

Consultation response

[Making Flexible Working the Default](#) consultation

Contact

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Do you agree that the Right to Request Flexible Working should be available to all employees from their first day of employment?

- Agree

techUK and its members are supportive of the suggestion that the Right to Request Flexible Working should be available to all employees from their first day of employment. However, it should be noted that some roles cannot be done at home, such as retail roles or on-site infrastructure roles. This day 1 right could conflict with business or customer needs and security so we must consider businesses rights to refuse. But most businesses who have the digital capability, where it is suitable for the job role, should offer employees this right as a default from the start of their contracts.

A benefit of this right is that it enables businesses to consider flexibility up front and, in turn, increases the number of applications to roles from minority groups or persons with disabilities, thereby accessing different pools of talent. The tech sector is currently facing a large skills gap, and organisations (of all sizes) have been taking a proactive approach to developing flexible working and the diverse talent it brings to future-proof their businesses against the skills shortages that could hold back their growth.

Additionally, in striking the balance between employees' professional lives with personal commitments more effectively, companies can improve retention of their staff. However, the POST Horizon scanning article on "The impact of remote and flexible working arrangements" from April 2021 highlights that positive benefits from increased flexible working may not be equally distributed throughout the population and could increase economic and social inequalities. This is something the day 1 right will work to alleviate by offering everyone the same opportunity, as currently take-up of the right to request differs in different groups of people across occupations. techUK is glad to see that Government is planning to continue expanding the right to flexible working beyond its initial limited focus on working families and is keen to encourage broader take-up across different groups to normalise this type of work in the UK. While the case to make flexible working the default can benefit all employees by creating a new workplace norm, it is key to understand how hybrid working in particular may impact career prospects of women or those from a minority background. Employers may need to provide protection and training to employees if discrimination against those who work flexibly become an issue in the future. techUK looks forward to seeing government data and analysis on this topic.

The tech industry has seen the conversation on flexible working shift due to the pandemic, but techUK wants to stress that this definition of flexible working is quite wide. Flexible

working does not only mean working from home but also includes: job shares; compressed hours; part-time concessions; remote, hybrid, and digital-nomad models that are entering the mainstream of ways of working. As such, any definition of flexible working will likely need to be reconsidered by Government in the future. techUK believes that companies should define flexible and hybrid working with regard to their specific organisational context. This might include several different forms of flexible working, even within one organisation, depending on role requirements.

Employers, however, must not be expected to offer all forms of flexible working. Employers have seen that requests around flexible working have begun to slip into negotiations with employees, with questions arising around excess costs, zoning pay and hybrid and remote contracts regarding benefits packages. While it is the employer's legal duty to find a suitable solution, both the employer and employee should work together towards either an informal or formal flexible working request.

In your organisation, do you currently accept requests for flexible working arrangements from employees that have less than 26 weeks continuous service? Please answer this question from the perspective of the employer.

- Yes

Given your experiences of Covid-19 as well as prior to the pandemic, do all of the business reasons for rejecting a flexible working request remain valid? Please answer this question from the perspective of the employer.

- Yes, the list of business reasons remains valid.

The reasons for rejecting flexible work requests remains valid and broadly cover the right areas. For some tech businesses, such reasons for refusals have been reduced as a result of the experience of the pandemic.

Do you agree that employers should be required to show that they have considered alternative working arrangements when rejecting a statutory request for flexible working?

- Disagree

techUK does not believe that employers should be "required" to suggest alternatives but rather that employers can and should consider alternatives, where possible. If an employer rejects a statutory request for flexible working, the business reason would be valid. An employer should not be required to suggest an alternative but consider alternatives with the employee. This would be a more informal request for flexible working. Working together to negotiate a compromise should be at the discretion of the employer and not a built-in requirement of the legislation. Going forward, employers should be encouraged to consider alternatives as best/good practice. techUK understands that while legislation is designed to make flexible working the default, or at least instigate a more agile way of working, it should be companies that decide where the boundary is between informal arrangements and formal requests.

Would introducing a requirement on employers to set out a single alternative flexible working arrangement and the business ground for rejecting it place burdens on employers when refusing requests?

- Yes

Introducing a requirement on employers to set out a single alternative flexible working arrangement would place burdens on employers and may compromise consistency and fairness to all other employees. Such burdens include those on the list of refusing request such as: extra costs, inability to reorganise work amongst staff, the business' ability to meet customer demand and client requests will be negatively affected. techUK sees that employers should consider alternatives with the employee, where possible but employers should not be legally mandated to do so.

If you answered yes to question 5, would this requirement have an effect on the time taken by employers to handle a request?

- Don't know

It is likely this requirement will have an effect on the time taken by employers to handle a request due to the additional considerations, but it is difficult to estimate the extra minutes/hours.

Do you think that the current statutory framework needs to change in relation to how often an employee can submit a request to work flexibly?

- Yes

Many digital employers already allow for another request within 12 months if someone's circumstances change. For large digital businesses, the organisation aims to be flexible, especially when circumstances have changed, with a high degree of informal flexibility and accommodation based on needs of different teams and styles of working. Temporary arrangements also need to be considered in this. Therefore, techUK sees 6 months as an appropriate statutory limit.

Do you think that the current statutory framework needs to change in relation to how quickly an employer must respond to a flexible working request?

- No

The existing 3-month deadline for responding to requests remains appropriate, but such requests should always be responded to in an appropriate and timely manner. Often this is done more quickly if the request is informally accepted by a line manager and HR and then formally accepted.

Are you aware that it is possible under the legislation to make a time-limited request to work flexibly?

- Yes

What would encourage employees to make time-limited requests to work flexibly? Please provide examples.

To encourage the wider uptake of flexible working arrangements in the short-term, employers need to make it understood that it is a safe conversation to have. Despite many employees saying they feel trusted, and that employers have done well in implementing working from home over the past 18 months, almost half of workers expected a return to limited flexible working policies following the end of lockdown according to [Personnel Today](#). Nevertheless, the pandemic has increased manager trust, as well as a broadened understandings of how value is delivered and measured in the workplace.

The need for transparency in flexible working policies from employers is required as well as guidance on how discuss a request. One techUK member said their requests work through a team-by-team approach—it is up to the skill of the leader to balance individual and team needs, alongside other business efforts. Team leaders are supported through training, facilitation guides, and sessions that focus on flexible work and wellbeing. This ensures managers and employees understand the value of flexible work and are able utilise such policies. BT has noted that to enshrine flexible working in corporate policy, it means “going beyond legal necessity and making sure that management (and particularly HR) pays much more than lip service to liberating the way staff work. The second is by enabling it with the right technology” (Transforming your business through flexible working, BT Business report 2020). Cisco has a “Flexible Work Practices: What Employees Need to Know” document that discusses the benefits and challenges of teleworking and offers advice for employees about how to manage the special requirements associated with working remotely with their team and managers. Proposals in this consultation normalise process of asking for and responding to requests which may make flexible working requests more common, but they will not make flexible working the default without a cultural shift.

Other employers may have implemented policies but in practice not used or restricted them. One techUK member looks to lead by example and encourages staff to make time-limited requests the same way their senior leaders have done. This allows such ways of working to become a part of the culture and a workplace norm. One large tech employer is beginning to pilot a 4 day week in some different areas. It is also important to evaluate the number of people who know about the ability to make time-limited requests and who both informally and formally make requests through employee feedback, surveys, and anecdotal discussions.

Please share your suggestions for the issues that the call for evidence on 'ad hoc' and informal flexible working might consider.

techUK is keen to support the work of the Flexible Working Taskforce to ensure the digital sectors' voice is championed, and to highlight the ways in which the tech industry is encouraging the uptake of flexible working while keeping employee wellbeing at the forefront of considerations. In particular, the best practice guidance will be useful, especially if case studies for different size organisations (from start-ups and scale-ups to SMEs to large) are showcased. The Government Equalities Office has produced a number of guidance documents that have proven beneficial to employers—guidance and best practice

on flexible working and informal flexible working practices could be replicated in the same way.

techUK does see a benefit to highlighting flexible working in job adverts. Timewise's Flexible Jobs Index 2021 shows that many recruiters are still failing to use flexible working, which is known to be a key employee benefit, as a tool to maximise job applications. Only 1 in 4 jobs is advertised with flexible working, which means that people who need flexibility are essentially excluded from 3 in 4 jobs. A recent Timewise survey revealed that many [candidates seeking flexible jobs will not apply to job adverts that do not overtly offer flex](#), but that this should be at the discretion of the employer and their recruitment policies.

Considering the demand for tech jobs was 42% higher in June 2021 than at the same time in 2019 and tech-related vacancies making up 13% of all UK job vacancies, (Tech Nation: Jobs & Skills report 2021), it is surprising to see that employers are not grabbing the competitive edge in attracting talent.

techUK believes that publishing flexible working policies or statements should be at the discretion of the employer as there are concerns about enforcement across different roles and situations. For global organisations, concerns may be temporal or rooted in culture. Ultimately, the point of flexible working is to provide flexibility. Government proposals should allow employers to be iterative in their thinking and the ways in which they engage with their employees on this issue.