

Title: The Flexible Working (Amendment) Regulations 2023 IA No: DBT-004(IA-F)-23-CMRR RPC Reference No: Lead department or agency: Department for Business and Trade Other departments or agencies:	Impact Assessment (IA)			
	Date: November 2023			
	Stage: Final IA			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
Contact for enquiries: bryan.halka@businessandtrade.gov.uk				
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2022 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-5.9	-5.9	0.7	N/A

What is the problem under consideration? Why is government action or intervention necessary?

Having the ability to vary the time, hours and place of work is key to the functioning of the UK's flexible labour market. In 2020, 80% of employees reported availability of any flexible working at their workplace and 59% of employees reported take-up. However, take-up levels have remained broadly consistent over the last 10 years, access is unequal and some employees report negative career consequences.

Access to all forms of flexible working is needed to support a flexible labour market in which all people can participate, and businesses can benefit. The reforms we are introducing ensures that the wider economic and social benefits are maximised (positive externalities), improves equality and fairness in access and improves awareness and understanding of the policy.

What are the policy objectives of the action or intervention and the intended effects?

The key objective of changing the right to request flexible working policy to a day 1 right is to:

- provide more employees with better access to contractual flexible working.
- help more employees to better reconcile their work and non-work lives; and
- help more employers to secure the business benefits of flexible working.

The proposed changes will help to secure more flexible working where this meets the needs of both individuals and businesses.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options have been considered:

- Option 1: Do nothing
- Option 2: Preferred (regulatory) approach: Make the right to request flexible working a day 1 entitlement

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:	
Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2029				

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by Kevin Hollinrake MP, Parliamentary Under-Secretary of State at the Department for Business and Trade:



Date:

5/12/23

Summary: Analysis & Evidence

Preferred Policy Option

Description: Make the Right to Request Flexible Working a day one right

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2024	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -17.7	High: -0.4	Best Estimate: -5.9
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	0.0	10	0.0	0.4	
High	0.0		2.1	17.7	
Best Estimate	0.0		0.7	5.9	
Description and scale of key monetised costs by 'main affected groups'					
<p>The assessment of costs for the regulatory reform is low, less than £1.0m per annum. These relate to the costs incurred by businesses from reviewing requests and any resulting impact in terms of appeals and tribunals to the additional population in scope of this right. Since the consultation-stage, we have gathered evidence to refine the key assumptions, particularly to understand how individuals and employers might react, and improve the robustness of the estimates.</p>					
Other key non-monetised costs by 'main affected groups'					
<p>We have not monetised any costs to employers of accommodating flexible working because this change is permissive. The employee has a right to request flexible working rather than having a right to have. Businesses may refuse requests, and are only likely to agree if the benefits outweigh the costs.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	Not quantified		Not quantified	Not quantified	
High	Not quantified		Not quantified	Not quantified	
Best Estimate	Not quantified		Not quantified	Not quantified	
Description and scale of key monetised benefits by 'main affected groups'					

Other key non-monetised benefits by 'main affected groups'

Benefits to businesses – We anticipate that the proposed policy options will lead to benefits to both employees and employers. This includes potential for positive effects on workplaces from reduced absenteeism, reduced vacancy costs and increased skill retention, and increases to profit. Increases in flexible working can also result in increased motivation and productivity from employees. CBI found that 99% of all businesses surveyed believed that a flexible workforce is vital or important to competitiveness and prospects for business investment and job creation.¹

Economic benefits – wider research indicates that flexible working can unlock opportunities for growth. It suggests that, in the absence of suitable working hours or locations, groups of people are either not employed, have retired early, or are working below their potential². In the context of labour shortages, there is a role for flexible working in attracting and keeping people in work. Research conducted by the Behavioural Insights Team has shown that offering flexible working can attract up to 30% more applicants to job vacancies, and a recent ONS publication revealed that older workers working flexibly are more likely to plan to retire later³. These reforms can help to 'normalise' a flexible working conversation between employers and employees and will improve the existing right to request framework. This has the potential to both help attract people back to work and make it easier to stay in work.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The key uncertainty relates to the percentage of people who make a formal request for flexible working under the statutory framework and whether employers accept or reject those requests in the same pattern as current evidence suggests. We have assumed a flexible working take-up rate of 4%, in the central case, based on survey evidence and performed sensitivity tests to account for this uncertainty.

See annex 1 for a full list of key assumptions.

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.7	Benefits: 0	Net: 0.7	N/A

¹ CBI & Pertemps (2017) Employment Trends Survey: <http://www.cbi.org.uk/index.cfm/?api/render/file/?method=inline&fileID=57DEC8F4-AF4B-4101-82B2406D3BE1CBCA>

² See Gornick and Hegewisch (2010) <https://www.gov.uk/government/publications/work-life-balance-business-costs-and-benefits-literature-review>

³ ONS Release

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerimpactofworkingfromhomeonolderworkers/2021-08-25>

Evidence Base

Policy background:

In 2003, legislation came into force which provided employed parents, and certain other carers, of children under the age of 6 (or disabled children under 18) with 26-weeks of continuous service (with their employer) a statutory right to request a flexible working arrangement – for example a change to their work location, working hours and/or associated working pattern. This was extended to carers of adults (2006) and children under 17 (2009).

All statutory requests must be considered by the employer but can be refused for one of eight prescribed business reasons. Eligible employees may make one statutory request in any 12-month period and employers must respond to requests within three months.

In 2014, as part of the Children and Families Act, the right to request flexible working was extended to all employees with 26 weeks continuous service. The statutory framework is intended to:

- provide employees with access to contractual flexible working.
- help employees to better reconcile their work and non-work lives; and
- help employers to secure the business benefits of flexible working.

In September 2021, the Government published a Post Implementation Review of the 2014 Flexible Working Regulations (PIR)⁴. This found that the majority of employees (80%) and employers (96%) report availability of flexible working at their workplace. The Review also found that in 83% of workplaces, where a request had been made, the request was granted. However, the Review also found that flexible working take-up (not necessarily achieved through a statutory request) has remained broadly flat since 2014 with 59% of all employees reporting they were or had worked flexibly in the last 12 months – as well as highlighting differences in reported take-up and availability across sectors, occupations, gender and size of workplace.

In the same month (September 2021), the Government published a consultation on proposals to encourage a better dialogue about flexible working opportunities, to increase the frequency of requests and to speed up the administrative process. The response was published in December 2022⁵ and made clear the Government's intention to take forward a number of reforms.

The Employment Relations (Flexible Working) Act received royal assent on 20 July. The Act makes changes to the right to request flexible working to provide employees with better access to flexible working arrangements.

The reforms that have already gained Royal Assent are to be implemented alongside this secondary legislation change as a package of measures that will come into force on the 1st April 2024. Making these changes at the same time will help improve awareness and compliance among businesses and employees.

Present context

Britain is a great place to start and grow a business, home to some of the world's best companies. But for many jobs there are still invisible restrictions that hold people back – like the need to live in high-cost accommodation close to the centre of cities or maintain working arrangements that make it hard to manage family or other responsibilities such as taking children to school or caring for an elderly relative.

The right to request flexible working provides a framework through which employers and employees can consider the benefits that come with removing these invisible barriers. For employers, some of these benefits are listed below:

⁴ Post Implementation Review of 2014 Regulations <https://www.legislation.gov.uk/uksi/2014/1398/resources/made>

⁵ <https://www.gov.uk/government/consultations/making-flexible-working-the-default>

- There is a strong demand for more flexible jobs – 87% of people surveyed by Timewise want to work flexibly⁶. This rises to 92% for young people⁷ surveyed by Deloitte. According to the 2022 Flexible Jobs Index, while 9 in 10 UK workers want to work flexibly, only 3 in 10 jobs offer flexibility⁸.
- 9 in 10 employees surveyed for HSBC consider flexible working to be a key motivator to their productivity at work (89% – even more than financial incentives (77%)).⁹ CIPD research (2022) shows that more than a third of organisations (37%) have seen an increase in requests for flexible working and almost two-fifths (38%) of organisations say that more home/hybrid working has increased their organisation’s productivity/efficiency.¹⁰
- The CBI Employment Trends survey¹¹ found that 99% of all businesses surveyed believed that a flexible workforce is vital or important to competitiveness and the prospects for business investment and job creation.

Wider research indicates that flexible working can unlock opportunities for growth. It suggests that, in the absence of suitable working hours or locations, groups of people are either not employed, have retired early, or are working below their potential¹². Additionally, the PIR showed that flexible working can reduce vacancy costs; increase skill retention; enhance business performance; and reduce staff absenteeism rates.

In the context of labour shortages in the economy, there is a role for flexible working in attracting and keeping people in work. Research conducted by the Behavioural Insights Team has shown that offering flexible working can attract up to 30% more applicants to job vacancies¹³ (helping employers to recruit from a more diverse talent pool) and a recent ONS publication revealed that older workers working flexibly would be more likely to be planning to retire later¹⁴.

An ONS Lifestyle Survey (Wave 2) finds that among those who would consider returning to work (58%), the most important factors when choosing a paid job were flexible working hours (32%), good pay (23%), and being able to work from home (12%). Flexibility in the workplace were also important factors to those currently in work. Among adults aged 50 to 65 years who said they currently had a paid job, the most common factors they considered important were their main job offering, ‘permanent employment’ (61%) and flexible working hours (48%)¹⁵.

The experience of the Covid-19 pandemic has shown many organisations that they can do things differently in the workplace. Even for those employers who could not accommodate home working, the pandemic necessitated adjustments to start and finish times. For example, the requirement to self-isolate resulted in the need for significant flexibility in the workforce to maintain business operations. This helps to demonstrate that flexible working is a broad concept covering how many hours people work and the timing of those hours, as well as where people work and when they work there. The table below sets out a description of the main types of flexible working seen in the economy.

Table 1: Different types of Flexible Working

Types of flexible working ¹⁶	Description
Job sharing	Two people do one job and split the hours.

⁶ Timewise Flexible Jobs Index (2018): https://timewise.co.uk/wp-content/uploads/2018/07/Timewise_Flexible_Jobs_Index_2018.pdf quality jobs defined a £20k +FTE

⁷ UKCES (2014) The future of work: jobs and skills in 2030: <https://www.gov.uk/government/publications/>

⁸ 2022 Flexible Jobs Index

⁹ HSBC (2017) accessed at: <https://www.about.hsbc.co.uk/-/media/uk/en/news.../171108-flexible-working.pdf>

¹⁰ <https://www.cipd.org/uk/knowledge/reports/flexible-hybrid-working-practices/>

¹¹ CBI & Pertemps (2017) Employment Trends Survey: <http://www.cbi.org.uk/index.cfm/?api/render/file/?method=inline&fileID=57DEC8F4-AF4B-4101-82B2406D3BE1CBCA>

¹² See Gornick and Hegewisch (2010) <https://www.gov.uk/government/publications/work-life-balance-business-costs-and-benefits-literature-review>

¹³ Behavioural Insights Team Research <https://www.bi.team/blogs/bits-biggest-trial-so-far-encourages-more-flexible-jobs-and-applications/>

¹⁴ ONS Release

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerimpactofworkingfromhomeonolderworkers/2021-08-25>

^{15,13} <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/reasonsforworkersagedover50yearsleavingleavingemploymentsincestartofthecoronaviruspandemic/wave2>

¹⁶ <https://www.gov.uk/flexible-working/types-of-flexible-working>

Remote working	Working from anywhere other than a permanent office (usually, but not always from home)
Hybrid Working	A combination of working remotely and in the employer's workspace
Part time	Working less than full-time hours (usually by working fewer days).
Compressed hours	Working full-time hours but over fewer days.
Flexitime	The employee chooses when to start and end work (within agreed limits) but works certain 'core hours', for example 10am to 4pm every day.
Annualised hours	The employee has to work a certain number of hours over the year, but they have some flexibility about when they work. There are sometimes 'core hours' which the employee regularly works each week, and they work the rest of their hours flexibly or when there's extra demand at work.
Staggered hours	The employee has different start, finish and break times from other workers.
Phased retirement	Default retirement age has been phased out and older workers can choose when they want to retire. This means they can reduce their hours and work part time.

The ONS Lifestyle Survey reports that more people appeared to be taking up flexible working when returning to work, which may be due to more flexible working options since the coronavirus pandemic. Among those who left work since the coronavirus pandemic and not returned, 18% accessed flexible working in their previous job, compared with 29% of those who left work after the coronavirus pandemic and have since returned¹⁷.

Rationale for Intervention

A number of organisations requested that the Government should make the right to request flexible working a day one right including the Women and Equalities Committee report on the gendered impacts of Covid.¹⁸ The pandemic has revealed how external events (which may require flexibility at work to deal with) do not discriminate between employees with differing lengths of service. Introducing a day one right would mean that an employee is able to make a statutory request for flexible working from the first day of their employment.

The objective in making the right to request flexible working the default a day one right would be to bring more employees into the scope of the legislation. It will also help to encourage, or nudge, certain behaviour changes from employers so that they consider flexible working options early in the job design/recruitment process and give employees more confidence to make a request.

We estimate that around 9.5% of employees have changed their jobs, or started one, within the last six months. That is 2.6 million people who currently are unable to make a statutory request for flexible working.¹⁹

The 26-week qualifying period was introduced, in part, to balance some of the potential business burdens of administering statutory requests for flexible working. The Post-Implementation Review of the 2014 Flexible Working regulations (2021) did not find any evidence of unreasonable cost burdens on employers resulting from administering or accommodating flexible working requests.

However, a long qualifying period has negative consequences for making flexible working the default. For instance, it can help reinforce the commonly held perception that flexible working is something an employee must earn or may receive as a "perk". In contrast, a day one right might also encourage

¹⁸ <https://committees.parliament.uk/work/319/unequal-impact-coronavirus-and-the-gendered-economic-impact/publications/>

¹⁹ BEIS analysis of 2022 Labour Force Survey data

employees to change jobs, safe in the knowledge that they will be able to request the flexibility in a new job that they value. This will improve the matching of job roles and individual skills within the labour market

Making the Right to Request Flexible Working a day one right could also, in part at least, address the issues raised in the July 2019 consultation, “Good Work Plan: Proposals to support families” regarding requiring an employer to say whether a job is open to flexible working in the advert. As a job applicant, you would know that the right to request flexible working applies from your first day at work – and that enables you to ask questions about flexible working during the recruitment process. Additionally, if an employer knows that a job applicant can submit a statutory request on their first day at work, he or she is likely to have considered what the response might be in advance of the recruitment exercise.

A number of respondents to the July 2019 consultation also suggested that requiring an employer to say whether a job is open to flexible working in the advert would drive the wrong response from those we were most looking to influence – those employers ‘hesitant’ to embrace flexible working and they would simply default to “no”.

For these reasons, the Government does not feel that now is the right time to introduce a statutory requirement for employers to say in job adverts whether flexible working is available. We believe that making the Right to Request Flexible Working a day one right will better help deliver the culture change which could lead to flexible working in job adverts becoming the norm.

As table 1 shows, flexible working does not come in one size only. The right to request flexible working is designed to support employers and employees to have constructive, open-minded conversations about the different types of available flexible working and then find working arrangements that work for both sides. The policy plays an important role in Britain’s flexible labour market, delivering benefits at the individual, business and socio-economic level where new work arrangements are agreed.

We believe that there are three market failures related to flexible working in the economy: positive externalities, equality, and asymmetric information. All can be addressed through this policy options. Below details each in turn and how government policy can improve the situation.

Positive externalities

The Flexible Working Post Implementation Review (PIR)²⁰ has highlighted positive externalities to both participation and satisfaction with work-life balance. For participation, an informal study carried out prior to the Covid-19 pandemic made reference to the untapped productive potential in the economy whereby segments of the population could be enabled to work more productively (full-timers), work more hours (part-timers) or could be more willing to work (unemployed/inactive) if provided the opportunity to work flexibly.²¹ Over half of employees (55%) working flexibly in the 2020 Employee Rights Survey said that a positive consequence of these arrangements was a better work-life balance.

Government policy can help ensure that the wider societal benefits from flexible working are maximised²² For example, these wider societal benefits can result from helping parents to manage their childcare responsibilities or other workers balance their eldercare commitments while staying in work – meaning that there is less demand on the state to support those who have not felt able to stay in employment.

Equality

It is important that we continue to ensure equality and fairness for both employees and employers in reviewing requests. It is also important that we support employers to achieve the business benefits where these are to be gained from accommodating requests. The proposed reforms will help to ensure that the right to request is a fair and accessible policy. In particular, by making it a day one right for all the policy becomes much easier for employers and employees to understand.

The reforms will cover all employees within scope but we know from the Post Implementation Review of the 2014 extension to flexible working that some underrepresented and disadvantaged groups (e.g. females,

²⁰ Flexible Working Post Implementation Review (2021)

²¹ CEBR (2014) The productive value of the untapped workforce: A study into the potential economic impacts of a flexible working culture, Centre for Economic and Business Research

²² BEIS (forthcoming) Employee Rights Survey 2020, Department for Business, Energy and Industrial Strategy

those aged 16-24 and 65+, Asian/Asian British etc) are more likely to report availability and use of specific forms of flexible working. Given all employees will now have the right to request flexible working this reform will support these workers directly.

Asymmetric information

The Flexible Working PIR assessing the impact of the 2014 extension highlighted an information failure (or asymmetric information) in understanding the benefits of flexible working and addressing “cultural expectations”. The PIR found that awareness that any employee (with more than 26 weeks continuous employment) had a legal right stood at 57%, much below that of the awareness of legal right for those with children under 17 (74%) or carers (79%). Whilst there is a likelihood that this information failure has also been impacted (and improved) through the pandemic, these awareness statistics suggest there is still some scope for improvement. This reform will increase clarity that the right to request is available for all and employers and employees will no longer have to consider length of service as part of the request criteria. Additionally, the PIR highlighted that there is still a risk that there are negative perceptions of how flexible working may impact career consequences and it is important to continue to tackle this. By levelling access to the right to request the proposed reforms will help to remove any stigma associated with flexible working.

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

We have made use of the available evidence base to model the costs of reforming the existing framework. Where relevant, we have used methodology from similar family-related leave policies to model the impacts on business. We have drawn on the conclusions made in the Post Implementation Review of the 2014 extension to Flexible Working and used relevant survey evidence, from the Management and Wellbeing Practices Survey and the forthcoming Employee Rights Survey, to feed into the cost modelling. The initial assessment of costs for these options is low (less than £1m per annum).

Description of options considered

Option 1: Do nothing

A ‘do nothing’ option would involve maintaining the status quo and the existing statutory regime for the right to request flexible working. This option would mean the benefits of flexible working are not realised for those with less than 26 weeks of service in their employment and the reforms delivered as part of the Employment Relations (Flexible Working) Act will mean a wider gap of entitlements between workers with and without the required employment service.

Option 2: Legislative change

Summary of preferred regulatory option

Flexible working needs to begin with a conversation between employers and employees about how best to balance work requirements and an individual’s needs. The 26-week qualifying period for the right to request flexible working, designed to allow the employer to make an assessment of the individual’s capability to work flexibly, means that up to 2.6 million employees do not have access to the entitlement. Some existing employees working flexibly may be deterred from changing employer as a result of the qualifying period as they risk losing these benefits. We therefore believe that the existing overarching legislative framework, which is based on an employee making a formal request for changes to their hours and/or location or work, and a business having a right to refuse the request if it is incompatible with its business needs, remains appropriate. However, the framework can be improved by making the right available to more employees.

Making Flexible Working a Day One right directly removes the current requirement that only employees who have worked with their employer for 26 weeks can request flexible working.

Summary of preferred option with description of implementation plan

Making the right to request apply from the first day of employment can be achieved through secondary legislation and will be introduced as a package of measures delivered through primary legislation separately.

Statutory flexible working begins with a conversation between employer and employee to understand how to balance particular work requirements and specific individual needs. Regardless of whether an individual is a time-served employee, a new entrant or a someone applying for a job, the framework aims to facilitate discussions of what might be possible and encourage employers and employees to consider flexible working options. Ultimately this reform aims to support the objective of making flexible working the default unless employers have good reasons not to.

From an enforcement perspective, employers must continue to consider all flexible working requests in a 'reasonable manner' as set out in the Acas code of practice. It is for employers and employees to ensure that rights are used appropriately but employees can complain to an employment tribunal if the employer:

- did not handle the request in a 'reasonable manner'
- wrongly treated the employee's application as withdrawn
- dismissed or treated an employee poorly because of their flexible working request, for example refused a promotion or pay rise
- rejected an application based on incorrect facts

Monetised and non-monetised costs and benefits of each element of preferred policy option (including administrative burden)

Monetisable Costs to Business

The estimated direct costs to business for the proposed reforms are based on administrative costs. These are costs incurred by businesses from going through the process of receiving a new flexible working request, including reviewing requests, changes to any recording/reporting system and any resulting impact in terms of appeals and tribunals.

We do not anticipate any set-up costs to employers as we are making adjustments to the existing legislative framework therefore this will only require minor modification of employers' policies and processes.

The costs to employers of accommodating flexible working (e.g., re-organising work schedules, adjustments to IT systems, recruiting additional staff to cover an employee on reduced hours) have not been included for these reforms for the following reasons:

1. The regulatory changes are permissive in nature as they allow, but do not force, businesses to do something. In this case, businesses must consider requests for flexible working, but they can reject requests on the grounds of cost. Where an employer accepts a request for flexible working, we assume that the benefits to the business (workforce satisfaction, retention, productivity etc) outweigh the direct costs.
2. We assume these costs have fallen significantly since the previous Impact Assessment in 2012 for several reasons including, more widespread use of portable IT (i.e., laptops and smartphones), increased awareness and greater use of flexible working generally (outside of the right to request legislation) and more recently large shifts to all forms of flexible working during the pandemic.
3. Evidence from various sources suggest that in 2020, at the peak of the pandemic restrictions, the share of those in employment doing some form of homeworking stood at around 45%²³ of the population. Crucially, there is further evidence that businesses are looking to or have already imbedded flexibility into everyday business functions²⁴. This will serve to reduce the burden of accommodating particular requests under the legislation.

²³ Evidence from the ONS Labour Market Study suggested that 46.6% of people were doing some work from home in April 2020. This compares to the Opinions and Lifestyle Survey estimate of 44.6% for the period 9th to 20th April and the Business Impacts of Coronavirus survey estimate of 46.8% for the 6th to the 19th of April. See ONS study here: [ONS Homeworking Study](#)

²⁴ The Big Four auditors are one high profile example adopting hybrid working: <https://www.ft.com/content/dc461e5b-37c5-44f4-aaad-0406b82230f2>

4. We expect that an obligation on employers to consult with employees before rejecting their requests (delivered as part of the Employment Relations (Flexible Working) Act 2023) will reduce the potential for conflict and possibly the need for complaints to employment tribunals.

Annex 1 contains a detailed flowchart of how the direct costs to businesses are modelled, including the assumptions made at each step. Annex 2 has a full breakdown of all the assumptions made and the evidence underpinning them.

Business Administration Costs

Prior to assessing the administration costs generated by any policy option, we first have to estimate the population who come into scope of this change (i.e. those who are employees with fewer than 26 weeks continuous service). We have estimated the population of interest in two steps:

- a) Firstly, data from the Labour Force Survey (LFS) suggests that there was an average of 27.4 million employees in the labour market across 2022. We have focused on ‘employees’ only (i.e. excluded the self-employed as they are ineligible under the right to request) as well as those based in Great Britain only (as Northern Ireland have a separate policy process).
- b) From this data we have estimated those who have worked in their current job for less than 26 weeks (2.6 million employees), roughly 9.5% of the total employee population. Table 2 below details estimates of employees by length of service from the ONS Labour Force survey.

Table 2: Number of employees in Great Britain by length of employment with same employer

Length of employment with same employer	Estimate LFS January – December 2022 (millions)
0-26 Weeks	2.6
26 Weeks +	24.8
Total number of employees	27.4

Process

Utilising the population of interest from table 2 above, the administrative costs are calculated based on three fundamental aspects:

- a) *Requests*: Cost to employers of having to consider and process new requests resulting from the policy change. The below formula illustrates how we have estimated the costs of requests:

$$\text{Cost of Requests} = P \times R \times F \times (\text{unit cost of a request})$$

Where:

P is the population of interest (either those with less than or more than 26 weeks continuous service (assumed to be 2.6 million);

R is the request rate for flexible working (assumed to be 4%²⁵ in the central case);

F is the share of requests (35% in the central case) which are made under the statutory right to request (where 1 – F = Informal request);

Unit Cost of a Request = average time to review a request x hourly wage of reviewer. We assume that it takes a HR professional (whose wage of £34.05 we take from ASHE 2023 and uprate using non-wage costs from Eurostat to account for employer pensions and national insurance contributions etc) 0.5 hours to review a request for flexible working. This is in line with the Neonatal Care Leave Impact Assessment which assumed small businesses will spend 0.5 hours processing a case

²⁵ We have taken the 4% request rate from the Flexible Working PIR (which estimates this figure from the 2018 British Social Attitudes Survey).

(excluding the familiarisation time needed for an entirely new leave right) and large business will spend the same (0.5 hours) processing a leave request as they are more used to processing requests for leave. This gives a unit cost of £17.03

- b) *Appeals*: Cost of any appeals where an employer has turned down a request resulting from the policy change. Evidence from the recently published Post Implementation Review on the 2014 extension to the Right to Request found that only 9% of requests for flexible working were rejected. We estimate that a proportion of these go onto an appeal (based on the Employee Rights Survey 2020, we assume that 21%²⁶ are taken to an appeal/ negotiation). The below formula illustrates how we have estimated the costs of appeals:

$$\text{Cost of Appeals} = (P \times R \times F) \times RR \times A \times (\text{unit cost of an appeal})$$

Where:

P, R and F are the same as above;

RR is the share of those requests which have been rejected (and as above is assumed to be 9%);

A is the share of those failed requests which are taken to an appeal (assumed to be 21%);

Unit Cost of an Appeal = average reviewing time for an appeal x hourly wage of reviewer. We assume that it takes a HR professional (whose wage of £34.05 we take from ASHE 2023 and uprate using non-wage costs from Eurostat to account for employer pensions and national insurance contributions etc) 3 hours (similar to the assumption in the Statutory Parental Bereavement Leave IA) to review a request for flexible working this reflects the potential for more careful, technical considerations of an appeal. This gives a unit cost of £102.16

- c) *Tribunals*: Costs from employees seeking redress through an Employment Tribunal (ET). We assume that 18% of cases are successful at appeal and therefore, that 82% are rejected (RA below). Of the 82%, some of those go onto an ET. Data for 2017-18 suggests that there were 112 ETs related to FW, therefore, based on the number of rejected requests which go to an appeal but are unsuccessful, we estimate that roughly 1% (SET below) take a rejected appeal to an ET²⁷. Therefore, the formula to estimate the cost of ETs is:

$$\text{Cost of ETs} = (P \times R \times F \times RR \times A) \times RA \times SET \times C$$

Where:

P, R, F, RR and A are the same as above;

RA is the share which are rejected at appeal;

SET is the share which go to an Employment Tribunal;

C is the average cost of tribunal (£5,900).

In order to estimate the total administration cost, we sum together the cost of requests, the cost of appeals and the cost of ETs.

Deadweight

Due to limited information, we currently assume that there is no deadweight (i.e. zero employers already consider/accept requests from those with less than 26 weeks employment)²⁸; this is a highly cautious assumption which will lead to higher total administration costs. Table 3 below details the key assumptions for each policy option and the administration cost.

²⁶ The 21% is based on responses to the Employee Rights Survey (forthcoming).

²⁷ To be exact, the 112 cases divided by circa 90k failed requests multiplied by 21% appealing and 82% of those failing, gives an estimate of 2.0%.

²⁸ We expect there are some cases where firms offer flexible working to new workers, and will aim to understand this issue through the consultation. Our assumption of 0% deadweight will lead to an upper boundary cost estimate.

The number of additional requests originating from those with 26+ weeks continuous service each year may also be minimal/close to zero as a day one right option may merely bring forward requests that would otherwise occur after they have worked for 6 months.

Table 3: Administration Costs for Policy Option 2

Additional Population in Scope	Scenario	Request Rate	Share of requests made under the statutory right to request ²⁹	Total Administration Costs (millions)
2.6 million	Low	1%	10%	£0.1
	Central	4%	35%	£0.8
	High	7%	60%	£2.3

We have estimated costs for a range of different take-up assumptions. The survey evidence informing these assumptions essentially relates to the population of employees who already have this right (i.e. those who have worked for their employer for 26 weeks or more) and we attempt to separate out the general request rate from the proportion of requests which follow the statutory approach as requests which are made without invoking the formal framework are, in effect, discretionary. Uncertainty remains in applying such assumptions but they are based on the strongest available evidence.

The assumption for the low scenario is based on the previous IA produced for the 2014 extension. The 1% is an average of the rates used for men and women (0.75% and 1.25% respectively). The 10% figure used for the share of requests made under the statutory right to request framework (as opposed to informally agreed or non-statutory requests) is the same as the previous IA for the 2014 extension. In the central scenario, we have taken a 4% request rate which is reported in the Flexible Working PIR (which estimates this figure from the 2018 British Social Attitudes Survey) and the 35% share of formal requests comes from the Employee Rights Survey which is based on requests that resulted in a contractual change. For the high scenario, we have applied the differences between the central and low estimate to increase both the request rate and the share of requests made under the statutory right to request.

The costs range from a low of £0.1million to a high of £2.3million. The total costs of increasing the scope of the right to request flexible working to those with less than 26 weeks continuous service is low with the central estimate at £0.8million.

Familiarisation Costs

As described in the policy background section, the reforms that have already gained Royal Assent are to be implemented alongside this reform as a package of measures that will come into force on the 1st April. Making these changes at the same time will improve awareness and compliance for both businesses and employees. We expect businesses to familiarise themselves with all of the changes at the same time.

By making the right to request flexible working a day 1 entitlement, we assess it to be highly unlikely that business will undertake any additional familiarisation. While this reform brings into scope an additional 9.5% of the employee population, the overwhelming majority of the 1.4m businesses in Great Britain (with at least 1 employee, based on Business Population Estimates for 2023) employing this additional population are already required to be familiar with the legislation, as their workforce already contains those who have been employed for at least 26 weeks. Furthermore, any micro or recently formed businesses that exclusively

²⁹ A statutory request involves a specific process (e.g. an eligible employee writing a letter/email to their employer with the change they would like, when it would start, any effects the change could have on the business, the date of any previous requests and if it relates to something covered in the Equality Act). The employer then has three months to consider. If they agree, this changes the terms within the employment contract. If they reject, they must write to the employee giving the business reasons for the refusal - <https://www.acas.org.uk/making-a-flexible-working-request/how-to-make-a-flexible-working-request>.

employee those with less than 26 weeks service will come into scope through the natural passage of time anyway and incur these costs in the absence of the reforms.

The Impact Assessment for the Employment Relations (Flexible Working) Act (July 2023)³⁰ includes a detailed assessment of familiarisation costs associated with those reforms which place new requirements on employers to make the framework more effective. These costs have not been duplicated in this Impact Assessment.

Total Costs

Therefore, the best estimate total direct (nominal) cost to businesses is estimated at £0.8 million per year. The costs of this policy will be realised when the regulations come into effect, which we expect will be April 2024. See table 4 below for estimated costs for all options.

Table 4: Monetised costs associated with policy reforms, 2022 prices (£m)

Policy reform	Low estimate	Central estimate	High estimate
Recurring (annual) Administration costs	£0.05m	£0.8m	£2.3m

Impact on small and micro businesses

We have estimated all impacts of the policy by business size to understand how the costs are distributed.

For the administration costs, we have split out the costs by business size based upon assumptions from the Business Population estimates for the proportion of employees in each category. After removing the businesses with 0 employees, and reweighting these employee shares, we find that micro and small businesses employ 29.5% of the employee population and therefore that medium and large businesses employ 70.5%. This therefore means that the majority of costs are felt by medium and large businesses (particularly businesses with 500 or more employees who make up almost 51% of the costs). The unit costs at each step of the administration cost process do not differentiate by size of firm and are scaled purely by the number of requests).

Table 5: Business Size by share of businesses and employees in scope of this policy change, 2023

Business Size	Share of businesses	Share of employees
1	8.6%	0.4%
2-4	52.9%	7.3%
5-9	19.2%	6.4%
10-19	10.2%	6.9%
20-49	5.6%	8.4%
50-99	1.8%	6.2%
100-199	0.8%	5.7%
200-249	0.2%	2.0%
250-499	0.3%	6.0%
500 or more	0.4%	50.6%

Despite there being more micro and small businesses than those of medium and large, Table 5 shows the share of employees in medium and large business (50+ employees) accounts for around 70% of all employees. We do not believe that small and micro businesses will be disproportionately impacted, nor do we think there is a justification to exempt them from the policy proposals which would create a two-tier labour market where rights would vary according to the size of business an individual works in. Moreover, small and micro businesses are not required to make changes immediately and we assume these firms will familiarise with the legislation over time on a case-by-case basis.

³⁰ <https://bills.parliament.uk/bills/3198/publications>

Wider Impacts and Transfers

The Proposed Regulatory Reforms

We anticipate that the proposed reforms will go further and increase the benefits to both employees and employers. This includes the potential for positive effects on workplaces from reduced absenteeism, reduced vacancy costs and increased skill retention, and increases to profit and productivity. The PIR notes that overall, the majority of evidence suggests a significant and positive relationship between various flexible working practices and business performance. Flexible working arrangements more generally make an important contribution in achieving work-life balance, with over half of employees report better work-life balance as a result of working flexibly. It remains difficult to isolate the effects of flexible working legislative changes to business performance and productivity. We have not monetised these impacts due to the intrinsic difficulty in attributing the impact of specific policy changes from shifts towards flexible working in the wider economy. The following sub sections detail the wider benefits identified and analysed in the previous IA as well as in the Flexible Working PIR, which includes a more recent review of the evidence base.

Previous IA benefits of FW

The impact assessment for the extension of the right to request in 2014 specified several benefits from flexible working for both employers and employees. For employers, this included: improved employee relations, improved employee motivation, reductions in recruitment, reduced labour turnover, increased productivity and reduced absenteeism. For employees, flexible working offered an improved work life balance, increased appreciation of employers' approachability as well as wider societal benefits of helping tackle child poverty, support single parents, carers, and older workers.

The IA also produced estimates of the magnitude for a subset of these benefits, including reduced vacancy costs and increased skill retention; increased productivity and profits; and reduced absenteeism rates. The below extract from the IA summarises these impacts:

“Average annual benefit to employers from higher productivity (£36.8m), lower labour turnover (£8.4m), and reduced absenteeism (£1.4m), over a period of ten years (total £46.6m), plus annual savings to employers from moving to a statutory code of practice (£9.1m). Subsequent years include benefits accrued from the previous year's new working arrangements, which leads to a total net present value of benefits over the 10 years of £474.9m.”³¹

The Impact Assessment for the Employment Relations (Flexible Working) Act (July 2023)³² includes a detailed assessment of the business costs associated with those reforms which place new requirements on employers. These include; requiring an employer to consult any employee before rejecting a request, enabling two requests a year, shortening the decision period to two months and removing the requirement for an employee to explain any impacts of flexible working on the employer. These changes will impose some small additional burdens on business while making the framework more effective.

Findings from the Flexible Working PIR

The Flexible Working PIR of the 2014 extension of the right to request to all employees with more than 26 weeks continuous service presents findings on the positive effect flexible working has contributed to the economy. Below focuses on the three key monetised benefits from the 2014 IA and provides a brief extract from the PIR:

1. Reduced vacancy costs and increased skill retention

More than four in ten employers report positive effects of flexible working on staff turnover and evidence has demonstrated a significant association of flexible working on staff turnover. Indicative estimates from a membership survey suggest that employer costs of hiring workers may have reduced over time. Employee retention rates across the economy overall are relatively consistent over time, with just under two thirds of employees staying with the same employer from one year to the next. Attributing any changes in employee

³¹ For the IA from 2014 and consultation IA from 2012, see here: <https://www.gov.uk/government/publications/right-to-request-flexible-working-impact-assessment-revised-cost-to-business> and <https://www.gov.uk/government/consultations/consultation-on-modern-workplaces>

³² <https://bills.parliament.uk/bills/3198/publications>

turnover to the legislative changes is difficult, however, given the numerous other factors that affect staff turnover.

2. Increased productivity and profits

The literature has demonstrated a significant and positive relationship between various flexible working practices and business performance. The literature has demonstrated an association between flexible working and positive effects on productivity. There is also evidence of benefits of flexible working practices and improved productivity at organisational level.

The original impact assessment for the 2014 regulatory extension calculated the net share of businesses at the time (36%) reported productivity improvements from flexible working arrangements. It assumed a 5-percentage point output gain would be achieved among these organisations. Annual ongoing benefits of increased productivity and profits was reported to be £36.8 million.

As mentioned previously, in 2018 just under half of employers with 5 or more employees (48%) perceived positive effects of flexible working arrangements on productivity. There is insufficient evidence to determine the extent of productivity increases (as measured by output gain) experienced by firms or profits (as measured by gross operating surplus) as a result of flexible working.

3. Reduced absenteeism rates

Around half of employers reported positive effects of flexible working on reducing absenteeism. The estimated benefits of flexible working on absenteeism may not have been realised across all employers reporting staff working flexibly in the economy. The econometric evidence on the association between flexible working and absenteeism is mixed. Sickness and absence have remained at relatively similar levels in the UK during the period of this review.

The PIR also highlighted some evidence on the potential non-monetised impacts stemming from the 2014 extension. This includes informal research polls indicating that some employers are planning to reduce office space as they consider health risks and cost savings and wider suggestions that there may be environmental benefits from working from home. However, despite one review suggesting that remote working may support energy savings, there is no consensus in the literature on how much energy consumption can be reduced, or whether there are unintended effects of working from home on non-work energy consumption.

Equality Impact Assessment

The Public Sector Equality Duty (PSED) under section 149(1) Equality Act 2010 applies to this policy reform. The key issues which arise from these proposals in relation to the PSED are that the Right to Request Flexible Working can have positive impacts on individuals with protected characteristics (such as sex, age and disability). By improving the Right to Request Flexible Working framework, we hope to further these positive impacts. We estimate that these changes do not appear to have any disproportionate negative impact on equality and the need to advance equality has been considered appropriately.

Just over 90% employees (92%) in Britain have more than six months continuous service and are therefore in scope of the right to request flexible working framework³³. The proposed reforms do not alter the eligibility criteria but aim to make the existing framework more effective this will support all groups with protected characteristics.

The following demonstrates how the availability and use of flexible working differs across specific groups. The main indications are that:

1. Gender: Female employees are more likely to take-up flexible working than men (64% versus 54%).³⁴
2. Age: Findings suggest that older workers (aged 65+) and younger workers (16-24) had less access to flexible working.
3. Income: Those with household income of £40,000 or more reported greater availability of flexible working (85% versus 80%).

³³ BEIS analysis of 2019 Labour Force Survey

³⁴ BEIS (forthcoming) Employee Rights Survey, Department for Business, Energy and Industrial Strategy

4. Sector: There are some difference in the take-up of flexible working by sector, with those in construction or transport sectors least likely to utilise the right.

The following is taken from the Employee Rights Survey:

Gender

Recent estimates (2020) by gender show that female employees are more likely to take-up any flexible working (64%) than male employees (54%).³⁵ Furthermore, female employees (85%) are more likely to report availability of any flexible working arrangements than male employees (75%). Part-time working availability is greater among female (62%) than male (41%) employees. However, availability of flexitime, working from home on a regular basis and homeworking were slightly more likely to be reported among male employees than female employees.

Age

There are some differences in the availability of flexible working arrangements by age. Older employees aged 65 and over (69%) are less likely to report availability of any flexible working arrangements than employees overall (80%). Fewer younger employees aged 16-24 (13%) said that they had access to working from home on a regular basis than employees on average (30%). Home-based working is also less likely to be made available to younger employees, with 12% of 16-24-year-olds reporting access compared with 20% of employees overall.

Ethnicity

Employees of Asian/Asian British ethnicity were more likely to report any flexible working (66%) than employees of White/White British ethnicity (58%). There were no statistically significant differences in the take-up of part-time working or regularly working from home by ethnicity.

Disability

There is little variation in take-up of any flexible working among employees reporting a physical or mental health condition (no statistically significant differences).

Income

Staff with higher household incomes of £40,000 or more report greater availability of any flexible working (85%) than average (80%). Access to working from home increases with household income, from 6% among those with incomes of £10,000 or less, rising to 43% of employees having access to working from home on household incomes of £40,000 or more.

Sector

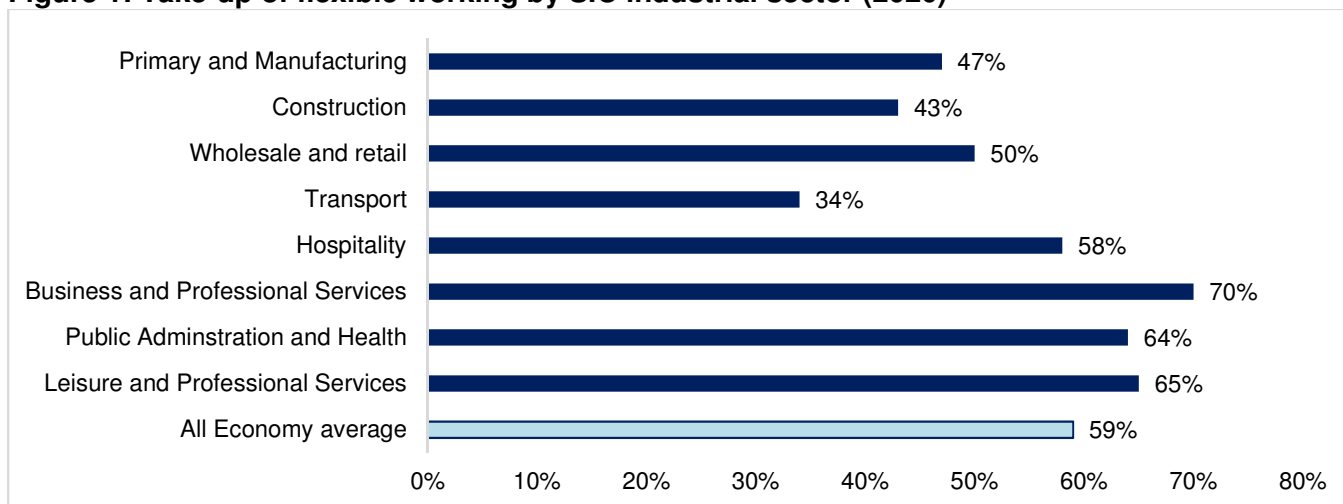
By sector, employees in Business and Professional Services (70%), and Public Administration and Health (64%) are more likely to report taking up flexible working than employees working in Construction (43%) and Transport (34%) sectors.³⁶ Without making any direct comparisons, the take-up of many forms of flexible working was also more common among public sector employees than sectors such as Manufacturing and Construction in 2011 according to the Work-life Balance survey.³⁷

³⁵ BEIS (forthcoming) Employee Rights Survey, Department for Business, Energy and Industrial Strategy

³⁶ Differences in take-up reported by Understanding Society and the Employee Rights Survey can be explained by the different methodologies employed.

³⁷ BIS (2012) *The Fourth Work-Life Balance Employee Survey*, Department for Business, Innovation and Skills. Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32153/12-p151-fourth-work-life-balance-employee-survey.pdf

Figure 1: Take-up of flexible working by SIC industrial sector (2020)



Source: Employee Rights Survey 2020
Unweighted base: all employees 5,291

Within sector by Employer Size

Larger employers of more than 250 staff were three times more likely (30%) to turn down a flexible working request than the economy average (9%).³⁸ As mentioned previously, larger employers are more likely to receive any requests from staff. Education (15%), Public administration and defence (15%) and Manufacturing sector employers (14%) were also more likely to report turning down a flexible working request than workplaces overall (9%).

These reforms will apply equally to all employees in scope of the right to request flexible working legislation but the evidence indicates that flexible working supports specific groups. We do not estimate the reforms to have any disproportionately negative impact on any groups with protected characteristics.

Monitoring and Evaluation

A proportionate, light-touch non-statutory review of the package of regulatory changes to the flexible working right to request will take place five years following introduction of the policy. The review will assess whether the changes to the statutory framework have had a positive impact in encouraging more effective employee and employer conversations on flexible working alongside this Statutory Instrument which removes the requirement to work for 26 weeks with your employer before you have the statutory right to request flexible working.

Stakeholder feedback will form the primary source of evidence, but we also anticipate that the series of employer and employee surveys will continue, and these surveys can be designed to capture some of the effects of these specific reforms.

³⁸ Management and Wellbeing Practices survey of employers, 2018. <https://www.niesr.ac.uk/projects/management-and-wellbeing-practices-survey>

Annex 1: Complete list of Assumptions and Source

Description of Assumption	Variable in formulae	Assumption	Source
Request Rate – The share of requests received annually for the Right to Request Flexible Working	<i>R</i>	4% (1% and 7% in sensitivity tests)	2018 British Social Attitudes Survey (the 1% is a mid-point from previous IA and 7% a BEIS estimate based on the difference between the 4% and 1%)
Percentage of requests which are made formally under the statutory right to request	<i>F</i>	35% (10% and 60% in sensitivity tests)	Based on Employee Rights Survey (the 10% is from the previous IA and 60% a BEIS estimate based on the difference between the 35% and 10%)
Percentage of successful (rejected) requests – The share of requests which are accepted	<i>1 - RR</i>	91% (9%)	Management and Wellbeing Practices Survey
Mean wage for: Human Resource Managers and directors (SOC 1)		£28.87	ASHE 2023 data
Non-labour wage costs		17.95%	Eurostat
Average time taken to review a Flexible Working Request		0.5hrs	BEIS estimate based on previous IA and increased familiarity