



Scottish Women's Convention response to the UK Government:

Making Flexible Working the Default

December 2021

Premise

In April 2003, the UK Government introduced the Right to Request flexible working for parents and certain other carers, and this was extended to all employees with 26 weeks continuous service in 2014. The statutory framework was intended to provide employees with access to contractual flexible working and help employers secure the business benefits.

The COVID-19 pandemic required many of us to change how we work and shifted the way we think about flexible working. However, there are still inequalities. Women are more likely to take up flexible working opportunities than men, and some workers have reported negative career consequences due to colleague perceptions of flexible working.

This consultation sets out five proposals for reshaping the existing regulatory framework:

- making the Right to Request Flexible Working a day one right;
- whether the eight business reasons for refusing a Request all remain valid;
- requiring the employer to suggest alternatives;
- the administrative process underpinning the Right to Request Flexible Working; and
- requesting a temporary arrangement.

The Scottish Women's Convention (SWC)

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at both a Scottish and UK level.

The SWC engages with women using a range of methods, including roadshow events, thematic conferences, and regional contact groups. This submission provides the views of women, reflecting their opinions and experiences in key areas relevant to women's equality.

The SWC is currently engaging with women through digital roadshows, online surveys, asking women to comment by email, and by telephoning those who want to talk. We are also using our wide network to ask women to collate views in their local communities and forward these to us on a regular basis. We are continuing to review innovative ways of engaging with women throughout Scotland using whichever medium is appropriate to them.

Question 8. Do you agree that the Right to Request Flexible Working should be available to all employees from their first day of employment?

Strongly agree

Question 9. Please give reasons for your answer, including any considerations about costs and benefits that may affect employers and/or employees.

- It removes the notion that is something that needs to be earned
- *"We need to stop referring to 'standard work' and '9to5'"* – there needs to be a genuine shift in narrative, normalising flexible working and other shift patterns as equally valid.
- *"You need to take away the excuses and solidify flexible working as the default."*
- *"We need to use the lessons from COVID as leverage. Disabled people have been calling for this for years but were told it is too expensive and impractical, but we've seen that it can be done."*
- *"This is about social justice... businesses need to understand this is a good thing to do."*

However, it does need to go further.

- The onus is still on the worker to ask for flexibility.
- When people do not see flexible working written into job descriptions, it often puts women off applying in the first place.
- Job adverts need to be upfront and explicit in stating which flexible working options will be available for the role.
- Employers should be encouraged to have an open discussion about flexible working options as part of job interviews.

Question 11. 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.

No

Question 13. If no, please state which reasons from the list above are no longer valid and why.

'Flexible working will negatively affect quality' and 'Flexible working will negatively affect performance' - There may be some instances where these are valid, but women are concerned these may be used as excuses.

- It is often hard to predict with certainty how quality and performance will be affected by flexible working.
 - During the pandemic, we saw many people benefit from flexible working who had previously thought that quality and performance would be negatively affected.
 - Equally, if homeworking during the pandemic had a negative effect on quality and performance, this should not necessarily be taken by employers as an

indication that flexible working will be unsuccessful in future. There were many other factors contributing to this such as ill-health, increased stress, lack of amenities, and home-schooling children among other things. This was not a true reflection of flexible working because there were so many external constraints and pressures on people's lives at that time.

Any of these given reasons can be overcome if there is a genuine will from the employer to support their workers' wellbeing.

- In line with the Scottish Government's Fair Work framework, respect for worker's wellbeing and their work-life balance should underpin our approach.
- Although working from home is not feasible in all sectors, for instance, there are levels of adjustment that can be made to any job (e.g., adapting hours of work, days of work, notice given for shift rotas).
- Businesses need to acknowledge that there is now a lot of evidence demonstrating that flexible working (when committed to properly) has a lot of benefits for productivity.

Question 14. 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?

Strongly agree

Question 15. Please give reasons for your answer.

- If we are serious about making flexible working the default, we need to stop letting employers off with making excuses.
- Although it is very hard to enforce, there needs to be accountability that an employer has given it proper consideration rather than just paying lip-service.
 - Perhaps there could be a framework or checklist for the options that an employer needs to demonstrate they have considered.
 - They should have to provide genuine reasons with evidence as to why they are rejecting the request.

Question 18. 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

Question 19. Please give reasons for your answer.

- *"There needs to be room for multiple requests because life changes."*
- Often, women ask for flexible working because they have childcare issues, caring responsibilities or ill health themselves.
 - Particularly when children are small, a lot can happen within a year.

- Health issues can be unpredictable, and people's condition may deteriorate or alleviate at short notice.

Question 20. 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?

Yes

Question 21. Please give reasons for your answer.

- The period for an employer to respond should be shorter than 3 months.
- In the lockdown, we demonstrated that employers were able to change their working practices almost overnight. It does not need to take 3 months just to make a decision, and that is before the process to actually implement the logistics of the request.

Question 22. If the Right to Request flexible working were to be amended to allow multiple requests, how many requests should an employee be allowed to make per year?

There should not be a limit on the number of requests an individual can make.

Question 23. Please give reasons for your answer, including any consideration about costs, benefits and practicalities.

- We need to develop a culture that promotes ongoing dialogue between workers and their managers/employers so that both sides can be better prepared for and pre-empt changes in circumstances that may require flexible working.
- BAME women have also highlighted that it would be useful to be able to request flexible working around religious festivals. Often, they are disadvantaged by having to use up their annual leave for these holidays when flexible working (e.g., working a 5-day week over 4 days, being able to work from home, or changing working hours to fit around fasting) might be more feasible.

Question 24. If the Right to Request flexible working were amended to reduce the time period within which employers must respond to a request, how long should employers have to respond?

More than two weeks, less than one month

Question 25. Please give reasons for your answer, including any consideration about costs, benefits and practicalities.

The shorter the time, the better.

- Even if a worker has a good relationship with their manager/employer, it can still cause a lot of anxiety to ask for a change. Therefore, a shorter waiting time would mean less time worrying about the outcome.

- In a lot of instances where a worker has put in a request, it is because there is an adverse circumstance (e.g., personal health problem, childcare or care responsibilities). This will already be a stressful time for them, leaving them feeling insecure about their work and unable to perform at their best while they are waiting to receive their outcome.
- If it is an issue of childcare, someone might lose their childcare place if they are having to wait longer than a month to confirm. We know this is an important issue for getting women back into work after having children.
- Especially after the lockdown, a lot of companies should have provisions already in place or at least rough outlines of different flexible working options that should not take too long to be amended or tweaked.
- A 28-day response time is quite standard in most sectors.

However, you do not want the time period to be too short if this will mean that employers reject the requests by default because they feel unable to deal with them in time.

- Plans for how to logistically enact the change in arrangement do not need to take place during this initial period, so that could help keep the period shorter.
- Also, we would not want to see processes around support for homeworking rushed.
 - Workers should not be out of pocket having to pay for equipment, electricity or Wi-Fi.
 - There should be proper health and safety assessments for homeworking to protect against injuries due to bad posture and domestic abuse, for example.
 - Anyone line-managing people working from home should do specific training to be look out for mental health concerns.

There should be provision for urgent interim requests while people wait for a more permanent solution, and employers should make workers aware of this.

- However, this should not be used as an excuse to let other proceedings drag on.

Question 26. Are you aware that it is possible under the legislation to make a time-limited request to work flexibly?

Yes

Question 27. What would encourage employees to make time-limited requests to work flexibly? Please provide examples.

If they genuinely believe that their manager/employer would accept their request.

- Many people are put off even asking because their workplace does not have a supportive attitude towards flexible working.

If they believe that their manager/employer would understand and validate their reason for asking.

- Many women who have caring responsibilities for family members may have a change in circumstances that needs addressing very quickly.

- *One woman explained that she is a long-term carer for her brother who has a mental health condition. She can sometimes go months or even years without needing to support him but, when he has a crisis, she needs to drastically change her working patterns to be there for him immediately.*
- Women's caring work and domestic labour is not valued by our society and is largely taken for granted. Women are often made to feel guilty about having to ask for adjustments or are told that caring responsibilities are not a sufficient reason, leading many women to leave paid employment altogether.
- Similarly, women often face discrimination regarding their own health. Many women have reported experiences of medical gaslighting to us, where their health concerns are belittled or not believed because they are women. This is especially the case for menopausal women. For this reason, they resist asking for flexible working during periods of ill-health because they do not think their employer will believe they are ill enough.

If there were reassurances that it would not impact on their long-term prospects.

- When employers want to cut costs, they may move someone on to permanently lower hours after a period of flexible working. This is often justified by saying that the worker was able to survive on the lower wages during their crisis, but this may not be the case long-term.
- We know that women are already disadvantaged when it comes to opportunities for promotion and training, so many women worry that having periods of flexible working, however short may hold them back.
- Negative attitudes towards flexible working may mean that women fear getting a reputation for being 'the difficult woman' that will disadvantage them in the workplace.

Conclusion

The SWC is grateful for the opportunity to respond to the Department for Business, Energy and Industrial Strategy's consultation on Making Flexible Working the Default. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to such legislation and the effect of this on women's equality.

For further information, please contact

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The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to women's equality.

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