



Make Work Pay: fire and rehire - changes to expenses, benefits, and shift patterns

Submission to the Department for Business and Trade, The Rt Hon Peter Kyle MP and Kate Dearden MP



About CIPD

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years.

It has 160,000 members across all sectors and sizes of organisation and provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers. It also seeks to promote and improve best practice in people management and development and to represent the interests of our members.

Opening remarks

The CIPD welcomes this consultation and recognises that the conduct of a very few employers has been of concern in this area. However, we consider this to be the practice of a very small minority, and we have concerns that this legislative change could have unintended consequences which impact on the flexibility of employers, particularly smaller employers, to respond to an economically unstable environment.

The [CIPD responded](#) to previous consultation regarding interim relief in ‘fire and rehire’ cases and set out its views on the principle of legislating in this area in that response. We maintain that fire and rehire, in the form that the Employment Rights Act 2025 anticipates it, remains a rare occurrence. We do not believe it should be completely outlawed as a practice as it does have a place in a situation of last resort to prevent redundancies, but we recognise that it has been abused by a small minority of employers. The CIPD considers that this minority will continue to act in this way should it suit them and agrees with the need for firm regulation; however, our review remains that legislation is ill-advised.

Along with other changes, it could lead to serious and potentially unintended consequences for employers with the knock-on impact of reducing employment and opportunity and contributing to economic uncertainty for individuals - the very thing the Government is seeking to reduce. This is particularly the case in the increasingly unpredictable economic climate. A strengthened statutory Code of Practice would be a more appropriate approach. Our remaining comments should be read against this position.

Limited use of ‘Fire & Rehire’

Our evidence shows very limited use of ‘Fire & Rehire’ as a ‘standalone’ practice without any form of prior consultation or engagement with employees. Following the CIPD’s research in 2021, [referenced in the 2021 Acas Fact Finding Exercise](#), we carried out a further poll in summer 2021, showing that only 3% of employers had engaged in fire and rehire practices in the previous 12 months - covering the COVID pandemic when these practices were felt to be on the increase. The poll showed that 19% of employers had made changes to Ts&Cs of employment through consultation, negotiation and voluntary agreement, and 73% had made no changes to Ts&Cs.

The CIPD conducted a further survey in summer 2023 which suggested that 5% of employers had made changes to employees’ terms and conditions of employment using ‘fire and rehire’ in the previous 12 months, as opposed to 23% doing so through consultation, negotiation and voluntary agreement, and 64% making no changes to terms and conditions. While this shows a small increase, the poll showed a larger increase in employers making changes through negotiation and agreement.



Within these surveys, the CIPD collected data to identify which terms and conditions had been changed by employers in the previous 12 months of the survey concerned - whether by negotiation and agreement or fire and rehire. Our surveys asked questions in respect of changing:

- pay levels,
- agreed hours of work,
- location of work,
- access to enhanced contractual entitlements/incentives,
- redundancy terms and pay, pension,
- notice periods and
- 'other' terms and conditions.

Of relevance to this consultation, only 4% of employers responding said they had made changes to 'other' terms and conditions, which would cover expenses, as well as variations to shift patterns. The data suggests that in 2023, 31% of organisations that made changes to Ts&Cs did so to 'enhanced contractual entitlements/incentive's, an increase from 20% recorded in the year to July 2021. However, pay levels and agreed hours of work remain the Ts&Cs most changed by employers.

Focus group feedback on 'Fire & Rehire'

Focus group discussions with CIPD members in recent weeks have broadly borne out our view that 'fire and rehire' is rarely used in practice. It may be included 'on the table' by employers as part of a wider consultation process with employees, but given the risks involved is never deployed. Those we spoke to shared the view that introducing additional restrictions by including expenses, benefits in kinds and shift patterns into 'restricted variations' would place an additional burden on employers. It would limit flexibility and increase the possibility of dispute even further, when in reality, these are areas that employees currently understand can be subject to change. Most employers we engaged with considered that the additional 'fairness' considerations being introduced through s.28 of the Employment Rights Act 2025 would be more than enough to protect employees in such a situation.

Expenses and shift patterns should not be included

While we recognise that this data is not comprehensive, and does not distinguish the proportion of changes to any particular contractual term made using fire and rehire rather than negotiation and agreement, given the low percentage overall of employers engaging in fire and rehire practices, we can conclude that expenses and shift patterns are rarely the subject of fire and rehire exercises, and should not be included within the defined list of 'restricted variations' inserted into the Employment Rights Act 1996 by the Employment Rights Act 2025. While there is some evidence to suggest that benefits in kind may be more commonly included in fire and rehire exercises, our view is that including some benefits in kind and not others would lead to confusion for employers and employees.

Excluding expenses and benefits in kind from "...sums payable to an employee in connection with employment..." and refraining from making regulations to specify conditions relating to 'a variation of the timing or duration of a shift' will still be subject to scrutiny under the additional provisions in relation to an ordinary unfair dismissal claim. We feel these should be sufficient to protect employees from arbitrary changes that are made without good reason, while affording employers the flexibility they need to manage their businesses.

In summary

Where we have provided answers to this consultation, below, they should be read against our belief that there is insufficient evidence to support further (secondary) legislation in these specific areas, and that there could be unhelpful, unintended consequences including business closures and more redundancies.

We agree that employees are entitled to protection, but we believe that the inclusion of the provisions covered in this consultation would be disproportionate given the very limited use of fire



and rehire, and within that limited usage, the lack of evidence to suggest that expenses, benefits in kind or the detail of shift patterns are the subject of fire and rehire.

Response

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

Option 1: All expenses and benefits in kind should be excluded from the restricted variation of sums payable to an employee in connection with the employment (and therefore not be subject to higher protections from fire and rehire)

Option 2: Certain expenses and benefits in kind should be protected from the restricted variation of sums payable to an employee in connection with the employment (and therefore subject to higher protections from fire and rehire)

In line with the position we have taken previously in respect of 'fire and rehire' we consider Option 1 - all expenses and benefits in kind should be excluded from the restricted variation of sums payable to an employee in connection with the employment - is the appropriate choice.

Research that we conducted between 2021 and 2023 through our [Labour Market Outlook](#) surveys conducted through YouGov asked employers about whether they had changed terms and conditions of employees in the previous 12 months, how those changes had been carried out, and which Ts&Cs had been changed.

We have referred to the results of these surveys above, but for completeness:

Summer 2021 - 3% of employers who responded indicated that they had engaged in Fire and Rehire Practices to change Terms and Conditions

Summer 2023 - 5% of employers who responded indicated that they had engaged in Fire and Rehire Practices to change Terms and Conditions

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

Mileage

Other travel expenses incurred in performance of duties, not including commuting

Accommodation expenses incurred in performance of duties

Long term accommodation offered as a benefit in kind

Share scheme and ownership arrangements

Other expenses and benefits in kind should be protected (please expand below)

None should be included in scope

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

Direct share allocations

Participation in schemes which allow employees to buy shares from a company reserve

None should be included in scope

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

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



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

Anecdotally, we believe that the importance placed on expenses and benefits in kind very much depends on the role and requirements placed on an individual employee within their role. A low paid employee in a large organisation who has to travel occasionally for work will potentially feel the reimbursement of travel expenses is more important than a higher paid employee with similar travel obligations, or an employee in a smaller organisation where the employee feels more invested in the success of the business. Equally, an employee who is required to travel regularly for work, particularly someone who receives a lower basic salary and can earn commission dependant on the success of trips made to secure business, such as a salesperson - will view the reimbursement of expenses more fundamentally than someone who only travels occasionally.

Equally, the importance of benefits in kind will depend on the base rate of pay and the intrinsic value the individual employee places on the benefit. An employee who receives accommodation in an area where accommodation is expensive and in short supply will rely more on such a benefit in kind than someone who already has somewhere to live or is in an area where accommodation is plentiful and not overly expensive.

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

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

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

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

In practice, we believe it would have very little impact as the employee would still be able to bring an unfair dismissal claim and would have the benefit of the additional 'fairness' considerations that have been introduced by the ERA2025.

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

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

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

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

Section 2: Shift Patterns



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

Option 1 - Only include the proposed narrow list of shift changes (day-night, night-day, weekday-weekend, and weekend-weekday)?

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

Other types of shift pattern changes should be protected as a restricted variation

We consider that the appropriate approach is Option 2 - no types of shift pattern are in scope of the restricted variation of the timing or duration of a shift. The surveys carried out in summer 2021 and 2023 asked which Ts&Cs had been changed by employers in the previous 12 months to the date of the survey. In both cases, employers were offered a list of individual T&Cs, as follows: pay levels, agreed hours of work, location of work, access to enhanced contractual entitlements/incentives, redundancy terms and pay, pension, notice periods and 'other'.

Shift patterns were not covered as a standalone term in the list of options, so we can only conclude that if employers made changes to shift patterns in the previous 12 months, they would have included this in the 'other' option, along with other Ts&Cs not listed. In 2021, only 5% of employers who made changes to Ts&Cs made changes that fell into the 'other' category, and in 2023, only 4% of employers responding said they had made changes to 'other' terms and conditions. Our survey did not distinguish at this point between changes made through negotiation and agreement, and those made through fire and rehire, so we can only conclude that fire and rehire is generally not used to change shift patterns in the way envisaged. As a result, we are not convinced that there is a strong enough rationale to implement such a change.

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

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

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

Yes both

Weekday to weekend only

Weekend to weekday only

Neither

Neither - see above.

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

Yes both

Day to night only

Night to day only

Neither

Neither - see above.

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

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



No. We consider that constraining employers in this way, with the threat of an automatically unfair dismissal claim, would be a disproportionate way of achieving a situation where employers engage in more open and ongoing consultation with employees with a view to achieving agreement around any business-critical changes such as shift patterns.

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

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

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

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

The consultation already highlights the risk of disadvantaging employees if a wider range of shift pattern changes is introduced through secondary legislation. We believe that including any shift pattern changes would risk disadvantaging some employees over others.

Given that shift pattern changes would appear to be rarely the subject of fire and rehire practices, introducing secondary legislation to include these within the category of automatically unfair dismissals would be disproportionate given the disadvantages it could introduce for employees while overall making very little impact on the use of fire and rehire.

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

Employers seem unlikely to use fire and rehire to change shift patterns - so the introduction of secondary legislation limited to these key areas appear likely to have little tangible impact on employers.

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

Question 26 - Do you believe that the proposals discussed in this consultation relating to shift changes will have an impact on individuals with a protected characteristic under the Equality Act 2010? Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

We acknowledge that shift working can have a particular impact on those with caring responsibilities and disabilities, those who are pregnant, and with health conditions which might make it harder to work at different times of the day - for example because of childcare arrangements that have been made and would be difficult to change; or because of the impact of the disability, pregnancy or health condition. However, in a situation where an employer sought to impose changes through fire and rehire, those impacted in this way have the protections against discrimination (both direct and indirect) of the Equality Act 2010 as well as the ordinary unfair dismissal protections under the Employment Rights Act 1996.