, referred to in this document as dismissal and re-engagement, 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 ("the 2025 Act") sets a floor for all businesses by introducing legal rights which aim to prevent the use of dismissal and re-engagement to change core terms, unless there are severe financial difficulties. 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.

There will also be regulations covering changes to expenses and benefits in kind, and shift patterns.

We're now seeking your views on a new Code of Practice on Dismissal and Re-engagement which reflects the new provisions of the 2025 Act and provides practical guidance where an employer is considering dismissal and re-engagement. In helping us shape the Code of Practice, you will be helping us to support good relations between employers and employees and improve industrial relations. Thank you for taking the time to read and respond to this consultation. Your views and insights will be invaluable to making these reforms a success.



The Rt Hon Jonathan Reynolds MP

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Innovation, Science and Trade and
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1. Introduction

1.i Purpose of Code

1. This Code is intended to promote good industrial relations where there may not be agreement over contract changes. It sets out legal obligations and good practice on information sharing, consultation and negotiation about changes to contracts of employment. It explains the strict limits on using dismissal and re-engagement and seeks to ensure that dismissal and re-engagement is treated as a last resort in these limited circumstances.

2. It is for an employer to make decisions for the benefit of the organisation and to set the strategic direction of the organisation. This may occasionally lead the employer to consider proposing changes to its employees' contracts of employment.

3. Contracts of employment, whether made in writing or verbally, are legally binding agreements and their core terms should not be changed unilaterally. Instead, changes should be agreed by both the employer and the employee, or by their properly authorised trade union or other employee representatives.

4. Dismissal and re-engagement as used in this Code covers two practices:

- Fire and rehire: the practice of dismissing one or more employees who do not agree to some or all of the contractual changes proposed by the employer and proposing to rehire them with changed terms and conditions.
- Fire and replace where one or more employees are replaced with either other employees or non-employees to do substantially the same work as the employee(s) they are replacing, and where this is not due to a reduced need for that work.

5. Changes imposed via dismissal and re-engagement can have the following negative consequences:

- it can be harmful to employees' interests
- it can be harmful to employee's health and wellbeing
- it creates legal and reputational risks for the employer
- it can damage the employer's relationships with its employees, potentially leading to disagreement and collective or industrial action
- it can lead to valued people not feeling valued/ satisfied due to the insecurity of work, potentially leading to them leaving the organisation

6. The 2025 Act added section 104I, J and K into the 1996 Act. These sections have changed the law of when a dismissal and re-engagement will potentially be fair (see sections 2 and 3). These changes significantly limit the circumstances where dismissal and re-engagement will be considered a fair dismissal and will affect whether and when it is appropriate to discuss the possibility of dismissal and re-engagement.

7. Everyone involved in a dismissal and re-engagement situation, including employers, employees, and their representatives, should act reasonably, consider alternatives and only use

dismissal and re-engagement as a last resort, thus preventing unscrupulous practices. This includes actively engaging in meaningful consultation with an aim to reaching an agreed outcome with employees and/or their representatives. Employers should not raise the prospect of dismissal and re-engagement unreasonably early or put undue pressure on employees by threatening dismissal where this is not, in fact, envisaged. Employers should only resort to dismissal and re-engagement when no other reasonable options exist to achieve the changes after all reasonable efforts have been made to reach agreement. It should only be used as a last resort because dismissal and re-engagement can have significant adverse consequences for individuals and industrial relations.

8. Acas – the Advisory, Conciliation and Arbitration Service – is an independent statutory body which offers impartial advice to employers, employees and/or their representatives on employment rights and obligations. It has expertise in helping parties to maintain good industrial relations and resolving disputes where they arise. Contact details for Acas are available on the Acas website.¹

1.ii Key terms and references section

Automatically unfair dismissal	Certain reasons for dismissal are considered to be automatically unfair e.g. dismissal for health and safety reasons. If that reason is found to be the reason or principal reason for the dismissal, then the dismissal will be automatically unfair with no assessment of whether the employer acted reasonably.
Collective agreement	Any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below: (a) terms and conditions of employment, or the physical conditions in which any workers are required to work; (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers; (c) allocation of work or the duties of employment between workers or groups of workers; (d) matters of discipline; (e) a worker's membership or non-membership of a trade union; (f) facilities for officials of trade unions; and (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers'

¹ See ACAS website: www.acas.org.uk

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	associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures ²
Collective bargaining	Negotiations relating to or connected with one or more of those matters outlined in the collective agreement definition. ³
Contractual terms	Contract terms include expressed terms, such as pay, duties and hours, and implied terms, such as duties of loyalty, the duty of care, and other obligations implied by law or statute. These terms arise from the contract of employment, whether the contract is written or oral. References in this Code to an employee's or employees' 'contract', 'contract of employment', 'terms and conditions' or 'terms', are references to all an employee's contractual terms, whether these are expressed or implied and, if expressed, whether they have been agreed in writing or verbally. In addition to any individual employee's written contract, terms may be found in other sources such as collective agreements, handbooks or letters, if these have been directly or implicitly incorporated into the contract.
Dismissal and Re-engagement	In this Code, 'dismissal and reengagement' is used to refer to both the practice of fire and rehire and fire and replace.
Financial difficulties exemption	This refers to the criteria an employer needs to meet in order for a dismissal and re-engagement to be potentially fair, including fire and rehire or fire and replace to make a restricted variation ⁴ or fire and replace with non-employees doing substantially the same role ⁵ (refer to section 3.iii.5 on financial difficulties in the Code for further information). This exemption is intended to be used as a last resort and has been designed to be narrow. There are different tests for public and private sector and local authority employers.
Fire and rehire	"Fire and rehire" refers to the process of an employer dismissing an employee and then re-employing them under a new contract, usually with less favourable terms and conditions.
Fire and replace	In this Code, this refers to situations where an employee is dismissed and the employer replaces them with another employee or non-employee to carry out substantially the same duties. The law makes specific provision for fire and replace with non-employee workers, which does not include situations where the dismissal is wholly or mainly attributable to a ceased or diminished need of activities for the employer's organisation.

² Section 178 in the 1992 Act

³ Section 178 in the 1992 Act

⁴ Section 104I in the 1996 Act

⁵ Section 104K in the 1996 Act

Non-restricted variation	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. ⁶
Recognised Trade Union	The recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and “recognised” and other related expressions shall be construed accordingly ⁷
Restricted variation	Changes to ‘core’ contractual terms (see section 2.2) that employers are legally not allowed to force onto employees. The 2025 Act makes it an automatic unfair dismissal where an employee is dismissed or replaced in order to make a restricted variation to their employment contract. A dismissal to make one of these restricted variations will be automatically unfair unless the employer is in severe financial difficulty and has no reasonable alternative.
Unfair dismissal	Where an employee is dismissed and their contract is terminated without a valid statutory reason. Subject to a qualifying period, an employee has the right not to be unfairly dismissed. The dismissal will be unfair unless the employer can show that the reason (or principal reason) for the dismissal was one of five fair reasons: capability, conduct, redundancy, illegality or some other substantial reason and that in all the circumstances (including the employer's size and administrative resources) the employer acted reasonably in treating that reason as a sufficient reason for dismissal.

1.iii Scope of Code

9. This Code applies to all employers, employees, and their representatives where an employer:

- is considering making changes to one or more of its employees’ contracts of employment, and
- envisages that they might have to consider making unilateral changes to contractual terms

10. This Code does not apply in respect of any given employee where the only reason an employer envisages that it might dismiss that employee is redundancy that falls within the definition of section 139 of the 1996 Act.⁸

11. The Code applies regardless of the number of employees affected, or potentially affected, by the employer’s proposals.

12. The Code applies regardless of the employer’s reasons for seeking changes to its employees’ terms and conditions.

⁶ Section 104J in the 1996 Act

⁷ Section 178 (3) the 1992 Act

⁸ Section 139 in the 1996 Act

13. This Code explains some of the legal obligations that are relevant where dismissal and re-engagement is considered. However, the Code is not intended to provide guidance on how to comply with legal obligations as this will depend on the facts of each circumstance. There may be some legal obligations with which the employer must comply, that are not referred to in this Code.

1.iv Legal status and effect of Code

14. A failure to observe the Code does not, in itself, make a person or organisation liable to legal proceedings. But section 207 of the 1992 Act provides that where relevant, courts, employment tribunals and the Central Arbitration Committee will take the Code into account.

15. In addition, if an employee brings an employment tribunal claims (for example unfair dismissal, discrimination or a breach of collective consultation requirements)⁹, and the claim concerns a matter to which this Code applies, then the tribunal can:

- increase any award it makes by up to 25%, if the employer has unreasonably failed to comply with the Code
- reduce any award by up to 25%, where the employee has unreasonably failed to comply with the Code

16. Where this Code states that a party “must” or must not do something, this indicates that that party is subject to a legal requirement. Where this Code states that a party “should” or should not do something, this indicates a standard of good practice, which is intended to be admissible in evidence and taken into account, as described in paragraph 14.

1.v Structure of Code

17. This Code is structured to follow the reasonable chronological steps which an employer should consider when seeking agreement to change an employee’s contract terms.

18. Employers should follow the section 2 on information sharing and meaningful consultation to come to an agreed change to contracts. Section 3 addresses circumstances where it has become clear that an employer and employee may not be able to agree to some or all proposed changes.

19. Where an employer intends to make a change to the terms of an employee’s contract which includes one or more restricted variation and is considering dismissing an employee to make these changes, the dismissal will be automatically unfair unless the employer meets the financial difficulties exemption (see section 3.iii.5). If the financial difficulties exemption applies, then the employment tribunal must consider the factors set out in section 2 when determining if the dismissal was fair or unfair. If an employer intends to change the terms of an employee’s contract

⁹ See further examples listed in [Schedule A2 to the 1992 Act](#)

which only include non-restricted variations and is considering dismissing an employee to make these changes, this will fall under enhanced ordinary unfair dismissal protections (see section 3.iii.3). If an employer intends to replace an employee with a non-employee to make changes in the terms of employment contracts, this will also be an automatically unfair dismissal unless the employer meets the financial difficulties exemption (see section 3.iii.4-5).

20. In circumstances where an employer is considering making a restricted change to employment contract terms where there are financial difficulties (see section 3.iii.5), or making a non-restricted change (see section 3.iii.3), an employer should consider the reason and justification for changing contract terms and whether they have reasonably complied with this Code.

2. Variations to Contract and good practice in mutually agreed contract changes

2.i What is a variation to a contract?

21. A variation to a contract is a change made to the existing employment contract so that the contract is different from the one that the employee was already working under.

22. Where there are agreed terms of an employment contract, these terms should not be amended without mutual agreement of both parties to the contract. Employers should seek mutual agreement when making changes to contracts of employment through consultation or negotiation. In some limited circumstances, an employer may be able to rely on making changes to the contract if the contract already authorises the variation e.g. by variation clause.¹⁰

23. This section considers good practice in seeking mutual agreement to changes to contracts of employment, noting that the provisions in the 2025 Act do not affect the ability of an employer and an employee to agree to contract changes following the minimum standards outlined here. Furthermore, the provisions in the 2025 Act relate to dismissals made in order to change an employment contract, so they do not affect one-off or ad-hoc non-contractual arrangements made between an employer and employee which are informal in nature.

2.ii Information-sharing

2.ii.1 General considerations for information-sharing and consultation

24. The provisions on information-sharing and consultation in this Code of Practice are intended to be viewed as an ongoing process, not a single event. Even where the employer considers that the employees and/or their representatives are unlikely to agree to the proposed changes, the employer should seek to share as much information as reasonable and consult for as long as reasonable in good faith, with an aim to reaching an agreed outcome. This Code provides guidance on how employers can determine what information is reasonable including its relevance, credibility and significance.

¹⁰ See Acas guidance on [flexibility clauses](#)

25. Where this Code applies, there may be additional legal information-sharing and consultation obligations on the employer which are beyond the scope of this Code. The employer must comply with any such obligations, which may include, but are not necessarily limited to:

- obligations to provide prescribed information for the purposes of collective consultation under the 1992 Act
- obligations arising under any information and consultation agreement
- information-sharing and consultation obligations arising in relation to a transfer of employment
- information-sharing and consultation obligations in relation to any health and safety implications of the proposed changes
- information-sharing and consultation obligations regarding proposed changes to occupational or personal pension schemes
- obligations to provide prescribed information for the purposes of collective bargaining where there is a recognised trade union

2.ii.2 Who information should be shared with

26. Who the employer provides information to and consults with will depend on the circumstances. For all employees in respect of whom there is a recognised trade union, the employer should provide information to and consult with that trade union. For all employees in respect of whom there is no recognised trade union, the employer should provide information to and consult with whichever is the appropriate of:

- an existing body of employee representatives who could appropriately be consulted on the employer's proposals (for example, if they have already been elected to represent employees on similar or related matters)
- representatives chosen to represent employees in consultations on the employer's proposals
- each of the employees individually

27. The employer must comply with legal obligations as to who they should consult and provide information to,¹¹ and should comply with what is reasonable in the circumstances.

28. It is important that all employees who might be affected by the proposals are informed and consulted, whether directly or through their representatives.

¹¹ Section 188 of the 1992 Act

2.ii.3 When information should be provided by the employer

29. Employers and employees should raise and deal with issues promptly and should not unreasonably delay information-sharing. It is important that all employees who might be affected by the proposals are informed and consulted in a reasonable timeframe, whether directly or through their representatives. A reasonable timeframe should consider the following risks:

- Raising dismissal and re-engagement too early, so that it can introduce an imbalance to discussions and that it can be corrosive to employment relations (even when dismissal and re-engagement then does not take place)
- Raising dismissal and re-engagement too late, so that there is insufficient time for parties to explore alternatives and that employers should be mindful of other relevant responsibilities (e.g. consultation and notification requirements for collective redundancy)

30. Information should be shared at the point which enables meaningful consultation (see section 2.iii). This promotes trust and gives the parties more time to reflect on the information, raise questions, suggest and explore reasonable alternative options, and form solutions.

2.ii.4 What information should be provided by the employer

31. Employers should share as much information regarding the proposals as reasonable with a view to enabling employees and/or their representatives to understand the reasons for the changes, to be able to ask questions and make counterproposals, and to engage in an effective collective bargaining procedure (see section 2.iii.3). The better informed the employees and/or their representatives are about the proposals, the more likely it is that the parties will be able to reach an agreed outcome. In particular, the employer should consider what information could reasonably be provided about:

- what the proposed changes are, including what the proposed new and/or revised contract terms will look like
- whether this is a restricted or non-restricted variation(s) and why this variation is important
- who will be affected by the proposed changes
- the organisation's reasons and justifications for the proposed changes
- whether the variation in contract is being proposed because the employer anticipates financial difficulties that could threaten the organisation
- evidence they are relying on to support this information
- the anticipated timings for the introduction of the proposed changes and the reasons for those

- anything offered to the employee by the employer in return for agreeing to the variation, for example, increased annual leave allowance in response to reduced pay
- any other options that have been considered other than making a variation to the employee contract
- the proposed outcomes and next steps for this process

32. The information provided may, however, depend upon the circumstances and the nature of the proposed changes. For example, if an organisation is suffering with financial difficulties exacerbating time pressure on information-sharing and consultation processes, then that employer should provide as much information as reasonable within their capacity.

2.ii.5 How information should be provided by the employer to employees and representatives

33. Employers and employee representatives, if any, should consider the type and style of communication used, to ensure all employees can participate. It is good practice for the employer to provide information in writing to ensure clarity and an accurate record. In some circumstances it may be appropriate to provide information in different formats, for example as a reasonable adjustment.¹²

34. Information should be shared in advance of any formal meeting, giving the employee reasonable time to review. Communication should be clear, specific, and factual.

35. Whether or not the right to be accompanied arises, it is good practice to allow employees to be accompanied at a formal meeting.

2.ii.6 After information is provided by the employer

36. It is likely that the employees and/or their representatives will have questions during and following the provision of information, and on an ongoing basis throughout the consultation process. The employer should always consider whether the information asked for can be provided (see section 2.ii.4), and ensure that the employee and/ or representatives are given a fair opportunity to respond in meaningful consultation (see section 2.iii). The employer should consider the employees' and/ or representatives' response before making a final decision.

37. An employer may reasonably conclude that it is unable to provide information even if requested by employees and/or their representatives, for example where it is commercially sensitive or confidential. The employer should reasonably explain its reasons for any refusal to provide information. Employers should aim to provide as much information as reasonable, particularly where the reason for the variation is related to the organisation's financial difficulties and the employer considers that they may need to rely on these financial difficulties to exempt them from their obligations (see section 3.iii.5).

¹² See the [2010 Act](#)

38. Failure to provide appropriate information to an employee/ representative or follow this process may be considered by an employment tribunal when assessing employer reasonableness. It may also strain industrial relations. There may also be legal obligations, for example, if there is a recognised trade union, not providing information could lead to a complaint to the Central Arbitration Committee (CAC) if the information was not disclosed as required or not confirmed in writing.¹³

2.iii Meaningful Consultation

2.iii.1 What is meaningful consultation?

39. Meaningful consultation should take place with the aim of reaching mutual agreement. Failing to consult meaningfully has significant risks in addition to failing to meet legal obligations. These risks include:

- legal claims and the associated costs and management time
- negative impact on organisation's reputation
- damage to trusting and positive relationships with an organisation's workforce or representative trade unions
- reduced workforce productivity
- potential for strikes or other industrial action
- losing valued employees

40. All parties should act in good faith with an aim of reaching an agreed outcome.

41. The employer should be as clear as is reasonable about their objectives and explain reasons for proposing contractual changes. They should genuinely consider any reasonable alternatives to making variations to contracts, for example, optimisation of processes, restructuring, flexible working arrangements etc. This would give another opportunity for averting dismissal and re-engagement that the employer may have overlooked.

42. Employers should consider the following principles of good practice in meaningful consultation to ensure that any eventual dismissal to make a variation is fair. Non-exhaustive examples of meaningful consultation include:

- consult a relevant trade union
- consult any other person(s) representing the employees
- offer anything to the employee in return to agreeing to the variation, for example, increased annual leave allowance in response to reduced pay

¹³ Section 183 of the 1992 Act

- negotiate in good faith with employees, their representatives or relevant trade unions, by offering suggestions and solutions that the employee could benefit from if they were to agree to the variation

43. All parties should participate in such consultations and negotiations with the aim of coming to a mutual agreement.

44. All parties could contact Acas for impartial advice on employment rights and obligations. Acas has expertise in helping parties to maintain good industrial relations and resolving disputes where they arise. Contact details for Acas are available on the Acas website.¹⁴

2.iii.2 When meaningful consultation should take place

45. Meaningful consultation should take place following the information-sharing process (see section 2.ii) and should start at a formative stage when proposals can still be influenced or withdrawn.

46. A consultation is meaningful when parties engage with each other openly and in good faith. All parties should genuinely consider all the reasonable points that are put forward.

47. Employers should continue to consult for as long as reasonable in good faith, with an aim to reaching an agreed outcome. A longer consultation period is likely to allow for reasonable and meaningful exploration of relevant information; the chance to ask questions and receive well-explained responses; more in-depth discussion; and a deeper understanding of the rationale for the proposals and the nature and intensity of any objections. This will facilitate a more thorough exploration of reasonable alternative options and increase the likelihood of an agreed outcome being reached.

2.iii.3 Collective Bargaining and Representation

48. Where there is a recognised trade union(s), collective bargaining should be the primary option for discussing and seeking agreement on contractual changes.

49. Unless the agreed collective bargaining procedure has first been exhausted, the employer should not make a direct offer to employees, if that offer relates to a matter falling within the scope of the collective bargaining agreement.¹⁵

50. Where there is not a recognised trade union, elected employee representatives (if any), chosen to represent employees in consultations on the employer's proposals, and individual employees should be consulted and involved in the consultation process.¹⁶

¹⁴ See ACAS website: www.acas.org.uk

¹⁵ Section 145B of the 1992 Act

¹⁶ Section 14 of The Information and Consultation of Employees Regulations 2004

2.iv. Reasonableness and Conduct

2.iv.1 Employer Reasonableness

51. An employer should act reasonably when discussing changes to employment contracts. Employers should take an approach that is proportionate, evidence-based and directed towards reaching an agreed outcome. Where employers consider a change is needed, they may decide to try to reasonably change those terms through existing variation clauses in a contract, or by other means. Employers should only consider dismissal and re-engagement where mutual agreement cannot be reached and there are no reasonable alternatives.

52. In this context, acting reasonably will depend on the specific circumstances but generally will mean that employers should promptly provide sufficient information (see section 2.ii) to employees and representatives to allow informed engagement, meaningful consultation, and allow adequate time for discussion and negotiation.

53. An employer should not act unreasonably when proposing and implementing changes to contracts. In this context acting unreasonably would include the following non-exhaustive list: where outcomes are predetermined, consultation is treated as a formality, or dismissal and re-engagement is used where agreement could reasonably have been reached by other means.

2.iv.2 Employee Reasonableness

54. Employees should act reasonably when discussing changes to employment contracts. Employees should engage in the process in good faith and with a genuine willingness to consider the employer's case. Employees should participate constructively in consultation, considering information provided by the employer, putting forward alternative proposals where appropriate, and responding within reasonable timeframes.

55. Employees should not act unreasonably when engaging in proposals of contractual changes. Acting unreasonably would include where an employee fails to engage meaningfully with the proposals or refuses to discuss reasonable alternatives. An employee should not be considered acting unreasonably solely because they have rejected a proposed change. However, a refusal to discuss a proposal or a reasonable alternative within a reasonable timeframe may be unreasonable.

2.v If changes are agreed

56. If changes are agreed, the employer should communicate the changes to affected employees in writing, setting out clearly when the changes will come into effect, giving as much notice as reasonably practicable.

57. If there are changes to terms of employment, the employer must put those changes in writing no later than month after the new terms take effect.¹⁷

58. Employers should formally invite feedback about the changes as employees adapt to them and consider what might be done to mitigate any negative impacts on employees. This is likely to reduce the likelihood of the revival of conflict over the new terms.

¹⁷ Section 4 in the 1996 Act

3. Where all reasonable efforts to reach agreement have been made without an agreed outcome

59. This section considers scenarios where agreement has not been reached on proposed changes to terms of employment. It considers the tests that will be applied in determining whether a dismissal to make a contract change is unfair.

3.i Re-examination by the employer

60. Once it has become clear to the employer that employees and/or their representatives do not agree to some or all the contractual changes which it has proposed, but the employer considers that it still needs to implement the changes, the employer should re-examine its proposals. As part of this re-examination, the employer should consider any feedback it has received from employees and/or their representatives so far.

61. Factors which an employer should consider include, but are not necessarily limited to:

- the objectives which it is seeking to achieve
- the negative consequences of imposing the proposed changes – these could include:
 - risks to the employer's reputation
 - damage to relationships with its workforce or representative trade unions
 - the potential for strikes or other industrial action
 - the risk of losing valued employees
 - the risk of facing legal claims, and the associated costs and management time
- the proportionality of the proposed changes compared to these risks and the impact on employees
- whether its proposals could have a greater impact on some employees than others – this might be on the basis that they share a protected characteristic¹⁸
- the likelihood of the proposed changes succeeding in achieving their goal
- whether there are any reasonable alternative ways of achieving the employer's objectives

¹⁸ Section 4 in the 2010 Act

- whether there could be anything offered to the employee by the employer in return for agreeing to the variation, apart from when collective bargaining is ongoing, for example, increased annual leave allowance in response to reduced pay

62. Re-examination may highlight opportunities for further negotiation and/ or alternatives to changes to employment contract terms.

63. The employer should return to this re-examination in response to a change in circumstances, or results of consultations with employees and/or their representatives.

64. The employer might commit to reviewing the changes at a fixed point in the future, to assess their cumulative impact, perhaps with a view to reconsidering whether they still consider the changes to be necessary.

3.ii Unilateral imposition of new terms

65. Where all reasonable efforts to reach an agreed outcome with employees and/or their representatives on the proposed terms have been made without an agreed outcome, employers should give due consideration to whether the change is necessary for the organisation. Where employers consider a change is needed, they may decide to try to impose those terms through existing variation clauses in a contract, or by other means. Or, where the relevant requirements are met, an employer can still consider making redundancies if the role is no longer needed.

66. There may be an existing clause which gives an employer a power to impose contractual changes. Employers should consider the scope of that variation clause, and the legal limitations of using it.

67. If there is no term in the employee's contract which allows unilateral imposition of the changes proposed by the employer, an employer who decides to impose its changes anyway will usually be breaching the employee's contract. This approach is likely to have damaging effects on industrial relations, productivity and other negative workplace outcomes where agreement on contract changes cannot be reached.

68. There are significant legal risks to the employer imposing changes unilaterally, especially where the contract does not clearly and unambiguously provide for this. An employee might, in addition to the protections in the 2025 Act, for example:

- resign and claim constructive unfair dismissal
- refuse to work under the new terms
- continue working, but under protest, potentially also bringing claims such as for breach of contract and/or any shortfall in wages
- work under the new terms, but claim for unfair dismissal

- bring a discrimination claim, if, for example, they consider that they have been treated less favourably based on their protected characteristic(s) under the Equality Act 2010¹⁹

69. There are also significant reputational risks to the employer imposing changes unilaterally. While employees should make it clear if they are working under protest and ideally put it in writing, it can sometimes be unclear whether the employee's continued working amounts to an implied acceptance of the new terms, or whether the employee is working under protest. This can create legal uncertainty for both parties.

70. It is good practice for an employee who decides to continue to work, but under protest, to make it clear to the employer, either directly or through their representative, that this is what they are doing, and set out the terms that they do not agree to. It is good practice for the employee to put their objections in writing, either directly or through their representatives.

71. Employers should formally invite feedback about the changes as employees adapt to them and consider what might be done to mitigate any negative impacts on employees. This is likely to reduce the likelihood of the revival of conflict over the new terms.

3.iii Dismissal and re-engagement

72. Where an employer seeks to make a change that is not covered by a relevant and legitimate variation clause in an employment contract, and where all reasonable efforts to reach agreement following the guidance in this Code have been made without an agreed outcome, it may be legally permissible in narrow circumstances to consider dismissing the employee and reengaging them on the new terms.

73. Employers should be aware that, in addition to the other risks involved in unilateral contract variations (see section 3.ii), there are strong protections for dismissal and reengagement in the 2025 Act and employees may be entitled to claim automatic unfair dismissal (see section 3.iii.2) depending on the terms which the employer seeks to change. The employer should treat this option as a last resort.

74. In addition to the strong protections against dismissal and re-engagement in the 2025 Act, an employer may be responsible for a discrimination claim for unlawful treatment based on their protected characteristics.²⁰ Employers and employee representatives, if any, should be mindful of employees who are absent such as those on sick leave or maternity leave, as well as employees with protected characteristics. In such cases, additional consultation measures should be put in place.

75. An employer opting for dismissal and re-engagement should give reasonable notice of the dismissal and must comply with whichever is the greater of the employee's contractual or statutory notice period as a minimum. The employer should also consider whether employees might benefit from more time in order to decide which might better enable them to accommodate the changes. For example, where the changes include changes to working hours, some

¹⁹ See the [2010 Act](#)

²⁰ See the [2010 Act](#)

employees may need to adapt their childcare arrangements or plan new journeys to work. Where an employee is entitled to receive payment in lieu of notice (PILON), the employee must stop work immediately but must still get paid for their notice period.

3.iii.1 Raising the prospect of dismissal and re-engagement

76. If an agreed outcome cannot be reached, or at any point, the employer intends to opt for dismissal and re-engagement, it is important that the employer communicate this with individual employees, relevant elected trade unions, and employee representatives without unreasonable delay (refer to sections on information-sharing, 2.ii, and meaningful consultation, 2.iii).

77. While Acas may be contacted by any party wherever this Code applies, the employer should contact Acas for advice before raising the prospect of dismissal and re-engagement. Contact details for Acas are available on the Acas website.²¹ There may also be requirements to notify the Secretary of State if collective redundancy is contemplated.

78. Even where an employer does not intend to dismiss and re-engage under a new contract, but rather to impose changes to the employee's existing contract, they should be aware that sometimes imposed changes can so significantly change the contract that it may amount to constructive dismissal and offer of a new contract. In that event, there may be legal risk, and legal options for the employee, that the employer hadn't envisaged.

79. However, raising the prospect of dismissal can be detrimental to attempts to reach an agreed outcome, so the employer should not do so unreasonably early and without fully considering the consequences of using dismissal and re-engagement. In addition, a threat of dismissal should not be used as a negotiating tactic to put undue pressure on employees in circumstances where the employer is not, in fact, envisaging dismissal as a means of achieving its objectives.

80. When raising the prospect of dismissal and re-engagement, employers should consider the reasonable timeline for information-sharing and meaningful consultation, as well as for re-engaging the employee on new contract terms.

81. Whether or not the right to be accompanied arises, it is good practice to allow employees to be accompanied at a formal meeting.

82. It is good practice for the employer to set out the new terms of employment in writing (see section 2.ii.5). If a change affects only one employee, the employer must write to them directly; if the change affects a number of employees, the employer may be able to write to the whole group at the same time. The employer must also comply with its obligations in respect of the written statement of employment particulars. The employer should ensure that the only terms which are changed are those which have been subject to the information-sharing and consultation process and should not use this as an opportunity to make any further changes.

²¹ See ACAS website: www.acas.org.uk

83. Employers should formally invite feedback about the dismissal and re-engagement process and should consider what might be done to mitigate any negative impacts on employees. This is likely to reduce the likelihood of the revival of conflict over the new terms.

3.iii.2 Restrictions on dismissal and re-engagement – automatically unfair dismissal

84. The law provides that it is usually automatically unfair to dismiss and re-engage or replace an employee (unless the limited financial difficulty exemption applies) to make changes to one or more core terms in their employment contract (protected as 'restricted variations').²² These include:

- Reductions to pay
 - A reduction of or removal to an amount that the employment contract says the employee should be paid
- Where pay is linked to measures of work done (such as targets), changes to those measures/targets
 - A change in contractual commitments to performance related pay, whether this results in an increase or reduction in pay
- Changes to pensions
 - Any changes to contractual term or condition in relation to pensions or pension schemes
- Changes to total hours
 - Any change to the contract to alter the total number of hours that an employee is required to work under the contract. This includes either an increase or a reduction in the total number of contracted hours.
- Reduction to leave entitlement
 - A reduction in the time off which an employee is entitled to take in their contract of employment
- Changes to shift patterns which are specified in regulations²³
- 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 change to add a variation clause to make one of the changes listed above. Note that in common with the other provisions here, it will only be an automatic unfair dismissal where an employee is dismissed to make this change to an employment contract.

²² Section 104I (5) of the 2025 Act

²³ Regulations will be made in Autumn 2026 and in force on 1 Jan 2027 (see Section 104I (5-6) of the 2025 Act) (note that this reference will be updated in the following Code with reference to the regulations as introduced in parliament)

85. A dismissal in order to make one or more of these restricted variations to an employment contract will be automatically unfair unless the employer meets the requirements of the financial difficulties exemption (see section 3.iii.5) and has no reasonable alternative. If an employer is considering making a package of changes to an employment contract and at least one is a restricted variation, then automatic unfair dismissal protections apply.

86. It will be an automatically unfair dismissal whether an employer intends to re-engage the original employee on a varied contract of employment (dismissal and re-engagement); to hire another person on a varied contract of employment (fire and replace²⁴); or if they have fired the employee for failing to agree to the restricted variation.²⁵ However, to be automatically unfair, the principal reason for dismissal must have been either:

- the employer sought to make one or more restricted variations, which the employee did not agree to.²⁶
- to allow the employer to rehire someone (which can include the original employee) on the varied contract to carry out the same duties the employee was carrying out before the dismissal²⁷

87. It will be for an employment tribunal to determine what it considers having been the principal reason for the dismissal. Therefore, it is possible for the employment tribunal to find the principal reason for the dismissal was another reason despite there being a restricted variation present. For example, where the employer's organisation has had a change in circumstances which meets the definition of redundancy²⁸ and that is the reason the role can no longer exist under the same terms of the existing contract, it is possible for the employment tribunal to determine that redundancy is the principal reason for a dismissal if the facts demonstrate this rather than an automatic unfair dismissal.²⁹

88. The employer might commit to reviewing the changes at a fixed point in the future, to assess their cumulative impact. If the employer is implementing more than one change, they might also wish to consider introducing them on a phased basis.

3.iii.3 Restrictions on dismissal and re-engagement: Non-Restricted Variations

89. Dismissals related to unrestricted variations to make changes to contracts for non-core terms—such as location or job role—will not be automatically unfair but are subject to enhanced protections for ordinary unfair dismissal.³⁰ As this is an ordinary unfair dismissal, it is subject to the qualifying period,³¹ which means that the employee needs to have worked for the employee

²⁴ Section 104I(3) of the 2025 Act

²⁵ Section 104I(2) of the 2025 Act

²⁶ Section 104I(2) of the 2025 Act

²⁷ Section 104I(3) of the 2025 Act

²⁸ Section 139 of the 1996 Act

²⁹ Section 104I of the 2025 Act

³⁰ Section 104J of the 2025 Act

³¹ Section 108 of the 1999 Act

for the length of the qualifying period before they would be eligible to bring an unfair dismissal claim.

90. These enhanced ordinary unfair dismissal protections seek to ensure employers engage in reasonable information-sharing and meaningful consultation (see section 2.ii and 2.iii) with employees and their representatives when making changes. Therefore, subject to any applicable qualifying periods, for a dismissal related to dismissal and re-engagement to make non-restricted variations to be fair, the employer should have:

- a potentially fair reason for the variation
- acted reasonably in the circumstances in treating that reason as a sufficient reason for dismissal
- shared reasonable information with the employee, relevant trade union, and/ or any other person representing the interests of the employee that, at the time of the dismissal, had authority to receive information and to be consulted about the dismissal on the employee's behalf
- carried out any meaningful consultation with the employee, relevant trade union, and/ or any other person representing the interests of the employee that, at the time of the dismissal, had authority to receive information and to be consulted about the dismissal on the employee's behalf
- considered offering anything to the employee in return for agreeing to the variation, for example, any practical support to employees, such as relocation assistance, career coaching or counselling for emotional support.
- made exhaustive attempts to reach agreement on contractual changes
- found no reasonable alternative options after this process other than dismissal and re-engagement

91. Employers should still only consider dismissal and re-engagement to make non-restricted variations as a last resort. Where fire and re-hire is being used as a last resort, employers must demonstrate that a dismissal that was made to make a non-restricted variation was fair in all the circumstances in accordance with ordinary unfair dismissal law.

3.iii.4 Fire and replace

92. Fire and replace refers to situations where an employee is dismissed and the employer replaces them with another employee or non-employee to carry out substantially the same duties.

93. It will be an automatically unfair dismissal if an employee is dismissed in order to replace them with another employee with a varied contract of employment provided that the varied contract includes a restricted variation (see paragraph 86).³²

94. There are specific protections for employees who are fired and replaced with non-employees.³³ It will be an automatically unfair dismissal if an employee is dismissed in order to replace them with a non-employee, e.g. an agency worker, to carry out substantially the same work that the employee was carrying out before the dismissal. However, this will not include situations where the dismissal is wholly or mainly attributable to a cease or diminished need of activities for the employer's organisation.

95. The 2025 Act does not prevent employers from carrying out genuine redundancies where roles are no longer required.³⁴ The automatic unfair dismissal of replacing an employee with a non-employee does not apply where the dismissal is because there is (or is expected to be) a reduced or discontinued need for those activities to be carried out. An employer may reasonably decide to contract out a service or function that was previously done by its own employees. If the non-employees do not carry out substantially the same role, this will not be an automatic unfair dismissal.³⁵

96. However, where an employer continues to require substantially the same work to be done, labelling a dismissal as redundancy will not determine whether or not the automatic unfair dismissal protections in the 2025 Act apply. Employers should be clear and reasonable about the underlying reason for any proposed dismissal and should not use redundancy processes to pursue changes to terms and conditions that could not be agreed.

97. Where redundancy is genuinely proposed, employers should follow fair redundancy procedures, the details of which are beyond the scope of this Code. Where dismissal and re-engagement is *considered*, employers should be aware that there are limited circumstances where it will be lawful.³⁶

3.iii.5. Employer exemptions to restrictions on dismissal and re-engagement: Financial difficulties

98. Dismissal and re-engagement is intended to be used as a last resort and has been designed to be narrow, even where there are severe financial difficulties. There is a very limited exemption to the automatic unfair dismissal provisions where the organisation is in financial difficulties, and an employment contract change that is a restricted variation cannot be agreed and is imposed. Financial difficulties should not be used as a general justification for changing contractual terms, nor a general mechanism to manage financial pressures or improve competitiveness, nor to be used to put undue pressure on employees by threatening dismissal where it is not, in fact,

³² Section 104I of the 2025 Act

³³ Section 104K of the 2025 Act

³⁴ Section 104K(2A) of the 2025 Act

³⁵ Section 104K of the 2025 Act

³⁶ Section 104K of the 2025 Act

envisaged. There are different rules and considerations depending on whether the employer is private sector, public sector or local authority.

3.iii.5.1 Can an employer ever dismiss an employee to either make a restricted variation or replace them with a non-employee?

99. If an employer has followed the steps in this Code and still needs to either dismiss the employee to make a restricted variation or replace the employee with a non-employee,³⁷ they may be able to do so without it being an automatically unfair dismissal, providing they can meet the criteria of the financial difficulties exemption.³⁸

100. To be able to meet the financial difficulties exemption, an employer must meet the relevant financial difficulties exemption (see sections 3.iii.5.2-4), and once the exemption is met, they must also show that the dismissal was fair in all the circumstances under ordinary unfair dismissal rules. Employers should consider the following steps outlined in this Code when dismissing employees to make restricted variations or replacements with non-employees:

- whether they have carried out any meaningful consultation with the employee
- whether they have carried out any meaningful consultation with a relevant trade union
- whether they have carried out any meaningful consultation with any other person representing the interests of the employee that, at the time of the dismissal, had authority to receive information and to be consulted about the dismissal on the employee's behalf
- if they have offered anything to the employee in return for agreeing to the variation, for example, any practical support it might offer to employees, such as relocation assistance, career coaching or counselling for emotional support.

3.5.ii.2 Private Sector – Financial Difficulties Exemption

101. For a private sector employer, they may be able to meet the narrow financial difficulties exemption if they can demonstrate the following:

- the reason for making the restricted variation or replacement with non-employees was to:
 - eliminate the financial difficulties (remove the financial pressures all together)
 - prevent the financial difficulties getting to the point where they would threaten the organisation
 - or
 - significantly reduce or significantly mitigate the effects of financial difficulties
 - and
- that those financial difficulties were affecting or very likely in the immediate future to affect the employer's ability to carry on their organisation as a going concern, where otherwise

³⁷ Section 104K(4-5) the 2025 Act

³⁸ Sections 104I and 104K of the 2025 Act

the organisation would be forced to conduct redundancies or the organisation would have to close, and

- in all the circumstances, the employer could not reasonably have avoided the need to either dismiss and re-engage an employee to make the restricted variation, or replace them with a non-employee

102. To be able to rely on the exemption employers should share sufficient reasonable evidence of (non-exhaustive list):

- **Information-sharing** (see section 2.ii): The employer should be able to share reasonable evidence to explain clearly (1) which restricted variation(s) it proposes, (2) how its financial difficulties affect, or are likely in the immediate future to affect, the viability of the organisation, and (3) why the restricted variation is necessary to eliminate, prevent, significantly reduce, or significantly mitigate the effects of those difficulties.
- **Meaningful consultation** (see section 2.iii): The employer should be able to demonstrate that meaningful consultation has taken place with the aim of reaching mutual agreement.
- **Imminence of financial difficulties:** Employers should evidence the imminence of their financial difficulties; they should attempt to establish that the financial difficulties were affecting or would likely in the immediate future affect their ability to carry on as a going concern. This evidence should go beyond general financial concerns that might be minor or temporary.
- **Severity and organisational scope.** Financial difficulties should be assessed at the appropriate organisational level. The employer should share reasonable evidence about whether the difficulty affects the organisation as a whole or only a part of it, and why any localised difficulties cannot reasonably be addressed without imposing a restricted variation (for example, by internal reallocation or other restructuring measures).
- **No reasonable alternative.** The employer should be able to show what other reasonable options were explored and why they would not address the difficulties in time or sufficiently. This could refer to a range of response options, including but not limited to: operational (non-labour) cost reductions; recruitment freezes and natural attrition; revenue diversification and closing loss-making activities; workforce adjustments by agreement (non-contractual); and workforce adjustments by agreement (contractual). Redundancies and dismissal and re-engagement should remain a last resort.

3.iii.5.3 Public sector (not including local authorities) financial difficulties exemption

103. For public sector employers, the test sets a similarly narrow exemption that an employer may be able to meet if they can demonstrate the following:

- the reason for the restricted variation or replacement with non-employee was to eliminate, prevent, significantly reduce or significantly mitigate the effects of financial difficulties
- that those financial difficulties at the time of the dismissal were affecting or very likely in the immediate future to affect the employer's ability to carry out the statutory functions of their organisation
- in all the circumstances the employer could not reasonably have avoided the need to make the restricted variation or replace the employee. In considering whether a public sector employer could have reasonably avoided the need to make the variation, a tribunal will apply the same principles as would be applied by a court in a judicial review.

104. The differences in this test account for the differences in which a public sector employer manages their finances, and to allow the tribunal to interrogate those decisions in a way courts ordinarily examine public decision-making using judicial review principles i.e. was the decision so unreasonable that no reasonable person would have made it. This should not change how the employment tribunal would otherwise process an unfair dismissal claim or any award result from such claim. The public sector financial difficulties exemption is intended to set an equivalently high bar for the use of dismissal and re-engagement in the public sector as in the private sector.

105. Public sector employers should only consider dismissal and re-engagement for restricted variations or replacements with non-employees where it will mitigate financial difficulties and where they meet the financial difficulties exemption. To be able to rely on the exemption, employers should share sufficient reasonable evidence of (non-exhaustive list):

- **Information-sharing** (see section 2.ii): The employer should be able to share reasonable evidence to explain clearly (1) which restricted variation(s) it proposes, (2) how its financial difficulties affect, or are likely in the immediate future to affect, their ability to carry out their statutory functions, and (3) why the restricted variation is necessary to eliminate, prevent, significantly reduce, or significantly mitigate the effects of those difficulties.
- **Meaningful consultation** (see section 2.iii): The employer should be able to demonstrate that meaningful consultation has taken place with the aim of reaching mutual agreement.
- **Imminence of financial difficulties:** Employers should evidence the imminence of their financial difficulties; they should attempt to establish that the financial difficulties were affecting or would likely in the immediate future affect their ability to carry out their statutory functions. This evidence should go beyond general financial concerns that might be minor or temporary.
- **Severity and organisational scope.** Financial difficulties should be assessed at the appropriate organisational level. The employer should share reasonable evidence about whether the difficulty affects the organisation as a whole or only a part of it, and why any localised difficulties cannot reasonably be addressed without imposing a restricted variation (for example, by internal reallocation or other restructuring measures).

- **No reasonable alternative.** The employer should be able to show what other reasonable options were explored and why they would not address the difficulties in time or sufficiently. This could refer to a range of response options, including but not limited to: operational (non-labour) cost reductions; recruitment freezes and natural attrition; workforce adjustments by agreement (non-contractual); and workforce adjustments by agreement (contractual). Redundancies and dismissal and re-engagement should remain a last resort.

3.iii.5.4 Applying the financial difficulties exemption (local authority employers)

106. For local authorities, the test sets a similarly narrow exemption. A local authority (different provisions need to be satisfied depending on Scottish, English or Welsh) should only consider dismissal and re-engagement to make a restricted variation or for replacements with non-employees where they can demonstrate, with evidence, that they meet financial difficulties exemption. To be able to rely on the exemption, employers should share sufficient reasonable evidence of (non-exhaustive list):

- At the time of the dismissal a relevant intervention direction was in force
- The relevant intervention direction is in force because the authority is undergoing financial difficulties and contains conditions on financial management or financial governance
- The reason for the restricted variation or replacement with non-employee was necessary to eliminate, significantly reduce, or significantly mitigate the effect of the financial difficulties mentioned in the relevant intervention direction
- In all the circumstances the authority could not reasonably have avoided the need to make the restricted variation or replacement with non-employee. In considering whether a local authority employer could have reasonably avoided the need to make the variation, a tribunal will apply the same principles as would be applied by a court in a judicial review.

107. The differences in this test are to account for the differences in which a local authority employer has to manage its finances, and to allow the tribunal to interrogate those decisions in a way courts ordinarily examine public decision-making using judicial review principles i.e. was the decision so unreasonable that no reasonable person would have made it. This should not change how the employment tribunal would otherwise process an unfair dismissal claim or any award result from such claim. The local authorities' financial difficulties exemption is intended to set an equivalently high bar for the use of dismissal and re-engagement for local authorities as for the public and private sector.

108. Local Authority employers should only consider dismissal and re-engagement for restricted variations or replacements with non-employees where it will mitigate financial difficulties and where they can demonstrate, with evidence, that they meet the financial difficulties exemption. To be able to rely on the exemption local authority employers should share sufficient reasonable evidence of (non-exhaustive list):

- **Identify the relevant intervention direction** relied on, confirm it was in force at the time of dismissal, and record the parts of the direction that link the intervention to financial difficulties and that set requirements on financial management/ governance.
- **Define the restricted variation.** Be clear which core term(s) would change, what the proposed end state is, and how the change is targeted at the financial difficulties identified in the direction.
- **Explain rationale, severity and timing.** Set out how the financial difficulties referred to in the direction are affecting (or are likely in the near term to affect) the authority's financial position, and how the restricted variation would eliminate, significantly reduce, or significantly mitigate their effects. The case should be evidenced and should go beyond general statements about budget pressures.
- **Explore reasonable alternatives.** Explore other reasonable options to avoid dismissal and re-engagement and explain why they would not avoid the need for the restricted variation. The authority should be clear whether the difficulty is authority-wide or confined to particular services, and why it could not reasonably be addressed without the restricted variation. This could refer to a range of response options including but not limited to operational (non-labour) cost reductions; recruitment freezes and natural attrition; workforce adjustments by agreement (non-contractual); and workforce adjustments by agreement (contractual). Redundancies and dismissal and re-engagement should remain a last resort.

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