

Consultation Response

Make Work Pay:
Consultation on
improving access
to flexible working

April 2026



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law sub-committee welcomes the opportunity to consider and respond to the UK Government's Make Work Pay: Consultation on improving access to flexible working.¹ The sub-committee has the following comments to put forward for consideration.

¹ [Make Work Pay: consultation on improving access to flexible working](#)



General Comments

We note the requirement on an employer to consult with an employee before rejecting their flexible working request (Employment Rights Act 1996, section 80G(1)(aza)). It is our view that the primary purpose of the consultation requirement ought to be to provide an opportunity for the employee and employer to engage in a meaningful dialogue in relation to whether the employee's request can be accommodated in the form it was made, and, only where this is not possible, in an alternative form. We do not believe that this purpose is fully reflected in the current proposals for regulation of the consultation requirement. This is most apparent in the proposal regarding the content of the consultation meeting which anticipates the meeting will focus on the challenges with accommodating the request and alternatives to the flexible working pattern requested by the employee. We suggest it would be preferable if the regulation of the consultation meeting operated to encourage open-minded and genuine discussion between employer and employee as to the feasibility of the employee's flexible working request. We are concerned that some employers will interpret the current proposal as relieving them of the obligation to consider with an open mind the employee's flexible working request in its original form during the consultation meeting and in light of the oral representations made by the employee.

We would also like to observe that the consultation provides limited detail on the operation of the new reasonableness test to which flexible working decisions will be subject. We note a further public consultation is to be held to inform ACAS statutory guidance on this new test. We note the importance of guidance on this test, particularly given it is to have a different statutory basis to other tests used in employment law and therefore the uncertainty as to how it will apply in practice. We keenly await this further public consultation.

Finally, we observe the requirements on employers which flow from the additional regulation of the duty to consider a flexible working request will have a particular impact on small organisations which have limited resource. We would ask that this is taken into consideration when determining which requirements are suitable for inclusion in regulation, and which are better suited to non-statutory guidance.

Consultation Questions

Part one: Understanding early impacts of recent reforms

Questions 6 – 15

These questions are for employers and individuals. We have no comments on these questions.



Question 16 - In your view, has overall access to flexible working improved since the 2024 changes were introduced?

There are no notable impacts to access to flexible working (positive or negative) that are easy to identify following the 2024 changes. In particular, there is no readily available data to comment on, whether that be sector specific or workplaces more generally. We would therefore welcome more data gathering and publication from the Government on the trends and impacts that have given rise to this consultation and the proposals in it. It is noticeable that many flexible working requests are successfully implemented informally and that focusing on formal requests only is unlikely to provide a complete picture as to how flexible working is implemented in the workplace.

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

17. 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?

This consultation encourages employers to justify their decision to reject a flexible working request in a better, more consistent and justifiable way. Whilst we agree with this objective, we'd encourage a more prominent role of the employee in the consultation meeting so that they can provide a deeper insight and understanding behind their request and encourage open dialogue with the employer. Please see our wider comments in the Introduction section.

19. 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:
- 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



One week or such other reasonable notice period. This would set an expectation but allow flexibility for employers based on business need and take account of postponement requests without too much rigidity. As referred to in our comments in the Introduction section, it will be important for the Government to consider whether any notice requirement is stipulated in regulation or guidance so that the practical impacts across different sizes and resources of employer can be considered.

20. Do you agree with the proposed requirements for setting up the meeting?

- a) **Yes**
- b) No
- c) Do not know

We do agree with the requirements, although do have concerns about the practicability of a decision maker always attending the meeting. In larger businesses, this may not always be possible, although we recognise that in order to have meaningful dialogue then the person representing the employer needs to have sufficient standing to influence the outcome of the request.

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

22. 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:

Agree with a – e. We would also suggest that the employee be given a fair and reasonable opportunity to make their request orally to allow them to explain the rationale behind it as employees may feel more comfortable doing this orally in person, rather than in writing.



23. 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

No, we do not agree that it should be a requirement for employers to communicate the outcome of the meeting, as well as the outcome of the statutory request, in writing. We feel that this would be an onerous requirement on employers. There is a risk that by making this a requirement, it could lead to duplication in responses. It may also limit the employer's time to fully reflect on the request and the information gathered during the meeting.

Questions 24-26

Questions 24-26 are for employers.

27. Do you have any further thoughts or suggestions on the process for the requirement to consult outlined above?

We would welcome more clarity around what is envisaged by the requirement to "consult" and what the process would entail. We would encourage it being genuine and meaningful consultation before a decision is made.

Part three: Training, resources and support

Questions 28-30

Questions 28-30 are for employers.

31. If you would like to see additional guidance for employers on flexible working, what format do you think this should take? This could include guidance on statutory or informal requests. Select all that apply.

- a) Guidance on handling 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) Case study examples**
- e) Visual aids, such as flow charts setting out steps to follow in handling requests**
- f) Additional written guidance**
- g) Video clips with short explainers



h) Webinars

i) I do not think additional guidance is needed

j) Other formats, specify:

Yes. Additional guidance would be helpful, particularly practical, accessible materials that support employers to handle both statutory flexible working requests and informal arrangements.

The most useful formats would be guidance on specific types of requests, case study examples, visual aids such as flow charts, and additional written guidance. Case studies and flow charts, supported by clear and bite-sized actions, would assist employers in applying the guidance in a way that reflects their own circumstances. Accessibility should be prioritised, and we query the added value of video content where it may restrict understanding.

Question 32

Question 32 is for employers.

33. 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:

Yes. Employees are most likely to benefit from guidance on making specific types of flexible working requests, guidance for those working shift patterns, and other relevant issues not fully captured by the listed options. Topic-based, accessible examples would help employees better understand how to make effective requests and navigate the process in practice.

34. 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:

We refer to our response to Question 31 regarding the importance of flexibility and accessibility in approach. The most effective formats for employees would be case study examples, visual aids such as flow charts, additional written guidance, and short video explainers.

Case studies and flow charts would help explain how flexible working requests operate in practice, including common arrangements such as compressed hours or remote working. Clear written guidance and short videos can provide repeatable, easy-to-understand explanations of the statutory framework and relevant ACAS processes, supporting employees from day one of employment. Employees often benefit from simplified and visual materials to supplement existing text-heavy resources. Webinars could also be useful where they prioritise accessibility and interactive engagement.

Question 35

Question 35 is for individuals.

36. 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:

We consider that options a), b), c), and d) merit further exploration, as together they address key barriers including poor communication, inconsistent enforcement, and low awareness among both employees and employers.

(a) would help set expectations at the recruitment stage and support access to flexible roles across more diverse talent pools.

(b) would help address inconsistent decision-making and weak processes, particularly as new reasonableness requirements are introduced.

(c) would support better use of day-one rights and reduce under-utilisation of flexible working options.



(d) would help ensure requests are handled more effectively, including through greater familiarity with alternatives such as compressed hours or adjusted working patterns.

Taken together, these measures would support more consistent, informed and meaningful consideration of flexible working requests in practice.



For further information, please contact:

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