

The government has today issued a consultation “[Making flexible working the default](#)” as part of its plans to modernise the way we work. According to the [press release](#), the government’s proposals are about providing the right framework to encourage flexible working conversations rather than prescribing specific arrangements in legislation. In other words, despite all the fanfare from the government around the announcement, we are talking more about tinkering around the edges of the current Flexible Working Regulations rather than significant legislative reform. Not least because the government has rejected upfront the idea of turning the current right to request into a right to have- the starting point will remain that an employee can still make a request for flexible working and given one or more legitimate business reasons, an employer can still reject it.

The first part of the consultation sets out a range of possible legislative reforms, including:

- Making the right to request flexible working a day one right for all employees – so removing the current requirement for employees to have worked for their employer continuously for at least 26 weeks before making a request.
- Considering whether the current eight permissible business reasons for refusing a flexible working request remain valid or whether there is a case for changing them.
- Requiring employers to show that they have considered alternatives when rejecting a request for flexible working – the government wants to explore whether it would be practicable (or painful) to require employers to set out, when rejecting a request, any alternatives that have been considered. For example, if an employer cannot make the change requested on all working days, did it look at making it on some working days only?
- Reviewing the administrative process underpinning the right to request flexible working – the consultation asks whether employees should be allowed to make more than one statutory request in any 12-month period and also whether the current three-month period for considering requests should be reduced.
- Clarifying that employees can request a temporary arrangement. Although the current legislative framework already provides for temporary arrangements, the government believes that time-limited requests are under-used and wants to explore ways to encourage them.



The government says it is also keen to secure a “cultural shift” in the way that we think about flexible working. Accordingly, alongside the legislative proposals set out above, it will also be inviting the Flexible Working Taskforce – a body made up of business groups, trade unions, charities and government departments – to develop advice to support the new ways of working we are expecting to see as the economy begins to fully open up and people start to remember just how hideous commuting actually was. The government will also be launching a separate Call for Evidence at some stage on how to secure a genuinely flexible working friendly culture and as to how ad hoc and informal job flexibility can best be supported.

At the back of the consultation document, the government refers to its 2019 consultation “Good Work Plan: Proposals to support families”. This contained proposals to introduce a new requirement for large employers to publish their parental leave and pay policies and flexible working policies and to advertise jobs as flexible unless there was good reason not to do so. In today’s consultation, however, the government has rejected both suggestions for the time being. The proposal to require employers to publish and report on their family-related leave and pay policies will now be considered as part of the government’s review of the impact of the Gender Pay Gap Reporting Regulations in 2022, so possibly more to come on this at a later date.

In other news, the government has also issued its response to its 2020 [consultation on carer’s leave](#) today, confirming that it will be granting unpaid carers who are balancing a job with caring for a dependant with long-term needs one week’s unpaid leave, as a day one right. Such leave will be able to be taken flexibly, from half-day blocks up to a single whole week. Legislation will be brought forward “when parliamentary time allows”, which we faintly suspect is now shorthand for “at a politically advantageous time shortly before the next election”.

The flexible working consultation will close on 1 December 2021.

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