



Department for
Business, Innovation,
Science and Trade



UK Government

Government Response to:

Make Work Pay: Fire and Rehire- Changes to Expenses, Benefits and Shift Patterns

Publication Date: 22 October 2026

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns



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1. Introduction

The government is clear in its ambition to build an economy that works for both working people and businesses, grounded in the principles of security, respect and opportunity. As set out in the Plan to Make Work Pay, strengthening employment rights and modernising the legislative framework is central to delivering sustainable economic growth and raising living standards.

Through the Employment Rights Act 2025 (“the 2025 Act”), the government is bringing employment protections into line with the realities of the modern work practices. This includes addressing practices which risk undermining job security, fair competition, and the quality of working life. By increasing security in employment and ending one-sided flexibility, the government intends to reduce the costs associated with staff turnover, improve retention of skilled workers, and support productivity across the economy.

The government’s approach recognises that strong employment protections and a thriving business environment are not in tension, but mutually reinforcing: a stable, secure workforce supports business growth, while fair competition ensures that responsible employers are not undercut by those engaging in poor practice.

Within this context, the government has taken action to address the practice of dismissal and re-engagement, commonly referred to as “fire and rehire”. The threat of fire and rehire can exert undue pressure on employees to accept less favourable conditions. Employers benefit from the one-sided flexibility that comes with being able to make unilateral changes to an employment contract via fire and rehire, without any equivalent mechanism available to employees. The government is clear that such practices have no place in a modern workplace. At the same time, it recognises businesses need to adapt to changing economic conditions, evolving technologies, and shifting patterns of demand.

The consultation on changes to expenses, benefits in kind, and shift patterns was launched to support the implementation of the new protections against fire and rehire in the 2025 Act. While some core contractual terms are protected as ‘restricted variations’ and may lead to liability for automatic unfair dismissal, all dismissals made in order to make a change to employment contracts (including ‘unrestricted variations’) are subject to new requirements in the Act, giving new protections to employees.

The Act provides for further detail to be determined through secondary legislation, specifically in relation to expenses and benefits in kind, and to shift patterns. This consultation was undertaken to gather evidence and views from businesses, trade unions, workers, and other

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

stakeholders on how these protections should operate in practice, including the appropriate boundary between liability for automatic unfair dismissal and operational flexibility.

In approaching these questions, the government has sought to strike the right balance between strengthening protections for employees and ensuring that the regulatory framework remains proportionate and workable for everyone.

The government's reforms are designed to create a level playing field in which responsible employers are supported, rather than disadvantaged, and where constructive engagement between employers, workers, and trade unions is encouraged. That is why the reforms include a requirement for tribunals to consider factors including whether employees and trade unions have been consulted on a contract change when determining if a dismissal is fair or unfair, including where a dismissal has been made to make an unrestricted variation. By ensuring that changes to employment contracts are made through fair processes the framework aims to promote better industrial relations.

The plan to Make Work Pay was developed through close engagement with business and trade unions, and this consultation was conducted with that same spirit of partnership. The government is very grateful to all respondents to the consultation for their considered and helpful responses. Responses have provided valuable insight into how the new fire and rehire protections should be implemented, and how the framework can best support fair, modern, and productive employment relationships. This document sets out a summary of the feedback received in the consultation, the government's response and next steps. A list of the questions asked in the consultation and a further breakdown of responses are included in Annex A.

2. Conducting the Consultation

The consultation ran from 4 February to 1 April 2026 (inclusive). The consultation received 121 responses from a range of stakeholders as set out below in Table One. The online submission portal saw a significant number of responses that were blank with no identifying data or completed with random text. These responses have been checked for relevant information, and where there was no response provided, discounted from the total of completed responses.

During the consultation period the Department for Business, Innovation, Science and Trade also engaged with consultation stakeholders through roundtables, virtual meetings, and email.

Stakeholder category	Number of responses
An academic	0 (0%)
An employer	53 (44%)
An employee, worker or individual	33 (27%)
A legal representative	4 (3%)
A business representative organisation or trade body	18 (15%)
A trade union or staff association	9 (7%)
A voluntary sector organisation	2 (2%)
Other (please expand)	2 (2%)
Prefer not to say	0 (0%)
Total responses	121

Table One – Breakdown of Responses

Further detail on the methods of analysis used in is found in Annex A.

3. Summary of Question Responses and Government Response

In this section we review the key themes identified in consultation submissions, provide the government's response and set out the next steps to be taken.

Through a combination of extensive stakeholder engagement and the responses to the consultation, we received a spectrum of evidence arguing both for and against the government's proposals. Due to the breadth of questions asked and the detail of responses received, we provide a high-level overview of responses in this section. It does not attempt to capture every point made in submissions to the consultation; further summaries of responses to individual consultation questions are provided in Annex A.

3.1 Expenses and Benefits in Kind

Overview of responses to the consultation

Employers and business representative organisations generally supported removing expenses and benefits in kind from the scope of the restricted variation, while trade unions and the majority of employee respondents supported including them. Many unions argued that all expenses and benefits should be protected, which would go beyond the options in the consultation.

Respondents expressed mixed views on the importance of contractual expenses and benefits in the context of the government's proposals. Some stressed that these have a different character from core pay, as expenses are usually reimbursements and benefits are often discretionary or secondary. They noted that expenses and benefits are often not included in contracts or are subject to variation clauses and therefore outside the scope of any fire and rehire protections, though respondents thought some benefits in kind are sometimes included in employment contracts. Other respondents said certain expenses are necessary to stay in work and that some benefits can have a strong impact on finances and wellbeing.

Respondents also expressed mixed views on the impact of including these terms as in scope of the restricted variation. Those in favour of inclusion said reducing any expenses or benefits could harm employees, and that partial protection could create uncertainty and more disputes. By contrast, employers and business groups stressed the need for flexibility to respond to

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

changing costs and business needs. They said restricting changes could lead to a two-tier workforce, affect industrial relations, and reduce employers' ability to manage costs. Some warned this could increase pressure to consider redundancies.

Many respondents also said that existing legal protections already provide safeguards, and that extending scope could add complexity and increase disputes.

Further detailed summaries are included in Annex A.

Government response

The government has carefully considered the evidence provided through the consultation and wider stakeholder engagement. On balance, the government has concluded that including certain expenses and benefits in kind within the scope of restricted variations represents a proportionate approach.

The expenses and benefits to be included in scope of the restricted variations are certain types of travel expenses (including mileage), accommodation expenses and accommodation as a benefit in kind. Changes to share schemes will not be in scope of the restricted variation. This closely aligns with Option 2 of the consultation document. This means that it would be automatically unfair to dismiss someone in order to vary a contractual term for sums payable in respect of travel expenses, accommodation expenses or accommodation as a benefit in kind.

In reaching this position, we have taken into account consultation responses which indicated that expenses and benefits in kind are not always included in employment contracts and may (where they are included) be subject to variation clauses. Nonetheless, where they are included in contracts, these particular expenses and benefits may form an important part of the overall employment offer. Indeed, 34% of responses rated expenses and benefits in general as very important and a further 25% as important. Consultation responses indicated that they can form part of the collectively bargained contractual rewards package and can improve the quality of working life for many employees. As such, employees could be impacted significantly if they are unilaterally altered or removed.

We have considered views expressed in consultation responses regarding the specifics of these expenses and benefits. When asked if the government were minded to protect certain expenses and benefits, which expenses and benefits should be protected, over half of respondents agreed that each of mileage, other travel expenses, accommodation expenses and long term accommodation as a benefit in kind should be protected. Only 36% agreed that share schemes

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

should be protected and only 6% cited 'other' types of expenses and benefits that they thought should be considered for protection.

We have taken into account concerns raised that changes to long-term accommodation could lead to a serious breakdown in relationships between employers and workers and result in significant financial loss for employees. In forming this position, we have also considered the diversity of expenses and benefits provisions across different sectors. We note that mileage, other travel expenses and accommodation expenses were raised as forming part of contractual entitlements, at least in certain sectors, and recognise the importance of these in particular for employees who rely on travel and accommodation support, including lower-paid staff in sectors such as social care. We considered comments from respondents that share scheme participation can be provided in manner akin to pay, however, we have concluded that these should not be included in the restricted variation for sums payable. Respondents highlighted that schemes were often voluntary, and that the detail of schemes was often too complex to be set out within contractual terms and participation was therefore often governed by separate arrangements, which could not be covered by the scope of the restricted variations.

The government considers that on balance the certain expenses and benefits identified should be afforded the same protection as core contractual pay under the fire and rehire measure. Including these within restricted variations will provide an additional safeguard and reinforce expectations that employers engage constructively with employees and seek agreement to contractual changes.

For other types of expenses and benefits that will not be in scope of the restricted variations, employees may rely on a range of protections to protect these terms from being altered by their employer. Enhanced unfair dismissal protections in the 2025 Act and the statutory Code of Practice on Dismissal and Re-engagement will require employers to engage meaningfully with employees and their representatives when seeking to vary contractual terms, with the potential for an uplift in compensation where the Code is not followed. In addition, existing statutory protections, including those under National Minimum Wage legislation and the Equality Act 2010 ("the 2010 Act"), will continue to apply. Together, these measures provide an appropriate level of protection for changes to other types of expenses and benefits. While the government considers that certain types of expenses and benefits should be restricted variations, employers should be afforded operational flexibility to alter other types where needed, subject to the other protections for employees as noted above.

Indeed, the government recognises that flexibility in relation to non-pay elements of expenditure can support employers in managing financial pressures while protecting employment. Allowing employers to adjust some contractual expenses or benefits, where necessary and subject to appropriate consultation, may help to avoid redundancies and support long-term business

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

viability. The government therefore considers that this targeted approach of only certain types of expenses and benefits being in scope of the restricted variation strikes an appropriate and proportionate balance between strengthening employee protections and maintaining employer flexibility.

Where changes to expenses and benefits are required, and an employment contract provides flexibility for these changes to be made (e.g. by variation clauses), those variations to expenses and benefits can still be made even if they include the types of expenses and benefits that have been identified as restricted variations. Similarly, if expenses and benefits in kind are not included in a contract but are granted by an employer separately, e.g. through a separate expenses policy, providing these documents do not form part of the employment contract employers could make changes to these expenses and benefits policies without it being a restricted variation. In these cases where the expenses and benefits are not contractual terms in an employment contract the employer has not contractually committed to a fixed level of expenses and benefits, and a change to the amount of these expenses and benefits would not require a change to the employment contract. However, if specific expenses and benefits are included in the employment contract as contractual terms, and an employer seeks to either remove this reference, or to make a change to the level of entitlement that is set out in the contract, this will be a restricted variation.

This approach recognises the importance of providing meaningful protections for employees where contractual changes to expenses and benefits have particularly significant effects, while ensuring that employers retain the flexibility required to respond to reasonable operational demands. This was reflected in responses, with a number of unions agreeing that restricting a limited subset of expenses and benefits struck the right balance between employee protections and preserving necessary operational flexibility. Inclusion within restricted variations will ensure that the changes to expenses and benefits that are most likely to significantly impact employees are subject to automatic unfair dismissal protections.

3.2 Shift Patterns

Overview of responses to the consultation

Consultation responses reflected a clear split in views. Employers generally favoured excluding shift pattern changes from scope (consultation option 2), while most trade union respondents argued that other types of changes to shift patterns should be a restricted variation. Many argued that all shift pattern changes should be protected, which was not an option in the consultation and would go further than the government's proposals. In this context, fewer respondents

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

supported the targeted approach in the government's option 1, to limit the restricted variation to the specified changes of day/night or weekday/weekend transitions.

Respondents consistently stressed the diversity and complexity of shift arrangements. This supported opposing conclusions: some considered that the complex realities of shift arrangements made any regulation to make shift pattern changes a restricted variation impractical and likely to increase burdens and uncertainty, while others considered that the best way to avoid gaps and unfairness would be to include all shift changes in the restricted variation. There was also disagreement over whether flexible arrangements, such as rota-based or availability window systems, should be in scope.

Many respondents highlighted the impacts that changes to shift patterns can have on employees, as well as the impacts that the proposed regulations would have on business flexibility. Those advocating for shift pattern restrictions highlighted that any change to shift times could have significant impacts on those with caring responsibilities and other arrangements, with consequences for employees' finances and wellbeing. They noted that this could be true even for small changes to shift times within the day. They stressed the importance of consultation between employers and employees when making shift changes.

Other respondents emphasised the operational need for flexibility, particularly in 24-hour and demand-responsive sectors including manufacturing, care and emergency services employers. Sector specific impacts were also highlighted in a range of other sectors including hospitality and higher education. Respondents warned of impacts on productivity, costs and workforce management, as well as the potential for unintended consequences in the way employers may be incentivised to draw up employment contracts in future.

Many respondents pointed to existing protections in employment and equality law and the Code of Practice, which they considered provide more proportionate protections for vulnerable employees. Some respondents also highlighted the importance of monitoring the impacts of the fire and rehire reforms to understand where protections may need to be altered in future.

Further detailed summaries are included in Annex A.

Government Response

The government has carefully considered the consultation responses and stakeholder engagement regarding whether shift pattern changes should be included within the scope of restricted variations. We have taken account of the complexity and diversity of shift arrangements across sectors, as well as the potential impact shift changes can have on employees' financial security, caring responsibilities, and overall wellbeing. This includes cases

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

where an established shift is changed by only a small amount. We have also had due regard to the fact that, while the extent to which shifts are incorporated into contracts varies, responses to the consultation show that at least some contracts will include shift patterns in some way.

Having considered this evidence, the government has concluded that it is appropriate and proportionate to include in the restricted variation those shift pattern changes that were proposed in the government's preferred option in the consultation. This means that it would be automatically unfair to dismiss someone in order to make a change to contractual shift patterns which would mean:

- The employee is required to work in the nighttime where they were not required to before or is required to work in the daytime where they were not before.
- The employee is required to work on a weekend where they were not required to before or is required to work in on a weekday where they were not before.

We have considered views expressed in consultation responses regarding the specifics of these provisions. In regard to the definition of nighttime, while a range of alternative definitions of night time were proposed by some respondents, 64% of respondents agreed with the government's proposal to align the definition of nighttime working with the principal definition set out in the working time regulations. Therefore, for the purposes of these regulations, nighttime will be defined as the period from 11pm to 6am. We recognise that the purposes of these regulations and the working time regulations are different, and that some sectors may have different operating models, but this straightforward definition of night time drawn from the working time regulations gives clarity and certainty for employers and employees.

The government also considered views expressed on availability windows, where an employee may be scheduled to work within a certain range of hours specified in a contract. 54% of respondents considered that availability windows should not be in scope of the restricted variation, with 41% saying they should be. Some respondents thought extending restricted variation protections to availability windows could be difficult to define clearly across different contract models, and many considered that adding protections for availability windows would be overly restrictive, including emergency services and care providers. The government will therefore not include availability windows in scope of the restricted variation for shift pattern changes. The restricted variation will be limited to changes to the period when employees are scheduled to work in a contract.

This approach recognises the importance of providing meaningful protections for employees where contractual changes to shift patterns have particularly significant effects, while ensuring that employers retain the flexibility required to respond to reasonable operational demands. This was reflected in responses, with a number of employers agreeing that the proposed limited shift changes struck the right balance between employee protections and preserving necessary

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

operational flexibility. Inclusion within restricted variations will ensure that the most extreme changes to agreed working patterns are subject to enhanced safeguards under the fire and rehire framework.

In reaching this position, the government has taken into account the existing framework of protections available to employees, including requirements under the Working Time Regulations, the 2010 Act and other provisions of the 2025 Act. While these measures provide an important baseline, consultation responses indicated that they may not always sufficiently mitigate the effects of unilateral shift changes. Including extreme shift pattern changes within restricted variations will therefore provide an additional safeguard, reinforcing expectations that employers engage constructively with employees and seek agreement before implementing changes.

For changes not amounting to the extreme shift changes in scope of the restricted variation, e.g. changes to push a shift back a few hours in the daytime, the new fire and rehire protections in the 2025 Act provide enhanced unfair dismissal protections. These require tribunals to consider factors including whether employees and trade unions have been consulted on a contract change when determining if a dismissal is fair or unfair, including where a dismissal has been made to make an unrestricted variation, such as a change to shift patterns that is not a restricted variation.

The government also intends to issue an updated Code of Practice on Dismissal and Reengagement that will set out best practice requirements including where employers should consult and give reasonable notice of changes to contracts. Failure to comply with the Code can lead to an uplift to the compensatory award by up to 25% in relevant unfair dismissal cases. In addition, the 2025 Act guarantees specific rights to reasonable notice of cancellation of or change to a shift (the 2025 Act section 2).

The government recognises concerns raised by respondents regarding the potential for unintended consequences, including increased complexity and the risk that misunderstandings may lead to disputes between employers and employees. We recognise that including the targeted list of shift changes outlined above has some hard edges that mean that some employees already working certain shifts may not be in scope of the new measure, and that some employers making only small changes will be in scope. However, we consider the approach strikes an appropriate balance between these considerations and the benefits that arise from clear and simple rules. We have taken into account calls in the consultation to keep the definition of relevant restricted shift pattern changes simple and clear.

Overall, the government considers that including appropriately defined shift pattern changes within restricted variations strikes the right balance between strengthening protections for

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

workers and maintaining labour market flexibility. This approach builds on the existing framework of employment protections, while responding to stakeholder concerns about the potential impact of significant changes to working patterns. It will support constructive engagement between employers and employees and help to ensure that contractual changes are made in a fair and transparent manner.

4. Next Steps

The government would like to thank all respondents for their submissions to this consultation, which we have considered carefully. Your input has been invaluable and has directly informed the details that will be set out in secondary legislation.

We will make regulations to:

- Exclude expenses and benefits in kind from the restricted variation of ‘a reduction of, or removal of an entitlement to, any sum payable to an employee in connection with the employment’, save for certain expenses and benefits in kind including travel expenses accommodation expenses and long term accommodation offered as a benefit in kind. This will mean that employees are protected from fire and rehire for changes to certain key expenses and benefits while preserving employers’ ability to make operational decisions related to other expenses and benefits as circumstances change.
- Make shift changes from day to night working (or vice versa), and weekday to weekend working (or vice versa) a restricted variation. This will mean that employees are protected from fire and rehire for the most extreme changes to shifts while preserving employers’ ability to make reasonable scheduling decisions across a workforce to respond to changing demands and conditions.

We intend to legislate when parliamentary time allows, with the aim for Regulations to come into force along with the 2025 Act’s fire and rehire protections in March 2027.

Overall, our approach will target protections at contract changes which are most likely to be the subject of fire and rehire, to eliminate the unscrupulous use of the practice while ensuring that these important new protections work for businesses, unions and employees and limit potential unintended consequences. Where necessary, the government will make use of powers in the Employment Rights Act to urgently legislate, including on restricted variations, if fire and rehire practices are prevalent in other areas. Likewise, we will actively monitor how the fire and rehire provisions operate in practice and consider further legislative measures in order to meet our commitment to end the scourges of fire and rehire and fire and replace, including, if necessary, interim injunctions and interim relief.

Employers should always consult with their employees when making any changes to terms and conditions. This is supported by the rules that are already in place, the new rules introduced in the 2025 Act, and the Code of Practice on dismissal and re-engagement.

To support compliance with the new fire and rehire protections, the government will update guidance on gov.uk. The government is also consulting on a new draft Code of Practice, so that that businesses, unions and other employee representatives have the opportunity to shape it in

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

order to best support both employers and employees. We encourage all stakeholders to provide their views. The government will carefully consider all feedback received before finalising the Code. The new Code of Practice will come into effect in Summer 2027.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

5. Contact Details

Email: fireandrehire@businessandtrade.gov.uk

Write to:

Fire and Rehire Policy, Employment Rights Directorate

Department for Business, Innovation, Science and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY
United Kingdom

6. Annex A – Summary of Responses

The consultation ran from the 4 February to 1 April 2026 (inclusive). The consultation received 121 responses from a range of stakeholders as set out below in Table One. The consultation questions were not compulsory for respondents to answer and, in some cases, questions allowed respondents to select multiple response options.

During the consultation period, the Department for Business, Innovation, Science and Trade also engaged with consultation stakeholders through roundtables, virtual meetings, and email.

The below provides a summary of the consultation responses received. It does not attempt to capture every point made in submissions to the consultation, nor does it cover comments on aspects of policy that fall outside the scope of the consultation. To note, the total responses in each table below will vary, partly due to some of the questions only being relevant to specific groups of respondents, and partly because some respondents left answers to the question blank.

6.1 About You

Table One – Breakdown of Responses by Stakeholder Category

Stakeholder category	Number of responses
An academic	0 (0%)
An employer	53 (44%)
An employee, worker or individual	33 (27%)
A legal representative	4 (3%)
A business representative organisation or trade body	18 (15%)
A trade union or staff association	9 (7%)
A voluntary sector organisation	2 (2%)
Other (please expand)	2 (2%)
Prefer not to say	0 (0%)
Total responses	121

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Table Two – Breakdown of Responses by Business Size

Business size	Number of responses
Micro (fewer than 10 workers)	3 (4%)
Small (11 to 15 workers)	7 (10%)
Medium (51 to 150 workers)	9 (13%)
Large (250+)	49 (73%)
Don't know	0 (0%)
Prefer not to say	1 (1%)
Not applicable	1 (1%)
Total responses	67

Note: The total number of responses in table two is higher than the number of respondents classified as an 'employer' in table one. This is because the question for table two was applicable more broadly: "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?"

Table Three – Breakdown of Responses by Region

Of the 121 respondents to the consultation, 101 (83%) responded to this question.

Respondents by region	Number of responses
All locations	10 (10%)
North-East	6 (6%)
North-West	11 (11%)
Yorkshire and the Humber	5 (5%)
East Midlands	6 (6%)
West Midlands	15 (15%)
East of England	8 (8%)
London	7 (7%)

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

South-East	18 (18%)
South-West	6 (6%)
Wales	4 (4%)
Scotland	3(3%)
Northern Ireland	0 (0%)
Don't know	2 (2%)
Prefer not to say	0 (0%)
Total responses	101

Table Four - Breakdown of Responses by Sector

Of the 121 respondents to the consultation, 101 (83%) responded to this question.

Respondents by sector	Number of responses
Across sectors	1 (1%)
Accommodation and food service activities	3 (3%)
Activities of households as employers; undifferentiated goods and services-producing activities of households for own use	0 (0%)
Administrative and support service activities	2 (2%)
Arts, entertainment and recreation	0 (0%)
Agriculture, forestry and fishing	2 (2%)
Construction	4 (4%)
Education	9 (9%)
Electricity, gas, steam and air conditioning supply	3 (3%)
Financial and insurance activities	0 (0%)
Human health and social work activities	11 (11%)
Information and communication	3 (3%)

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Manufacturing	6 (6%)
Mining and quarrying	0 (0%)
Production	2 (2%)
Professional, scientific and technical activities	4 (4%)
Public administration and defence; compulsory social security	10 (10%)
Real estate activities	0 (0%)
Services sector	7 (7%)
Transportation and storage	6 (6%)
Water supply; sewerage, waste management and remediation activities	0 (0%)
Wholesale and retail trade; repair of motor vehicles and motorcycles	4 (4%)
Other service activities	24 (24%)
Don't know	0 (0%)
Prefer not to say	0 (0%)
Total responses	101

6.2 Expenses and Benefits in Kind (Q1-Q13)

Question One: Which of the following options regarding expenses and benefits in kind protections do you agree with?

Of the 121 respondents to the consultation, 111 responded to this question (92%). The breakdown of responses can be found in the table below.

Table Five – Breakdown of Question 1

Option	Number of responses
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Government Response

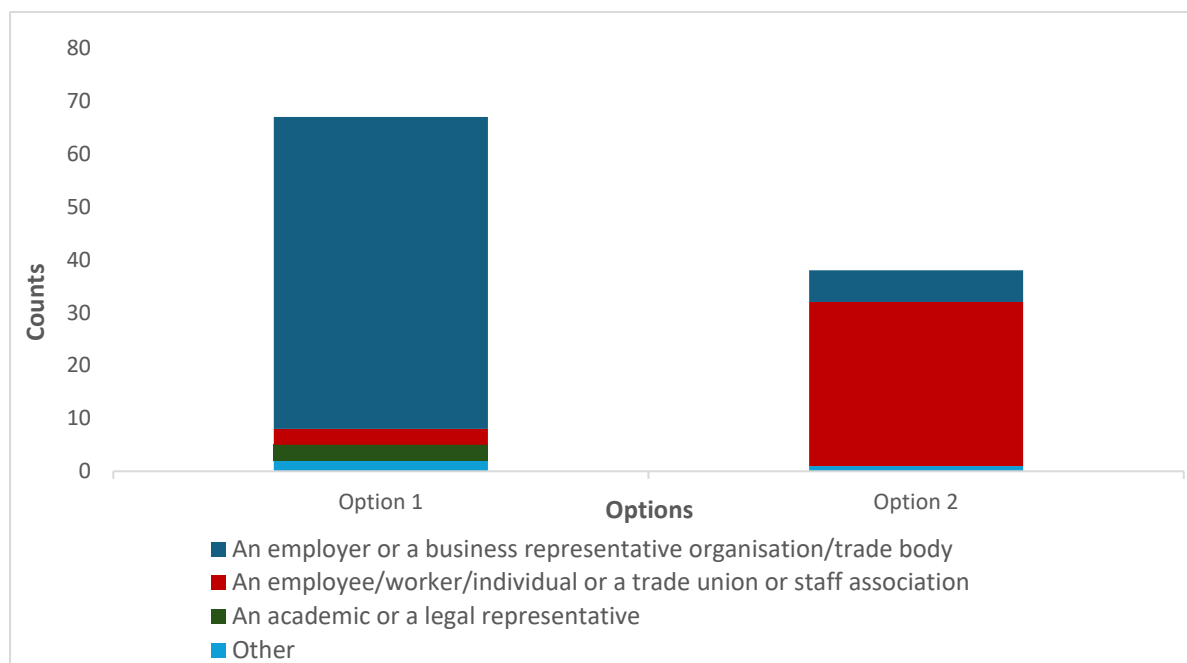
Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

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)	67 (60%)
<i>of which an employer or a business representative organisation/trade body</i>	59
<i>of which an employee/worker/individual or a trade union or staff association</i>	3
<i>of which an academic or a legal representative</i>	3
<i>of which other</i>	2
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)	38 (34%)
<i>of which an employer or a business representative organisation/trade body</i>	6
<i>of which an employee/worker/individual or a trade union or staff association</i>	31
<i>of which an academic or a legal representative</i>	0
<i>of which other</i>	1
None of the above	1 (1%)
Don't know	0 (0%)
Other (please expand below)	5 (5%)
Prefer not to say	0 (0%)
Total responses	111

Chart One – Count of responses to Question 1 which selected options 1 or 2, by respondent category

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns



Alt text for Chart 1: Response count for Question 1 visualised in a bar graph. Each bar contains a breakdown of respondent category (employer/business representative organisation/trade body, employee/worker/individual/trade union/staff association, academic or legal representative or other).

A majority of respondents (60%) supported excluding all expenses and benefits in kind from the scope of the restricted variation (option 1). This view was mainly held by business respondents and legal representatives. These respondents highlighted the need for employer flexibility to alter expenses and benefits provisions and noted that existing protections, such as unfair dismissal rules, already provide sufficient safeguards. They also noted that option 1 would be more consistent and clearer to implement for employers. Moreover, respondents highlighted that there is limited evidence to show that employers are routinely removing or reducing the level of expenses and benefits in kind through fire and rehire, and that there is minimal incentive for employers to reduce or remove expenses unreasonably as these are often tied to job requirements. Furthermore, respondents stated that there are clear operational differences between core pay and benefits in kind and consequently, these should be treated differently.

In contrast, 34% of respondents supported protecting some expenses and benefits in kind as restricted variations (option 2). This view was mainly held by employee and trade union respondents, who accounted for around 80% of respondents that supported option 2. Those who supported option 2 argued that stronger protections were needed to prevent harm to employees, noting that benefits in kind often form an integral part of overall reward packages, core terms and conditions of employment, and can improve the quality of working life for many employees. Respondents stated that employees should not be left financially worse off for carrying out their job; many of these terms

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

are collectively bargained and form part of the contractual reward package; and removing these can have major practical consequences. Furthermore, respondents stated that expenses and benefits in kind are not discretionary perks but are integral parts of employees' terms and conditions and can be important for them to be able to carry out their role.

Question Two: 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)

Of the 121 respondents to the consultation, 96 responded to this question (79%). The breakdown of responses can be found in the table below.

Table Six – Breakdown of Question 2

Option	Number of responses
Other travel expenses incurred in performance of duties, not including commuting	57 (59%)
Mileage	53 (55%)
Accommodation expenses incurred in performance of duties	52 (54%)
Long term accommodation offered as a benefit in kind	52 (54%)
Share scheme and ownership arrangements	35 (36%)
Other expenses and benefits in kind should be protected (please expand)	6 (6%)
Prefer not to say	27 (28%)
Don't know	18 (19%)
Total responses	96

A number of respondents disagreed with option 2 in Question 1 and used Question 2 to reiterate that all expenses and benefits should be excluded from the scope of the restricted variation, while others said that all expenses should be included. Of those that did respond to this question to indicate specific priority expenses and benefits for protection, around half of responses to this question supported including each of the specific items identified in the consultation: mileage, travel, and accommodation expenses.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Some respondents raised concerns about the impacts of changes to long-term accommodation in particular. These respondents argued that the unilateral removal of such benefits in kind without higher protections could lead to a serious breakdown in relationships between employers and workers and result in significant financial loss for employees. Other respondents suggested further expenses and benefits in kind that were not included in the proposed list, including subsistence expenses, expenses for Personal Protective Equipment, childcare benefits and healthcare benefits. However, the majority of respondents proposing a larger list of expenses were arguing for all expenses and benefits in kind to be included in the restricted variation.

A majority of respondents did not consider that share schemes should be within scope of a potential list of protections. Some respondents drew a distinction between different types of share schemes and argued that some may be given in lieu of pay.

Question Three: 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)?

Of the 121 respondents to the consultation, 76 responded to this question (63%). The breakdown of responses can be found in the table below.

Table Seven – Breakdown of Question 3

Option	Number of responses
Direct share allocations	15 (20%)
Participation in schemes which allow employees to buy shares from a company reserve	18 (24%)
None should be included in scope	28 (37%)
Don't know	2 (3%)
Other (please expand)	14 (18%)
Prefer not to say	1 (1%)
Total responses	76

Views on including share-related arrangements within scope were mixed. Over a third of respondents (37%) said that no types of share schemes should be included. This view was mainly driven by business respondents, who raised concerns about the potential loss of flexibility for

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

employers. A smaller percentage supported including specific arrangements, with 24% favouring participation in employee share-purchase schemes and 20% supporting the inclusion of direct share allocations.

Question Four: 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)?

Of the 121 respondents to the consultation, 111 responded to this question (92%). The breakdown of responses can be found in the table below.

Table Eight – Breakdown of Question 4

Option	Number of responses
Very common	10 (9%)
Common	12 (11%)
Occasionally	23 (21%)
Rarely	25 (23%)
Very rarely	15 (14%)
Never	5 (5%)
Don't know	19 (17%)
Other (please expand)	3 (3%)
Prefer not to say	0 (0%)
Total responses	111

A number of respondents said that these items are not commonly included in contracts, with around 40% reporting that they are rarely, very rarely, or never included. Many of these responses noted that expenses and benefits in kind are more commonly set out in policies rather than contracts or in contracts with variation clauses. These respondents noted that this would mean the inclusion of expenses and benefits in kind within scope of the restricted variation would be ineffective in preventing changes, as employers would rely on these variation clauses, or the non-contractual nature of the expenses, to make a variation.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Some respondents noted that where benefits in kind (such as long-term accommodation or health insurance provision) were included in contracts, they were still likely to be made subject to variation clauses.

However, union respondents stressed that expenses and benefits in kind often form part of collective agreements, and should be considered to be both part of the total reward package and of the terms and conditions of employment. Some respondents highlighted specific examples of expenses and benefits in kind that are often included in employment contracts, collective agreements, and the overall reward package offered to employees in certain sectors. In particular, some respondents stated that travel and mileage as well as accommodation expenses are examples that are included in employment contracts in some sectors and may be essential to undertaking work rather than an optional perk. Respondents working in sectors such as in health and social care emphasised that travel costs are often a necessary requirement of the role rather than an optional benefit. Some respondents also raised concerns that the unilateral removal of long-term accommodation arrangements could have significant financial consequences for employees and damage employment relations.

Question Five: 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)?

Of the 121 respondents to the consultation, 66 responded to this question (55%).

In response to Question 5, a high proportion of respondents stated that expenses and benefits in kind are not included in contract terms, reflecting their treatment outside formal contracts, for example through separate policies or discretionary arrangements. Of those respondents who did highlight specific expenses and benefits in kind in response to this question, a high proportion mentioned: vehicle or travel expenses including mileage, and accommodation expenses. In response to other questions, respondents noted that long term accommodation benefits can be included in contracts and some respondents noted that relocation expenses are sometimes included in contracts.

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

Of the 121 respondents to the consultation, 87 responded to this question (72%). The breakdown of responses can be found in the table below.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Table Nine – Breakdown of Question 6

Option	Number of responses
Very important	30 (34%)
Important	22 (25%)
Moderately important	20 (23%)
Slightly important	8 (9%)
Not important	2 (2%)
Don't know	0 (0%)
Other (please expand)	5 (6%)
Prefer not to say	1 (1%)
Total responses	87

Of the respondents who answered this question, a majority considered that where expenses and benefits in kind were included in contracts they were important, with 34% rating them as very important and a further 25% as important.

Some respondents noted that expenses and benefits in kind have advantages for recruitment and retention. These views were primarily raised by business respondents, who highlighted that employers were therefore unlikely to remove them lightly.

Respondents also emphasised the need to ensure that the costs of carrying out a role are adequately covered by the employer. Respondents warned that failure to cover essential costs could result in employers losing workers and negatively affecting focus and productivity.

Question Seven: 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?

Of the 121 respondents to the consultation, 93 responded to this question (77%). The breakdown of responses can be found in the table below.

Table Ten – Breakdown of Question 7

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Option	Number of responses
Very common	6 (6%)
Common	5 (5%)
Occasionally	13 (14%)
Rarely	13 (14%)
Very rarely	16 (17%)
Never	2 (2%)
Don't know	30 (32%)
Other (please expand)	8 (9%)
Prefer not to say	1 (1%)
Total responses	93

Many respondents said this issue was not relevant to their sector or organisation.

Among respondents who did have share schemes or similar arrangements, many noted that the detail of the scheme was too complex to be set out within contractual terms and participation was therefore governed by separate arrangements. Some business respondents also highlighted that practice varies depending on the sector and nature of the role, and a number of respondents noted that many share schemes will be voluntary.

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

Of the 121 respondents to the consultation, 65 responded to this question (54%). The breakdown of responses can be found in the table below.

Table Eleven – Breakdown of Question 8

Option	Number of responses
Very important	12 (18%)
Important	11 (17%)

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Moderately important	16 (25%)
Slightly important	7 (11%)
Not important	6 (9%)
Don't know	1 (2%)
Other (please expand)	10 (15%)
Prefer not to say	2 (3%)
Total responses	65

35% of responses to this question said that share schemes were either important or very important. A substantial proportion of respondents stated that the issue was not relevant to their sector or organisation. Others noted that it can be difficult to assess the importance of share schemes where these form part of employment contracts as the impact may vary significantly by sector.

Question Nine: 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.]

Of the 121 respondents to the consultation, 72 responded to this question (60%).

Many respondents felt that the overall impact would be limited, suggesting little change. Business respondents in particular indicated that excluding all expenses and benefits in kind would make little difference, as existing unfair dismissal protections would continue to apply and current arrangements already allow employers to make changes when required.

In contrast, trade union respondents raised concerns about negative impacts on employees. They highlighted that the removal of benefits in kind could reduce overall reward packages and lead to financial hardship for some workers. Particular concerns were raised for employees who rely on travel and accommodation support, including lower-paid staff in sectors such as social care, who were seen as especially vulnerable to economically detrimental changes to their terms and conditions.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Question Ten: 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)?

Of the 121 respondents to the consultation, 69 responded to this question (57%).

Many respondents, particularly businesses, said including these expenses in scope of the restricted variation would have a significant impact on employers. They raised concerns about reduced flexibility for organisations, including those in the public sector. Some suggested that this could increase operational and financial pressures, and in extreme cases risk the viability of organisations if changes could not be made in good time. Similarly, these respondents said that without the ability to make reasonable changes to reduce costs, some employers may be obliged to consider redundancies which they might not otherwise have considered.

With regard to expenses, respondents gave examples of businesses who may face unsustainable costs as a result of external shocks which increase the cost of travel or accommodation forcing a change in business practice; or businesses whose circumstances change after expanding into a new region or restructuring, where a previously appropriate level of expenses provision was no longer appropriate or sustainable and needed to be reduced.

With regard to benefits in kind, respondents noted that some benefits may depend on external providers who may change their terms in a way which made a previous benefit unsuitable or unsustainable, forcing the employer to change or withdraw the benefit, for example a significant rise in healthcare premiums, or the end of a lease for employee accommodation. Certain benefits may also become outdated or no longer needed, e.g. due to technological changes or changing employee tastes, and so could reasonably need to be changed.

A substantial proportion of respondents stated that share schemes were not prevalent or commonly included in employment contracts in their sector or organisation.

Finally, these respondents argued that preventing employers from making changes to expenses and benefits in kind which might be in contracts could therefore have the unintended consequence of creating a two-tier workforce, which could harm industrial relations.

In contrast, a smaller number of trade union respondents suggested that including these terms within scope would encourage greater transparency and negotiation, making it more likely that agreed outcomes could be reached. They said that including these terms in scope would level the playing field, supporting good employers by preventing the continued use of fire and rehire practices by less responsible employers.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Question Eleven: 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 2010 Act?

[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.]

Of the 121 respondents to the consultation, 85 responded to this question (70%). The breakdown of responses can be found in the table below.

Table Twelve – Breakdown of Question 11

Option	Number of responses
Yes	36 (42%)
No	39 (46%)
Don't know	3 (4%)
Other (please expand below)	5 (6%)
Prefer not to say	2 (2%)
Total responses	85

There was a broadly even split in responses to this question.

Some business respondents noted that limits on employers' ability to harmonise benefits in kind and expenses provisions could increase the risk of age discrimination, while others highlighted that certain groups with protected characteristics may be particularly reliant on certain benefits in kind, e.g. women may be more reliant on benefits related to childcare. Many of the benefits in kind and expenses identified in this regard were examples that were not included in the list of expenses in option 2 of the consultation.

Some respondents noted that some benefits and expenses could be reasonable adjustments provided to disabled employees, such as assisted vehicles. However, other respondents noted that alternative protections already exist which restrict an employer's ability to remove such reasonable adjustments or make changes with a discriminatory effect, with a number of respondents referring to the 2010 Act.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

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

Of the 121 respondents to the consultation, 45 responded to this question (37%).

Respondents highlighted the importance of consultation on changes to terms and conditions, emphasising engagement with employees or trade unions ahead of any changes and ensuring that reasonable adjustments are properly considered. A number of respondents again noted current protections in the 2010 Act.

Question Thirteen: 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)?

Of the 121 respondents to the consultation, 39 responded to this question (32%).

Many respondents reiterated their view that expenses and benefits in kind should not be included in scope of the restricted variation. Business respondents in particular highlighted the need for employers to retain flexibility to manage and adjust terms and conditions in order to respond to operational requirements, commercial pressures, and wider market changes.

Some respondents called for sector-specific guidance, including for the care sector, that reflects the realities of commissioned care delivery. These respondents cautioned that broad restrictions on contract changes could negatively affect routine operational decision-making, particularly in adult social care and support services. They appealed for government to keep any necessary regulatory requirements simple and tightly targeted.

6.3 Shift Patterns (Q14-Q28)

Question Fourteen: Which of the following options regarding shift changes do you agree with?

Of the 121 respondents to the consultation, 111 responded to this question (92%). The breakdown of responses can be found in the table below.

Table Thirteen – Breakdown of Question 14

Option	Number of responses
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Government Response

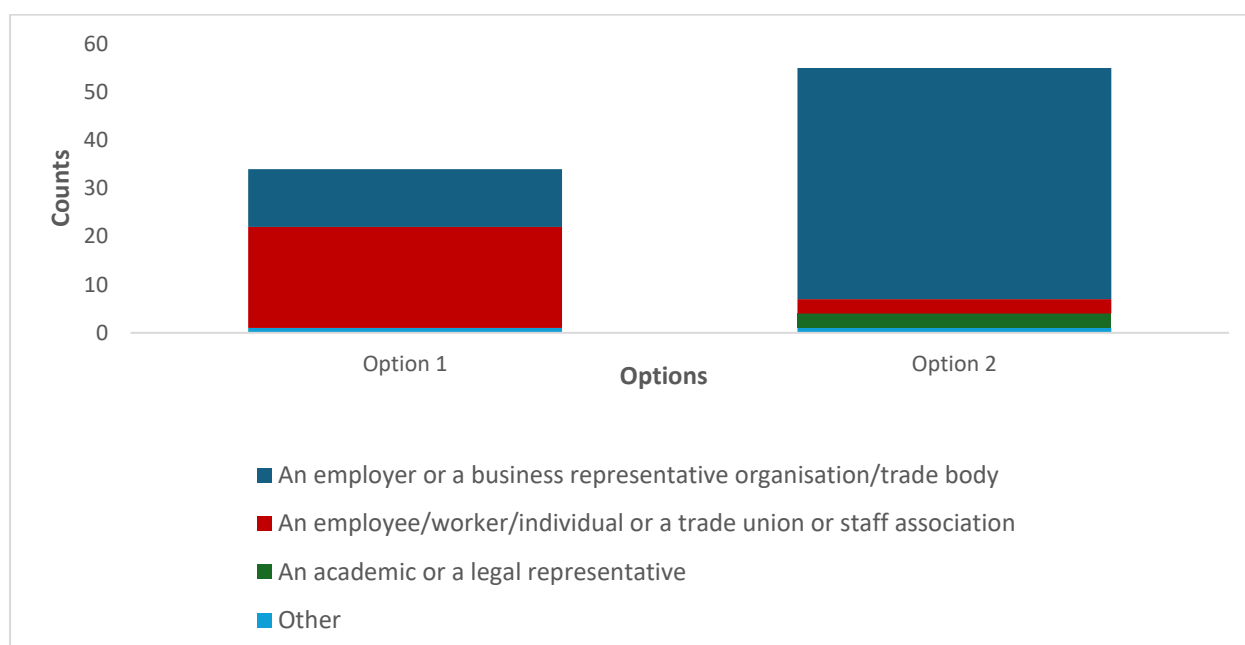
Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Option 1 - Only include the proposed narrow list of shift changes (day-night, night-day, weekday-weekend, and weekend-weekday)?	34 (31%)
<i>of which an employer or a business representative organisation/trade body</i>	12
<i>of which an employee/worker/individual or a trade union or staff association</i>	21
<i>of which an academic or a legal representative</i>	0
<i>of which other</i>	1
Option 2 - No types of shift pattern changes are in scope of the restricted variation of the timing or duration of a shift.	55 (50%)
<i>of which an employer or a business representative organisation/trade body</i>	48
<i>of which an employee/worker/individual or a trade union or staff association</i>	3
<i>of which an academic or a legal representative</i>	3
<i>of which other</i>	1
Other types of shift pattern changes should be protected as a restricted variation	16 (14%)
None of the above	1 (1%)
Don't know	0 (0%)
Other (please expand below)	4 (4%)
Prefer not to say	1 (1%)
Total responses	111

Chart Two – Count of responses to Question 14 which selected options 1 or 2, by respondent category

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns



Alt text for chart 2: Response count for Question 14 visualised in a bar graph. Each bar contains a breakdown by respondent category (employer/business representative organisation/trade body, employee/worker/individual/trade union/staff association, academic or legal representative or other).

Nearly half of respondents supported option 2, preferring not to include any types of shift changes in the restricted variations. Around one-third of respondents supported option 1, favouring a narrow list of protected shift changes. A smaller proportion (14%) considered that other types of shift pattern changes should be protected as restricted variations.

Of those who supported option 2, respondents focused largely on business flexibility, with many respondents emphasising the need for employers to retain the ability to respond to customer demand and maintain service delivery. Business respondents highlighted the need to flex to customer needs and noted that the wide variety of shift arrangements across sectors makes it difficult to define restricted variations without creating unintended operational consequences. A number of respondents raised concerns about implications for public services, including care work and emergency services, where restrictions on an employer's ability to allocate shifts across a workforce could affect delivery.

In contrast, union respondents highlighted impacts on employees of changes to shift patterns, including disruption to personal lives. It was noted that the reasonableness of shift changes depends on individual circumstances, such as caring responsibilities or commuting needs, which are difficult to capture through legislation. Some respondents were concerned that the targeted approach to restricting shift pattern variations in option 1 would be unfair as some employees whose contracts straddle the periods specified in the measure would not benefit from the restricted variation (i.e. employees whose contract says they may need to be available for work at evenings or weekends), while those who work in only one of the periods would benefit from protections if a change were

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

imposed (e.g. working only weekends or daytime hours). Respondents were concerned that this would create a two-tier workforce, which could harm workforce cohesion and industrial relations. They noted that employees in some sectors, e.g. those with a 24/7 schedule such as rail workers, would be more likely to see no benefits from the proposals and so would be disadvantaged versus employees in other sectors. Some respondents argued that this was a reason to make all changes to shifts a restricted variation, while others argued that it showed that no shift pattern changes should be a restricted variation.

Respondents were also concerned that specifying only certain changes as restricted variations could have the unintended consequence of encouraging employers to write contracts more broadly in future, for example to include a provision that all employees may be required to work night times, even where the probability of such redeployments to night working was low.

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

Of the 121 respondents to the consultation, 108 responded to this question (89%). The breakdown of responses can be found in the table below.

Table Fourteen – Breakdown of Question 15

Option	Number of responses
Yes	69 (64%)
No	28 (26%)
Don't know	0 (0%)
Other (please expand)	11 (10%)
Prefer not to say	0 (0%)
Total responses	108

Responses to Question 15 showed a clear majority in support of the proposed definition of night-time working, with 64% of respondents answering that they agreed. Just over a quarter (26%) disagreed, while 10% selected other, often providing additional context or alternative suggestions.

Some respondents noted that the most appropriate approach may depend on the organisation, reflecting variation across sectors and job roles.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Some respondents were concerned that the proposed definition of night working relied on the basic definition from the Working Time Regulations but did not incorporate the broader context provided elsewhere in those regulations. For example, the consultation's proposed definition for night time working for fire and rehire does not incorporate requirements in the working time regulations for an employee to work a certain amount of time during the night time period to be considered a night worker, nor would it allow for variation where the parties had reached a working time agreement. As a result, these respondents argued the definition would be too restrictive for employers. Some respondents were also concerned that even small changes in contracted times which took employees into the restricted periods could lead to liability for an automatic unfair dismissal and proposed that instead a threshold of a minimum number of hours into the restricted period should be introduced before the change would qualify as a restricted variation.

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

Of the 121 respondents to the consultation, 42 responded to this question (35%).

Views were mixed on when night-time working should begin, with respondents making different suggestions, including 7pm or 10pm.

Respondents also put forward alternative suggestions for the nighttime working definition, such as the hours starting or finishing earlier, capturing work that falls partly within the night-time period, and highlighted the importance of providing clearer guidance on the timings of these periods and how restrictions will work in practice.

In addition, some respondents noted that greater flexibility to determine the appropriate period may be preferable to a fixed definition in certain sectors, such as healthcare.

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

Of the 121 respondents to the consultation, 114 responded to this question (94%). The breakdown of responses can be found in the table below.

Table Fifteen – Breakdown of Question 17

Option	Number of responses
Yes both	49 (43%)

Government Response*Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns*

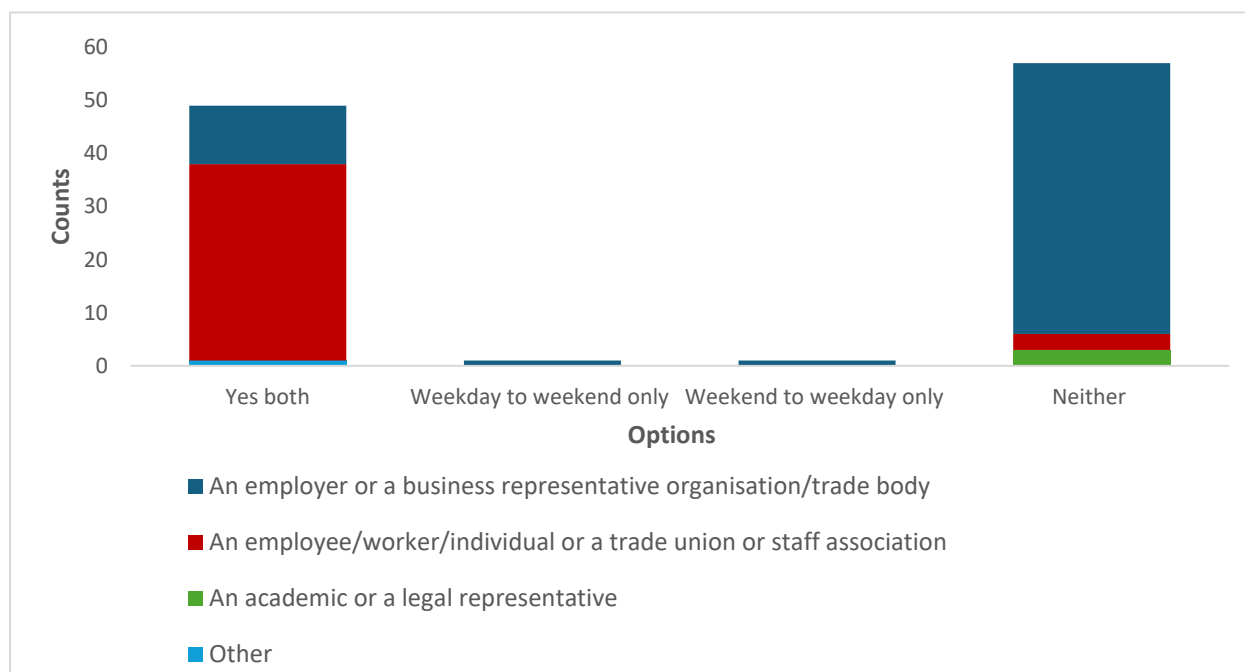
<i>of which an employer or a business representative organisation/trade body</i>	11
<i>of which an employee/worker/individual or a trade union or staff association</i>	37
<i>of which an academic or a legal representative</i>	0
<i>of which other</i>	1
Weekday to weekend only	1 (1%)
<i>of which an employer or a business representative organisation/trade body</i>	1
<i>of which an employee/worker/individual or a trade union or staff association</i>	0
<i>of which an academic or a legal representative</i>	0
<i>of which other</i>	0
Weekend to weekday only	1 (1%)
<i>of which an employer or a business representative organisation/trade body</i>	1
<i>of which an employee/worker/individual or a trade union or staff association</i>	0
<i>of which an academic or a legal representative</i>	0
<i>of which other</i>	0
Neither	57 (50%)
<i>of which an employer or a business representative organisation/trade body</i>	51
<i>of which an employee/worker/individual or a trade union or staff association</i>	3
<i>of which an academic or a legal representative</i>	3

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

<i>of which other</i>	0
Don't know	0 (0%)
Other (please specify)	5 (4%)
Prefer not to say	1 (1%)
Total responses	114

Chart Three– Count of responses to Question 17, by respondent category



Alt text for chart 3: Response count for Question 17 visualised in a bar graph. Each bar contains a breakdown by respondent category (employer/business representative organisation/trade body, employee/worker/individual/trade union/staff association, academic or legal representative or other).

Responses to this question showed a clear split in views. Half of respondents (50%) said that neither weekday-to-weekend nor weekend-to-weekday changes should be a restricted variation. 43% supported applying restrictions to both types of changes.

The view that neither type of change should be restricted was driven mainly by business respondents and public service providers. They emphasised the importance of retaining flexibility, noting that such changes are required only on rare occasions and that additional restrictions could hinder their ability to respond to operational needs and service demands. Concerns about potential

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

impacts on public services included risks to continuity and effective service delivery if flexibility to make scheduling changes across a workforce were reduced.

Support for applying restrictions to both types of shifts changes was largely expressed by employee and trade union respondents. These respondents highlighted the potential impact on employees, particularly disruption to personal lives, including childcare arrangements, health, finances and the ability to plan ahead.

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

Of the 121 respondents to the consultation, 110 responded to this question (91%). The breakdown of responses can be found in the table below.

Table Sixteen – Breakdown of Question 18

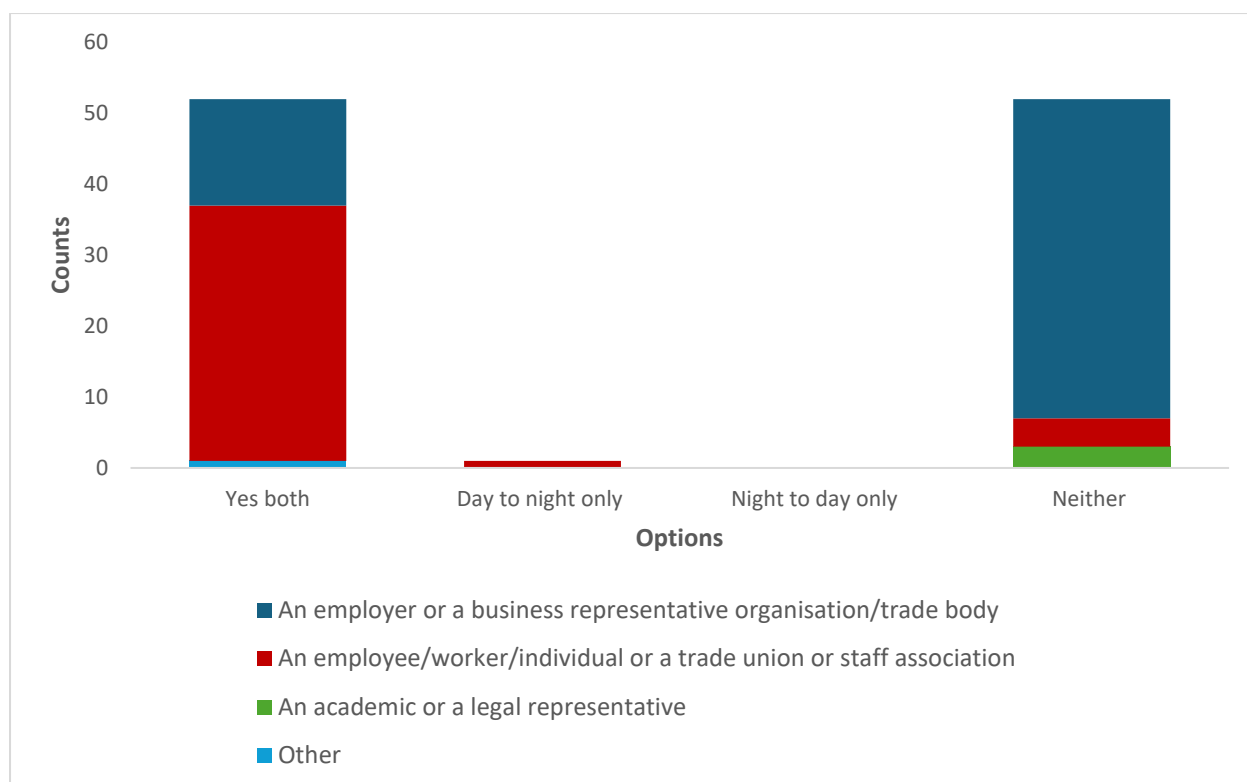
Option	Number of responses
Yes both	52 (47%)
<i>of which an employer or a business representative organisation/trade body</i>	15
<i>of which an employee/worker/individual or a trade union or staff association</i>	36
<i>of which an academic or a legal representative</i>	0
<i>of which other</i>	1
Day to night only	1 (1%)
<i>of which an employer or a business representative organisation/trade body</i>	0
<i>of which an employee/worker/individual or a trade union or staff association</i>	1
<i>of which an academic or a legal representative</i>	0
<i>of which other</i>	0

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Night to day only	0 (0%)
Neither	52 (47%)
<i>of which an employer or a business representative organisation/trade body</i>	45
<i>of which an employee/worker/individual or a trade union or staff association</i>	4
<i>of which an academic or a legal representative</i>	3
<i>of which other</i>	0
Don't know	0 (0%)
Other (please specify)	4 (4%)
Prefer not to say	1 (1%)
Total responses	110

Chart Four – Count of responses to Question 18, by respondent category



Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Alt text for chart 4: Response count for Question 18 visualised in a bar graph. Each bar contains a breakdown by respondent category (employer/business representative organisation/trade body, employee/worker/individual/trade union/staff association, academic or legal representative or other).

Responses to Question 18 were also split. Nearly half of respondents (47%) supported applying restrictions to both types of changes. This view was driven largely by employee and trade union respondents. These respondents highlighted potential impacts on employees of changes to night working, including disruption to personal lives such as childcare, health, and finances, as well as concerns about increased complexity and additional costs.

The same proportion of respondents (47%) felt that neither type of change should be restricted. This view was driven primarily by business respondents. They emphasised the importance of retaining flexibility to respond to operational requirements and service demands.

Question Nineteen: 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?

Of the 121 respondents to the consultation, 101 responded to this question (83%). The breakdown of responses can be found in the table below.

Table Seventeen – Breakdown of Question 19

Option	Number of responses
Yes	41 (41%)
No	55 (54%)
Don't know	0 (0%)
Other (please expand)	5 (5%)
Prefer not to say	0 (0%)
Total responses	101

Responses to Question 19 showed mixed views. A slight majority of respondents (54%) answered “No” to if the government should consider whether there are certain kinds of changes to contractual availability windows which should be protected, while 41% answered “Yes”. Responses who said that availability windows should not be protected largely centred on the importance of business

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

flexibility. Many business respondents stressed the need for employers to retain the ability to manage operations effectively and respond to changing business demands.

In addition, some respondents expressed negative views about the proposals, highlighting concerns about increased complexity involved in restricting changes to availability windows which could be difficult to define clearly across different contract models and additional costs. These respondents also expressed concerns that these restrictions would be overly restrictive, including for emergency services and care providers.

In contrast, some respondents emphasised the need for appropriate protections for workers and employees, a view most strongly expressed by trade unions. These respondents raised concerns that enforced changes to availability windows could have significant and detrimental impacts on workers and argued that such changes should be treated as a restricted variation.

Question Twenty: If you answered yes to question 19, which changes to contractual availability windows should be protected?

Of the 121 respondents to the consultation, 31 responded to this question (26%).

Responses to Question 20 focused on how changes to availability windows should be treated. Although the number of responses was relatively low, a substantial proportion of respondents suggested that any changes should be conditional on usual working patterns or hours typically available. Respondents noted that this approach could provide greater clarity on the proposed shift rules, including the length and number of availability windows.

Some respondents specifically referred to the extension of availability windows, while others argued that all changes to contractual availability windows should be subject to protection. Overall, these responses reflected differing views on the extent to which restrictions should apply to changes in availability arrangements.

Question Twenty-One: 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?

Of the 121 respondents to the consultation, 111 responded to this question (92%). The breakdown of responses can be found in the table below.

Table Eighteen – Breakdown of Question 21

Option	Number of responses
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Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Very common	25 (23%)
Common	33 (30%)
Occasionally	16 (14%)
Rarely	12 (11%)
Very rarely	7 (6%)
Never	2 (2%)
Don't know	10 (9%)
Other (please expand)	6 (5%)
Prefer not to say	0 (0%)
Total responses	111

Over half of respondents to this question reported that it was either very common (23%) or common (30%) for shift patterns (specific days and times) to be specified in employment contracts or as a contractual term. However, many specified that this is typically done through a rota system or with flexibility for employer and employees to agree working patterns without a change to the contract. Similarly, a majority of respondents said that it was common for shift patterns to be subject to a flexibility clause (see question below).

Some respondents highlighted sector-specific practices. For example, respondents said that in sectors such as health and social care many contracts include wording requiring employees to “work flexibly to meet the needs of the service”, with the precise working pattern determined through rostering arrangements.

In addition, some respondents pointed out that terms may be incorporated into custom and practice, noting that unwritten workplace arrangements may, over time, constitute implied terms of an employment contract.

Question Twenty-Two: 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?

Of the 121 respondents to the consultation, 110 responded to this question (91%). The breakdown of responses can be found in the table below.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Table Nineteen – Breakdown of Question 22

Option	Number of responses
Very common	30 (27%)
Common	36 (33%)
Occasionally	11 (10%)
Rarely	8 (7%)
Very rarely	5 (5%)
Never	2 (2%)
Don't know	13 (12%)
Other (please expand)	5 (5%)
Prefer not to say	0 (0%)
Total responses	110

As with the previous question, a majority of respondents (60%) reported that flexibility clauses, in relation to shift patterns, were included either very commonly or commonly.

A substantial proportion of respondents emphasised the importance of maintaining business flexibility to make adjustments. Respondents commonly noted that approaches are business-dependent and highlighted the need for consultation prior to any adjustments, for example through engagement with trade unions on proposed changes. Respondents again referred to unwritten workplace arrangements that may, over time, form implied terms of an employment contract, when describing how adjustments are managed in practice.

Question Twenty-Three: 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)?

Of the 121 respondents to the consultation, 83 responded to this question (69%).

Responses raised concerns about potential negative effects on employees either directly arising from shift pattern changes, or indirectly arising from risks to the business.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Trade union respondents argued that a narrow approach to restricted shift changes could leave many changes to shift patterns unprotected, which they felt would increase the likelihood that employers would make unilateral changes. These respondents warned that this could make employees more vulnerable and, in some cases, limit their ability to access flexible working arrangements that support work–life balance.

Some respondents emphasised the importance of protecting employees from adverse outcomes resulting from risks to the business. They warned that, where employers are unable to implement necessary changes to terms and conditions, the reforms could increase the likelihood of employers resorting to redundancy, potentially leading to job losses rather than improved protections.

Question Twenty-Four: 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)?

Of the 121 respondents to the consultation, 78 responded to this question (64%).

In response to Question 24, respondents highlighted the negative impacts of increased operational constraints and reduced flexibility. Any further restrictions on shift changes were seen as representing a reduction in employer flexibility compared with the current legislative framework.

A significant number of responses from public service providers, especially in the care sector and the emergency services, opposed any restricted variations for shift patterns. Given the 24/7 nature of these roles, providers need to rebalance staffing between day and night to maintain safe cover, and respondents worried that the proposals would push providers towards more rigid contract working to manage legal risk, which could make roles harder to recruit into. These respondents expressed a preference for measures to encourage a fair process and consultation in agreeing necessary changes.

Similar concerns were expressed by other sectors involved in 24/7 production or service provision. Respondents noted that where production lines were continuous and sectors might be sensitive to energy or supply shocks, employers with established work patterns may sometimes need to make new or temporary changes to working arrangements to adapt. Restrictions to employers' ability to respond to these shocks could introduce perverse incentives, including encouraging employers to consider redundancies where they might not otherwise have done so.

Many other respondents also noted that any restrictions to changes to contractual shift patterns would limit businesses' ability to meet changing client needs or changing demand patterns. Respondents from the Higher Education sector expressed concerns that the proposals may hinder their ability to respond to changing student demand.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Question Twenty-Five: 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)?

Of the 121 respondents to the consultation, 80 responded to this question (66%). The breakdown of responses can be found in the table below.

Table Twenty – Breakdown of Question 25

Option	Number of responses
Yes	52 (65%)
No	22 (28%)
Don't know	0 (0%)
Other (please expand)	4 (5%)
Prefer not to say	2 (3%)
Total responses	80

In response to question 25, a majority of respondents to this question expressed concerns with the proposed change.

Respondents reiterated concerns that restrictions would limit necessary operational flexibility, and some emphasised that no rigid definitions should be applied. Restricting shift changes to a limited set of protected categories was seen as potentially creating an unbalanced framework, where certain shift adjustments become overly rigid while others remain flexible. Respondents suggested that this imbalance could add complexity to scheduling and introduce further negative impacts, such as perceptions of unfairness and increased workplace conflict.

Question Twenty-Six: 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 2010 Act?

Of the 121 respondents to the consultation, 95 responded to this question (79%). The breakdown of responses can be found in the table below.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

Table Twenty-One – Breakdown of Question 26

Option	Number of responses
Yes	56 (59%)
No	30 (32%)
Don't know	3 (3%)
Other (please expand)	6 (6%)
Prefer not to say	0 (0%)
Total responses	95

Respondents broadly expressed concern that individuals with protected characteristics under the 2010 Act could be disproportionately impacted by shift pattern changes. Some respondents noted that female employees could be disproportionately affected as they were more likely to have childcare or caring responsibilities. Others raised concerns about disabled employees, where changes to shift patterns could affect individuals who rely on taking medication at specific times or require consistency in working arrangements.

Some respondents considered that where employees with protected characteristics were disadvantaged by shift pattern changes there may already be suitable protections in the 2010 Act, including rights related to reasonable adjustments. These respondents felt that these rules were better suited to assessing differing impacts of complex shift pattern changes than automatic unfair dismissal under the fire and rehire protections, which respondents characterised as too blunt a tool. A substantial proportion of respondents also highlighted the potential for uneven effects arising from the proposals for targeted restrictions for specified changes

Question Twenty-Seven: Where you have identified potential negative impacts in your response to question 26, are there ways to mitigate these?

Of the 121 respondents to the consultation, 47 respond to this question (39%).

Respondents focused on the importance of flexible working and the provision of reasonable adjustments, highlighting the need to accommodate tailored working requirements. Respondents also commonly emphasised the importance of providing reasonable notice of shift changes and meaningful consultation, for example through employers working with employees to agree fair adjustments, including the use of prescribed notice periods.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

In addition, respondents put forward specific suggestions, for example, offering employees with disabilities preferred working times, and providing additional or extended breaks. Some respondents also suggested collective consultation with trade unions and the use of robust equality impact assessments to inform scheduling decisions.

Question Twenty-Eight: 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)?

Of the 121 respondents to the consultation, 42 responded to this question (35%).

Many responses reiterated the importance of employers retaining the ability to manage shift arrangements and respond to operational needs. Respondents also raised concerns that restricting shift changes could have unintended consequences, such as increased legal risks or that new automatic unfair dismissal protections could make reaching agreement through discussion harder. These respondents often reiterated their view that sufficient protections are already in place.

Many union respondents stated that the measures subject to consultation should be expanded beyond the scope of the consultation. They similarly argued for new restricted variations, such as changes to location or job role. They stressed existing pressures on the employment tribunal system meant that automatic unfair dismissal protections should be expanded through broader restricted variations, as they considered that this would discourage unilateral changes, reducing reliance on the tribunal system.

In addition, respondents highlighted the need for updates to the Code of Practice or clearer statutory guidance. Others noted that, whatever the government's decision, it will be important to track the impact of changes on Employment Tribunal caseloads and Acas notifications to inform subsequent changes to the legislation.

7. Conducting the consultation

Consultation responses were submitted through the Qualtrics consultation tool and via email. Written consultation responses were analysed using mixed methods. Closed components of questions were analysed with standard dichotomous and multiple-choice quantitative techniques. Open ended components of questions were analysed using qualitative techniques involving breaking the text down into categories, coding responses, and considering positive or negative sentiments to draw out common perspectives among the respondents.

In analysing the responses to the consultation, we have applied the following criteria to how they have been counted as part of the summary of responses:

- Responses from multiple bodies or individuals that were received within one submission are counted as a single response for the purpose of this government response.
- Where respondents answered any of the questions to the consultation, even if this was only one question, these have been counted as responses to this consultation.
- Where respondents to the consultation only provided their name and/or email address and did not answer any questions posed in the consultation these have not been counted as responses.
- Where respondents to the consultation input random data in response to questions (most commonly random letters that do not form words) these responses have been discounted.

There are many questions in this consultation where respondents chose to answer one specific area of interest and then leave the other questions relating to different topics blank. There were 121 responses in total, with the number of responses to each question provided above.

Percentages may not total to 100% when added up, as percentages have been rounded to the nearest whole number and multiple responses were chosen for some questions.

Government Response

Make Work Pay: Fire and Rehire – Changes to Expenses, Benefits and Shift Patterns

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