

## EMPLOYMENT & INCENTIVES

### Proposed reform of the flexible working regime September 2021

The Government's much-anticipated consultation on flexible working has been published, seeking views on proposed changes to the existing flexible working regime. The reforms are aimed at bringing about a cultural shift in attitudes towards flexible working, capitalising on the lessons learned from homeworking during the pandemic. The consultation is open for responses until 1 December 2021.

#### Making flexible working the default

Flexible working has been on the Government's agenda for some time. In 2019, it indicated that it would consult on making flexible working the default for all roles, unless the employer had a good reason not to allow it.

The pandemic has radically altered the approach of many employers to flexible working. The extended period of homeworking demonstrated that remote employees were, in many cases, able to function just as efficiently and productively as office-based employees.

Against the backdrop of a return to the office for many businesses, the Government has published its proposals for reform of the flexible working regime. While the Government's aim is to prompt a cultural shift, the measures on which it seeks views are intended to influence, rather than enforce change. The consultation does not contain a proposal that flexible working becomes the default position for all roles. Instead, the reforms would bring more employees within the scope of the existing regime and introduce more dynamism to the process for considering requests.

#### Proposed reforms

Right to request flexible working will be a day one right
Review of the validity of the statutory grounds for refusing a request
Duty to propose an alternative when refusing a flexible working request
Relaxation of the one request per year rule
Reduction in the timeframe for employers to consider requests
Promotion of the use of the current flexible working regime for temporary arrangements

#### Proposed changes to the flexible working regime

##### A day one right

The key proposal is to remove the current requirement for a period of 26 weeks' continuous service to be eligible to make a request to work flexibly. This would make flexible working available to all employees from the outset of their employment, bringing larger numbers of employees into the scope of the regime. In addition, the Government considers that removing the service requirement would encourage earlier conversations about flexible working and that prospective employees would feel empowered to make enquiries about the availability of flexible working during the recruitment process.

##### Changes to the grounds for rejecting a request to work flexibly

Under the existing regime, in rejecting a flexible working application, an employer must cite one of eight statutory reasons to explain why the application cannot be accommodated. The current list has been in place since 2014 and the Government questions whether the reasons are still relevant, particularly in light of the lessons learned from remote working during the pandemic. The consultation seeks views as to whether the business reasons continue to be valid.

## Contacts



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## Statutory grounds for refusing a flexible working request

The burden of additional cost
Detrimental effect on ability to meet customer demand
Inability to recruit additional staff
Detrimental impact on performance
Insufficiency of work during working periods proposed
Inability to reorganise work amongst staff
Detrimental impact on quality
Planned structural changes

### A duty to suggest an alternative flexible working arrangement

One of the aims of the consultation is to foster more constructive conversations around flexible working. The consultation seeks views as to whether this could be achieved by the introduction of a requirement that the employer suggest an alternative flexible working arrangement in circumstances where it is unable to accommodate the request in the terms proposed by the employee. It gives examples, such as declining a permanent contractual change but offering a change on the same terms for a defined period; or making the requested changes on certain days of the week, rather than all days of the week. The consultation seeks views as to whether such an obligation would place an additional burden on employers or increase the amount of time it takes to handle a request.

### Increasing the frequency with which employees may make flexible working requests

Under the current regime an employee is limited to one flexible working application every 12 months. The Government questions whether this is unduly restrictive and notes that there may be occasions in which an employee's personal circumstances change during the course of a 12-month period, for example, a new health diagnosis or becoming a new parent. The consultation asks whether the restriction should be lifted altogether or be increased to two or three requests within a 12-month period in order to make the regime more responsive to an individual's personal circumstances.

### Reducing the timeframe for consideration of a request

The Government recognises that there is a balance to be struck between allowing time for organisational changes to be implemented and responding promptly to requests. The consultation seeks views as to whether the timeframe could be reduced in order to inject more dynamism into the process.

### Raising awareness of the existing right of employees to request temporary flexible working arrangements

Although the current framework includes a right for employees to request temporary flexible working arrangements, this right is under-utilised. The Government believes that using the regime to seek time-limited flexible work would be beneficial to employees and seeks views as to what would encourage greater take up.

## Businesses drive the agenda

Attitudes to flexible working have changed dramatically in the course of the pandemic. Many large employers have introduced agile working policies under which employees have complete or partial freedom to determine whether or not they wish to attend the office on any given day. In the context of these new, hybrid ways of working, the reforms proposed by the Government may not seem innovative.

The consultation can be accessed [here](#). It closes on 1 December 2021.

**Please get in contact with one of the members of our team or your usual Linklaters contact to discuss how these reforms may be relevant to your business.**

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