

**EXPLANATORY MEMORANDUM TO**  
**THE CODE OF PRACTICE (DISMISSAL AND RE-ENGAGEMENT) ORDER 2024**

**2024 No. 708**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
- 1.3 This explanatory memorandum is for The Code of Practice (Dismissal and Re-engagement) Order 2024 (“the Order”).

**2. Declaration**

- 2.1 Minister Hollinrake, Minister of State at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Richard Kelly, Deputy Director for Strategy and International at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Otis Long at the Department for Business and Trade, email: Otis.Long2@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 The Order is made under section 204(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”). Its purpose is to bring into effect the Code of Practice on Dismissal and Re-engagement (“the Code”) on 18<sup>th</sup> July 2024.
- 4.2 The Code was laid in draft before both Houses of Parliament on 19 February 2024 and approved by a resolution of the House of Commons on 17 April 2024 and by a resolution of the House of Lords on 25 March 2024. The Code provides practical guidance for the purpose of promoting the improvement of industrial relations, where an employer:
  - is considering making changes to one or more of its employees’ contracts of employment; and
  - envisages that, if the employee and/or their representative does not agree to some or all of the changes, it might opt for dismissal and re-engagement in respect of that employee.

*Where does the legislation extend to, and apply?*

- 4.3 The extent of the Order (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.4 The territorial application of the Order (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

## **5. Policy Context**

### *What is being done and why?*

- 5.1 Specific cases of dismissal and re-engagement, also known as ‘fire and rehire’, attracted significant media attention and raised the profile of the practice during the COVID-19 pandemic.
- 5.2 Concerns were raised about threats of dismissal being used as a pressure tactic in the early stages of discussions around implementing changes to employment contracts.
- 5.3 The Code clarifies and gives some legal force to accepted standards about how employers should behave when seeking to change employees’ terms and conditions.
- 5.4 Its purpose is to ensure that employers take all reasonable steps to explore alternatives to dismissal and re-engagement, and that they engage in meaningful consultation with a view to reaching an agreed outcome with individual employees and/or their representatives. The Code also aims to ensure that employers do not raise the prospect of dismissal unreasonably early or threaten dismissal where this is not, in fact, envisaged.
- 5.5 The Code has been designed to strike the right balance between supporting employers to grow their businesses through a flexible labour market and protecting workers from unfair practices that undermine employment protections.

### *What was the previous policy, how is this different?*

- 5.6 The Code does not impose any new legal obligations and operates within the current legal framework with which employers are already required to comply.

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 The Code is issued under section 203 of the 1992 Act. This section gives the Secretary of State a general power to issue Codes of Practice containing practical guidance for the purpose of promoting the improvement of industrial relations.
- 6.2 The Secretary of State considers that the practice of dismissing and re-engaging employees (sometimes referred to as ‘fire and rehire’) as a means of changing their terms and conditions of employment can give rise to conflict between employers, employees and trade unions, which can lead to a deterioration in industrial relations. This Code is intended to provide practical guidance on avoiding, managing and resolving such conflict and disputes.
- 6.3 A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. But under section 207 of the 1992 Act, the Code is admissible in evidence in proceedings before a court, employment tribunal or the Central Arbitration Committee, and any provision of the Code which appears to the court, tribunal or Committee to be relevant to those proceedings must be taken into account by it.
- 6.4 In addition, if an employee brings one of the employment tribunal claims listed in Schedule A2 to the 1992 Act, and the claim concerns a matter to which this Code applies, then the tribunal can:

- increase any award it makes by up to 25%, if the employer has unreasonably failed to comply with the Code; or
  - reduce any award by up to 25%, where it is the employee who has unreasonably failed to comply.
- 6.5 The statutory procedure for issuing the Code and bringing it into effect is set out in section 204 of the 1992 Act.
- 6.6 Under section 204(1), the Secretary of State, after consultation with the Advisory, Conciliation and Arbitration Service (ACAS), prepared and published a draft of the Code.
- 6.7 Under section 204(1), the Secretary of State considered representations made to them about the draft Code and modified the draft accordingly.
- 6.8 The public consultation on the draft Code (as a result of which those representations were made) was launched on 24 January 2023 and closed on 18 April 2023. A response was published by the Government on 19 February 2024.
- 6.9 Under section 204(2), the Secretary of State laid the draft Code before both Houses of Parliament on 19 February 2024 and it was approved by a resolution of the House of Commons on 17 April 2024 and by a resolution of the House of Lords on 25 March 2024. The Secretary of State is issuing the Code in the form of that draft.
- 6.10 Under section 204(3), a Code issued under that section shall come into effect on such day as the Secretary of State may by order appoint. Such order is to be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament (section 204(4)).
- 6.11 Under section 204(3), the Order to which this explanatory memorandum relates is therefore required to bring the Code into effect. The Order is subject to the made negative procedure.

***Why was this approach taken to change the law?***

- 6.12 This is the only possible way to bring the Code into effect.

## **7. Consultation**

***Summary of consultation outcome and methodology***

- 7.1 The Government issued a public consultation on the draft Code of Practice on Dismissal and Re-engagement on 24 January 2023. The consultation was open for 12 weeks, until 18 April 2023, and received 50 responses: 8 responses from individuals and 42 responses from organisations, primarily consisting of trade unions, legal representative groups, and employers.
- 7.2 In response to the views expressed by consultees, the Government made a number of changes to the draft Code.
- 7.3 The Government published a response to the consultation on 19 February 2024<sup>1</sup>.

## **8. Applicable Guidance**

- 8.1 There is no guidance in respect of the Order. In respect of the Code, this is itself guidance. Relevant stakeholders are referred to the content of the Code.

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<sup>1</sup> The Government response to the consultation on the draft Code is available at: <https://www.gov.uk/government/consultations/draft-code-of-practice-on-dismissal-and-re-engagement>

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for the Code because there is expected to be a low level of impact on business. A low level of impact on business is expected because the Code does not impose any new legal obligations and operates within the current legal framework with which employers are already required to comply.

#### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the Code operates within the existing legal framework with which employers are already required to comply.
- 9.3 The legislation does impact small or micro businesses, albeit this impact is not expected to be significant. The Government wishes to ensure that dismissal and re-engagement is only ever used as an option of last resort by all employers, regardless of their size.
- 9.4 There is no, or no significant, impact on the public sector because the Code will apply to all employers and employees in England and Wales and Scotland equally.

### **10. Monitoring and review**

#### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 This is not relevant for the Order. The approach to monitoring of the Code is to consider how it changes behaviour in scenarios where employers are considering making changes to employees' terms and conditions and envisaging that they might opt for dismissal and re-engagement in order to effect the changes.
- 10.2 Neither the Order nor the Code include a statutory review clause.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

### **11. Matters of special interest to Parliament**

- 11.1 None.

### **12. European Convention on Human Rights**

- 12.1 As the Order is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

### **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").