



Department for  
Business, Energy  
& Industrial Strategy

# Consultation on Making Flexible Working the Default

Government Response

December 2022



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# Introduction

The 2019 Conservative Party manifesto committed to “encourage flexible working and consult on making flexible working the default unless employers have good reasons not to”. The Government published a consultation on 23 September 2021, which ran for 12 weeks before closing on 1 December 2021.

The consultation set out proposals to amend the right to request flexible working so that it might better support employers and employees to reach agreement about appropriate flexible working arrangements. The proposals covered:

- making the right to request flexible working a day one right;
- whether the eight business reasons for refusing a request all remain valid;
- the administrative process underpinning the right to request flexible working;
- requiring the employer to consider alternatives if the initial request is unworkable;
- requesting a temporary arrangement; and
- a future call for evidence on ad hoc and informal flexible working.

The consultation received over 1,600 responses from a wide range of stakeholders. This document sets out the conclusions we have drawn from the consultation.

The first section of this document provides a consideration of the arguments for and against the consultation proposals. The second section presents an analysis of consultation responses broken down by question. The final section accounts for some of the wider points raised during the consultation.

# Section 1: An improved right to request flexible working

## Overview

In 2003, legislation came into force which provided employed parents and certain other carers with 26-weeks continuous service with a right to request a flexible working arrangement, supporting them to make a formal application to change their work location, working hours and/or their associated working pattern. In 2014, the right to request flexible working was extended to all employees with 26 weeks continuous service.

The consultation set out specific proposals intended to help ensure that the legislative framework remains fit for purpose.

Most consultation responses indicated support for flexible working and the benefits it can bring. This support was consistent across individuals, business representatives and other interested groups.

“Flexibility is not a perk and makes good business sense” – Virgin money

All groups of respondents recognised the importance of flexible working in supporting individuals into work. Many respondents described why flexible working was important to them and/or the people they represent. We are grateful for the additional survey undertaken by the Trades Union Congress (TUC) in this regard (section 3).

“Increasing flexible working options at all levels will not only improve access to employment for women and help reduce pay gaps, but will also support fathers who want a better work/life balance, and older people. In addition, flexible working can be a valuable reasonable adjustment for disabled workers, contributing towards closing the disability employment gap” – Equality and Human Rights Commission

Respondents also said that flexible working can be beneficial to employers, bringing wider societal benefits along the way – including supporting equality of employment opportunities among the general population and the full development and utilisation of the skills and capabilities of the workforce.

“When employees are able to strike the right work life balance, this benefits both the employer and employee in terms of improved productivity, reduced absence, lower turnover of staff and overall better employee relations” – Prospect Union

Generally, respondents accepted the principle that businesses' ability to accommodate flexible working arrangements depends on the individual's particular role and wider circumstances – for example customer requirements.

“Each individual case will vary, and the policies of each employer will be different. However, ongoing conversations regarding flexible working should be encouraged between employers and employees, at all stages of the employment relationship”  
– Large employer

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 potential<sup>1</sup>. Additionally, the Post Implementation Review of the Flexible Working Regulations 2014<sup>2</sup> showed that flexible working can reduce vacancy costs; increase skill retention; enhance business performance; and reduce staff absenteeism rates.

“Flexible working can help everyone to thrive in their professional and personal lives, and the overwhelming evidence shows that it is good both for people and organisations. A culture of flexible working will improve staff wellbeing and mental health, and drive-up innovation, ensuring that businesses are highly productive and investing further in the UK economy” – Sir Robert McAlpine

In the present context of a tight labour market, 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<sup>3</sup>, and a recent ONS publication revealed that older workers working flexibly would be more likely to be planning to retire later<sup>4</sup>.

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<sup>1</sup> See Gornick and Hegewisch (2010) <https://www.gov.uk/government/publications/work-life-balance-business-costs-and-benefits-literature-review>

<sup>2</sup> Post Implementation Review of 2014 Regulations <https://www.legislation.gov.uk/uksi/2014/1398/resources/made>

<sup>3</sup> Behavioural Insights Team Research <https://www.bi.team/blogs/bits-biggest-trial-so-far-encourages-more-flexible-jobs-and-applications/>

<sup>4</sup> ONS Release

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

## Making the right to request flexible working a day one right

The consultation asked whether the right to request flexible working should be a day one right, meaning that employees are able to make statutory requests for flexible working from their first day of employment.

### ***Support for the proposal***

Both individuals and business representatives expressed clear support for taking this step and removing the 26-week qualifying period, with 91% of all respondents being in favour. We heard that making the right to request flexible working a day one right would help to remove perceptions that flexible working is something that has to be “earned” rather than the norm. It was argued that this would encourage people to seek conversations with their employers about flexibility at work.

“This proposal will make flexible working more accessible and encourage employers and employees to have conversations about formally working flexibly from day one, or when it suits them. This will support a shift in workplace culture, moving away from the notion that the ability to request flexible working is an earned benefit...the current qualifying period can act as a disincentive for employees who want to move jobs but, because of personal circumstances, do not want to wait six months before formally requesting a change in their working arrangement” – Confederation of British Industry (CBI)

Respondents pointed out that making the right to request flexible working accessible to more employees (an estimated additional 2.2 million people) would support labour market participation. It would thereby support employers’ access to a wider pool of talent which could improve workforce diversity, the benefits of which are well-documented<sup>5</sup>. This is especially important in the context of a tight labour market. Encouraging employers and employees to discuss and agree flexible work arrangements from day one would assist those who may wish to return to the labour market but can only do so on certain working patterns.

“Not offering flexible working from the first day of employment limits the job mobility of millions of people who need flexibility” – Timewise, flexible working consultancy

Respondents also highlighted practical benefits to introducing the measure. The Women’s Business Council stated that: “removing the service qualification and having that conversation right at the start, removes the potential for disagreement after six months resulting from both parties having different expectations”. Moreover, an individual’s circumstances can change within the first six months of starting with a new employer for unforeseen reasons, making their working pattern unsustainable. Extending statutory protections to support conversations about

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<sup>5</sup> McKinsey (2015) <https://www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/why-diversity-matters>

alternative arrangements during this initial period could thereby prevent cases of individuals falling out of work, which is detrimental to both the employee and employer.

“Around one third of unpaid carers start caring every year and many people will find that they take on new caring responsibilities in the first six months of taking on a new job. Equally they may find their existing caring responsibilities become more intense within the first 6 months of their employment – in both situations, having a day one right to request flexible working would be invaluable” – Carers UK

We also heard that many employers already accept requests for flexible working arrangements from day one, with 69% of employer consultation responses confirming that they already do so. Extending the statutory right to request flexible working to day one of employment would bring the law in line with existing good practice.

“We already provide this as a day one right. It allows us to treat colleagues equally and helps to promote a flexible workforce from the start of employment. It also allows us to attract potential new employees who would want to work flexibly” – Large employer

## **Challenges**

Some respondents (7%) were concerned that making the right to request flexible working a day one right would be unnecessarily disruptive to their existing approach to the workplace. This was highlighted in sectors such as education, where teachers are required to provide specific services at set times, and hospitality, where flexibility is often pre-built into roles through the shift-pattern nature of the work. In such scenarios, it was argued that giving employees the opportunity to submit a request for a different arrangement within six months of their start date could create operational and logistical challenges.

More broadly, certain respondents were keen to point out that agreements about work arrangements should not be immediately reopened once an employee has accepted their job offer since this could negatively impact the employee-employer relationship.

Other responses suggested that the proposal should go further and guarantee flexibility from day one to better support individuals who do not feel comfortable starting the conversation in the first place.



## **Conclusion**

On the balance of the evidence provided by the consultation responses and the Post Implementation Review<sup>6</sup>, the Government believes that making the right to request flexible working apply from the first day of employment is a proportionate step to take.

There is no ‘one size fits all’ approach to work arrangements and it is important that the legislation remains a right *to request*, not a right *to have*. The Government believes that early conversations about flexibility in the job design, recruitment and appointment phases should be encouraged – and this measure will directly support that goal.

“If we give this right to request flexibility from day one, we open up our culture at all entry points and can stimulate a change in the way we think about working hours as a whole” –  
Phoenix Group

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<sup>6</sup> Post Implementation Review of 2014 Regulations <https://www.legislation.gov.uk/uksi/2014/1398/resources/made>

## Refusing flexible working requests

The consultation asked, in the light of recent experiences including the Covid-19 pandemic, whether the eight business reasons for refusing a flexible working request (see list below) remain valid.

- extra costs that will be a burden on the business
- the work cannot be reorganised among other staff
- people cannot be recruited to do the work
- flexible working will negatively affect quality
- flexible working will negatively affect performance
- the business' ability to meet customer demand will be negatively affected
- there is a lack of work to do during the proposed working times
- the business is planning structural changes.

### **Responses**

62% of all respondents did not believe that the reasons for refusing a flexible working request remained valid.

### **Responses seeking a reduction to the list of business reasons**

Where respondents believed that the business reasons for refusing a flexible working request were no longer valid, the majority supported a *reduction* in the list of reasons. These were generally from individuals rather than employers. Their headline argument was that the list of business reasons was too broad, and the current framework made it too easy for employers to refuse flexible working requests.

“A fair framework should be robust enough to motivate employers to familiarise themselves with their flexible working obligations and place an onus on them to offer reasonable flexibility from day one, while allowing for genuine exemptions in certain situations” –  
Joseph Rowntree Foundation

Much of the discussion in responses focused specifically on homeworking. Amongst those who wanted to see the list of business reasons reduced, the most cited reasons related to performance and quality saying that these were no longer relevant where an individual is seeking to work remotely as they would have proven their effectiveness during lockdown.

### **Responses seeking to increase the list of business reasons**

Other respondents felt the list of business reasons was no longer valid and should be *increased*. These respondents were generally employers. This group raised specific concerns in relation to homeworking, where they felt the list needed to be broadened to cover scenarios

where individual and organisational preferences and requirements clashed. They were generally of the view that the eight reasons remain valid and were able to provide examples of how each could reasonably be applied in different scenarios across different sectors.

This group challenged the notion that performance and quality are no longer relevant to assessments of the suitability of certain work arrangements. On homeworking, for example, it was felt that quality can be impacted where staff are needed in the workplace in order to train or supervise other members of staff, share knowledge or work on projects which benefit from 'face-to-face' collaboration and unplanned interactions.

### ***Responses supporting the current list of business reasons***

While contrary to the overall body of individual opinion, a breakdown of the responses showed that 63% of employers and business representatives considered that the list of business reasons remains valid.

Among these respondents, it was argued that the experience of Covid-19 has changed the baseline against which flexible working requests will be assessed going forwards, due to a richer evidence base upon which conversations can take place and employers can make decisions.

“The reasons are still valid, though we consider the likelihood of the reasons being applied is less. Our expectation is that employers and individuals are now finding more solutions and adapting ways of working together” – Childcare provider

Some employers reflected that while the list of reasons and supporting framework is needed, it is the quality of the conversations, rather than a strict adherence to the reasons themselves, that matters in practice. The importance of management capability in effectively considering and responding to flexible working requests was highlighted, alongside the supporting role that guidance can play.

“The greatest barriers to flexible working are not legislative but instead linked to the perception of flexible working as difficult to implement. It would be beneficial for employers, and particularly smaller employers, to receive clearer guidance on the process, such as what metrics should be used when making decisions around flexible working requests, or how they can minimise tension between employees who can and cannot work flexibly” – Business representative organisation

Some respondents suggested the reasons could be positively viewed as a checklist to help determine the impact of any request and how it might be accommodated. Such an approach may encourage, rather than discourage, an employer to accept a request by demonstrating that the request will have manageable consequences.

“It is important for employers to have the existing range of reasons open to them. The list benefits both employees as well as employers in its current form. This is because, as currently drafted, the list offers clarity and encourages accountability and so is helpful to employees, as well as to employers, as it means an employer can only turn down a request on very specific grounds” – Burges Salmon (Law Firm).

### **Conclusion**

While an overall majority of consultation responses supported a reduction in the list of business grounds for rejecting a flexible working request, no clear picture emerged of an obvious way forward. For example, any shortening of the list could require the remaining reasons to become broader to meet the needs of employers, which would lead to less clarity over what each individual reason covers.

There was a clear difference between the views of individuals and employers, with concern expressed in relation to how the reasons are used rather than what they specifically state. This in turn supports the need for a conversation between the employer and employee about the reason(s) applicable in any specific case and therefore how flexible working might sensibly and practically be available to an employee, if at all.

For these reasons, coupled with the strong arguments for maintaining the current position put forward in some consultation responses, the Government will retain the current list of business reasons and not make any changes.

## Consulting with employees about their requests

The consultation asked whether employers should be required to show that they have considered alternative arrangements when rejecting a statutory flexible working request. The proposal suggested a process whereby an employer should demonstrate, through a written notice, that they have considered an alternative arrangement. The intention was to encourage wider consideration of what might be workable.

### ***Support for the proposal***

94% of respondents supported the principle. Responses emphasised the need to treat requests decently, embedding best practice, and the importance of the discussion between employee and employer about flexible working options.

“This will reinforce the aim in the consultation that there should be a negotiation between employer and employee, which takes account of both employee preferences and business needs” – Employment Lawyers Association

### ***Challenges***

There was consensus that a requirement to show that a single alternative had been considered may lead to a tick box or unnecessary record-keeping exercise on behalf of employers, with 52% of employers and business representatives saying that the requirement would place a burden on business. There were further concerns among employee representatives that this approach may limit the scope of conversations and do little for those individuals who have a specific flexibility requirement. There were also strong arguments that alternative options should not be proposed by the employer without consultation with the employee. From the employer’s perspective, several respondents made it clear that there will be circumstances where no reasonable alternative is available.

“It [requiring an employer to show that it has considered a single alternative when rejecting requests] may have the unintended consequence of reducing the scope and effectiveness of any discussions between the parties. The most efficient way to identify whether potential alternative arrangements are feasible is by facilitating a discussion between the parties” – Make UK

### ***Conclusion***

The consultation responses and further engagement with stakeholders have suggested that employers should discuss a statutory flexible working request with their employee if they are considering rejecting it. Such an approach would also be consistent with the guidance in the Acas Code of Practice on handling flexible working requests.

“It is important that the shift to flexible working by default is seen as an improvement in the maturity of conversation between employee and employer, and changes to the regulations are introduced in a way that contributes to this... Getting to ‘flexible by default’ for us means that regular conversations take place between colleagues to explore whether the way they are working is delivering the best outcomes for the business, our customers and the individual” – Lloyds Banking Group

The Government supports this approach and will take forward this change so that employers are required to consult with their employee, as a means of exploring the available options, before rejecting their flexible working request.

## A more responsive process for making and administering requests

Currently employees can make one statutory flexible working request in a 12-month period, and employers must respond within three months. The consultation invited views on allowing greater number of requests and reducing the time period within which employers must respond.

### ***Support for the proposal***

74% of consultation respondents supported reform to both the number of statutory requests permitted in a 12-month period and the employer response timeframe, with the main reasons being that circumstances can change within 12 months and will often necessitate a quicker response to avoid negative outcomes for both employees and employers.

“A year is a long time, and multiple life events can happen in a twelve-month period; for example, becoming disabled, becoming a carer, losing someone close, becoming a parent. Therefore, employers supported the proposal that employees should be able to make more than one request per year. Otherwise, “flexible working” is at risk of not being “flexible” – Business Disability Forum

Despite some concerns around potential administrative burdens, 54% of employers and business representatives also supported a change to both parts of the administrative process.

“Employers recognise that requests are not made lightly and that long delays in responding create stress and uncertainty, which could be detrimental to job satisfaction and productivity. Requests to amend working hours or locations can generally be responded to quickly, however, for some requests to be accommodated, more consideration and changes are required” – Charity, advice service and campaign group

### ***Challenges***

Business representatives emphasised that employers without a dedicated HR function need sufficient time to properly consider requests alongside meeting the demands of running their business. Other respondents were concerned about the prospect of repeat requests and the risk that this may clog up HR processes.

In parallel, shortening the three-month response timeframe could deter an employer from fully considering a request as there may not be enough time for them to work through the implications of a request for the wider business operation.

“Alongside better meeting employees’ needs, the right to request framework must be manageable for employers of all sizes and sectors...Employers recognise the value of a speedier response for individuals as it makes life-planning easier and think that streamlining internal processes (budget considerations, assessments of resource allocation, work planning and recruitment alternatives done by multiple managers, finance and HR) by four-weeks can be achieved by businesses of all sizes” – CBI

### **Conclusion**

Given the evidence, the Government believes that employees should be able to make more than one request within a 12-month period, and that employers should respond to requests more swiftly.

The consultation and subsequent discussions with stakeholders have pointed to a general consensus around permitting two requests in any 12-month period and embedding a shortened two-month response timeframe as standard. The Government believes such changes support the overall policy objective of normalising flexible working and will take forward these changes.



## Employment Protections

During the consultation period, organisations such as the Trades Union Congress (TUC) and Equalities and Human Right Commission (EHRC) suggested that the existing requirement for the employee to set out how the effects of their flexible working request might be dealt with by the employer could lead to unfair treatment and, in some cases, indirect discrimination. For example, a new joiner with dyslexia may be disadvantaged in making a compelling business case compared to a senior manager with ten years' experience with the same employer.

“The requirement to present applications in business case terminology has meant that the process is more accessible to higher status, more valued employees, and may serve to exclude low status employees, possibly even nudging them into early workforce exit where their circumstances no longer permit them to work in pre-existing ways” – Individual, academic researcher

This requirement also interplays with the Government's consideration of making the right to request flexible working a day one right, since it would likely prove difficult for new entrants to know with any certainty what the impact of their request would be upon joining an organisation.

### Conclusion

The Government believes that, rather than placing the sole responsibility on the employee to set out the business case, employers should seek to engage with employees to jointly understand what the impact of their flexible working request would be.

For this reason, alongside the arguments set out above, the Government intends to remove the requirement for employees to set out how the effects of their flexible working request might be dealt with by the employer.

## Requesting a temporary arrangement and informal flexibility

### *Requesting a temporary arrangement*

The consultation asked whether people were aware that it is possible to make a time-limited flexible working request under the legislative framework. In response, 63% of respondents overall were not aware that this is possible. Most suggestions for ways to encourage employees to make this type of request related to awareness-raising and improved guidance. Among employers and business representatives the trend was reversed, with 77% confirming that they were aware that time-limited requests can be made under the framework.

### **Conclusion**

The Government recognises the need for clear guidance and awareness-raising, particularly among individuals, about the ability to make temporary requests for flexible working and will take this forward.

### *Informal flexibility*

The consultation proposals predominantly focussed on amending the right to request flexible working, which is used to support employees making applications for contractual flexible working arrangements – such as part-time or job-shares. Yet often what people need is ad hoc or informal flexibility, that allows them to manage elements of their lives, such as attending appointments or managing fluctuations in their health. The consultation asked for suggestions on what a call for evidence on ad hoc and informal flexible working might consider.

Respondents highlighted a range of topics relating to the take-up and administration of informal flexible working by individuals and employers alike. In relation to individual take-up, suggestions on what the call for evidence might consider included:

- how individuals ask for flexibility at short notice – whether it is informal, evidence-based or through a leave entitlement, for example;
- how individuals experience these conversations – whether they feel comfortable, able to disclose personal information and how that is received, for example; and
- what the individual needs are and why flexibility is needed – whether the need is medical, shorter/longer term or in response to planned/unplanned events, for example.

In relation to how employers administer informal flexibility, suggestions on what the call for evidence might consider included:

- how employers respond to requests for flexibility at short notice – whether policies are in place, what employers understand their responsibilities to be and the extent to which informal flexibility is part of the culture, for example;
- whether the degree of informal flexibility available to workers differs between different workers in the labour market; and

- whether employers treat requests for informal flexibility differently depending on the need.

### **Conclusion**

The Government wants to understand more about how these less-formalised types of flexibility work in practice. Drawing on the responses we have received through this consultation and the expertise of the Flexible Working Taskforce, we will issue a call for evidence on the subject in due course.

## Summary of conclusions and next steps

A key principle underpinning the consultation was that genuine flexible working does not come in one size only. It is not just homeworking on Mondays for the office worker. Nor is it just revised shift patterns for the factory worker. Clearly, the needs of businesses and individuals will differ in each circumstance. That is why, rather than telling people and organisations how to work, we put individual agency and choice at the heart of the proposals. It is right that the system is based on employers and workers having constructive, open-minded conversations about flexible working to find arrangements that work for both sides.

Following the consultation, the Government will:

- make the right to request flexible working apply from the first day of employment, through secondary legislation when parliamentary time allows;
- develop enhanced guidance to raise awareness and understanding of how to make and administer temporary requests for flexible working; and
- launch a call for evidence to better understand how informal or ad hoc flexible working works in practice.

The Government will also take forward the following measures, which require primary legislation:

- requiring employers to consult with their employees, as a means of exploring the available options, before rejecting their flexible request;
- allowing employees to make two flexible working requests in any 12-month period and requiring employers to respond to requests within two months; and
- removing the requirement for employees to set out how the effects of their flexible working request might be dealt with by the employer.

The Government is supporting a Private Member's Bill introduced by Yasmin Qureshi MP<sup>7</sup> which passed its Second Reading on 28 October 2022. The Government will continue to support the Employment Relations (Flexible Working) Bill as it progresses through parliament.

The Government will retain the current list of business reasons for rejecting flexible working requests and not make changes.

Alongside this we will also consider the role of guidance and awareness-raising in achieving these outcomes.

The right to request flexible working will continue to apply in Great Britain (England, Wales and Scotland), as employment law is devolved to Northern Ireland.

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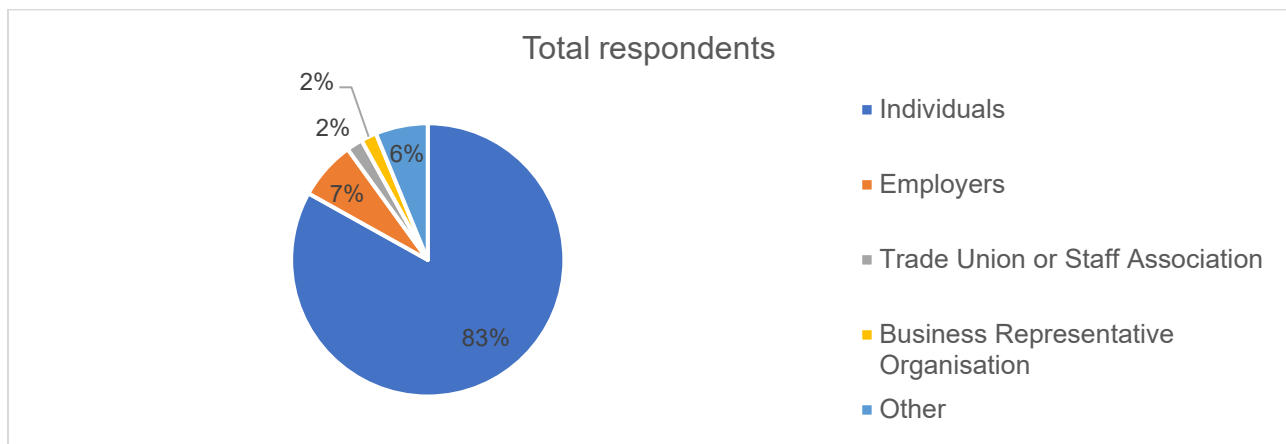
<sup>7</sup> Employment Relations (Flexible Working) Bill <https://bills.parliament.uk/bills/3198>

## Section 2: Analysis of Consultation Questions

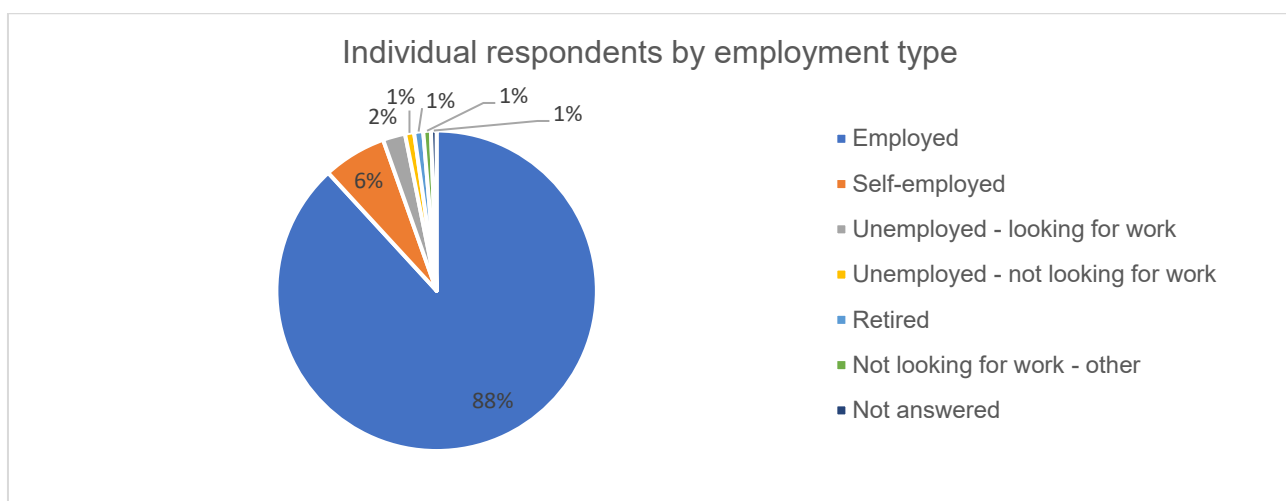
### Response Breakdown<sup>8</sup>

There were **1,611 responses** to the consultation. The majority of responses were from individuals – 1,342 (**83%**). Among these individuals, the majority were in employment – 1252 (**88%**) individuals. A minority of responses were from employers – 112 (**7%**). Of the 100 (**6%**) of respondents who defined themselves in the ‘other’ category, the main sub-groups were charities, campaign groups, academics, think tanks, advisory groups and professional bodies. Figures 1-4 below provide a breakdown of the respondents into various categories.

**Figure 1: Breakdown of respondents**

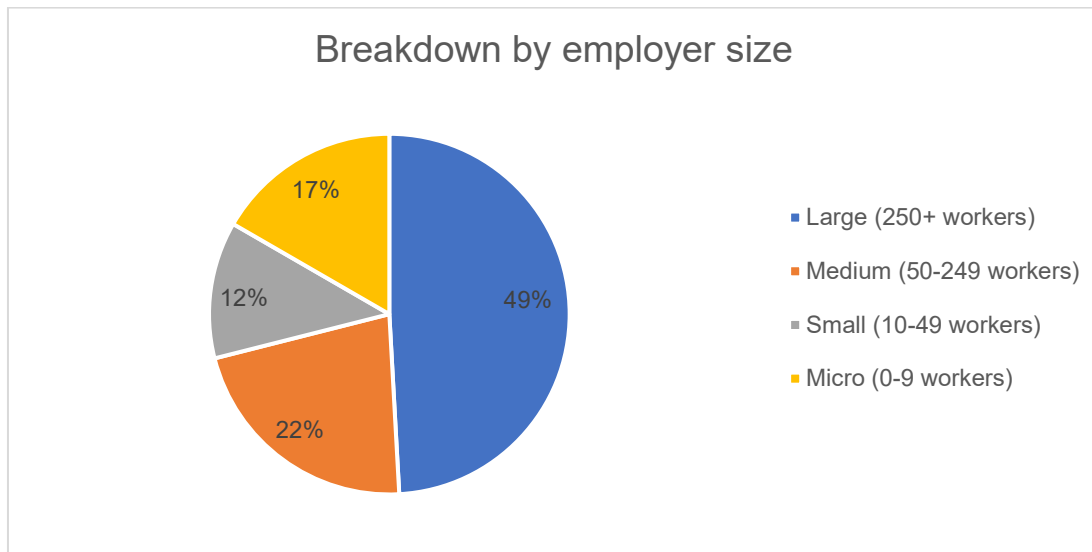


**Figure 2: Breakdown of individuals by employment**

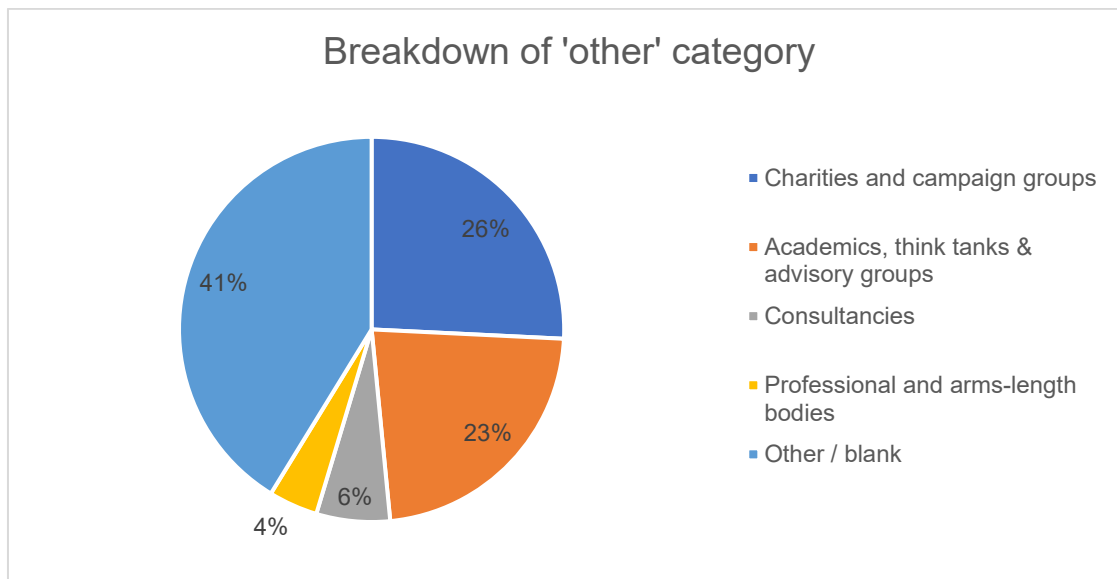


<sup>8</sup> Percentages have been rounded to the nearest percentage point. Not all respondents answered every question. The number of respondents to each question are noted. Where respondents had the option to provide a reason or further detail for their answer the number of respondents who did so is also noted.

**Figure 3: Breakdown of employer responses by size**



**Figure 4: Breakdown of 'Other' category by type of respondent**



## Making the right to request flexible working a day one right

### **Question 1: Do you agree that the right to request flexible working should be a day one right?**

There were **1,611 responses** to this question. 91% of all respondents agreed that the right to request flexible working should be made a day one right for employees. Among all employers and business representatives, 57% agreed that it should be a day one right. This breakdown is provided in figures 5 and 6.

There was some differentiation in responses between smaller and medium-sized employers (with up to 250 workers) and larger employers (with at least 250 workers). 48% of smaller and medium-sized employers agreed that it should be a day one right, compared with 74% of larger employers.

**1,015 respondents provided reasons for their answer. Within this, 608 respondents provided sufficient detail to be analysed below.**

- Among the 608 respondents, 56% considered that this measure would better support individuals to apply for and access jobs. Some of the key points raised by this group included that:
  - under the current framework, it is difficult for employees and potential employees to know how and when to have conversations about flexible working, deterring talent from applying for jobs;
  - a day one right can bring clarity and a framework for having early conversations (before a pattern of work has been established) to hiring managers and people who are changing jobs, attracting more applicants to roles and encouraging these applicants to progress their careers in new roles;
  - if flexible working were something that could be asked for from day one, without a requirement to disclose a disability/health condition or to justify the reasons behind it, this would better support working opportunities for many people.

Other themes among the responses included:

- 8% considered that this measure would help to promote organisational cultures that are more accommodating of flexible working arrangements by setting the right conditions. Respondents acknowledged that circumstances can change in the first 6 months of employment and the legislation should reflect and support this. Removing the qualifying period means employers and employees can have a conversation right at the start of employment, which reduces the potential for disagreement after six months resulting from both parties having different expectations. One employer commented that proactively inviting workers to ask about flexibility helps to position them as an employer of choice and supports their value proposition.

“It will act as a driver to change the culture within workplaces to be more flexible and encourage employers to think more proactively about how jobs can be done flexibly. We also hope it will encourage older workers to feel more comfortable discussing the existing need for flexibility they need from the start of a job, and this could broaden the range of jobs that older workers considering their place in the labour market feel are open to them”  
– Centre for Ageing Better

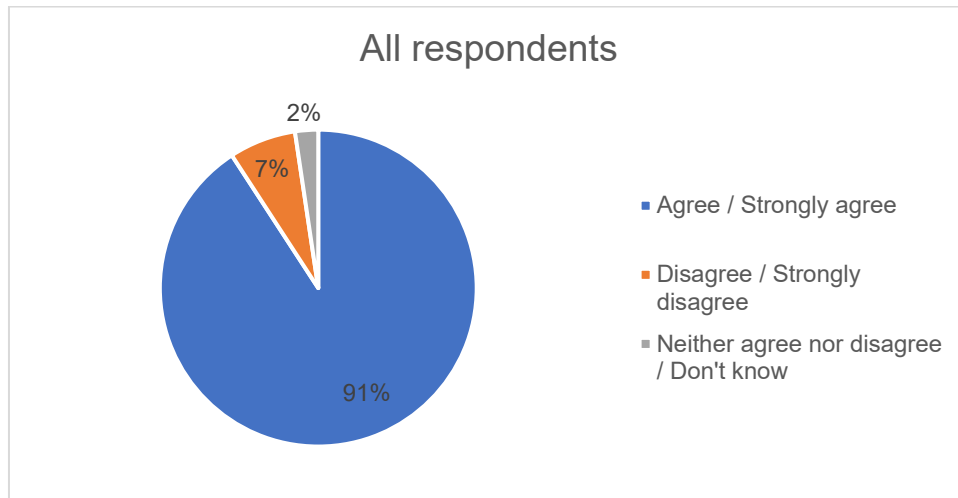
- 8% pointed out that the right needs to remain a right to request rather than a right ‘to have’. Respondents reinforced the point that flexibility must be balanced with the needs of employers. They reported that it is crucial that any legislative changes focus on facilitating conversations about optimal working arrangements at the individual business level, rather than mandating particular approaches to working arrangements. Some respondents suggested that the right to request should be brought forward (ahead of day one) so that requests can be submitted before contracts are agreed, while others recognised that there are issues with how any such right could be enforced.
- 8% said that the measure would better support under-represented groups into work by encouraging more applications and inclusive workplaces. Respondents highlighted how the measure will benefit both the workers themselves and businesses, by helping them to attract and retain a wider pool of talent and assisting with recruitment challenges through opening up more roles to people looking for a range of working patterns.

“The ability to make a day one request for flexible working would be a game-changer for many disabled people, enabling them to remain and progress in work. Overall, it would also build towards a future labour market that is more disability inclusive” – Leonard Cheshire

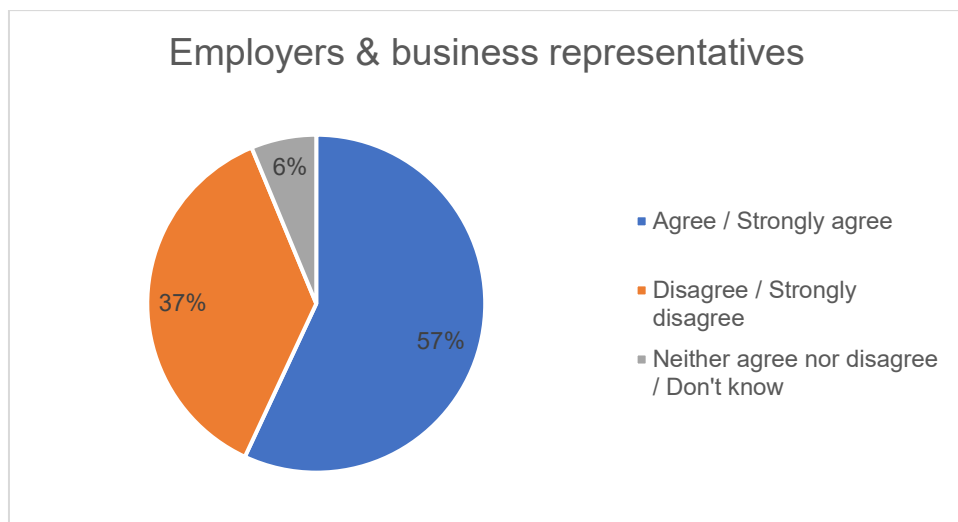
- 7% expressed concerns that this measure was unnecessary and could disrupt existing organisational policies and practices. This was highlighted in particular sectors such as education, where teachers have certain responsibilities to provide specific services, and hospitality, where it was argued that flexibility is inherently built into roles due to the nature of work – so further requests would be counter-productive.
- 5% said that the measure risks damaging organisational culture. Respondents felt that this is a conversation that should not be immediately reopened once an employee has accepted their job offer. The issue of fairness was also raised in relation to the scenario where some employees are granted flexible working while others are not. There also appeared to some conflation of flexible working generally with home working specifically, with some respondents making the point that a degree of workplace presence is necessary for the first few months of starting a new role.



**Figure 5: Question 1 – All respondents**



**Figure 6: Question 1 – Employers and business representatives**

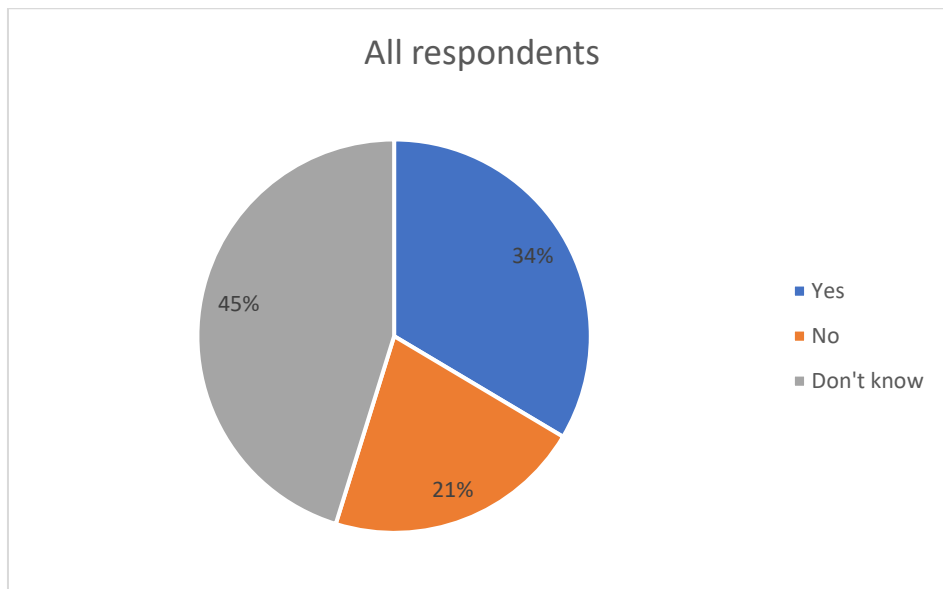


**Question 2: In your organisation, do you currently accept requests for flexible working arrangements from employees that have less than 26 weeks continuous service? Please answer this question from the perspective of the employer.**

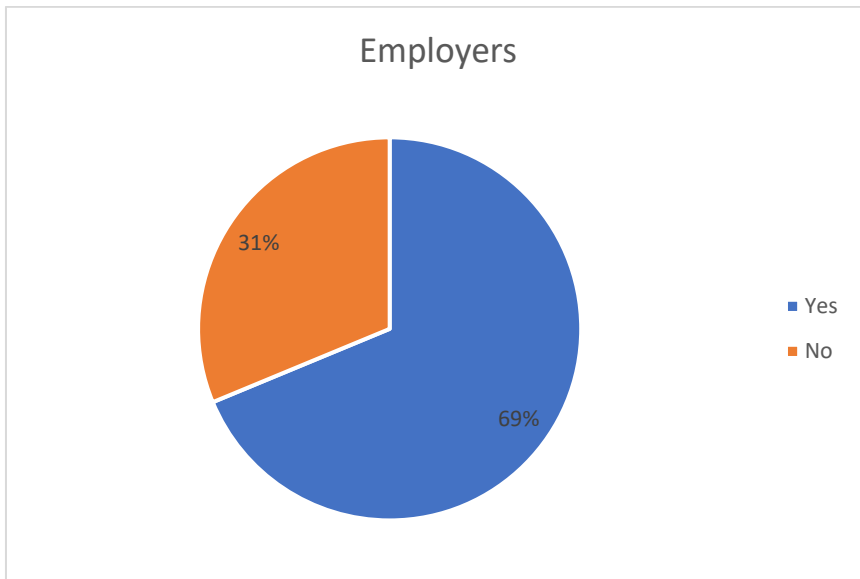
There were **1,407 responses** to this question. Among these respondents, 45% did not know (figure 7). Among those who did know (i.e. gave a yes or no answer to the question), 61% said that their organisation does accept requests for flexible working arrangements from employees with less than 26 weeks continuous service. This was mirrored among employer responses (figure 8), the majority (69%) of whom said that they do currently accept requests.

“This day 1 right is already in place in the council. We see this as an important part of our commitment to flexibility within our workforce and part of our flexible offer to prospective employees. The costs of extending this right have been minimal” – Luton Borough Council

**Figure 7: Question 2 – All respondents**



**Figure 8: Question 2 – Employers**



## Refusing flexible working requests

**Question 3: 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.**

There were **1,558 responses** to this question. Among these respondents, 62% answered in the negative, i.e. said that the reasons do not remain valid. The remaining proportion of respondents either answered in the affirmative, i.e. said that the reasons do remain valid (21%) or did not know (17%). This breakdown is given in figure 9.

The picture was quite different among employers and business representatives (figure 10), with 63% answering that the reasons do remain valid, 32% answering that they do not remain valid and 5% answering that they did not know..

**963 respondents provided reasons for their answer. Within this, 847 respondents provided sufficient detail to be analysed below.** Many of the respondents were not in a position to provide an employer's perspective directly but still provided a response and an accompanying reason for their answer.

Among those who answered 'yes – the reasons do remain valid':

- 54% expressed that the reasons were fair and reflected genuine issues faced by businesses. Here, respondents explained how the eight business reasons provided clarity and accountability in the assessment of flexible working requests, by providing a framework within which requests can be reviewed.
- 24% made the point that the needs of the business (and the customer) should take priority and the eight reasons serve to support a range of valid circumstances across different business sizes and sectors.
- A further 11% singled out certain reasons as particularly important and 10% thought that the reasons, as they are, gave sufficient assurance to employers that unworkable requests can be refused.
- A few respondents also responded that it was not the right time to change the reasons.

“Focus group discussions confirmed that the 8 business reasons are still used and, therefore, remain valid. However, our members felt that employers should have access to best practice guidance that encourages and supports them to challenge the barriers they experience and to explore potential solutions before refusing a request” – British Chambers of Commerce

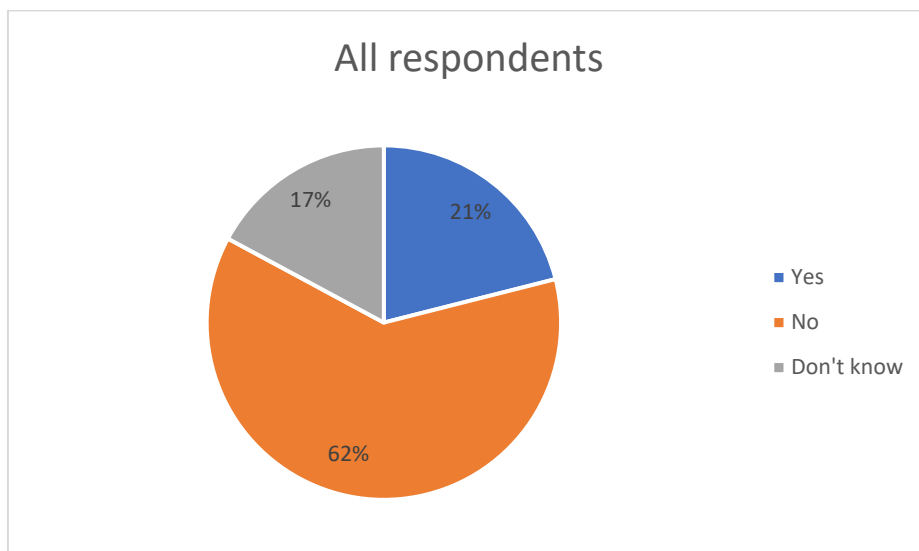
Among those who answered 'no – the reasons do not remain valid':

- 28% considered that negative impacts on quality and performance were no longer valid reasons for employers to give when refusing requests. This was supported by a further 23% of respondents who referred to the experience of flexible working during the

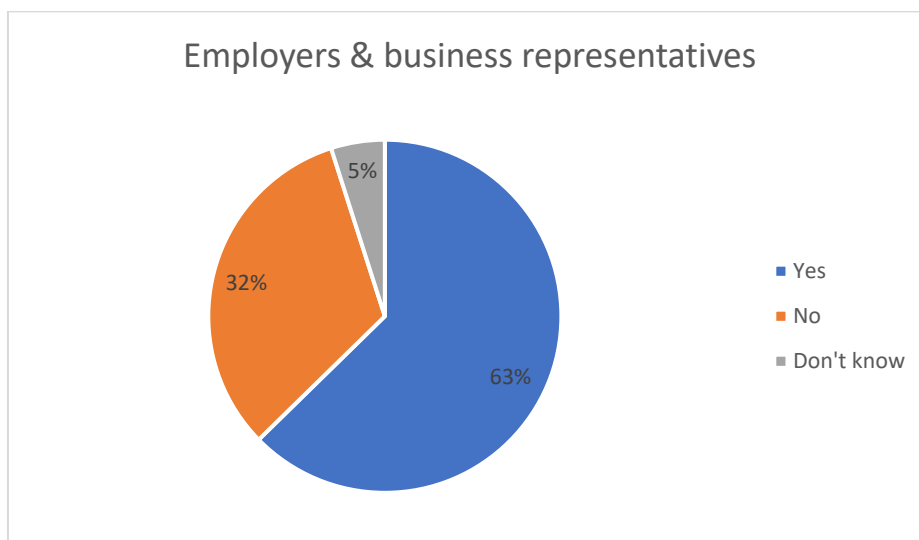
pandemic as having shown minimal disruption on business activities. Here, the most referenced type of flexible working was home working.

- 26% described the reasons as being too broad. Further comments referred to the reasons constituting a 'catch all' approach, such that employers can refuse any request for any reason. It was also put forward that employers should be required to explain the reasoning behind any refusals.
- 8% suggested that 'extra costs' was no longer a valid reason for refusing requests. It can be inferred that this was also generally in relation to the belief that flexible working arrangements during the pandemic did not impose disproportionate cost burdens on employers.
- Among employers and business representatives who answered 'no', the most common themes related to the breadth of the reasons and their being out-dated, and that additional reasons were needed in light of recent experiences, particularly in relation to requests for full-time homeworking.

**Figure 9: Question 3 – All respondents**



**Figure 10: Question 3 – Employers and business representatives**



## Consulting with employees about their requests

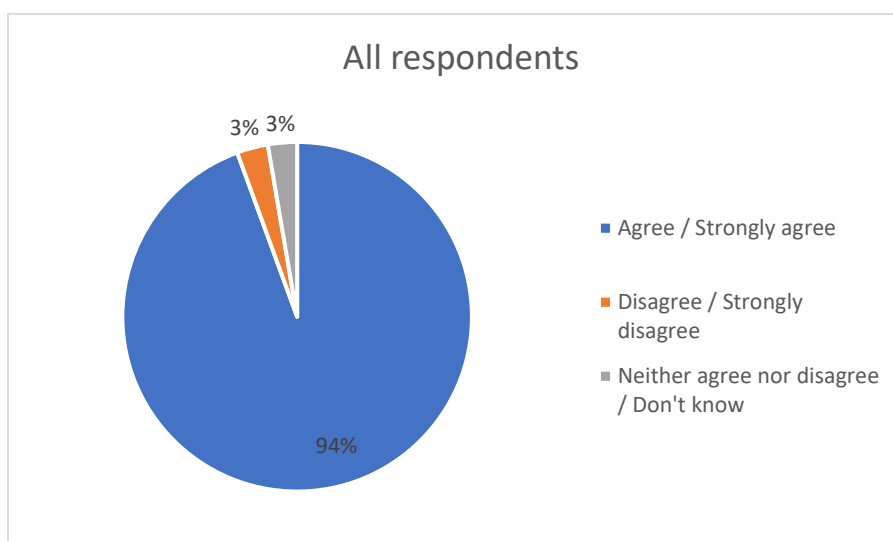
### Question 4: Do you agree that employers should be required to show that they have considered alternative working arrangements when rejecting a statutory request for flexible working?

There were **1,598 responses** to this question. There was overwhelming support for this measure among all respondents (figure 11), with 94% either agreeing or strongly agreeing with the proposal. Support from employers and business representatives (figure 12) was also forthcoming, with 72% either agreeing or strongly agreeing as well. There was no material variation among responses from businesses of different sizes.

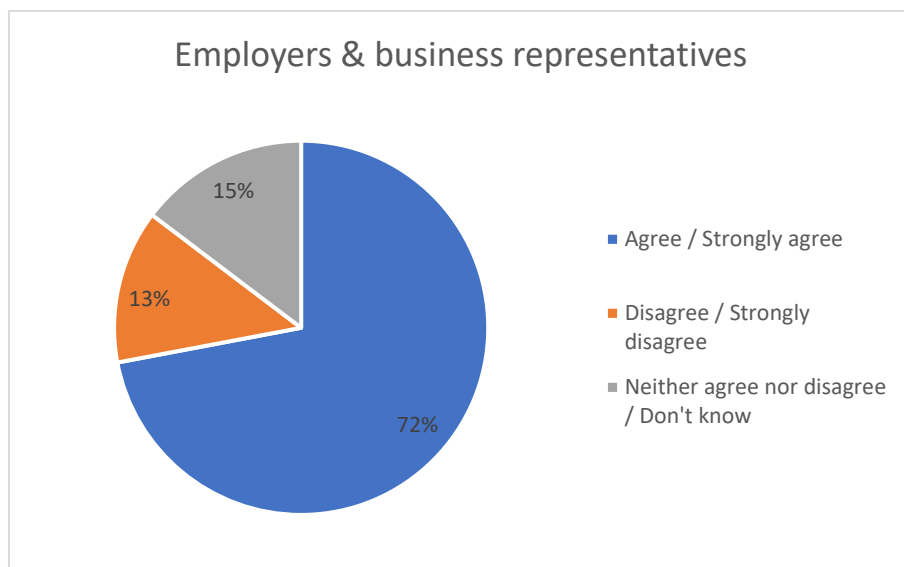
**847 respondents provided reasons for their answer. Within this, 769 respondents provided sufficient detail to be analysed below.**

- Among the 769 respondents, 44% cited the importance of transparency in decision-making as a key reason why they supported the proposal.
- 24% considered that such an approach would make employers more likely to fully engage with and consider the request.
- 12% thought that this would help to influence organisational cultures more in favour of flexible working practices, and 11% explained that this would benefit the employment relationship by helping both sides to find solutions to flexibility needs.
- Among employers and business representatives, several respondents were keen to point out that they would support a requirement to consider alternatives but a requirement to offer alternatives would not be acceptable due to its implication that at least one form of flexible working would have to be guaranteed.

**Figure 11: Question 4 – All respondents**



**Figure 12: Question 4 – Employers and business representatives**



**Question 5: Would introducing a requirement on employers to set out a single alternative flexible working arrangement and the business ground for rejecting it place burdens on employers when refusing requests?**

There were **1,494 responses** to this question. Answers to this question were mixed, with 30% answering with ‘Don’t know’. Overall, 43% of respondents did not think this requirement would place burdens on employers when refusing requests, while 27% of respondents did think this would create additional burdens (figure 13).

Among responses from employers and business representatives, a much higher proportion (52%) answered that this requirement would place burdens on business (figure 14). This figure was higher among medium and large employers (60%) than it was among micro and small employers (41%).

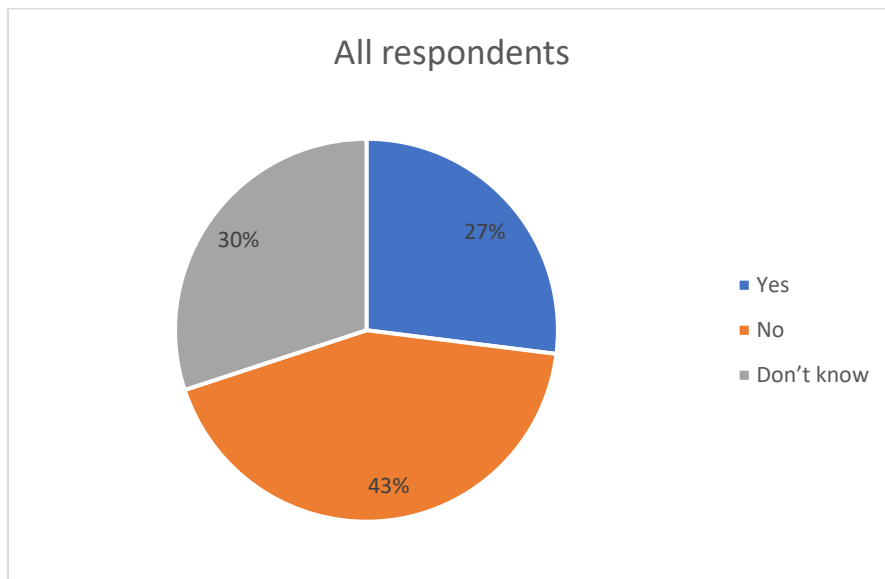
**580 respondents provided reasons for their answer. Within this, 507 respondents provided sufficient detail to be analysed below.**

- Among the 507 respondents, 71% set out that they considered that any burden would be proportionate to achieving the desired outcome.
- 12% explained that this exercise should not be seen as a burden, it should just be seen as good management.

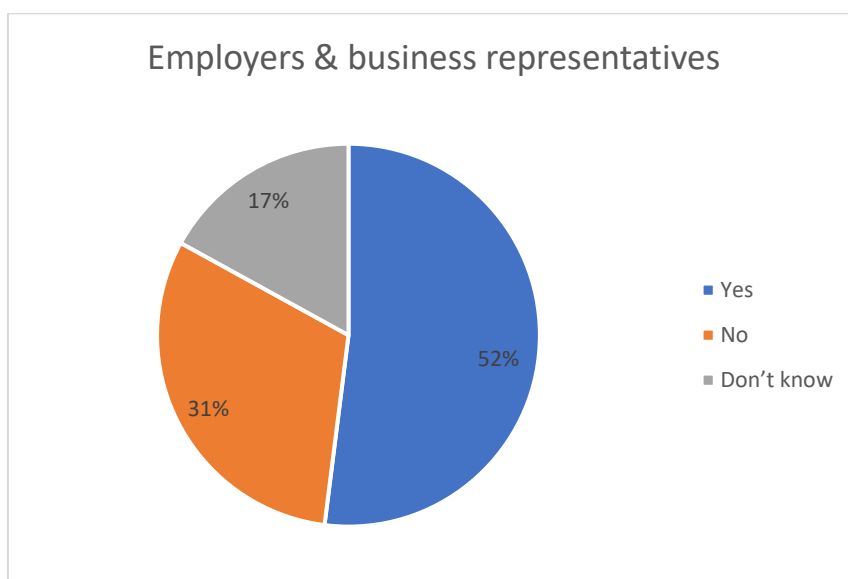
“Any additional time burden on employers would be very well spent, as any genuinely informed and fair discussion between the employer and the worker making the request should, by definition, include consideration of potential alternative ways to provide the worker with the flexibility they need” – Maternity Action

- 5% pointed out that there may be instances where there is no workable alternative for the employer to consider and that this could present difficulties when enforcing legislative compliance.
- 5% argued that the employer burden is already too high and should not be added to.
- Other respondents said that this could shift the responsibility for setting out the available flexibility onto the employer, with varying opinions on whether or not this is the right thing to do.

**Figure 13: Question 5 – All respondents**



**Figure 14: Question 5 – Employers and business representatives**





**Question 6: If yes, would this requirement have an effect on the time taken by employers to handle a request?**

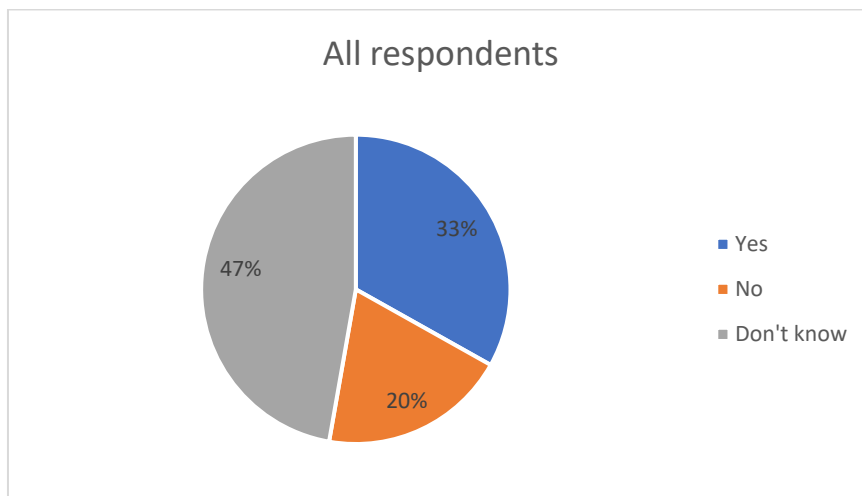
There were **830 responses** to this question. 47% of respondents did not know whether the requirement would have an effect on the time taken by employers to handle a request.

Among the respondents who answered yes or no, it was generally accepted that this would have an impact, with 33% of respondents overall saying that this requirement would have an effect on the time taken, compared with 20% who said that it would not (figure 15).

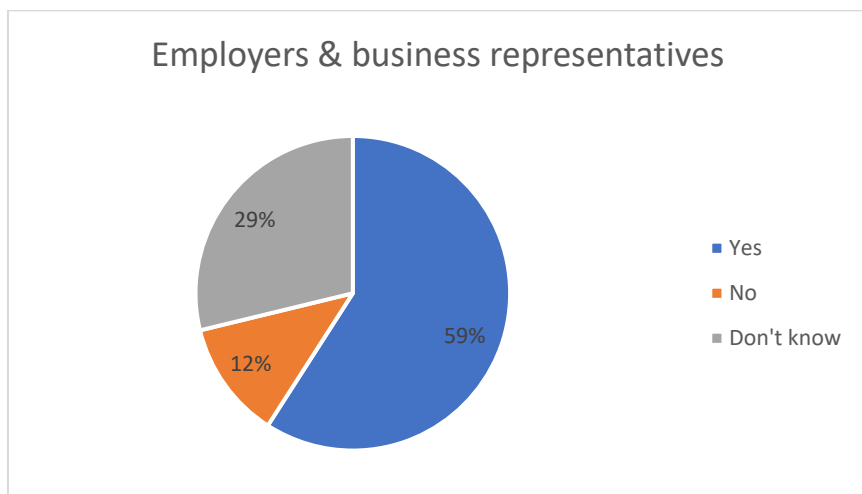
Among employers and business representatives, the proportion of respondents stating that this requirement would have an impact on the time taken to handle a request was higher, at 59% (figure 16).

Among those who answered yes and provided an estimated amount of additional time that this requirement would add on to an employer's handling of a flexible working request, these varied widely. At one end, estimates ranged from one hour to eight hours, at the other end some respondents suggested it could take days.

**Figure 15: Question 6 – All respondents**



**Figure 16: Question 6 – Employers and business representatives**



## A more responsive process for making and administering requests

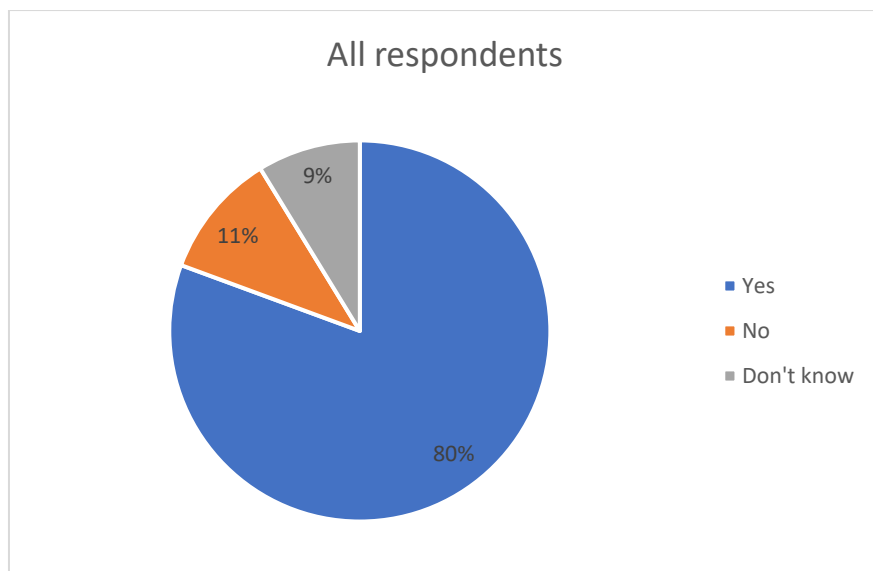
### Question 7: Do you think that the current statutory framework needs to change in relation to how often an employee can submit a request to work flexibly?

There were **1,589 responses** to this question. 80% of respondents overall thought that the statutory framework needs to change in relation to how often an employee can submit a request to work flexibly (figure 17). 56% of employers and business representatives also agreed with this (figure 18).

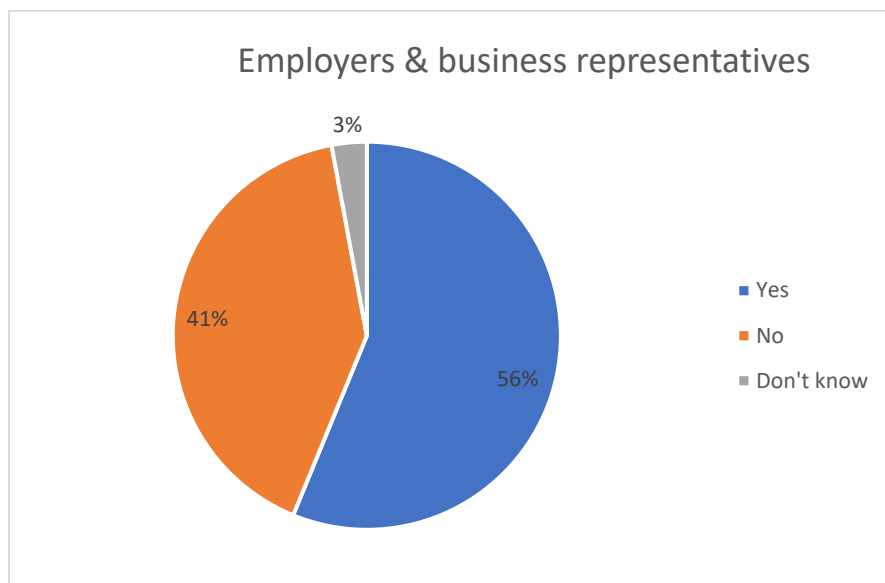
**913 respondents gave reasons for their answer. Within this, 738 respondents provided sufficient detail to be analysed below.**

- Among the 738 respondents, 41% expressed that an individual's circumstances can change within a 12-month period and a single request is not currently sufficient to accommodate this.
- 23% said that the number of permitted statutory requests should be determined by individual need rather than a specified number of requests.
- 12% thought that one request per year was sufficient but that individuals should be able to submit extra requests in exceptional circumstances.
- 6% considered that a balanced approach was needed to ensure that the needs of both employers and individuals are met, with a further 5% citing that the framework should aim to support and encourage an open dialogue between the two parties.
- 5% thought that the current framework works well as it is, with a further 4% arguing that introducing multiple requests would create disproportionate bureaucracy.
- 4% made the point that allowing multiple requests could be the difference in keeping someone in employment.

**Figure 17: Question 7 – All respondents**



**Figure 18: Question 7 – Employers and business representatives**



**Question 8: 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?**

There were **1,582 responses** to this question. 75% of all respondents thought that the statutory framework needs to change in relation to how quickly an employer must respond to a flexible working request (figure 19). Employers and business representatives were broadly split on this question, with 54% agreeing that the framework needs to change (figure 20).

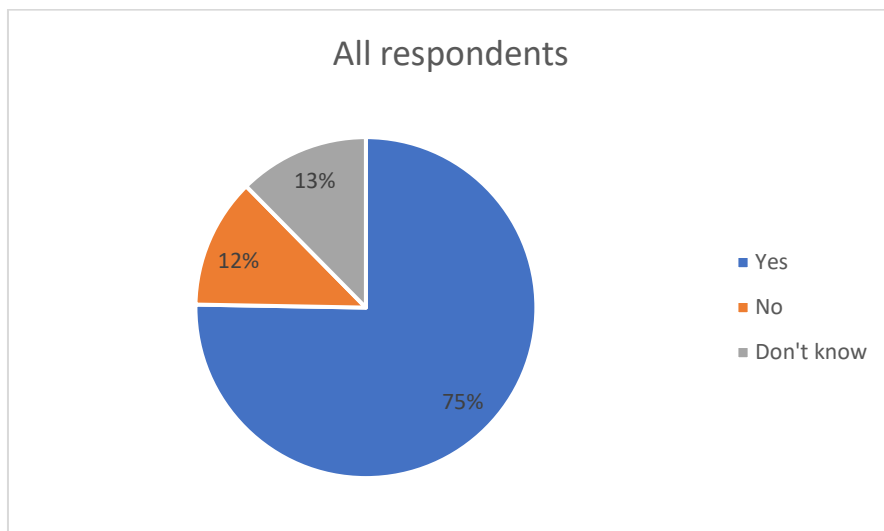
**787 respondents gave reasons for their answer. Within this, 682 respondents provided sufficient detail to be analysed below.**

- Among the 682 respondents, 48% set out that many circumstances will require a quicker answer than three months. This was backed up by a further 24% who felt that employers should treat more urgent flexibility needs more quickly, by taking a needs-based approach.
- 15% argued that the existing three-month timeframe allows employers to give proper consideration to requests and that any reduction could risk jeopardising this.
- At the same time, 5% put forward that a three-month wait time can be unnecessarily stressful for the requestor. In support of this, 4% made the point that a decision can be made sooner than actual implementation.
- Several respondents felt that a quicker response timeframe was in both parties' interests since it facilitates more efficient planning.

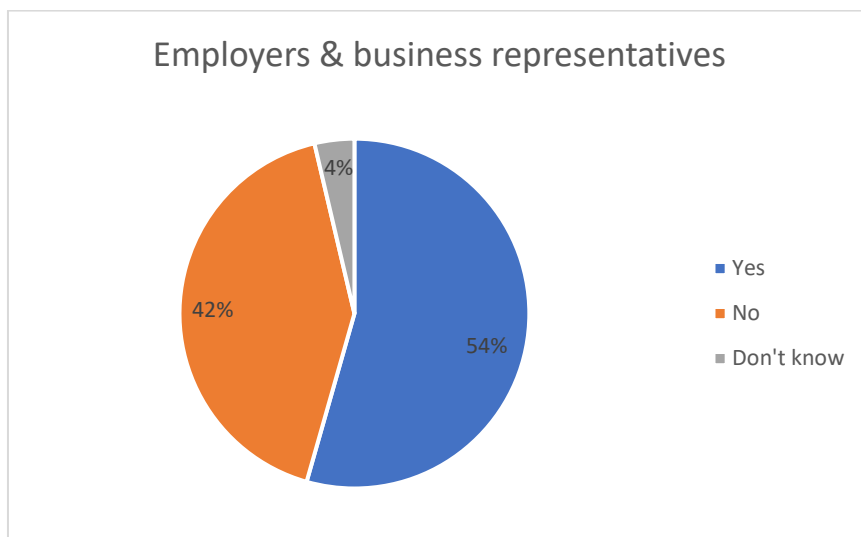
“Three months is a long time for the employee to have to wait for a response if they are genuinely struggling with their working pattern. However, it very much depends on the organisation and what other requirements are implemented as a result of this consultation – if employers have to take an extra step by suggesting an alternative flexible working arrangement (if the employee’s request is rejected) then they may need three months to consider what other arrangements might work”.

“Despite this, we consider that a two-month period would work better in practice than the current three months. It is not too significant a change for the employer in dealing with the request and still gives them a decent amount of time to properly consider the request / other potential arrangements but also assists the employee in providing certainty much quicker – the sooner they know the position, the sooner they can sort out any issues outside of work” – Liverpool Law Society

**Figure 19: Question 8 – All respondents**



**Figure 20: Question 8 – Employers and business representatives**

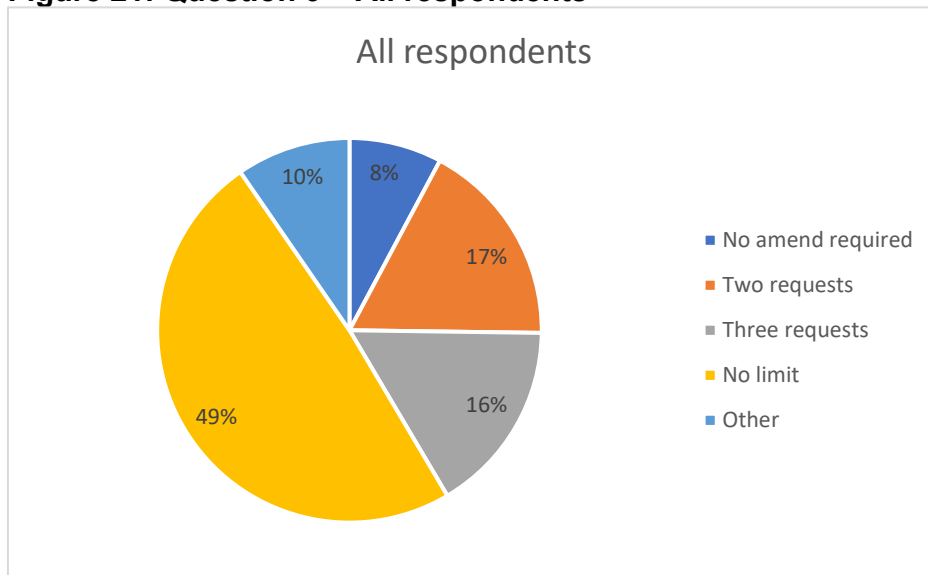


**Question 9: If the Right to Request flexible working were to be amended to allow multiple requests, how many requests should an employee be allowed to make per year?**

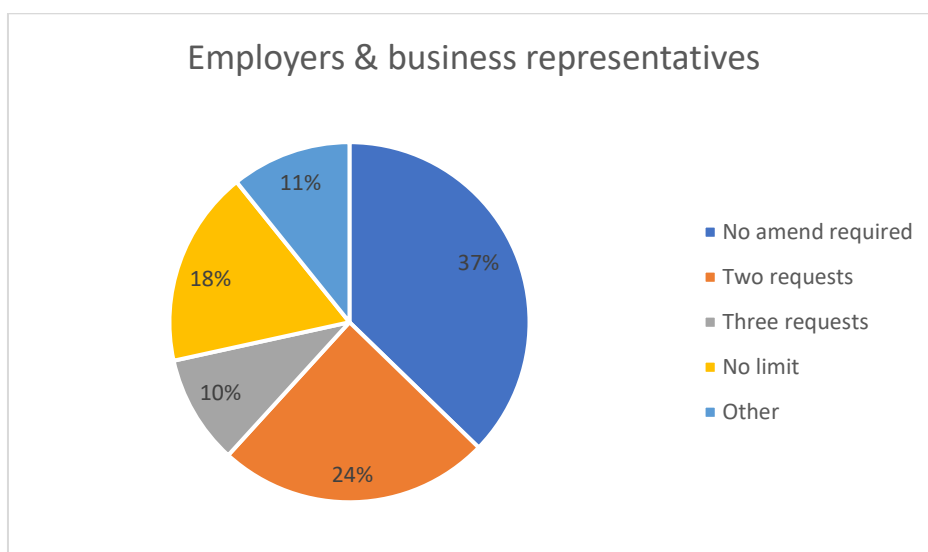
There were **1,499 responses** to this question. 49% of all respondents thought that there should be no limit on the number of requests an individual can make (figure 21). Beyond that, respondents were split between two requests (17%) and three requests (16%) within a 12-month period. 8% of respondents overall thought that no amendment is required.

The picture was different when accounting for employers and business representatives only. Within this group, the most popular response was that no amendment is required (37%). The second most popular response was that two requests should be allowed within a 12-month period (24%) (figure 22).

**Figure 21: Question 9 – All respondents**



**Figure 22: Question 9 - Employers and business representatives**

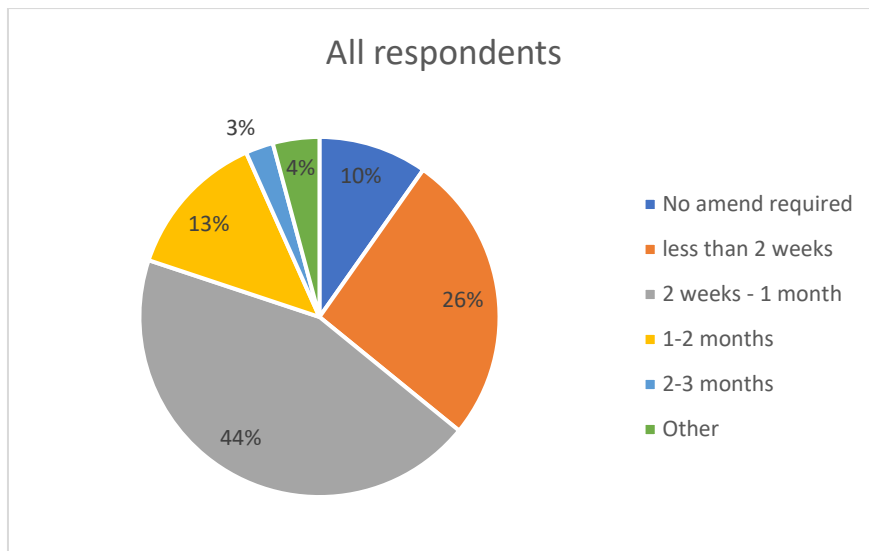


**Question 10: If the Right to Request flexible working were amended to reduce the time period within which employers must respond to a request, how long should employers have to respond?**

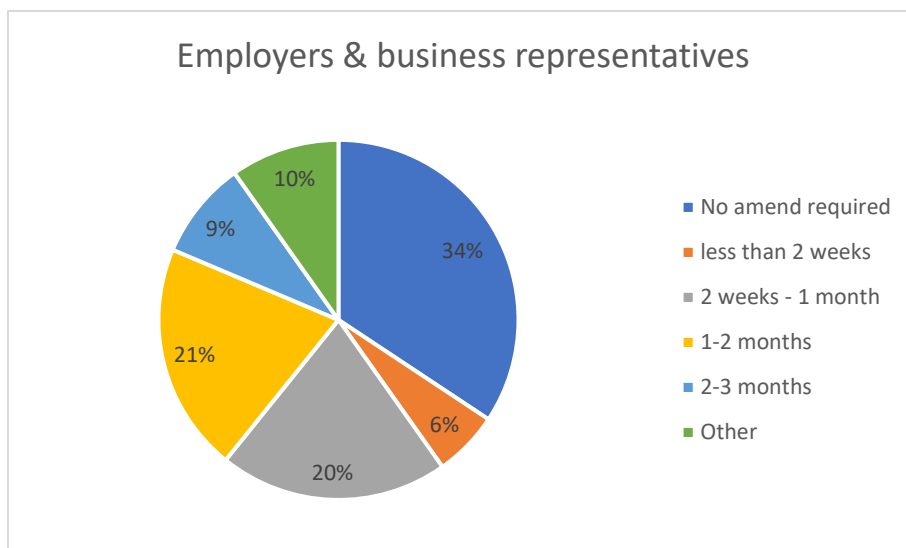
There were **1,483 responses** to this question. Overall, among all respondents, the most popular option was that employers should have to respond to requests within a period of between two weeks and one month (44%). The second most popular option was that they should be required to respond within a period of less than two weeks (26%). The full breakdown is provided in figure 23.

Among employers and business representatives, as in the previous question, the most popular response was that no amendment is required (34%). After that, the next popular responses were between two weeks and one month (19%) and between one and two months (21%). The full breakdown is provided in figure 24.

**Figure 23: Question 10 – All respondents**



**Figure 24: Question 10 – Employers and business representatives**



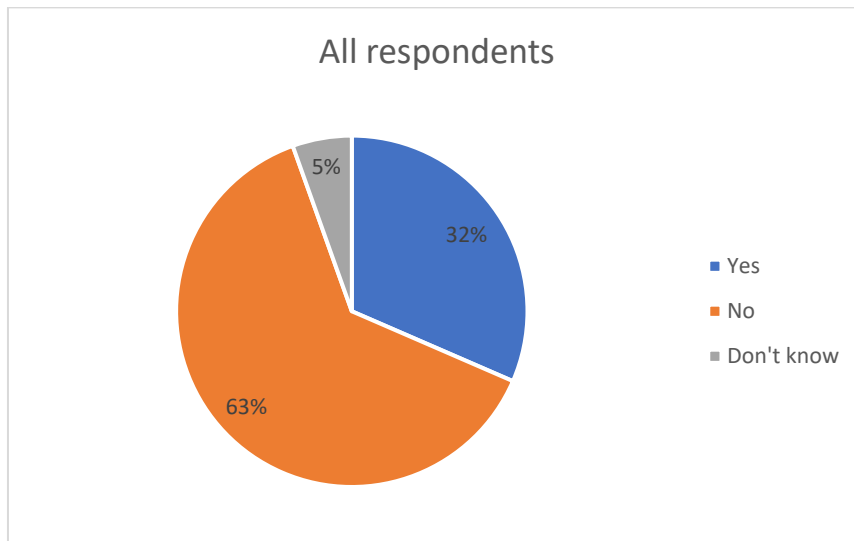
## Requesting a temporary arrangement and informal flexibility

### Question 11: Are you aware that it is possible under the legislation to make a time-limited request to work flexibly?

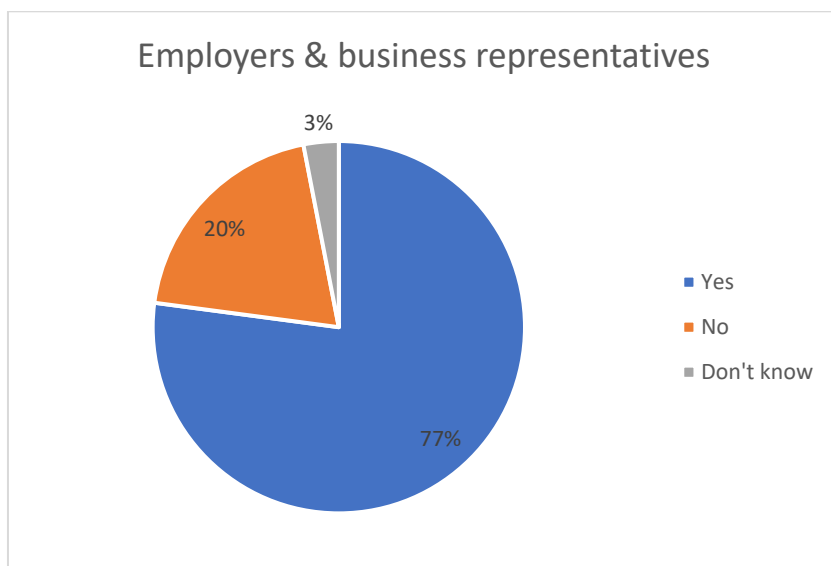
**This question registered 1,501 respondents.** Among all respondents, 63% were not aware that it is possible to make a time-limited request to work flexibly under the existing legislation (figure 25).

This was not the case among employers and business representatives, with 77% of this group saying that they are aware that this is possible under the existing legislation (figure 26).

**Figure 25: Question 11 – All respondents**



**Figure 26: Question 11 – Employers and business representatives**



**Question 12: What would encourage employees to make time-limited requests to work flexibly? Please provide examples.**

**This question registered 867 respondents.** Responses to this question were focused on awareness-raising activities and the provision of better guidance for workers and employers on how this works in practice, as well as how to support flexible working cultures. Wider points were also made about how strengthening the legislative framework more generally will help to support time-limited requests – shortening the response timeframe from three months to two months, for example, will support faster employer responses that enable time-limited requests to be processed quicker.

**Question 13: Please share your suggestions for the issues that the call for evidence on ad hoc and informal flexible working might consider.**

**This question registered 624 respondents.** We received a range of suggestions for how we might take the call for evidence forward. Suggestions for the issues it might cover included:

- how individuals ask for flexibility at short notice – whether it is informal, evidence-based or through a leave entitlement, for example;
- how individuals experience these conversations – whether they feel comfortable, able to disclose personal information and how that is received, for example;
- what the individual needs are and why flexibility is needed – whether the need is medical, shorter/longer term or in response to planned/unplanned events, for example.
- how employers respond to requests for flexibility at short notice – whether policies are in place, what employers understand their responsibilities to be and the extent to which informal flexibility is part of the culture, for example;
- whether the degree of informal flexibility available to workers differs between different workers in the labour market; and
- whether employers treat requests for informal flexibility differently depending on the need.



## Section 3: Further points raised during the consultation

To accompany their consultation response, the TUC commissioned a survey that received over 5,500 responses primarily from parents – and shared these responses with BEIS. The responses highlighted the importance of flexible working to individuals in helping them to access, stay and progress in work. The responses also drew attention to the fact that individuals will not always feel comfortable making a flexible working request and suggest that the present approach makes it too easy for an employer to turn down a flexible working request. Another theme from the survey responses is that employers do not sufficiently investigate the possibilities for accommodating flexible working, because it is easier not to.

While this document does not seek to directly address the TUC-commissioned survey, we are grateful to have received it and the insights it provided.

This publication is available from: [www.gov.uk/government/consultations/making-flexible-working-the-default](https://www.gov.uk/government/consultations/making-flexible-working-the-default)

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