

Royal College of Nursing response to Make Work Pay: fire and rehire – changes to expenses, benefits, and shift patterns

About the Royal College of Nursing

With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector.

The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

Consultation questions

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
- **Option 2: Certain expenses and benefits in kind should be protected**
- None of the above
- Don't know
- Other (please expand below)
- Prefer not to say

RCN response

For the nursing workforce, option 2 is essential. Excluding all expenses/benefits (Option 1) would invite coercive changes that disproportionately impact community nurses and nursing support workers and lower-paid staff who depend on mileage reimbursement and duty-related accommodation to do their jobs.

In home and community care, travel between patients is working time and must be recognised. Where pay or expenses for that travel are eroded, effective hourly earnings can fall below the NMW, and retention suffers.

Health unions have repeatedly highlighted non-payment for travel time between visits. Protecting core expense entitlements helps prevent back-door cuts via fire-and-rehire. The RCN also evidences the role of travel reimbursement mechanisms to fair pay in community services.

The government's own impact case for restricting fire-and-rehire is to stop unilateral changes to core terms and where an expense or benefit is effectively linked to pay (mileage, long-term accommodation), it should be in scope.

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)
- Don't know
- Prefer not to say

RCN response

These items are common in nursing and social care, are usually contractual or embedded in national frameworks, and effectively function as remuneration elements that enable staff to work.

HMRC AMAP rates (a benchmark many employers mirror) and NHS travel frameworks show why erosion impacts earnings and the feasibility of roles, especially for community nurses travelling between visits.

They are central to fair/better pay and are increasingly set out in contracts by providers to ensure National Minimum Wage compliance and workforce stability. Non-payment issues

on this issue are at their most acute, and therefore treating them as restricted variations will lock in fair practice.

For long-term accommodation, HMRC rules confirm it is a taxable benefit unless job-related, and sudden removal via dismissal would have severe personal and service impacts.

Where employers provide tied/live-in accommodation, contracts already treat this as part of remuneration due to benefit-in-kind rules and limited exemptions. Unilateral removal or worsening via dismissal/re-engagement would have a significant impact on employees' pay, so it should be a protected core term.

These protections align with the consultation's aim to stop unilateral changes to core terms, while still allowing negotiated updates and ordinary unfair-dismissal tests for genuinely peripheral items.

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)?

- Very common
- **Common**
- Occasionally
- Rarely
- Very Rarely
- Never
- Don't know
- Other (please expand below)
- Prefer not to say

RCN response

For nursing staff employed on NHS Agenda for Change contracts, expenses and benefits in kind are included in the framework. The NHS Terms and Conditions Handbook sets out

a national approach to reimbursing costs for travel, accommodation and meals during the course of work being carried out.

As stated above, some providers mirror these provisions across the independent health and social care sectors. It is common in health and social care for mileage reimbursement, paid inter-visit travel time, duty-related accommodation and, in some services, long-term/tied housing to be stated or incorporated as contractual entitlements, especially where service delivery depends on them.

These items are routinely treated as part of total reward and, for travel/accommodation, are essential enablers of work rather than optional perks. Evidence includes HMRC AMAP norms, NHS Mileage Allowance and employer's mileage frameworks, and Acas guidance that inter-visit travel counts as working time.

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)?

RCN response

In nursing and wider NHS practice, items are “core” where they’re expressly written into the contract or national terms and form a predictable, material part of overall remuneration or role viability, rather than discretionary policy.

Business mileage reimbursement is set at nationally set NHS rates (including standard, reserve and passenger rates), where travel is an inherent duty (e.g., community roles). These rates and entitlements are set out in the NHS Terms and Conditions of Service (TCS) Handbook and operate as contractual rights when criteria are met.

Subsistence allowances (day subsistence, night subsistence, and provisions for short- and long-term overnight stays), payable when staff must travel for work. These are specified in the TCS Handbook and are relied upon as part of the contractual package where eligibility conditions apply.

High Cost Area Supplements (HCAS / London weighting) are paid where applicable. Although a cash allowance, it is a contractual, work location-linked element, widely understood by staff and employers as part of the core package.

These items are embedded in national terms or written contracts and should therefore be in-scope as core, as opposed to purely discretionary or policy-level perks that employers may alter unilaterally.

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

- Very Important
- Important
- Moderately Important
- Slightly Important
- Not Important
- Don't know
- Other (please expand below)
- Prefer not to say

RCN response

The UK faces severe nursing shortages, with around 30,000 vacancies and declining applications to nursing courses. Reports stress that nursing must be made more appealing, not just through salaries but also through improved terms and conditions and support.

Benefits that reduce personal costs help reposition nursing as a more attractive and viable career. Without this fair reimbursement, nurses subsidise service delivery. Under-reimbursement of these benefits and expenses impact on pay, retention and service provision.

Retention is a central challenge: newly qualified nurses report leaving due to lack of support, stressful conditions, and limited development opportunities. Structured support is identified as crucial to retention.

The RCN has highlighted that improving the work environment, through better support, fair treatment, and manageable workloads, helps mitigate retention risks. Many benefits in kind directly influence these conditions and contribute to keeping nurses in post.

The NHS 10 year plan emphasises the need to draw more people into nursing, yet it has been argued that it lacks detail on improving the attractiveness of the profession. Benefits and expenses can fill part of that gap by lowering barriers to entry and improving day-to-day experience.

Wider NHS workforce briefings published by the UK House of Commons Library also show that staff turnover, sickness absence, and stress are major concerns. Benefits that relieve stress contribute to reducing burnout risk.

HMRC's research defines benefits in kind and expenses structures and highlights that reimbursement frameworks vary widely across employers. Where employers do reimburse or provide benefits in kind, nurses experience lower financial strain, which is important in a workforce where pay dissatisfaction is high.

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?

RCN response:

Excluding all expenses/benefits would undermine retention and safety, particularly in community nursing and domiciliary care.

Cutting or varying mileage reimbursement and paid inter-visit travel time via dismissal depresses effective hourly earnings, risks NMW breaches once travel is counted, and accelerates churn, precisely the outcomes the Employment Rights Act 2025 seeks to avoid.

The RCN has pressed for fair mileage mechanisms to keep services viable, and UNISON survey data indicate widespread non-payment of travel time, despite Acas confirming inter-visit travel is working time.

Exclusion would enable “back-door” pay cuts (mileage/accommodation removals), intensifying exits from community roles and disadvantaging lower-paid, women and disabled staff, groups already over-represented in nursing. The Institute for Employment Rights research finds that fire-and-rehire disproportionately hits lower-paid and protected groups.

Removing automatic-unfair protections where these are core would normalise detrimental contractual changes, contrary to the Code of Practice's intent.

In your opinion, what would be the impact on employees 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)?

RCN response

If travel, accommodation, and share-scheme expenses were treated as “sums payable” protected as restricted variations, employees would gain much stronger guarantees that these entitlements could not be cut via fire-and-rehire tactics.

This would result in greater financial security, especially those who rely heavily on these expenses to remain in role (travelling workers, those on remote assignments, or staff whose compensation structure includes share-based awards).

The government notes in the consultation document that some expenses, such as travel expense, may not always be integral to core pay and employers often need flexibility to adjust them. If these expenses were instead protected, employees would be shielded from sudden employer decisions that shift significant costs onto the employee.

For roles requiring travel or temporary accommodation, removing expenses could make the role financially unviable, something the government notes would be relevant to fairness even under ordinary unfair-dismissal rules.

Including these elements in scope would result in greater bargaining leverage for employees and their trade unions. Employers would be significantly limited in their ability to force through cuts, and employees could refuse detrimental changes without fear of the possibility of being dismissed and re-employed on worse terms.

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?

- Yes
- No
- Don't know
- Other (please expand below)
- Prefer not to say

RCN response

The proposals do have the potential to impact employees with protected characteristics under the Equality Act 2010. This is of particular importance to the RCN, given that nursing is a female-dominated profession, and those members working in independent health and social care, where detrimental contract changes are more prevalent.

The consultation stresses that some expenses are not considered integral to pay, and that employers should retain flexibility to adjust them for operational reasons. Despite this, the consultation also acknowledges that if adverse changes leave an employee significantly out of pocket, employers may struggle to justify fairness under ordinary unfair-dismissal protections.

This is significant because equality law obligations apply regardless of fire-and-rehire rules.

Even if these expenses are excluded from restricted-variation status, employers must still consider whether a change disproportionately disadvantages a protected group, triggering the need for justification and mitigation.

The intersection of protected characteristics as set in the Equality Act is a major area of focus for the RCN and its members, particularly in social care. The exclusion of the expenses and benefits in kind already discussed risks exacerbating the socio-economic disadvantages associated with these characteristics.

Any exclusion of these expenses from restricted variations would increase organisational flexibility, but may amplify inequality risks unless employers proactively mitigate disproportionate impacts. In our view, that mitigation means ensuring those expenses and benefits in kind are in scope of the restricted variations,

Section 2: Shift Patterns

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 variations
- **Other types of shift pattern changes should be protected as a restricted variation**
- None of the above
- Don't know

- Other (please expand below)
- Prefer not to say

RCN response

Support Option 1 as a minimum and, if needed, extend to other material changes with clear, objective definitions. Day-night / night-day and weekday-weekend / weekend-weekday shifts have well-evidenced health and caring impacts in nursing and are recognised as potentially harmful. Therefore, such moves should not be imposed via dismissal.

As set out in the consultation document, an expansion of this protection should include variations to shift patterns in other ways. These include restrictions based on a change to a specified number or proportion of scheduled hours. Under these alternatives, dismissals made in order to change hours above a certain threshold limit would be automatically unfair (unless the financial difficulties exemption applies).

This aligns with safer-staffing principles and existing practice on unsocial hours. Where contracts already lawfully provide flexibility, that remains; the restriction is on using fire-and-rehire for extreme changes.

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

- Yes
- No
- Don't know
- Other (please expand below)
- Prefer not to say

RCN response

The proposed definition directly mirrors the statutory definition of “night time” under the Working Time Regulations 1998. This is the default legal period, unless an alternative is agreed, and using the same definition in fire-and-rehire protections creates coherence across employment law frameworks.

Acas guidance highlights that night-time working during 11pm–6am is the period most consistently linked to fatigue-related risks, which is why it sits at the centre of night-working regulations. Therefore, aligning the fire-and-rehire shift-change protections to that same window strengthens safeguards for workers at the most sensitive hours.

As stated, an agreement on an alternative window may be agreed, should the length of the shift allow (longer than seven hours) and this flexibility complements current guidelines.

The proposed timeframe is legally consistent and grounded in long-standing health and safety evidence. It also avoids unnecessary redefinition and maintains alignment with the Working Time Regulations.

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
- Weekday to weekend only
- Weekend to weekday only
- Neither
- Don't know
- Other (please expand below)
- Prefer not to say

RCN response

The proposals relating to shift-pattern protections and changes to expenses and benefits in kind have important implications for the nursing workforce, which continues to face acute challenges around recruitment and retention.

Newly qualified nurses experience significant pressures, including limited support, workplace culture issues, and burnout, all of which contribute to high turnover rates. Given this context, the RCN supports the inclusion of weekday-to-weekend and weekend-to-weekday shift changes within the list of restricted variations.

These shifts can have a substantial impact on nurses' family life, caring responsibilities, and rest, and the government has already identified certain shift-pattern changes as having the potential for "significant adverse impact" on employees, warranting protection from fire-and-rehire tactics.

For a predominantly female workforce balancing work with caregiving, weekend pattern changes can disproportionately increase personal and financial burdens, further affecting retention.

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

RCN response

These transitions are among the most disruptive shift alterations an employee can experience.

There is longstanding evidence, reflected in the Working Time Regulations 1998 and associated guidance, that night-time working poses heightened risks to physical and mental health.

UK employment law defines night time as work performed between 11pm and 6am, with night workers entitled to specific safeguards due to the health, safety, and fatigue risks associated with overnight hours.

This statutory framework underscores that night work is qualitatively different from day work, and shifting employees into or out of night work without agreement can therefore have serious consequences for wellbeing, sleep cycles, and work-life balance.

For the nursing workforce in particular, a sector already facing significant retention challenges protection from abrupt transitions between day and night shifts is critical. Newly qualified nurses commonly cite burnout, poor support, and difficult working patterns among the factors driving early exits from the profession.

Since night working is strongly associated with fatigue and increased strain, imposing unsocial hours via fire-and-rehire could intensify the pressures that are already contributing to high turnover. Given the documented workforce shortages, maintaining predictable and sustainable working patterns is essential to retention efforts.

Including day-to-night and night-to-day shift changes as restricted variations is an important step in protecting employees from such disruptive transitions, promoting fairness, workforce stability, and improved wellbeing across safety-critical sectors such as healthcare.

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?

- Yes
- No
- Don't know
- Other (please expand below)
- Prefer not to say

RCN response

The government's options assessment highlights that core terms such as hours, pay, pensions, and specified shift patterns are protected because changes to these can materially affect an employee's ability to continue working.

Availability windows operate in a similar way. If an employer alters the periods during which an employee is required to be available for work, for example, expanding availability into late evenings, early mornings, or weekends, this can substantially disrupt family life, increase childcare costs, and compromise rest and wellbeing.

These concerns mirror the government's rationale for protecting certain shift-pattern changes, which it acknowledges may have a "significant adverse impact" on employees.

For sectors like nursing, where retention pressures are well documented, changes to availability windows can exacerbate stress and burnout. Newly qualified nurses already report that lack of support and unsustainable working patterns contribute to early departure from the profession.

Given these factors, protecting the most disruptive forms of availability-window changes, particularly those that significantly alter work-life balance or undermine wellbeing, would align with the government's stated aim of creating a meaningful set of protections.

It would help safeguard fairness while supporting workforce stability in safety-critical and high-demand sectors.

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?

RCN response

In health and social care, it is more common for contracts to set total weekly hours and the requirement to work a rota. Many NHS contracts explicitly state hours and include wording such as a duty to “work flexibly to meet the needs of the service,” with the actual pattern set by the roster. In practice, employers may vary patterns with appropriate process and notice where the contract or local policy allows.

Operationally, rostering policies govern when staff are scheduled to work, with rotas created to meet service need, skill mix and safety standards, which reinforces that specific shifts are typically determined through the roster cycle, not the contract. Employer policies emphasise fair, transparent roster production and allow for adjustments.

At national level, the NHS (Agenda for Change) TC Handbook addresses maintaining round-the-clock services, unsocial hours and unforeseen changes to agreed patterns, but it does not require that exact shift days/times are contractually specified for most roles, these are ordinarily managed locally via rostering arrangements. Where patterns are agreed (through flexible working or reasonable adjustments) they can become the reference point for rostering and change controls.

There are exceptions. Some roles (certain community, outpatient or primary care services) may have fixed, contractually expressed patterns (Monday–Friday day shifts). Likewise, where a flexible working arrangement has been formally agreed, the pattern may be set out in writing and treated as contractual unless varied by agreement.

However, across much of NHS nursing, specific shift days/times are more often rostered than contractual, with safeguards provided by local policies, national terms, and consultation duties when changes are proposed.

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?

RCN response

Flexibility clauses are frequently included in nursing employment contracts across both the NHS and independent sectors. Typical wording requires staff to “work flexibly to meet the needs of the service” or permits changes to rotas with specified notice, which is reflected in RCN guidance on shift changes and local policies.

Within the NHS, under Agenda for Change Terms and Conditions and national people policies, it emphasises agreed flexible working, not unilateral imposition. NHS England's national flexible working framework states that staff should be able to work flexibly from day one, with arrangements progressed through local discussion and agreement. This reinforces that flexibility should be collaborative, predictable and agreed by both parties.

Acas and GOV.UK guidance states that a flexibility clause can only be used for reasonable changes such as significant alterations imposed unilaterally, which still require meaningful consultation and adequate notice. Over-broad or heavy-handed use can amount to breach of contract or constructive dismissal. The safer drafting is narrow and specific

In nursing, large, safety-critical employers often include clauses enabling limited shift-pattern adjustments to meet service needs. However, moving staff from long-standing patterns to materially different ones purely on the strength of a general flexibility clause is legally risky unless the change is clearly within the clauses scope. Many employers therefore still seek agreement rather than rely solely on the clause.

While it is common to find flexibility clauses, their lawful and appropriate scope is narrow. They may justify modest, short-term rota adjustments, but they should not be relied upon to impose material shift-pattern changes, for example, moving staff from established day to night rotations or weekday to weekend patterns, without meaningful consultation and, in many cases, explicit agreement.

Accordingly, the RCN recommends that any flexibility wording be specific, transparent and limited, embedded in partnership processes, and never used to bypass agreement on changes that substantially affect nurses' health, caring responsibilities and work-life balance.

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)?

RCN response

Protecting the narrow list, as a minimum, (day/night, night/day, weekday/weekend, weekend/weekday) would deliver a real, immediate benefit to nursing staff, because these are among the most disruptive changes an employer can impose and the government's framework recognises they warrant stronger protection from fire-and-rehire.

Under the proposed regime, dismissals to force these changes would be automatically unfair unless the employer meets a strict financial-difficulty exemption, materially reducing the risk of unilateral imposition on staff.

Anchoring protections to night work also aligns with the existing Working Time Regulations default definition of night-time (23:00–06:00), reinforcing health and fatigue safeguards already familiar to nursing services and staff.

For nurses and nursing support workers, who are routinely rostered across unsocial hours, shielding these transitions would help limit sleep disruption, caring-responsibility conflicts and burnout, factors the RCN regularly sees driving disputes about rota changes.

However, limiting protection only to this narrow list leaves many impactful variations outside the “restricted variation” category. Changes such as repeated early/late flips, split shifts, compressed weeks, extended evening finishes, or more frequent consecutive weekends may still be attempted via dismissal and re-engagement, falling back to ordinary unfair-dismissal tests rather than automatic protection.

If only specified shift changes become restricted, with others remaining non-restricted, this could continue to expose nurses, especially women with caring roles and disabled staff, to disproportionate disruption, contrary to the NHS’s national flexible-working policy direction to agree person-centred flexibility from day one.

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)?

RCN response

Limiting “restricted variations” to day-night and weekday-weekend creates a baseline for employers where dismissals to force these specific changes would be automatically unfair (except for the narrow financial-difficulty exemption).

This sharpens legal risk only where disruption is greatest, helping employers prioritise compliant rostering and avoid costly litigation over the most sensitive patterns.

Because other shift adjustments remain non-restricted, employers still have room to reorganise patterns (subject to ordinary unfair-dismissal tests and meaningful consultation).

This preserves agility for service redesign and local demand management, while steering organisations toward engagement rather than unilateral change.

It also sits alongside the NHS national flexible-working policy direction, which emphasises agreed, person-centred flexibility from day one – reducing conflict and improving predictability in staffing.

Protecting the most disruptive changes can stabilise rosters, supporting morale and retention, which are key employer priorities amid ongoing nursing shortages. Improved predictability reduces grievances over unsocial-hours imposition and aligns with RCN guidance that contentious rota changes are a frequent source of disputes. Lower churn ultimately benefits employers through continuity of care and reduced replacement costs.

The narrow-list approach, as a baseline, offers employers a workable balance, with strong guardrails where harm is greatest, preserved flexibility elsewhere, while encouraging partnership-based rostering that supports safe staffing and retention

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)?

RCN response

If only these four transitions trigger automatic-unfair-dismissal protection, employers may shift towards non-listed rota changes to achieve similar effects, because such changes would fall back to ordinary unfair-dismissal tests rather than automatic protection.

Weekend and night-work protections help, but carers, disabled staff, and many women may still face substantial disruption from other availability and timing changes. NHS flexible-working policy emphasises person-centred, agreed flexibility from day one, therefore a narrow statutory list risks under-protecting these groups unless matched by strong partnership practice.

While the Working Time Regulations define night time (11pm–6am), the consultation approach requires specifying which shift changes are restricted. Without further guidance, disputes may arise over patterns that approach but do not cross the 11pm–6am window, or over partial rotations.

Many NHS and independent-sector contracts contain flexibility/variation clauses. Managers might assume these allow unilateral change, however, even with such clauses, changes must be reasonable, consulted upon, and confirmed in writing, otherwise there is breach-of-contract risk. Narrow statutory protections could create a false sense of security for the nursing workforce.

Because the Secretary of State can add to the list by regulation, the regime should include monitoring of nursing outcomes (fatigue, turnover, equality impacts) to identify additional high-impact patterns that may warrant future protection.

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?

RCN response

Protecting day-night transitions is likely to benefit women, disabled staff, and those with health conditions, given the well-evidenced fatigue and health risks associated with night work and the additional statutory safeguards (health assessments) that recognise its distinct impact.

Aligning protections with the Working Time Regulations' definition helps mitigate those risks for groups more vulnerable to sleep disruption and health consequences.

Protecting weekday-weekend changes will support groups disproportionately carrying caring responsibilities, particularly women in a predominantly female nursing workforce, by reducing abrupt loss of weekend time for care and family life.

Limiting automatic protection to four shift changes creates a risk, whereby employers may seek significant, but non-listed, variation, which could still disproportionately disadvantage disabled staff and carers and would be judged only under ordinary unfair-dismissal tests rather than automatic protection.

RCN casework shows rota changes are a frequent source of dispute; narrowing the statutory list without robust guidance may leave some equality harms unaddressed in practice.

Even with protected changes, many contracts contain flexibility/variation clauses. Misuse, without reasonable justification, consultation, or adequate notice, can still amount to breach and raise discrimination risks, so clear guidance for managers remains essential.

NHS national flexible-working policy emphasises person-centred, agreed flexibility from day one, supporting inclusive practice for disabled staff and carers, and statutory reforms should reinforce, not dilute, this partnership approach.