BIRMINGHAM LAW SOCIETY

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Response to Government consultation on flexible working

April 2026

Make Work Pay: Improving access to flexible working

About this response

This response is submitted on behalf of the Employment Committee of Birmingham Law Society. Birmingham Law Society is one of the largest regional law societies in England and Wales, representing the interests of lawyers and law firms across Birmingham and the West Midlands. The Employment Committee comprises practising employment lawyers drawn from across the region, including solicitors in private practice and in-house counsel, with expertise spanning both contentious and non-contentious employment law. The Committee's response reflects the practical experience of its members in advising employers and employees on the full range of employment law matters.

The consultation questions to which the Committee has chosen to respond are reproduced below, with the Committee's selected answers highlighted in yellow. Questions directed at employers or individuals have not been answered by the Committee and are not reproduced.

Part one: Understanding early impacts of recent reforms

All employees across Great Britain have a right to request a flexible working arrangement. This could include changes to when or where they work. Employers can choose to accept or reject these requests.

In April 2024, the following changes to the flexible working framework took effect:

- allowing employees to make a flexible working request from the first day of a job;
- requiring employers to decide on requests within two months;
- requiring employers to consult employees if they are considering rejecting a request;
- employees being able to make two statutory requests in any twelve-month period;
- Removing the requirement for employees to explain the effect their request would have on the business.

We want to know how these changes have affected employers and employees.

[Questions 1 – 15 are for employers and individuals and have not been answered in this response]

16. **[All respondents] In your view, has overall access to flexible working improved since the 2024 changes were introduced?**

    a) Yes

    b) No

    c) Do not know

Part two: A new process for consulting employees on flexible working requests

This section focuses on the requirement for employers to consult employees before rejecting a statutory flexible working request. Employers are currently required to consult employees before rejecting a request, however there is no further detail set out in legislation about how employers should conduct this process.

We are addressing this gap by setting out a process in secondary legislation that employers will be legally required to follow.

The process set out below aims to introduce consistency for employees and better guidance for employers leading to constructive conversations between both parties about the request, as well as consideration of potential alternative arrangements. It has been shaped through discussions with businesses, employees, trade unions and charity sector organisations about what works now, and where there may be a need for improvement.

Acas already provides non-statutory guidance on flexible working requests, which includes a detailed set of steps employers could choose to follow to meet the requirement to consult employees about requests. The suggested process outlined below draws on this existing guidance to shape a series of light touch requirements that will be familiar to many employers.

To support employers to follow this process, there will also be non-statutory guidance for employers. Where the words ‘should’ or ‘could’ are used below, this indicates a point for guidance as opposed to a legal requirement.

Suggested process

Where an employer is considering rejecting a statutory flexible working request, we are proposing that the employer must meet with the employee making the request.

The objective of this meeting is:

To consider ways to address challenges with the requested arrangement and explore whether a suitable alternative arrangement could be agreed.

17. **[All respondents]: Do you feel the proposed objective is appropriate for the consultation meeting?**

a) Yes

b) No

c) Do not know

18. **[if No or Do not know]: What do you think should be the objective for this consultation meeting? [Open text]**

N/A

Setting up the meeting

- The meeting must be held without unreasonable delay, and must take place within the two month period for making a decision. In practice, to allow time for potential follow-up conversations to agree an alternative arrangement before a decision is agreed, the conversation should happen within six weeks of a request being made.

- The employee must be informed about the context of the meeting in advance to allow them to prepare for it.

- A person with the authority to make a decision about flexible working arrangements must attend the meeting. This could be the employee's line manager, or it may be a different member of staff. They will be referred to as the decision maker for the purposes of the requirement to consult.
- The decision maker will be required to keep a record of the discussion during the meeting.

19. [All respondents]: How much advance notice do you think an employee should receive before the meeting is held?

a) 1 day
b) 3 days
c) 1 week
d) Other, specify:

   At least one week's notice

e) The requirement should be to give fair notice, accounting for ways of working within the organisation
f) No minimum notice should be required
g) Do not know

20. [All respondents]: Do you agree with the proposed requirements for setting up the meeting?

a) Yes
b) No
c) Do not know

21. [if No or do not know]: What do you think the requirements for setting up the

meeting should be? [Open text]

<u>During the meeting</u>

<u>The meeting must allow for sufficient discussion of the request and any potential alternatives</u>

- The decision-maker must clarify whether the employee would like the proposed request to be considered as a reasonable adjustment in accordance with the Equality Act 2010.

Identifying challenges and problem solving:

- The decision-maker must clearly communicate any challenges they identify with the original request. They must explain why they feel that it would not be feasible to accommodate the request, or why the request is not reasonable, referring to the relevant business reason(s).
- The decision-maker must consider whether there might be ways to navigate these challenges and accommodate the request.
    - For example, if the proposed start date of the flexible working arrangement is incompatible with business needs according to a relevant business reason, the employer must consider whether a different start date may be feasible and discuss this with the employee.
- If the potential impacts of a new arrangement are unclear, an employer and employee could choose to trial it for a fixed period of time.

Exploring alternatives: if the original request cannot be feasibly accommodated, the employer and employee must consider whether there are feasible alternative arrangement(s). As with other requests, employers can only reject proposed alternative arrangements where a relevant business reason applies. Employers must record the outcome of this discussion and communicate this with the employee.

22. [All respondents]: In your view, which of the elements set out in the suggested process above should be part of the meeting between a decision maker and employee about a statutory flexible working request? Select all that apply.

a) Asking if the employee would like the request to be considered as a reasonable adjustment, in accordance with the Equality Act 2010

b) Discussing any challenges in accommodating the original request

c) Exploring alternative start dates for the proposed request

d) Considering alternative arrangements that could be accommodated

e) Discussing the option of a trial period

f) Other, explain your answer:

Communicating Outcomes in Writing

Currently, employers are required to notify employees of the outcome of their flexible working request. Under the new proposals, employers would also be required to provide written notification of both:

- **The outcome of the meeting:** a summary of what was discussed and any conclusions or next steps agreed during the meeting between the employer and employee about the flexible working request (for example, whether alternative arrangements were explored, or if a trial period was agreed).
- **The outcome of the request**: the final decision made by the employer about the flexible working request (for example, whether the request was approved, rejected, or if an alternative arrangement was formally agreed).

23. [All respondents]: Do you agree that employers should be required to communicate the outcome of the meeting, as well as the outcome of the statutory request, in writing?

a) Yes
b) No
c) Do not know

[Questions 24 – 25 are for employers only and have not been answered]

26. [All respondents]: Do you have any further thoughts or suggestions on the process for the requirement to consult outlined above?

Nothing to add

Part three: Training, resources and support

[Questions 27 – 32 are for employers only and have not been answered]

33.[All respondents]: If you would like to see additional guidance for employees on flexible working, what topics do you think it should cover? Select all that apply.

a) Guidance on making specific types of requests, for example on compressed hours or remote working
b) Guidance for specific sectors, such as hospitality or logistics
c) Guidance for specific ways of working, for example people working shift patterns
d) I do not think additional guidance is needed
e) Other topics, specify: _____

34.[All respondents]: If you would like to see additional guidance for employees on flexible working, what format do you think this should take? Select all that apply.

a) Case study examples
b) Visual aids, such as flow charts setting out steps to follow in making requests
c) Additional written guidance
d) Video clips with short explainers
e) Webinars
f) I do not think additional guidance is needed
g) Other formats, specify: _____

35.[For individuals only – not answered]

36.[All respondents]: Which, if any, of the following ways to address barriers to flexible working do you think we should explore further over the years ahead? Select all that apply.

a) Encouraging organisations to communicate their approaches to flexible

working with candidates

b) Improving enforcement of the right to request flexible working

c) Improving employee awareness about different arrangements

d) Improving employer awareness about different arrangements

e) Something else, specify: _____

Summary of the Committee's response

The Committee broadly supports the proposals set out in the consultation. In the Committee's view, access to flexible working has improved since the 2024 reforms took effect, and the proposed objective for the consultation meeting between employer and employee — together with the suggested process for setting up that meeting and recording its outcome in writing — is appropriate and proportionate. The Committee agrees that the substantive elements of the meeting should include discussion of any challenges in accommodating the original request, exploration of alternative start dates and arrangements, and consideration of a trial period. The Committee considers that employees should receive at least one week's notice of the meeting. Looking ahead, the Committee suggests that further attention should be given to encouraging organisations to communicate their approaches to flexible working with candidates, to improving employer awareness of different flexible working arrangements, and — notwithstanding the progress made since 2024 — to improving enforcement of the right to request flexible working. The Committee also identifies a continuing need for more accessible guidance for employees, particularly in the form of sector-specific material, case studies, flow charts and additional written guidance.

Birmingham Law Society Employment Law Committee

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