FLEXIBLE WORKING: THE RIGHT TO REQUEST AND THE DUTY TO CONSIDER - A GUIDE
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Introduction

Under the Employment Act 2006 ("the Act") and the Flexible Working Regulations 2007 ("the Regulations"), certain employees are given the legal right to request flexible working, even if their contract of employment does not give them any such right.

The Act and Regulations do not give a right to flexible working; they give certain employees the right to make a request for flexible working, oblige the employer to give it proper consideration, and prevent the employer treating an employee unfairly for making the request.

An employee who has worked for his or her employer for 26 weeks is entitled to request flexible working in order to care for a dependant (e.g. spouse or civil partner, child under 6, disabled child under 18).

About this booklet

This booklet explains —

- what is meant by 'flexible working';
- who is entitled to request flexible working, and for what purpose;
- how a request for flexible working is to be made;
- how an employer must respond to a request for flexible working;
- how disputes about flexible working can be resolved;
- what employees can do if they are treated unfairly for requesting flexible working.

A set of forms accompanies this guidance to assist the employee and employer.


The Guide is written in general terms and is not intended to be a complete or authoritative statement of the law. It is not possible to provide a definitive statement of the law, which in any case is the function of the Employment and Equality Tribunal and the High Court. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the Courts, are authoritative.

No responsibility can be accepted for errors or omissions, or their consequences.
The guide was last updated in May 2019. It does not cover any changes to employment law after that date. Any earlier editions should be disregarded.
1. **Summary of rights and responsibilities**

**Employees’ rights**

- To apply for flexible working.
- To have their request considered properly in accordance with the set procedure, and refused only where there is a clear business ground for doing so.
- To have a companion when meeting the employer to discuss the request.
- Where a request is refused to have a written explanation detailing why.
- To appeal against the employer’s decision to refuse a request.
- To take a complaint to the Employment and Equality Tribunal in certain circumstances.

**Employees’ responsibilities and best practice**

- To provide a carefully thought-out request.
- To ensure their request is valid by checking that all the eligibility criteria are met and that they have provided all the necessary information.
- To ensure the request is made well in advance of when they want it to take effect.
- To arrive at meetings on time and to be prepared to discuss their request in an open and constructive manner.
- If necessary, be prepared to be flexible themselves to reach an agreement with the employer.

**Employers’ rights**

- To reject a request when the desired working pattern cannot be accommodated within the needs of the business.
- To seek the employee’s agreement to extend timescales where it is appropriate.
- To consider a request withdrawn in certain circumstances.

**Employers’ responsibilities and best practice**

- To consider requests properly in accordance with the set procedure.
- To adhere to the time limits contained within the procedure.
• To provide the employee with appropriate support and information during the course of the request.

• To only decline a request where there is a recognised business ground and to explain to the employee in writing why it applies.

• To ensure that any variation with the procedure is agreed in advance with the employee and recorded in writing.
2. What is flexible working?

Traditional patterns of working involve an employee attending at the employer's place of business (office, shop or factory) to work for fixed hours on fixed days of the week.

'Flexible working' involves different patterns of work — working at different hours, or on different days or working from home. The Employment Act 2006 specifies 3 matters, in relation to which an employee can request a change in the terms and conditions of employment —

- the length of time he or she is required to work;
- the times at which he or she is required to work; and
- where he or she is required to work (as between home and the employer's place of business).

The following are examples of flexible working:

2.1 Annualised hours

Annualised hours means that working time is organised on the basis of the number of hours to be worked over a year rather than a week. This can be used to fit in with peaks and troughs of work. Pay is usually calculated on the hours worked in each pay period (week or month).

2.2 Compressed hours

Compressed hours means allowing an employee to work a total number of agreed hours, but over a shorter period than the usual working week, e.g. working a 35-hour week over 4 rather than 5 days. Pay is usually calculated as for an ordinary working week, i.e. the employee would not be paid overtime for the agreed extra hours worked in any one day.

2.3 Flexitime

Flexitime means allowing an employee to work different hours on different days, provided that he or she works a certain number of hours in a given period (e.g. 7½ hours in a day, or 37½ hours in a week). An employee is usually required to be at work during certain 'core' times (e.g. 10.30-12.00 and 13.30-15.00). Pay may be calculated at a weekly or monthly rate, or on the hours actually worked.
2.4 **Homeworking**

Homeworking may involve working only at home, or partly at home and partly at the employer’s place of business. Pay is usually calculated on the hours actually worked. Employers are required to carry out a risk assessment of homeworking, identifying any hazards and deciding whether steps have been taken to prevent harm to employees or anyone else who may be affected by their work. Further details about risk assessments are available from the Health and Safety at Work Inspectorate at


2.5 **Job-sharing**

Job-sharing typically involves two people, each employed part-time, but working together to cover a full-time post. Each receives pay for the hours he or she works.

2.6 **Shift working**

Shift working gives employers the scope to have their businesses open for longer periods than a normal working day. Pay is usually based on the hours worked, sometimes with extra pay for work at unsocial hours (although agreed flexible working arrangements may mean that a shift premium is not needed).

2.7 **Staggered hours**

Staggered hours allow employees to start and finish their day at different times. This is often useful in the retail sector, for example, where it is important to have more staff at peak times but fewer at off-peak times. Pay will usually depend on the total hours worked, rather than the time at which they are worked.

2.8 **Term-time working**

Term-time working allows employees to take unpaid leave of absence during the school holidays, or to work only in school term time.
3.  **Who is eligible?**

In order to exercise the statutory right to request flexible working, an employee must fulfil a number of conditions. An employee who does not meet the criteria will not be able to make a request under the statutory right, but may still approach the employer to ask for flexible working; however the employer will not be obliged to consider the request as required by the Regulations.

3.1  **An 'employee'**

In order to make a request, the employee must be an employee.

An 'employee' is a person who works for an employer under a contract between them, called a 'contract of employment' (which may, but need not, be in writing: it may be agreed orally or simply implied by the nature of the relationship). A contract of employment is defined as 'a contract of service or apprenticeship'.

Workers other than employees do not qualify.

If you are unsure whether or not you are an employee contact the Manx Industrial Relations Service (see Annex B).

3.2  **Minimum period of employment**

In order to make a request, the employee must have worked for the employer continuously for at least 26 weeks.

Continuous employment generally means working for the same employer without a break, but this is not always the case. An employee’s continuity of employment for the purpose of qualifying for the right to request flexible working will not be regarded as broken in certain circumstances, even if there has been a change of employer.

3.3  **The request must be to care for a dependant**

A request can only be made in order to help the employee to care for a 'dependant'. It cannot be made for any other purpose.

A dependant is

- the employee's spouse or civil partner;
- a child under the age of 6 years;
- a disabled child under the age of 18 (a child is 'disabled' if disability living allowance is payable in respect of him or her);
• a parent’; or
• a person who lives in the same household as the employee, but is neither an employee, tenant, lodger or boarder of the employee nor a child who is excluded by age from eligibility.

'Child' includes an adopted child and a foster child. A child's mother and father are equally entitled to request flexible working to care for the child.

'Caring' for a dependant may cover a range of circumstances. For example, it may enable the employee to spend more time with a child, or to take a child to, or collect a child from, school, or to start work later in order to fit in with the arrival of a home help or carer.

3.4 **A request must not have been made in the past year**

An employee may not make a request for flexible working if he or she has made such a request under the Regulations in the previous 12 months (whether or not the request was successful).
4. How does an employee request flexible working?

4.1 Form of request

A request for flexible working must —

- be in writing;
- state that it is a request for flexible working;
- state whether a previous request has been made by the employee and, if so, when; and
- be dated.

The request may be made by letter, fax or email. Employees may wish to use the Form at Annex A.

4.2 What must the request contain?

The request must —

- set out the change in the employee's terms and conditions of employment which he or she is requesting; this must relate to one or more of the following —
  - the hours the employee is required to work;
  - the times when he or she is required to work;
  - where, as between the employee's home and a place of business of the employer, he or she is required to work.
- state the date on which the employee wishes the change to become effective (this should allow time for the request to be considered and, if successful, for the change to be implemented);
- explain what effect, if any, the employee thinks making the change would have on the employer, and how the employee thinks the employer might cope with that effect; and
- explain what relationship the employee has to the dependant for whom he or she caring (see Section 2: Who is Eligible).

The request gives the employee an opportunity to set out the desired working pattern, to explain how it will help the employee care for the dependant, and to argue how it can be implemented without harming the employer's business. It is for the employee to make a case for the change.
4.3  **Can the employee withdraw a request?**

An employee may withdraw a request for flexible working at any time before the employer notifies him or her of the decision. The request may be withdrawn either orally or in writing. If it is withdrawn orally, the employer must confirm to the employee in writing that it has been withdrawn.

4.4  **Points to bear in mind when making a request**

An employee should bear the following points in mind when making a request for flexible working.

- If the request is successful, the new working pattern will be a permanent change, (unless the employer and employee have agreed a trial period, or have otherwise agreed that the change is temporary). So think carefully about your request, as you will have no right to revert back to your former hours of work.

- Think about the date you when you would like your new working pattern to begin. Be aware that the process can take up to 14 weeks to complete, and sometimes longer where a problem arises.

- Ask how the employer would like the request to be made. The employer may have their own form of request.

- The more notice you give your employer, the more likely you will be able to make the change at a time which suits you. So once the request is complete, submit it to the employer immediately.

- If the flexible working you are asking for means that you will work fewer hours, your pay will also be reduced.

- It is to your advantage to provide as much detail as possible about the pattern you would like to work.

- Take time to consider how your colleagues will manage if your working pattern is changed. If you have any colleagues or friends who are already working flexibly, ask them about their experiences.

- Think about what effect flexible working will have on your job. You should aim to show in your request that your plans will not harm your employer’s business and, if possible, will improve it. For example, it may mean that you are available to provide extra cover at peak hours, thereby improving customer service.
• Think about how any problems flexible working may cause your employer could be overcome, and ensure that you include them in your request. For example, it may mean that you will not be in work when the business opens. What effect will this have on the business, and how could it be managed?

• Check who will consider your request and ensure that you submit it to the right person. If the person is absent it may be necessary to send it to another manager.

• If you are due to go on maternity leave think carefully about when to make your request. You might wish to mention to your employer before you take leave that you are interested in applying to work flexibly on your return. Bear in mind that you may need to attend meetings with your employer so that your request can be properly considered. If you want the changes to start on your return from maternity leave, you should make your request in good time.
5. **Considering a request**

There is a legal duty on employers to consider a request for flexible working which has been properly made, and to establish whether the request can be accommodated within the needs of the business. The employer has to follow a set procedure. This section explains the first step in the process, which is to arrange a meeting to discuss the request with the employee.

- The employer must hold a meeting to consider the request within 28 days of receipt.
- The employee can, if he or she wishes, be accompanied at the meeting by another person, who must be employed by the same employer.
- The employer must write to the employee within 14 days after the date of the meeting, informing him or her of the decision on the request.

5.1 **How should a request be submitted and received?**

A request will be considered to have been made on the day that it was received by the employer. For a request sent by email or fax, this is taken to be the day it was sent. For a request sent by post, it means the day on which it would have been delivered in the ordinary course of post, unless shown to be otherwise.

The employer should acknowledge receipt of the request. An acknowledgement slip is included in the employee’s request form in the Appendix, which allows the employer to confirm the date on which it was made. This is particularly important where there has been a delay in the request reaching the employer.

5.2 **What happens if the request is incomplete?**

If an employee fails to provide all the required information (as set out in Section 4) the employer should inform the employee what is missing and ask him or her to re-submit the request when complete. The employee should also be informed that the employer is not obliged to consider the request until it is complete and re-submitted.

5.3 **Can the employer require further information?**

An employer may require further information before he or she can properly consider the employee's request. For example, if the employee wishes to work from home, the employer is required to ensure that it is safe for him or her to do so, and may require information about working conditions. If the employee fails or
refuses to provide such information, the employer may treat the request as withdrawn. In that case the employer must notify the employee in writing that the request is treated as withdrawn.

5.4 **Would a trial period help?**

Trial periods can help both employees and employers because they provide an opportunity – without commitment - to test a particular working pattern to see if it works out to the satisfaction of both. An employee may, for example, be concerned about making what will be a permanent change to his or her contract of employment, while the employer might have concerns about the potential impact of the proposed change in the employee’s working pattern on the business. A trial period of, say 12 weeks, will give both the employee and the employer a chance to find out whether the chosen pattern of working will really work out well in practice.

5.5 **How would a trial period work in practice?**

Trial periods can potentially happen at two stages before a formal agreement is reached:

Firstly, the employer could give informal agreement to a trial before a formal flexible working request has been made by the employee; if this happened, the formal procedure would still be available to the employee if they wished to use it at some stage in the future;

Secondly, if a formal application is made, an extension of time for the employer to make a decision could be agreed (see Section 6.6) and the trial period could happen before a final agreement takes place; in this case the rest of the formal procedure would still be available to the employee.

5.6 **Would a temporary period of working flexibly be appropriate?**

In some circumstances, particularly where caring for an adult is involved, a permanent change to an employee’s contract of employment may not be the best solution for him or her. Where, for example, an employee suddenly becomes the carer of an adult with a terminal illness, the employer might consider that a temporary period of flexible working, agreed informally outside the formal procedure, might be appropriate. Alternatively the employer and employee might agree to a time-limited change after which they would revert back to the original pattern.
An informal temporary arrangement might also be more appropriate where the demands on an employee’s time are unpredictable, for example if caring for someone with a fluctuating condition like Parkinson’s Disease.

5.7 The next step: agreement or meeting

If the employer agrees to the employee's request, the employee should be given notice in writing to that effect. The notice must be given within 28 days after the request is made, and must include —

- details of the new working pattern, as set out in the employee's request
- the date from which the change is to take effect.

If the employer is not able to agree to the employee's request within that time, he must arrange a meeting with the employee, which must take place within 28 days after the request is made.

The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth, and to consider how it might be accommodated. If the original working pattern cannot be accommodated, the meeting also provides an opportunity to see if an alternative working arrangement may be appropriate. It may also be in both the employer’s and the employee’s interests to agree that the new working pattern will take place for an agreed trial period in order to see how it would suit them both.

5.8 Time and place of the meeting

The employer must ensure that the meeting is held at an appropriate time and place convenient to both parties. In most cases, this will probably be the usual place of work, but both parties should be prepared to be flexible about this. For example, if the employee is a mother who is about to return to work from maternity leave, it may be that she will find it difficult to travel to her workplace. In such circumstances, the employer should discuss the meeting place with her and consider whether there is a more convenient place to meet.

If it is difficult to arrange a meeting within 28 days after the request was made at a time and place convenient to both parties, the employer should seek the employee’s agreement to extend the period. The employer must record in writing an agreement to extend the time, and give a copy of the record to the employee.
If the manager or other person who would normally deal with a request for flexible working is on holiday or off sick when the request is made, the 28-day period within which the meeting must be held does not begin until that person returns to work, or 28 days from the date the request was made, whichever is the sooner.

Failure to hold a meeting within the 28-day period or any extension, without the employee’s agreement, will be a breach of the procedure (see Section 7).

If the employee's companion (see below) is unable to attend the meeting, the employee can ask the employer to rearrange the meeting for a time, within 7 days of the time previously arranged, which is convenient to both parties and the companion. If this cannot be achieved, the employee should consider asking someone else, who can attend the meeting, to accompany him or her.

5.9 Can an employee bring a companion to the meeting?

The right allows an employee to be accompanied at the meeting by one person, if he or she feels this would help. The companion must be a worker employed by the same employer, and can be a colleague or a trade union representative.

The companion —

- can address the meeting or confer with the employee during the meeting;
- is not allowed to answer questions on the employee’s behalf.

The role of the companion is to support the employee. If the employee is not used to attending meetings, he or she may be nervous, and the presence of a colleague can therefore make the meeting more productive for both parties.

The employer must allow any worker to take time off with pay during work hours to act as the employee's companion.

5.10 How to ensure you get the most from the meeting

Employer

It is recommended that:

- you make a list or draft an agenda of the issues you want to discuss at the meeting, e.g. if you are already aware that the
request can be granted, you may want to discuss a suitable start date before formally accepting the request;

- you inform your employee of anyone you have asked to join the meeting;
- you ask your other staff if they would want to cover any extra hours that may be created as a result of granting the request;
- if you have a personnel department, you speak to them so that you are clear about your options;
- you familiarise yourself with this guidance and the different types of flexible working; and
- if it would be helpful to involve external expertise, you are open to the proposition.

Employee

It is recommended that:

- you are prepared to expand on any points within your request;
- you are prepared to be flexible. Your employer may ask if there are any other working patterns you would be willing to consider or if you would consider another start date or a trial period;
- if you are taking a fellow-worker along as companion, make sure he or she is fully briefed on your request beforehand, provide him or her with a copy of your request, and inform your employer that a companion will be present. This will save time during the meeting; and
- you familiarise yourself with this guidance and other sources of information on flexible working before the meeting.

5.11 What happens if the employee fails to attend this meeting?

An employee who fails to attend the meeting without notification should contact the employer as soon as possible to explain the absence, and to allow the employer to rearrange the meeting at another convenient time. If the employee fails to attend the meeting more than once, and does not provide a reasonable explanation, the employer may treat the employee's request as withdrawn and take no further action on it. In that case the employer must notify the employee in writing that the request is treated as withdrawn.
6. **Reaching a decision**

After the meeting to discuss the employee's request, the employer must reach a decision on it and notify the employee of the decision. A request may only be refused where the employer has a clear business reason for doing so. Acceptable business reasons are listed in this section.

6.1 **Employer agrees to employee's request**

If the employer agrees to the employee's request, he or she must notify the employee of his or her decision within 14 days after the meeting. The notification must —

- be in writing (the employer may like to use the form at Annex A);
- set out details of the new working pattern (either as originally proposed by the employee, or as agreed at the meeting, as appropriate);
- set out the date from which the change is to take effect; and
- be dated.

6.2 **Employer's action where request is accepted**

Action to be taken by the employer when the employee's request is accepted.

- inform personnel section (if any) of the new working pattern;
- change the employee's pay, if necessary;
- ensure that all health and safety requirements are satisfied (particularly if the employee is to work from home); and
- inform other interested persons, including the employee's colleagues.

6.3 **Employer does not agree to employee's request**

If the employer does not agree to the employee's request, he or she must notify the employee of the decision within 14 days after the meeting. The notification must —

- be in writing (the form in the Annex may be used);
- state the business grounds for refusing the request;
- explain why those grounds apply in relation to the employee's request;
• provide details of the employee’s right to appeal (see below); and
• be dated.

6.4 **What are the business grounds on which a request can be refused?**
The only grounds on which an employee's request for flexible working can be refused are one or more of the following —
• the burden of additional costs;
• its detrimental effect on the business's ability to meet customer demand;
• inability to re-organise the employee's work among existing staff;
• inability to recruit additional staff;
• a detrimental impact on quality;
• a detrimental impact on performance;
• insufficiency of work during the periods the employee proposes to work; and
• planned structural changes.

6.5 **How should the refusal be explained?**
In addition to providing a specific business ground the employer must include an explanation about why the business ground applies in the circumstances. Experience shows that an employee who understands why a business reason is relevant will accept the outcome and be satisfied that their application has been considered seriously, even if they are disappointed that their application has been refused. It also shows that the reverse is true, particularly if the explanation is not sufficient.

The explanation should include the key facts about why the business ground applies. These should be accurate and clearly relevant to the business ground. To prevent any uncertainty, the explanation should avoid the use of unfamiliar jargon and should be written in plain English.

An explanation of around two paragraphs will usually be sufficient, although the actual length of explanation necessary to demonstrate why the business ground applies will differ depending on each individual case.
An example might be a manager in a small firm manufacturing curtains who receives a request from an employee to not work on Thursdays. The manager rejects the request, as the weekly fabric delivery is received on Thursday, and preparations begin for the following day’s despatch of customer orders. The explanation might say:

'I am sorry that I cannot grant your request to change the days that you work, but to allow you to not work on a Thursday would have a detrimental effect on the performance of the business.

Thursday is our busiest day of the week, when all staff are required to ensure that the machinists can continue making curtains while stock is received, and finished curtains are packaged ready to be despatched the following morning. You are aware that on a Thursday morning we receive our weekly delivery of fabric. This requires the involvement of all staff to help move the material from the delivery bay into the storeroom, before the newly made curtains can be prepared for despatch the following morning.

As I indicated when we met to discuss the application, if you decide to change the day you would prefer not to work to one earlier in the week, then I would be happy to reconsider your application'.

Any facts quoted in the explanation must be accurate. It is not a necessity for the employer to provide the detail in the explanation, but they should ensure that they are able to back up any facts should they subsequently be disputed. A decision based on incorrect facts to reject an application would provide an employee with a basis to make a complaint to the Employment and Equality Tribunal.

6.6 What happens if the employer needs more time to reach a decision?

If the employer needs more time to come to a decision, the employee’s agreement should be sought to extend the period. The employer must record in writing an agreement to extend the time, and give a copy of the record to the employee. Failure to notify the decision within the 14-day period or any extension, without the employee’s agreement, will be a breach of the procedure (see Section 7).
Further information on when an employee may have a right to pursue their request, including making an appeal or complaint to the Employment and Equality Tribunal, can be found in Section 7.

6.7 **Can the employee require the employer to reconsider his decision?**

If the employee is dissatisfied with the employer’s decision to refuse his or her request for flexible working, he or she can appeal the decision, which requires the employer to reconsider it.

6.8 **How to appeal the employer's decision**

An employee appeals by giving the employer a notice of appeal within 14 days after the date on which he or she is notified of the decision.

The notice of appeal must —

- be in writing (the employee may wish to use the form at Annex A);
- set out the grounds of appeal; and
- be dated.

There are no constraints on the grounds of appeal, so long as they are relevant to the employer's decision. They may state, for example —

- why the employee believes the business grounds for refusing the request do not justify the refusal;
- that the facts stated by the employer in support of the refusal are incorrect; or
- a change in circumstances since the meeting (e.g. that another member of staff is prepared to cover for the employee when he or she is absent).

6.9 **The appeal meeting**

If an appeal is made, the employer must arrange an appeal meeting to take place within 14 days after receiving the notice of appeal.

The same rules apply to an appeal meeting as applied to the original meeting, e.g. as to the time and place and the employee's right to be accompanied (see Section 5).
It may be appropriate for a different manager, for example a more senior manager, to hold the appeal meeting, but this is not required, and may not be possible for many small businesses.

6.10 The decision on an appeal

The employer must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting. The same rules apply to a decision on appeal as apply to the original decision (see Section 5), except that the notice does not mention any right of appeal. The appeal decision form at Annex A may, but need not, be used.
7. **Unresolved requests**

7.1 **How to deal with an unresolved request**

If, even after an appeal, an employee is dissatisfied with the way his or her request for flexible working has been dealt with, he or she may take further action —

- through an informal discussion;
- through the employer’s grievance procedure;
- by involving the Manx Industrial Relations Service (see Annex B);
- in certain circumstances, by making a formal complaint to the Employment and Equality Tribunal.

7.2 **Informal discussion**

The quickest and most effective way for an employee to resolve an issue may be to discuss it with the employer, for example, if there has been a simple misunderstanding of the procedure.

7.3 **Employer’s own grievance procedure**

Many employers have their own grievance procedure which the employee might use to seek resolution of the complaint. This may also be a quick and effective way of resolving it.

7.4 **Manx Industrial Relations Service**

Either the employer or the employee, or both, may consult the Manx Industrial Relations Service, an officer of which may be able to resolve a dispute by conciliation.

7.5 **A complaint to the Employment and Equality Tribunal**

An employee may make a complaint to the Employment and Equality Tribunal where —

- the employer has failed to follow the procedure properly; or
- the decision by the employer to reject a request was based on incorrect facts.

Under the Flexible Working Regulations 2007 an employee has no right to make a complaint where he or she simply disagrees with the business grounds given by the employer for declining a request, and the Employment and Equality Tribunal cannot question the employer’s business reasons. (However see 7.6 below for details of when business reasons may be questioned).
A breach of the procedure may be, for example, a failure by the employer —

- to hold a meeting to discuss the request, or hear an appeal, within the time-limit allowed (where no extension of time has been agreed), or
- to provide all the necessary information in a notice of the employer’s decision.

### 7.6 Sex Discrimination — an additional ground of complaint

An employer’s refusal to grant a flexible working request may be grounds for a sex discrimination claim under the Equality Act 2017. The Act prohibits various types of discrimination including direct and indirect sex discrimination.

**Direct discrimination** is treating a person less favourably than others because of a protected characteristic\(^1\). This includes an employer treating a worker an employer treating a worker less favourably -

- because of the worker’s association with another person who has a protected characteristic\(^2\); or
- because the employer mistakenly thinks that the worker has a protected characteristic\(^3\).

**Indirect discrimination** is applying a provision, criterion or practice which places a person with a protected characteristic\(^4\) at a disadvantage to others and which cannot be justified.

In dealing with requests for flexible working, indirect sex discrimination is more likely to occur. In general, more women than men have family responsibilities and wish to work part-time so a policy that everyone must work full-time could amount to indirect sex discrimination.

---

\(^1\) The Equality Act protects people in work from being subjected to ‘prohibited conduct’ to do with the ‘protected characteristics’ of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

\(^2\) Other than the protected characteristics of marriage and civil partnership or pregnancy and maternity.

\(^3\) Other than the protected characteristics of marriage and civil partnership or pregnancy and maternity.

\(^4\) Other than the protected characteristic of pregnancy and maternity.
In order for such a claim to be made the procedure for requesting flexible working need not have been followed, though having completed the process may strengthen an employer’s case.

7.7 Re-examination of the business grounds

It is worth noting that if a complaint is brought solely on the ground of sex discrimination, or on both the grounds of failure to comply with the Flexible Working Regulations and sex discrimination, the Employment and Equality Tribunal may examine the business grounds put forward by the employer. This is because the Equality Act provides a defence of objective justification to the employer so that the Tribunal would be likely to assess whether the rationale for the employer’s refusal to grant a flexible working request constitutes “a proportionate means of achieving a legitimate aim”\(^5\).

7.8 How should a complaint to the Tribunal be made

An employee who wishes to make a complaint to the Employment and Equality Tribunal should in the first instance contact the Clerk to the Tribunal or the Manx Industrial Relations Service and obtain a claim form. (See Annex B for contact details).

A complaint must normally be made within three months of the breach of procedure, or of the notification of the employer’s decision on appeal, as appropriate. An extension to this time limit can be granted only in exceptional circumstances, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been made in time.

When the Clerk to the Tribunal receives the completed form, he or she will send a copy to the Manx Industrial Relations Service, an officer of which will try to help the parties to reach a settlement.

If the conciliation is not possible or fails, the Tribunal will hear the case and both parties should attend the hearing.

7.9 Remedies and compensation

If the Employment and Equality Tribunal finds in favour of the employee, it will be able to order the employer to do either or both of the following —

- reconsider a request by following the procedure correctly

\(^5\) See section 20(2)(d) of the Equality Act.
• pay compensation to the employee

The level of compensation will be an amount that the Tribunal feels to be just and equitable in all the circumstances, limited to a maximum of 8 weeks’ pay.

In addition, where the employer is found to have prevented the employee from being accompanied, either at the meeting to discuss the request or an appeal meeting, the Tribunal may make a separate award of up to 2 weeks’ pay.

(A 'week’s pay' is itself limited to the maximum amount of a week’s pay provided for under Schedule 6 to the Employment Act 2006. The present limit is £540).
8. Protection from detriment and dismissal

Employees are protected from suffering a detriment or dismissal for exercising their statutory right to request flexible working.

8.1 What protection is there against detriment for requesting flexible working?

Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer because he or she —

- made or proposed to make a request for flexible working;
- took or proposed to take any step following such a request (e.g. being accompanied at a meeting or appeal meeting, appealing the employer’s initial decision);
- made a complaint to the Employment and Equality Tribunal;
- alleged that any circumstance existed which would be a ground for a complaint to the Tribunal.

Employees who suffer unfair treatment at work for the above reasons may make a complaint to the Employment and Equality Tribunal. If the Tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation. It is for the Tribunal to decide the appropriate award, taking account of the employer’s conduct and the loss suffered by the employee.

8.2 What protection is there against dismissal for requesting flexible working?

Dismissal means the termination of employment by the employer, with or without notice. It could also include constructive dismissal, where the employee has resigned because the employer has made a substantial breach of the contract of employment indicating that he or she intends no longer to be bound by it. Or, it could include the expiry of a limited-term contract without its renewal.

It is unlawful for an employer to dismiss an employee because he or she:
• made or proposed to make a request for flexible working;
• took or proposed to take any step following such a request (e.g. being accompanied at a meeting or appeal meeting, appealing the employer’s initial decision);
• made a complaint to the Employment and Equality Tribunal; or
• alleged that any circumstance existed which would be a ground for a complaint to the Tribunal.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.

If an employer dismisses the employee on any of those grounds, the dismissal is automatically unfair under the Employment Act 2006, and the employee may make a complaint to the Employment and Equality Tribunal. Where the Tribunal finds that the employee was unfairly dismissed or selected for redundancy, it will order payment of compensation, and may also order that the employee be reinstated or re-employed.

For further details of remedies in cases of unfair dismissal, see the DfE guide "Isle of Man Employment Rights and Responsibilities – a Guide for Employers, Employees and Workers”.

8.3 Has the employee’s companion any rights?

A fellow-worker accompanying the employee at an initial meeting or appeal meeting is entitled to time off with pay. He or she is also protected against suffering detriment or dismissal for accompanying the employee, or for claiming time off with pay, and may assert these rights at the Employment and Equality Tribunal.
9. **How the right works with other legislation**

A refusal by the employer of an employee's request, even if justified by the Employment Act 2006 and the Regulations, may nevertheless contravene other rights of the employee, as outlined below.

Where a complaint about flexible working is made to the Employment and Equality Tribunal, and the employee considers that the employer's action is also in breach of other rights, it will be possible for both matters to be heard together by the Tribunal.

### 9.1 Sex Discrimination

As indicated at section 7.6 a complaint may in certain circumstances be made under the Equality Act 2017 that a employer’s refusal to grant a flexible working request is indirect sex discrimination.

There are time limits in respect of bringing a claim of discrimination to the Employment and Equality Tribunal. For information on how to pursue a discrimination claim please contact the Manx Industrial Relations Service (see Annex B).

### 9.2 Part-time workers

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 make it unlawful to treat part-timers less favourably in their contractual terms and conditions than comparable full-timers.

This means that when granting a request for flexible working that involves a reduction in hours, employers should be aware that their employees are still entitled to the same consideration in respect of training, promotion and financial issues. Further information is available in the DfE guide *Part-time Workers: the Law and Best Practice*. 
Feedback

How helpful was this booklet to you? Did it answer your questions? Was it detailed enough? Was it clear? Does it contain any typographical errors? Do you have any comments or suggestions as to how to the Department might improve future editions? Please email your feedback to emplaw@gov.im.
Annex A: Flexible Working Forms

These forms may be used by employers and employees who are dealing with a flexible working request.

It is not mandatory to use these forms, and as long as a written record is kept and all the necessary information is given, other forms of communication can be used.

FW (A): Flexible Working Application Form
FW (B): Flexible Working Application Acceptance
FW (C): Flexible Working Application Rejection
FW (D): Flexible Working Appeal
FW (E): Flexible Working Appeal Reply
FW (F): Flexible Working Extension of Time Limit
FW (G): Flexible Working Notice of Withdrawal
Note to the employee

You can use this form to make an application to work flexibly under the right provided in law to help eligible employees care for their dependants. Before completing this form, you should first read the DfE guidance booklet *Flexible Working: the right to request and the duty to consider* and check that you are eligible to make a request.

You should note that under the right it may take up to **14 weeks** to consider a request before it can be implemented and possibly longer where difficulties arise. You should therefore ensure that you submit your application to the appropriate person well in advance of the date you wish the request to take effect.

It will help your employer to consider your request if you provide as much information as you can about your desired working pattern. It is important that you complete all the questions as otherwise your application may not be valid. When completing sections 3 and 4, think about what effect your change in working pattern will have both on the work that you do and on your colleagues.

Once you have completed the form, you should immediately forward it to your employer (you might want to keep a copy for your own records). Your employer will then have 28 days after the day your application is received in which to hold a meeting with you to discuss your request. If the request is granted, this will be a permanent change to your terms and conditions unless otherwise agreed.

Note to the employer

This is a formal application made under the statutory right to apply for flexible working and the duty on employers to consider applications seriously.

You have 28 days after the day you received this application in which to either agree to the request or arrange a meeting with your employee to discuss their request. You should confirm receipt of this application using the attached confirmation slip.

Forms accompanying the guidance have been provided for you to respond to this application.

### 1. Personal Details

<table>
<thead>
<tr>
<th>Name:</th>
<th>Staff or payroll No:</th>
</tr>
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<tbody>
<tr>
<td>Manager:</td>
<td>National Insurance No:</td>
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</tbody>
</table>

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*Form FW(A): Flexible Working Application Form*
To the employer

I would like to work a flexible working pattern that is different to my current working patterns under my right provided in the Flexible Working Regulations 2007. I confirm I meet each of the eligibility factors as follows:

Eligibility requirements

- I am an employee.
- I am making the request in order to care for a dependant
- That dependant is
  - a spouse;
  - a child under the age of 6 years;
  - a disabled child under the age of 18 (a child is disabled if he or she is entitled to disability living allowance);
  - a parent; or
  - a person who lives in the same household as me, but is neither my employee, tenant, ledger or boarder nor a child who is excluded by age from eligibility.
- I have worked for this employer continuously for 26 weeks at the date the application is made.
- I have not made another application to work flexibly under the right during the past 12 months.

If you are not sure whether you meet any of the criteria, information can be found in section 2 of the DfE guidance.

If you are unable to tick all of the boxes then you do not qualify to make a request to work flexibly in law. This does not mean that your request may not be considered, but you will have to explore this separately with your employer.
2a. Describe your current working pattern (days/hours/times worked):


2b. Describe the working pattern you would like to work in the future (days/hours/times worked)

You may continue on a separate sheet if necessary

2c. I would like this working pattern to start from: Date:

3. Impact of the new working pattern:
I think this change in my working pattern will affect my employer and colleagues as follows:
4. Accommodating the new working pattern

I think the effect on my employer and colleagues can be dealt with as follows:

You may continue on a separate sheet if necessary

Name: ___________________________ Date: __________

Detach this slip and return it to your employee in order to confirm receipt of their application

**Employer’s Confirmation of Receipt (to be completed and returned to employee):**

**Dear**

I confirm that I received your request to change your work pattern on: __________ Date: __________

I shall be arranging a meeting to discuss your application within 28 days following this date. In the meantime you might want to consider whether you would like a fellow colleague to accompany you to the meeting.

**From:**

____________________________
**Form FW(B): Flexible Working Application Acceptance**

**Note to the employer**

You must write to your employee with your decision within 14 days following the meeting. This form can be completed by the employer when accepting an application to work flexibly. If you cannot accommodate the requested working pattern you may still wish to explore alternatives to find a working pattern suitable to you both. Section 4 of the DfE guidance booklet *Flexible Working: the right to request and the duty to consider* provides information on the issues that you might want to consider.

Please note that *Form C: Flexible Working Application Rejection Form* may be used if the employee’s working pattern cannot be changed, and no other suitable alternatives can be found.

<table>
<thead>
<tr>
<th>Dear</th>
<th>Staff No:</th>
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**Following receipt of your application and our meeting on:**

Date: [ ]

I have considered your request for a new flexible working pattern.

☐ I am pleased to confirm that I am able to accommodate your application

☐ I am unable to accommodate your original request. However, I am able to offer the alternative pattern which we have discussed and you agreed would be suitable for you.

Your new working pattern will be as follows:

Your new working arrangements will begin from: Date [ ]

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<th>Date</th>
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</table>
Note to the employee

Please note that the change in your working pattern will be a permanent change to your terms and conditions of employment and you have no right in law to revert back to your previous working pattern.

If you have any questions on the information provided on this form please contact me to discuss them as soon as possible.

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<th>Name</th>
<th>Date</th>
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<td>Position in organisation</td>
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**Form FW (C) Flexible Working Application Rejection**

**Note to the employer**

You must write to your employee within 14 days of the meeting with your decision. This form can be completed by you when declining an application. Before completing this form you must ensure that full consideration has been given to the application.

You must state the business ground(s) as to why you are unable to agree to a new working pattern and the reasons why the ground(s) applies in the circumstances. The list of the permissible business grounds under which a request may be refused are detailed in Section 6.4 of the DfE guidance booklet *Flexible Working: the right to request and the duty to consider*.

---

**Dear**

[Staff Name]

**Staff No:**

**Following receipt of your application and our meeting on:**

[Date]

I have considered your request for a new flexible working pattern.

I am sorry but I am unable to accommodate your request for the following business reasons:

[Blank space]

These grounds apply because:

[Blank space]

You should explain why any other work patterns you may have discussed at the meeting are also inappropriate. Please continue on a blank sheet if necessary.
If you are unhappy with the decision you may appeal against it. Details of the appeal procedure are set out below.

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<th>Name</th>
<th>Date</th>
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<tr>
<td>Position in organisation</td>
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The Appeal Process

To the employee
If your employer turns down your request for flexible working, you have the right to appeal against the decision. If you wish to appeal, you must write to your employer, setting out the grounds for your appeal, within 14 days after receiving written notice of his decision.

To the employer
If you reject your employee’s request for flexible working, your employee has the right to appeal against your decision.

If your employee appeals against your decision to refuse a request for flexible working, you must arrange a meeting with your employee to discuss the appeal within 14 days after receiving the appeal letter. This is detailed in Section 5 of the DfE guidance.

After the meeting has been held, you must write to your employee within 14 days to notify him or her of the outcome of the appeal.

NOW RETURN THIS FORM TO YOUR EMPLOYEE
### Form FW (D) Flexible Working Appeal

<table>
<thead>
<tr>
<th>Note to the employee</th>
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<tbody>
<tr>
<td>If your application has been refused, you may appeal against your employer’s decision. You can use this form to make your appeal. You should set out the grounds on which you are appealing, and do so within 14 days of receiving written notice that your application for flexible working has been turned down.</td>
<td></td>
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</table>

<table>
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<tr>
<th>Note to the employer</th>
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<tbody>
<tr>
<td>This is a formal appeal made under the legal right to apply for flexible working. You have 14 days following your receipt of this form in which to arrange a meeting with your employee to discuss their appeal. See Section 6 of the DfE guidance booklet <em>Flexible Working: the right to request and the duty to consider</em> Form FW(E) Flexible Working Appeal Reply Form, to be used when responding to this appeal, has been provided.</td>
<td></td>
</tr>
</tbody>
</table>

Dear

I wish to appeal against your decision to refuse my application for flexible working. I am appealing on the following grounds:

Please continue on a blank sheet if necessary

Name  Date

NOW RETURN THIS FORM TO YOUR EMPLOYER AND KEEP A COPY
**Form FW (E) Flexible Working Appeal Reply Form**

Note to the employer

You may complete this form when replying to an appeal that an application to work flexibly has not been properly considered.

You must return this form to your employee, giving notice of your decision, within 14 days of the meeting at which you both discussed the appeal. If you decide to turn down the appeal, you must state the grounds for your refusal.

More information is available in Section 5 of the DfE guidance booklet *Flexible Working: the right to request and the duty to consider.*

<table>
<thead>
<tr>
<th>Dear</th>
<th>Staff No.</th>
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**Following our meeting on:**

Date

I have considered your appeal against the decision to refuse your application to work a flexible working pattern and I accept your appeal against the decision. I am therefore able to accommodate your original request to change your working pattern as follows:

<table>
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<tr>
<th>Your new working arrangements will begin from</th>
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</table>

Date

**Note to the employee**

Please note that the change in your working pattern will be a permanent change to your terms and conditions of employment and you have no right in law to revert back to your previous working pattern.
I am sorry but I must reject your appeal for the following ground(s):

The ground(s) apply because:

Please continue on a separate sheet if necessary.

Name

Date

Position in organisation
Form FW (F) Flexible Working Extension of Time Limit Form

Note to the employer
This form is provided for you to complete when confirming agreement with your employee that you wish to extend a time limit for part of the procedure, from that set out in the regulations. You may extend the time limit for any part of the process, providing your employee agrees to the extension. Information on when it might be appropriate to extend the time limits can be found in the DfE guidance booklet *Flexible Working: the right to request and the duty to consider*

Dear [Employee Name],

Staff No.

I wish to extend the amount of time that the Flexible Working Regulations 2007 allow me to:

- Arrange a meeting to discuss your application (28 days) [ ]
- Notify you of my decision regarding your application (14 days) [ ]
- Arrange a meeting to discuss your appeal (14 days) [ ]
- Notify you of my decision regarding your appeal (14 days) [ ]

I wish to extend the time limit to ___ days.

This means that I will have until ___ to complete the necessary action.

I need the extra time for the following reason(s):

If you agree to this extension please complete the slip below and return it to me.

Name ___________________________ Date ___________________________

Position in organisation ___________________________
Note to the employee

To allow proper consideration of your request, your employer may wish to extend the permitted time limit for any part of the process. Your employer will need your agreement to any extension of the time limit. If you agree to the above request, please complete the agreement slip below and return it to your employer. See Section 7 of the DfE guidance booklet *Flexible Working – the right to request and the duty to consider* for further details.

Cut this slip off and return it to your employer in order to confirm your acceptance of their request

---

**Employee’s agreement to Time Extension** (to be completed and returned to employer)

Dear

I accept your request to extend the amount of time to

Signed ___________________________  Date ___________________________

Name ___________________________
**Form FW (G) Flexible Working Notice of Withdrawal Form**

### Note to the Employee

This form provides notification to your employer that you wish to withdraw your application to work flexibly. Once you have withdrawn your application, you will not be able to make another application until 12 months from the date your original application was made.

| Dear
<table>
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<tbody>
<tr>
<td>I wish to withdraw my application to work flexibly which I submitted to you on</td>
</tr>
<tr>
<td>I understand that I will not be able to make another application until 12 months after the above date.</td>
</tr>
</tbody>
</table>

**Signed**

**Date**

**Name**

### NOW RETURN THIS FORM TO YOUR EMPLOYER

### Note to the employer

Once your employee has completed this form and returned it to you, the application is considered as withdrawn and you are not required to give it any further consideration. See Section 7 of the DfE guidance booklet 'Flexible working :the right to request and the duty to consider' for more information.

You should complete the slip below and return it to your employee to confirm your receipt of the withdrawal notice.
Employer’s Confirmation of Withdrawal  (to be completed and returned to employee)

Dear

I confirm that I have received notice that you wish to withdraw your application for flexible working which you submitted on

Under the right to apply, you will not be eligible to submit another application until 12 months after the above date.

Signed

Date

Position in organisation
Annex B: Where to find further information

<table>
<thead>
<tr>
<th>Body</th>
<th>Function</th>
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| **The Manx Industrial Relations Service (MIRS)**                    | Industrial Relations Officers (IROs) provide advice and guidance about employment rights and help to settle disputes between employers and workers.  

IROs will also attempt to promote a settlement where a complaint has been made or could be made to the Employment and Equality Tribunal.  

Tel.: 672942  
E-mail: [iro@mirs.org.im](mailto:iro@mirs.org.im)  
Web: [www.mirs.org.im](http://www.mirs.org.im)                                                                 |
| **Department for Enterprise website**                               | For information on employment rights, including various guides and Codes of Practice.                                                                                                                      |
| [www.emplaw.gov.im](http://www.emplaw.gov.im)                       |                                                                                                                                                                                                          |
| **The Clerk to the Employment and Equality Tribunal**                | This is the appropriate contact point where a claim to the Employment and Equality Tribunal has been made.  

(MIRS should be contacted where a claim has not been made or is being considered). (See above).  

Tel.: 685941 (Mon - Fri 9 a.m. to 5 p.m.)  
Fax: 685573  
Email: [tribunals@gov.im](mailto:tribunals@gov.im)  
Web: [www.courts.im/court-procedures/tribunals-service/tribunals/](http://www.courts.im/court-procedures/tribunals-service/tribunals/) |
| **Health and Safety at Work Inspectorate**                          | For guidance and enforcement in respect of health and safety issues.                                                                                                                                 |
| Environment Safety and Health Directorate  
Department of Environment Food & Agriculture  
Thie Slieau Whallian |                                                                                                                                                                                                          |
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<tr>
<th><strong>Benefits</strong></th>
<th>For information on:</th>
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<tbody>
<tr>
<td>The Treasury</td>
<td>• Maternity Allowance,</td>
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<tr>
<td>Markwell House</td>
<td>• Paternity Allowance,</td>
</tr>
<tr>
<td>Market Street</td>
<td>• Adoption Allowance, and</td>
</tr>
<tr>
<td>Douglas</td>
<td>• other family benefits.</td>
</tr>
<tr>
<td>IM1 2RZ</td>
<td></td>
</tr>
<tr>
<td>Tel.: +44 1624 685105</td>
<td></td>
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<tr>
<td>Fax: +44 1624 685120</td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:generalbenefits@gov.im">generalbenefits@gov.im</a></td>
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<thead>
<tr>
<th><strong>Isle of Man Legislation website</strong></th>
<th>For current versions of Isle of Man Acts.</th>
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<tbody>
<tr>
<td><a href="http://www.legislation.gov.im/cms/">www.legislation.gov.im/cms/</a></td>
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</table>
Feedback

How helpful was this booklet to you? Did it answer your questions? Was it detailed enough? Was it clear? Does it contain any typographical errors? Do you have any comments or suggestions as to how to the Department might further improve future editions? Please e mail your feedback to emplaw@gov.im