



HM Government

**CONSULTATION ON MODERN WORKPLACES**

Modern Workplaces Consultation - Government Response on Flexible Working

NOVEMBER 2012

# Modern Workplaces Consultation: Government Response to Flexible Working Proposals

Executive Summary .....	6
MODERN WORKPLACES CONSULTATION: GOVERNMENT RESPONSE TO FLEXIBLE WORKING PROPOSALS .....	8
Background .....	8
MODERN WORKPLACES CONSULTATION: GOVERNMENT RESPONSE TO FLEXIBLE WORKING PROPOSALS .....	9
Consultation process.....	9
Engagement with stakeholders .....	9
MODERN WORKPLACES CONSULTATION: GOVERNMENT RESPONSE TO FLEXIBLE WORKING PROPOSALS .....	10
ANALYSIS OF RESPONSES AND GOVERNMENT RESPONSE .....	11
Q.1 SHOULD THE GOVERNMENT LEGISLATE TO EXTEND THE RIGHT TO REQUEST FLEXIBLE WORKING TO ALL EMPLOYEES? .....	11
Q.2 DO YOU SUPPORT THE PROPOSAL TO REPLACE THE STATUTORY PROCESS FOR THE CONSIDERATION OF REQUESTS WITH A CODE OF PRACTICE? .....	12
Q.3 SHOULD THE CODE OF PRACTICE DETAIL THE EXISTING STATUTORY PROCEDURE? .....	13
Q.4 SHOULD A CODE OF PRACTICE BE PRINCIPLE-BASED (I.E. REQUIRING REQUESTS TO BE CONSIDERED IN A 'REASONABLE' MANNER AND TIME) OR PROVIDE A SAFE HARBOUR (I.E. WHERE EMPLOYERS FOLLOWING THE PROCESS PRECISELY GET PROTECTION)? .....	13
Q.5 IF YOU DO NOT AGREE THAT WE SHOULD INTRODUCE A CODE OF PRACTICE TO GOVERN FLEXIBLE WORKING REQUESTS, WHAT ALTERNATIVE COULD BE INTRODUCED TO REDUCE THE ADMINISTRATIVE BURDENS OF CONSIDERING REQUESTS, WITHOUT DIMINISHING EMPLOYEE RIGHTS? .....	14
Q.6 DO YOU AGREE WITH OUR PROPOSALS ON PRIORITISATION OF MULTIPLE FLEXIBLE WORKING REQUESTS THAT CANNOT ALL BE ACCOMMODATED? .....	16
Q.7 RETAIN THE QUALIFYING PERIOD OF 26 WEEKS OF CONTINUOUS EMPLOYMENT WITH THEIR EMPLOYER BEFORE AN EMPLOYEE CAN MAKE A FLEXIBLE WORKING REQUESTS? .....	18
Q.8 DO YOU AGREE THAT THE RESTRICTION ON THE NUMBER OF REQUESTS ALLOWED IN ANY 12-MONTH PERIOD SHOULD BE CHANGED? .....	19
Q.9 DO YOU HAVE AN ALTERNATIVE PROPOSAL FOR PROMOTING TEMPORARY CHANGES TO WORKING PATTERNS?.....	19
Q.10 DO YOU AGREE WITH THE GOVERNMENT THAT MICRO-BUSINESSES AND START-UPS SHOULD BE EXEMPTED FROM THE EXTENSION TO THE RIGHT TO REQUEST FLEXIBLE WORKING FOR THE THREE YEAR MORATORIUM? .....	20
Q.11 WHAT SUPPORT DO YOU THINK EMPLOYERS NEED TO ENABLE THEM TO OPERATE FLEXIBLE WORKING? EMPLOYERS: WHAT EXISTING SUPPORT AND GUIDANCE HAVE YOU USED? HAS THIS BEEN HELPFUL TO YOU? PLEASE EXPLAIN YOUR RESPONSE.....	22
TOTAL NUMBER OF RESPONSES 94 .....	22
Q.12. WHEN LOOKING FOR JOBS, WHAT COULD EMPLOYERS OR RECRUITMENT AGENCIES PROVIDE THAT WOULD HIGHLIGHT THAT A JOB HAS FLEXIBLE WORKING OPPORTUNITIES?.....	22
Q13. WHAT SUPPORT IS REQUIRED TO HELP PEOPLE TO UNDERTAKE VARIED-HOURS WORKING?.....	23
CIVIL SERVICE AS AN EXEMPLAR .....	23

CASE STUDY ONE: .....	23
WORKING WITH THE PRIVATE SECTOR .....	24
JOBCENTRE PLUS.....	25
Q. 14 DO YOU HAVE ANY FURTHER COMMENTS OR SUGGESTIONS RELATING TO OUR PROPOSALS OR IMPACT ASSESSMENT ON FLEXIBLE WORKING?.....	25
MODERN WORKPLACES CONSULTATION: GOVERNMENT RESPONSE TO FLEXIBLE WORKING PROPOSALS .....	26
EXTEND THE RIGHT TO REQUEST FLEXIBLE WORKING.....	26
REPLACE THE CURRENT STATUTORY PROCESS FOR CONSIDERING FLEXIBLE WORKING REQUESTS, WITH A DUTY ON EMPLOYERS TO DEAL WITH REQUESTS IN A REASONABLE MANNER, WITHIN A 'REASONABLE' PERIOD OF TIME; AND CREATE A STATUTORY CODE OF PRACTICE TO EXPLAIN THE MEANING OF 'REASONABLE' TO EMPLOYERS. ....	26
RETAIN THE QUALIFYING PERIOD OF 26 WEEKS OF CONTINUOUS EMPLOYMENT WITH THEIR EMPLOYER BEFORE AN EMPLOYEE CAN MAKE A FLEXIBLE WORKING REQUEST.....	27
REMOVE THE RESTRICTION ON THE NUMBER OF REQUESTS AN EMPLOYEE CAN MAKE WITHIN ANY 12 MONTH PERIOD .....	27
EXEMPT MICRO BUSINESSES FROM THE EXTENSION TO THE RIGHT TO REQUEST FLEXIBLE WORKING. .....	28
ENQUIRIES .....	31
ANNEX A .....	32
LIST OF QUESTIONS .....	32
ANNEX B .....	34
RESPONSES TO SPECIFIC QUESTIONS .....	34
1.    QUESTION (Q1) - SHOULD THE GOVERNMENT LEGISLATE TO EXTEND THE RIGHT TO REQUEST FLEXIBLE .....	34
2.    QUESTION (Q2) - DO YOU SUPPORT THE PROPOSAL TO REPLACE THE STATUTORY PROCESS FOR THE CONSIDERATION OF REQUESTS WITH A CODE OF PRACTICE? .....	34
3.    QUESTION (Q3) - SHOULD THE CODE OF PRACTICE DETAIL THE EXISTING STATUTORY PROCEDURE? .....	34
4.    QUESTION (Q4) - SHOULD A CODE OF PRACTICE BE PRINCIPLE-BASED (I.E. REQUIRING REQUESTS TO BE CONSIDERED IN A REASONABLE MANNER AND TIME) OR PROVIDE A SAFE HARBOUR (I.E. WHERE EMPLOYERS FOLLOWING THE PROCESS PRECISELY GET PROTECTION)? .....	34
5.    QUESTION (Q5) IF YOU DO NOT AGREE THAT WE SHOULD INTRODUCE A CODE OF PRACTICE TO GOVERN FLEXIBLE WORKING REQUESTS, WHAT ALTERNATIVE COULD BE INTRODUCED TO REDUCE THE ADMINISTRATIVE BURDENS OF CONSIDERING REQUESTS, WITHOUT DIMINISHING EMPLOYEE RIGHTS? .....	34
6.    QUESTION (Q6) - DO YOU AGREE WITH OUR PROPOSALS ON PRIORITISATION OF MULTIPLE FLEXIBLE WORKING REQUESTS THAT CANNOT ALL BE ACCOMMODATED?.....	35
7.    QUESTION (Q7) - RETAIN THE QUALIFYING PERIOD OF 26 WEEKS OF CONTINUOUS EMPLOYMENT WITH THEIR EMPLOYER BEFORE AN EMPLOYEE CAN MAKE FLEXIBLE WORKING REQUESTS? .....	35

8. QUESTION (Q8) DO YOU AGREE THAT THE RESTRICTION ON THE NUMBER OF REQUESTS ALLOWED IN ANY 12-MONTH PERIOD SHOULD BE CHANGED? .....	35
9. QUESTION (Q9) DO YOU HAVE AN ALTERNATIVE PROPOSAL FOR PROMOTING TEMPORARY CHANGES TO WORKING PATTERNS? .....	35
10. QUESTION (Q10) - DO YOU AGREE WITH THE GOVERNMENT THAT MICRO-BUSINESSES AND START-UPS SHOULD BE EXEMPTED FROM THE EXTENSION TO THE RIGHT TO REQUEST FLEXIBLE WORKING FOR THE THREE YEAR MORATORIUM? .....	35
11. QUESTION (Q11) - WHAT SUPPORT DO YOU THINK EMPLOYERS NEED TO ENABLE THEM TO OPERATE FLEXIBLE WORKING? EMPLOYERS: WHAT EXISTING SUPPORT AND GUIDANCE HAVE YOU USED? HAS THIS BEEN HELPFUL TO YOU? PLEASE EXPLAIN YOUR RESPONSE. ....	35
12. QUESTION (Q12) - WHEN LOOKING FOR JOBS, WHAT COULD EMPLOYERS OR RECRUITMENT AGENCIES PROVIDE THAT WOULD HIGHLIGHT THAT A JOB HAS FLEXIBLE WORKING OPPORTUNITIES? .....	36
13. QUESTION (Q13) - WHAT SUPPORT IS REQUIRED TO HELP PEOPLE TO UNDERTAKE VARIED-HOURS WORKING? .....	36
14. QUESTION (Q10) - DO YOU HAVE ANY FURTHER COMMENTS OR SUGGESTIONS RELATING TO OUR PROPOSALS OR IMPACT ASSESSMENT ON FLEXIBLE WORKING? .....	36
ANNEX C .....	37
KEY EVENTS .....	37
ANNEX D .....	38
WRITTEN RESPONSES TO THE CONSULTATION WERE RECEIVED FROM: .....	38
LIST OF RESPONDENTS:.....	38

# Modern Workplaces Consultation: Government Response to Flexible Working Proposals

## FOREWORD

We spend almost 100,000 hours of our life at work – that’s the equivalent of eleven and a half years. Having the ability to manage the time we spend at work so that it fits into our life instead of taking over our life can make a huge difference to our wellbeing and contribution to society and the economy. The UK is leading the world in flexible working policy and practice; bringing social and economic necessities together to create an environment where business grow through the engagement and commitment of their employees. We want to maintain this momentum and ensure that the UK can grow its way out of the current economic downturn without sacrificing our fair employment principles in the process. For all these reasons we want to extend the right to request flexible working to all employees.

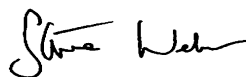
Our strategy to promote economic growth through a strong and efficient labour market, published in October 2011, set out 3 key principles for the UK labour market: flexible, efficient, fair. We are applying these principles to our proposals to extend the right to request flexible working to all employees.

Many parents and carers have already benefited from flexibility in balancing their personal and working lives through the existing right to request flexible working. Extending this right and encouraging flexible working generally will give all employees the opportunity to contribute more widely to society, whether as carers, disabled people, volunteers, or simply as citizens. It will also help employers to recruit, motivate and retain their workforces, and so build successful businesses as well as increasing productivity. By responsibly negotiating working patterns that suit the needs of both parties, businesses can access a labour pool of experienced and skilled staff, who in turn will be able to find work that fits around their other commitments.

We have listened to the opinions of both business and individuals in developing the policy direction for flexible working. We are confident that this extension to the right to request flexible working will bring wider benefits to businesses, not least from an engaged, motivated workforce. We will work with business to make sure that these changes are undertaken in a way that minimises the costs and complexities for businesses. We want to reduce red tape and bureaucracy so we will consult further in conjunction with ACAS on the contents of the Code of Practice on flexible working.

By extending the right to request flexible working to all employees we will deliver the commitment we made in the Coalition Agreement. More importantly, it will move us a significant way towards our vision of modern employment based on freedom, fairness, and responsibility for both employers and employees.

Having set out our proposals for a right to request flexible working, open to all employees, we will bring forward legislative changes as soon as parliamentary time permits.



**Jo Swinson MP, Minister for Employment, Department for Business, Innovation and Skills**  
**Steve Webb MP, Minister of State, Department of Work and Pensions**

# Modern Workplaces Consultation: Government Response to Flexible Working Proposals

## Executive Summary

### Why reform the right to request Flexible Working

- Flexible working is a label for a wide range of working practices, including part-time, flexi-time, compressed hours, and working from home. Flexible working is essentially an agreement between an employer and employee for the employee to work in a way that best fits their other responsibilities whilst also ensuring that the job gets done. It has tangible benefits for both the individual and employer.
- For businesses, holding onto experienced and skilled staff is important in maintaining quality and containing costs. Offering flexible working can help retain staff and widen the talent pool, so employers are able to recruit people with more skills; it can also increase commitment and loyalty of staff members. This can in turn translate into improved productivity and by extension improved profitability and economic growth.
- For employees, flexible working allows them to better balance their work life with their family responsibilities or other commitments. In today's society, both men and women want to find a balance between work, family and caring responsibilities.
- Many of the challenges facing society; reducing the deficit, increasing employment and decreasing benefit dependency relies, in part, on enabling more access to - and better functioning of - the labour market. In the current financial climate, any actions that can be taken to aid recovery clearly have value. Dismantling some of the barriers to work for people with caring responsibilities, enabling flexible retirement so older workers can gradually decrease their working hours and enabling those working below their potential due to lack of quality part-time or flexible work to fully utilise their skills, will have a positive impact on the economy.
- The current right to request flexible working has enabled many parents and carers to integrate their work and family responsibilities. However because of the current right to request restrictions, it has created the cultural belief that flexible working is only of benefit to parents and carers and consequently for women, as they continue to deliver the majority of the caring role. As a result some groups of employees are concerned that working flexibly is not for them and will harm their career prospects, and so are less likely to apply. This has also resulted in the risk of a stigma being attached to those who do work flexibly, resulting in a negative impact on their labour market positions in terms of career progression and standing within an organisation.
- This culture also means that many businesses aren't recognising the benefits of flexible working so do not offer it for all employees equally and are not considering flexible working when they advertise jobs. Opening up flexible working to all employees and encouraging employers to consider flexible working when advertising new roles will address this

information and equality market failure, change the cultural perceptions around flexible working, and create more flexible working opportunities.

## Modern Workplaces – Government Response

- The Modern Workplaces consultation was published on the 16 May 2011, and ran for 12 weeks. The consultation included questions on Flexible Parental Leave; Flexible Working; Working Time and Equal Pay. This response focuses on the Flexible Working aspects of the consultation. Other parts of the Government Response to the Modern Workplaces consultation will follow in due course.
- The Flexible Working section of the Modern workplaces consultation received 149 incomplete responses (where only contact details were registered) and 202 completed responses – 41.5 % from business and their representative organisations; 31% from individual employees and their representatives; and 27.5% from other i.e. trade unions/staff associations, the public sector, charities and other organisations.

## Summary of Policy Intention

Following analysis of the feedback the Government has concluded that it should proceed with the extension of the right to request flexible working to all employees and implement a package of measures to reform the right to request flexible working regulations. This will contribute to the Government's commitment to make the UK's employment practices more flexible and family-friendly. The key elements of this package will be to:

- Extend the right to request flexible working to all employees
- Replace the current statutory procedure, through which employers consider flexible working requests, with a duty on employers to deal with requests in a reasonable manner, and within a '*reasonable*' period of time;
- Create a statutory code of practice to give guidance as to the meaning of '*reasonable*' to employers;
- Provide guidance to employers on how to prioritise conflicting requests when received at the same time within the current framework for the right to request flexible working;
- Retain the 26 weeks qualifying period of continuous employment

## Non legislative measures

- The Civil Service will become an exemplar in flexible working practices therefore leading by example.
- The Government work collaboratively with a wide range of representatives from the private sector who understand the benefits and barriers found in the private sector when promoting flexible working.
- Jobcentre Plus will work to improve culture change through engagement with employers and people seeking work.
- Through the Age Positive Sector Initiative and Ageing Well Legacy work, Government will continue to provide information for the business community on how flexible working can help employers to retain and transfer the valuable skills and experience of their older workers.

# Modern Workplaces Consultation: Government Response to Flexible Working Proposals

## Background

- The right to request flexible working was first introduced in April 2003 for employed parents of children under 5 or under 18 if the child is disabled, giving 3.6m employees the ability to request a change to their working pattern. The right to request flexible working was extended to carers of some adults in April 2007 and in April 2009 for parents of children under 17.
- The legislation provides eligible employees with the right to request a change in their contractual working pattern from their employer and places a statutory duty on the employer to seriously consider it and only reject it where there is a clear business reason. Employers are able to reject flexible working requests on a number of specified business grounds.
- To qualify individuals must be employed with the same employer for more than 26 weeks before a request can be made; have or expect to have caring responsibilities for a qualifying child or adult; and can only make one request in any 12 month period.
- The Government committed in the Coalition Agreement to extend the right to request flexible working to all employees, consulting with business on how best to do so. This aims to help employees better balance their work, family and wider responsibilities; and help employers to retain their best experienced and skilled staff.
- The Government remains convinced of the strong economic case for family-friendly workplaces; and by the evidence of the benefits to the UK economy. Flexible working encourages the widest possible participation in the labour market and as part of the Modern Workplaces Consultation will make employment practices in the UK more flexible and family-friendly. The Department for Business Innovation and Skills (BIS) consulted on proposals to extend the right to request flexible working to all employees with the aim of introducing the extension by 2014.



# Modern Workplaces Consultation: Government Response to Flexible Working Proposals

## Consultation process

- The Department for Business Innovation and Skills published the Modern Workplaces consultation document and accompanying Impact Assessments on 16 May 2011. The consultation set out the Government's proposals to implement the Coalition Agreement commitments to extend the right to request flexible working to all employees; develop a system of flexible parental leave; and promote equal pay. The consultation also included proposals to amend the Working Time Regulations affecting the interaction of annual leave with sick leave and family-friendly leave in the light of recent EU court judgments.
- The consultation document was sent to a range of relevant stakeholders and posted on the BIS website. The consultation period ran for 12 weeks and closed on 8 August 2011. This document sets out the Government's formal responses to the comments received in the consultation around extending the right to request flexible working to all employees. The Government is grateful to all respondents for their contributions during the consultation process.
- Responses were received through the online survey at Survey Monkey or via the Modern Workplaces consultation mailbox. Electronic copies of the consultation papers were made available via the BIS website, and during the consultation period the consultation webpage received 4,193 unique visits.

## Engagement with stakeholders

- As part of the consultation process Ministers and officials from the Department for Business, Innovation and Skills have engaged in a range of consultation meetings and events with key stakeholders. This was to canvass views around a wide range of issues relating to the Modern Workplace agenda and to help inform policy development. For an overview of the key engagement activities undertaken with business and their representative organisations, please see annex C
- The Department is grateful to all the respondents for their time and has considered all of the comments and suggestions received. There were 202 formal responses to the consultation from a broad spectrum of interested parties.

## Modern Workplaces Consultation: Government Response to Flexible Working Proposals

The table below provides a comprehensive break down of written responses by type of responding organisation:

*Table 1 Break down of responses by type of organisation*

Large business (over 250 staff)	34	17%
Medium business (50-250 staff)	4	2%
Small business (10-49 staff)	6	3%
Micro business (up to 9 staff)	4	2%
Individual	62	31%
Business representative organisation/trade body	35	18%
Charity or social enterprise	26	13%
Public sector	17	9%
Trade union or staff association	11	6%
Other	1	1%

A list of respondents who were willing for their name and response to be disclosed is attached at Annex D.

## Analysis of Responses and Government Response

- The consultation document sought the views of stakeholders on proposals to extend the right to request flexible working to all employees. This section sets out the analysis of the responses received to each of the issues raised in the consultation document, and how the Government intends to respond in line with its commitment to develop and implement policies to make UK employment practices more flexible and family-friendly.
- This analysis excludes responses where statements did not respond directly to the consultation. All percentage figures exclude nil responses.

### Extending the Right to Request Flexible Working (Q1)

#### ***Q.1 Should the Government legislate to extend the right to request flexible working to all employees?***

##### Responses

- Total number of responses to Q1 - 190 (94%)
- Nil response - 12
- Yes - 161 (85%)
- No - 29 (15%)

##### Proportion of response in favour of the proposal within each organisational group (discounting nil response)

- Employers and business representatives – 55 (72%)
- Individuals and Trade Unions – 66 (92%)
- Charity and public sector – 40 (95%)

- The majority (85%) of the 190 respondents to this question were in favour of the Government's proposal to extend the right to request flexible working to all employees.
- The key supporting comments for this proposal included:
  - The right to request has business benefits, including increased retention, reduced absenteeism and increased productivity. (27% of respondents)
  - Extending the right to request flexible working to all employees will help remove the stigma attached to flexible working requests and facilitate conversations between employees and employers. (25% of respondents)
  - Caring is not the only reason why people need to work flexibly, the workplace is changing so all employees should have the benefit. (29% of respondents)
- Some respondents did raise concerns over the proposal. The key concerns raised were that the extension would place too great a burden on employers - leading to an increased threat of employment tribunals; the extension will increase the number of requests, which wouldn't be able to be accommodated and the number of declines would increase; and that an extension to all was not necessary as many employers already offer flexible working more widely than the legislation.

## Government Response

- The consultation responses support the Government's view that extending the right to request flexible working to all employees will be beneficial to employees and employers. The extension will deliver the benefits of flexible working as widely as possible.
- We have therefore decided to proceed with the extension of the right to request flexible working to all employees in line with the commitment made in the Coalition Agreement.

## Modifying the right to request (Q2 - Q5)

### ***Q.2 Do you support the proposal to replace the statutory process for the consideration of requests with a Code of Practice?***

#### Responses

- Total number of responses to Q2 - 174 (86%)
- Nil response - 28
- Yes - 97 (56%)
- No - 29 (44 %)

#### Proportion of response in favour of the proposal within each organisational group (discounting nil response)

- Employers and business representatives – 51 (73%)
- Individuals and Trade Unions – 25 (38%)
- Charity and public sector – 21 (54%)

- Around half of respondents to the question (56%) of respondents were in favour of the code of practice replacing the current statutory process, with (44%) against.
- The key supporting comments for the reform included:
  - The current process is too prescriptive (21%); 39% of businesses highlighted this as an issue – given that most of the current process falls on employers to manage, this concern is understandable;
  - (23%) of respondents also highlighted that this change will increase flexibility, again employers highlighted this more, with 39% of business respondents making the statement.
  - A significant number of respondents (29%) called for the Code to be simple and clear and include best practice guidance to support employers.
- The key concerns with this change were:
  - That replacing the current process with the Code of Practice might impact negatively on employee protection (29%);
  - That there is nothing wrong with the current process for considering requests and it is important that the employee has access to a process (18%).

### **Q.3 Should the Code of Practice detail the existing statutory procedure?**

#### Responses

- Total number of responses to Q3 - 128
- Nil response - 74
- Yes - 94 (73 %)
- No - 34 (27%)

Proportion of response in favour of the proposal within each organisational group (discounting nil response)

- Employers and business representatives – 31 (67%)
- Individuals and Trade Unions – 44 (79%)
- Charity and public sector – 19 (73%)

- The majority (73%) of respondents said that the Code should detail the existing statutory procedure.
- Some respondents commented that there would be no advantage in duplicating existing process as employers should be able to adopt a more flexible, less bureaucratic process. They also stated that a less formal process for smaller employers with minimum requirements and relaxed timeframes would be beneficial (15%)
- 17% of those who responded also said that the Code should include some best practice guidance.

### **Q.4 Should a Code of Practice be principle-based (i.e. requiring requests to be considered in a 'reasonable' manner and time) or provide a safe harbour (i.e. where employers following the process precisely get protection)?**

#### Responses

- Total number of responses to Q4 - 113
- Nil Response - 74
- Principle based - 65 (51%)
- Safe harbour - 36 (28%)
- Neither - 17 (13%)
- Mixture - Principle approach with upper limits – 10 (8%)

- The majority (51%) of respondents both business (56%), Individuals and Trade Unions (50%) and public sector and Charities (43%) favoured a new principle based Code which requires requests to be considered in a 'reasonable' manner and time over the safe harbour approach (28%) where employers following a set process are protected.

- Key comments regarding the approach were:
  - The safe harbour approach would be inflexible and too prescriptive; (5%)
  - The principle based approach provides greater flexibility and ability for employers to use an alternative processes; (10%)
  - Concerns were raised that the principle base option could be too uncertain, relying on a subjective interpretation of '*reasonable*' – which could leave employers open to challenge and increased uncertainty. (2%)

**Q.5 If you do not agree that we should introduce a Code of Practice to govern flexible working requests, what alternative could be introduced to reduce the administrative burdens of considering requests, without diminishing employee rights?**

Responses

- Total number of responses 64
  - Nil Response 138 (68%)
- 38% of respondents said that the current process is not too burdensome, or considered that the extension to all employees will reduce burdens on business. Many respondents were concerned that without a stated process the right to request might be abused.
  - Respondents highlighted a number of approaches to reduce burdens on employers without introducing a code of practice. These included allowing employers to develop their own informal process backed up with a default process; and a flexible process with revised business grounds and shorter timetables.
  - Many respondents (37%) reported that they did not consider the current process to be too burdensome; extending the right to all would reduce the burden on business whereas the absence of some structure might lead to abuse; or that there was no benefit to changing familiar process as changing can diminish rights

**Government response to Q2 – Q5**

- The consultation proposed removing the current process for considering requests for flexible working, and replacing it with a duty on employers to deal with requests in a 'reasonable' manner. In order to explain what we mean by '*reasonable*', we proposed to create a code of practice to give guidance and explanation.
- The responses to the consultation highlight that some employers do find the current process burdensome and would welcome the flexibility that this change will deliver. However responses also highlight some valid concerns with the approach and we will need to ensure that employee protections are maintained through this change. The Government is keen to ensure that any changes to the right to request flexible working maintain the existing employee protections. Changing the prescriptive process to a duty to deal with requests in a '*reasonable*' manner will ensure that protections are maintained without a bureaucratic process.
- We have therefore decided to proceed with the proposal set out in the Consultation. We will replace the existing statutory procedure, through which employers consider flexible

working requests, with a duty on employers to deal with requests in a 'reasonable' manner, and within a '*reasonable*' period of time. We will support this with a statutory code of practice to help employers understand the definition of '*reasonable*'.

- Since the closure of the Modern Workplaces consultation, Employment Regulation has been subject to the *Red Tape Challenge*. This process enabled individuals to comment on existing pieces of regulation via a web portal. Comments from the public via the website were largely positive in relation to flexible working and the legislation, supporting the Government's plans to extend the right to request flexible working to all employees. The Red Tape Challenge also involved a Star Chamber discussion of Ministers to scrutinise each regulation and agree whether it should be retained. The Star Chamber agreed that the change to a Code of Practice could be beneficial to employers, but were concerned that a lengthy code would prove more confusing to small businesses than the current process. We will therefore endeavour to keep the code of practice concise and easy to use.
- Comments made in response to a number of questions in the consultation, highlighted the regard with which Acas's (Arbitration and Conciliation Advisory Service) code of practice on discipline and grievance is held. Many organisations cited this code as a template for the code on the right to request flexible working. The Government has therefore asked ACAS to develop the code of practice and they have agreed. The Private Sector Working Group on Flexible Working established by DWP in March 2011 is working in an advisory role to support the development of the code of practice over the coming months, and ACAS will consult on a draft code in due course. The group chaired by Sarah Jackson, Chief Executive of Working Families brings together a range of experts with insight into the private sector, in order to generate practical ideas and outputs to encourage greater availability of flexible working, and specifically looking at how to encourage flexible working in recruitment.
- Responses to the consultation strongly favoured a principles based approach to the Code of Practice, to enable employers freedom to consider flexible working requests in a way that suits them, so long as they can demonstrate that the process was '*reasonable*'.
- The aim is to make the Code of Practice as concise and easy to use as possible, whilst giving employers useful guidance and support on flexible working. We therefore intend to create accompanying guidance information, including good practice and case studies, which will sit alongside the Code, but have no statutory status. This will ensure that there is clear distinction between the Code, which employers should take into consideration and the guidance, which contains advice employers may find helpful.

## Prioritisation (Q6)

### **Q.6 Do you agree with our proposals on prioritisation of multiple flexible working requests that cannot all be accommodated?**

#### Responses

- Responses 140
- Nil Response 62
- Yes 100 (71%)
- No 40 (29 %)

Proportion of response in favour of the proposal within each organisational group (discounting nil response)

- Employers and business representatives – 34 (67%)
- Individuals and Trade Unions – 41 (74%)
- Charity and public sector – 25 (73%)

- The majority of respondents supported the Government’s ambition to enable employers to prioritise conflicting requests for flexible working from employees. 55% of respondents who were not in favour of allowing employers to prioritise requests said that decisions should be business based with no prioritisation.
- 21% of respondents stated that any prioritisation would need very detailed guidance to ensure that employers do not inadvertently discriminate.
- During the consultation period many employer organisations stated that this issue was their biggest concern associated with the extension to the right to request flexible working. In order to further inform policy decisions we conducted a survey of a small number of employers (20 were approached, 11 responded) who currently offer flexible working rights that go beyond the statutory provision. We asked how companies who already offer flexible working to all manage the issue of conflicting requests.
- Employers were asked a series of questions about the extent of their policy provision; whether the arrangement meant a contractual change; how they treated requests from different types of employees; how they handled conflicting requests and whether arrangements were reviewed. The following is the outcomes from responses:
  - 100% of these organisations said they accepted flexible working requests from all employees on a reason neutral basis and do not prioritise requests for any group.
  - 91% said that decisions were business driven. However in response to the question on how they handled competing request (e.g. where two workers are asking for similar changes that could not both be accommodated) 55% of all organisations said that they would take the employee’s circumstances into consideration when making their decision or give priority to those protected under the statutory provision.



- 100% of those who responded reported that the flexible working request could either result in an informal arrangement or a permanent change to the employee's contract of employment.
- 73% of employers reported a facility to review working arrangements, however, these would only take place where:
  - there has been no permanent change to the employees contractual terms and conditions;
  - to determine whether the arrangements were working for both parties;
  - where the individual's circumstances had changed or
  - where there is a change in operational requirements

### Government response

- We recognise that it is important for employers to be able to manage flexible working in ways that suit their business and Government considers it important to enable employers to prioritise flexible working requests based on business need and individual circumstances. In exploring this issue we considered whether additional legislation was needed to enable employers to do this.
- However, we judge that the existing legislative framework of both flexible working and discrimination legislation is sufficient to enable employers to do this. Discrimination legislation already requires employers to consider whether refusing a flexible working request will disadvantage an employee given their personal characteristics. For example refusing a request for flexible working from a mother with a disabled child may be disability discrimination, as the mother needs flexible working in order to continue to work.
- Additionally the existing business reasons for refusing a request such as *detrimental impact on performance* enable an employer to consider an individual's performance records, to identify the individual's importance to the business, and the future business requirements when making a decision. We consider that this is sufficient to enable an employer to prioritise competing requests effectively.
- To support employers with these situations we have asked ACAS to create additional guidance for employers on the interaction of discrimination legislation with flexible working rights and how the existing business reasons for refusing a request can help an employer in handling competing requests.

## 26 Week Qualifying Period (Q7)

### *Q.7 Retain the qualifying period of 26 weeks of continuous employment with their employer before an employee can make a flexible working requests?*

#### Responses

- Total number of responses 174
- Nil Response 28
- Yes 102 (59%)
- No 72 (41%)

Proportion of response in favour of the proposal within each organisational group (discounting nil response)

- Employers and business representatives – 50 (73%)
- Individuals and Trade Unions – 37 (56%)
- Charity and public sector – 15 (37%)

- 59% of respondents were in favour of retaining the 26 week qualifying period. The key reasons cited by business for retaining the qualifying condition were:
  - Employers need to know the conditions of employment when recruiting (10%),
  - A level of trust is needed between employee and employer in order to facilitate flexible working (22%),
  - Removing the condition would place additional burden on business (14%); and
  - Flexible working needs to be discussed at recruitment – as it is too late for people to make a request on the first day of (12%).
- Respondents in favour of removing the 26 week qualifying period commented that:
  - The current restriction acts as a barrier to those who need flexible working to find employment (21%); and
  - Removing it would support the culture change (17%).

#### Government response

- As stated in the consultation document the Government was never convinced that the qualifying period should be removed. The right to request flexible working works through employers and employees having a frank discussion about how a job can be delivered in a different way. This requires a level of knowledge of the role on the employee's side before the conversation can be effective. An employee would not have this knowledge on the first day of employment. Our judgement is that employers and employees should have certainty over the terms and conditions that an employee is appointed on. If an employee believes that they will be able to change their working pattern on the first day of employment, this creates an expectation that may not be able to be accommodated and could lead to an employee needing to leave the job. This isn't helpful for the employer who needs to recruit again or the employee who drops out of the labour market.

- Many of the responses to the consultation supported and reiterated these points.
- Government does recognise that employees who need more flexible patterns of working in order to enter employment need to be supported. This is why this Government established the Private Sector Working Group on Flexible Working. The group is chaired by Sarah Jackson, Chief Executive of Working Families, and its members include the Chartered Institute of Personnel and Development, the Confederation of British Industry, Trades Union Congress, Women Like Us, Federation of Small Businesses, British Chambers of Commerce, the Engineering Employers' Federation, Equality and Human Rights Commission and the Recruitment & Employment Confederation. The purpose of this group is to bring together a range of experts with insight into the private sector, in order to generate practical ideas and outputs to encourage greater availability of flexible working, and specifically looking at how to encourage flexible working in recruitment. Further details of this Groups outputs can be found later in this document.

### Temporary flexible working (Q8 – Q9)

#### **Q.8 Do you agree that the restriction on the number of requests allowed in any 12-month period should be changed?**

- | Responses                       | Proportion of response in favour of the proposal within each organisational group (discounting nil response) |
|---------------------------------|--|
| – Total number of responses 165 |  |
| – Nil Response 37               |  |
| – Yes 111 (67%)                 | – Employers and business representatives – 34 (50%)  |
| – No 54 (33%)                   | – Individuals and Trade Unions – 46 (78%)  |
|                                 | – Charity and public sector – 31 (82%)   |
- Over half (67%) of respondents favoured removing the current restriction of only one request in any 12 month period, However (24%) of respondents were concerned about the increased burden that this would impose on business. Many comments in the consultation highlighted that the right to request flexible working consideration process, even under the 'reasonableness' test, is too slow to accommodate some of the situations we had highlighted where temporary changes would be helpful.

#### **Q.9 Do you have an alternative proposal for promoting temporary changes to working patterns?**

- Responses - 67
- 135 (67%) respondents either did not state an alternative or did not respond
- The responses to this question suggest that any reform should be delivered through non legislative means – informal process (22%); best practice guidance (43%); good employers already have measures in place and should therefore be embedded in the current process (14%).

## Government response to Q8 – Q9

- On reflection, the Government has therefore decided to retain the restriction on the number of requests that can be made in any 12 month period. We understand that most employers would accommodate temporary changes in response to the difficult situations described and the current regulations already provide the facility for employers and employees to agree non permanent changes.
- We will include advice in the guidance on flexible working about where such temporary changes can be helpful to encourage employers and employees to consider these arrangements and avoid situations where employees believe that they have no alternative, other than to leave employment.

## Legislative considerations (Q10)

***Q.10 Do you agree with the Government that micro-businesses and start-ups should be exempted from the extension to the right to request flexible working for the three year moratorium?***

### Responses

- Total number of responses 151
- Nil Response 51
- Yes 62 (41%)
- No 89 (59%)

Proportion of response in favour of the proposal within each organisational group (discounting nil response)

- Employers and business representatives – 35 (62%)
- Individuals and Trade Unions – 20 (31%)
- Charity and public sector – 7 (22%)

- Respondents were heavily split on this issue with 59% of respondents against any proposal to exempt micro businesses from the extension to all, compared to 41% who supported this deregulatory measure.
- The key concerns for both business and non business around non exemption for micro business were:
  - All employees should be entitled to flexible working provision (27%);
  - To achieve a culture change the right to request flexible working needs available consistently (15%);
  - Micro businesses benefit from flexible working as well and the legislation does not create a disproportionate burden for them (17%); and
  - Employers can still decline requests based on the needs of the business (15%).

### **Government Response**

- In the Budget statement of 2011 the Government announced that for the following 3 years new legislation would not apply to micro-businesses. This moratorium expires in March 2014. The legislation to create an economy-wide right to request flexible working will not come into force until April 2014 at the earliest. Whilst this is after the moratorium period finishes, we judged that it was important to fully consider the impact of this legislation on micro-businesses and to reflect upon whether they should be included in the right to request flexible working.
- Ministers have considered options around exempting micro businesses from the right to request flexible working, including exempting micro businesses from the extension to the right to request, and repealing existing flexible working legislation for micro businesses. However, the Parental Leave Directive requires parents returning from parental leave to have a right to request flexible working. This means that any micro business exemption would create a two tiered system for the right to request and not support the Government's message that flexible working is good for business as well as employees. This could create a confusing legislative picture for micro businesses.
- Alongside this is the change from a statutory procedure to a duty to deal with requests in reasonable manner for requests made by the existing eligible groups of parents and carers. This change makes the process for considering requests much simpler, especially for micro businesses. Because of the intimate nature of micro businesses, we envisage that a request to work flexibly could involve a brief discussion about the change and an e-mail to the employee agreeing to the change if it's accepted, or explaining the reasons why it can't be accommodated if the request is refused.
- Micro businesses will experience the same benefits of flexible working as large employers, and so we judge that to exempt micro businesses from the legislation would reduce opportunities for flexible working in micro businesses because employees would not be willing to ask for flexible working.
- The Ministerial Star Chamber which was asked to consider the results of the Employment Regulations Red Tape Challenge discussed this issue at length. Ministers

recognised that the benefits of flexible working are experienced by all businesses, regardless of size. However they were eager to ensure that the Code of Practice is concise and easy to use regardless of the size of a business. Ministers will consider the composition of the code of practice to ensure that it is simple and easy to use by all businesses.

### **Approaches to support people into flexible working (Q11 – Q13)**

***Q.11 What support do you think employers need to enable them to operate flexible working? Employers: What existing support and guidance have you used? Has this been helpful to you? Please explain your response.***

Total number of responses 94

- Most comments called for the legislation to be supported with clear and simple examples using real, everyday good practice experience of operating flexible working. In addition training support for managers and line/middle management should be made available as this is key to encouraging more businesses to successfully engage with the concept of flexible working. In addition more specific, clear examples of how flexible working has produced benefits to business should be produced.
- Other responses called for more specialised advice for SMEs in designing flexible jobs; for the Public Sector to become an exemplar to encourage the growth of flexible working and wherever possible to encourage the use of Flexible Working champions or focus groups within organisations to facilitate and encourage better understanding of flexible working.

***Q.12. When looking for jobs, what could employers or recruitment agencies provide that would highlight that a job has flexible working opportunities?***

Total number of responses 114

- Most responses concentrated on job adverts and job descriptions which respondents said should clearly state that the job is suitable for flexible working and that applications are welcomed by people looking for flexible working. Around a quarter of respondents stated that a logo or symbol representing flexible working on job adverts and application forms would be useful or should be encouraged. However, some respondents said that a logo would not be appropriate as employers are in danger of becoming “logoed – out”.
- A considerable number of respondents thought that Jobcentre Plus should/could play a significant role in encouraging employers and potential employees to consider flexible working. Some respondents thought that job adverts should clearly state that flexible working could be considered after 26 weeks.

**Q13. What support is required to help people to undertake varied-hours working?**

Total number of responses 98

- The majority of respondents stated that all forms of management; senior, higher and middle should better understand the relationship between inputs over outputs. Many respondents stated that for too long some employers have judged the effectiveness of their employees more by their attendance at work rather than by the quality or the amount of work that they produce. Respondents also asked for more information on how IT can help manage this process.
- Other respondents said that until there is an improvement in the provision of out of “standard” hours childcare and public transport, it will be difficult for many to engage in flexible working arrangements.

**Government Response**

- Government recognises that it will take more than legislation to stimulate the changes needed for flexible working to become the norm across the whole labour market.
- Our objective is to see a genuine culture change where the benefits of flexible working for businesses are widely understood, with the end to any perception of a link between an employee’s status, potential or prospects and his or her working pattern.
- Government has a leading role to play, working collaboratively with business leaders, employers and through Jobcentre Plus. As a large employer Government recognises the need to lead by example on flexible working.

**Civil Service as an exemplar**

- The consultation supports the Government’s aspiration for the civil service to be an exemplar in flexible working practices. The Government will proceed with developing guidance on flexible working to further support line managers. This guidance will be based on examples of existing good practice within government departments.
- The Department for International Development (DFID) has been identified as a source of best practice guidance. An example is provided in the following case study:

**Case Study One:**

- A Team Leader in DFID works reduced hours (three days a week) and manages a team of 8 people. Within the team a further three people work reduced hours: one is semi-retired and two have young children. So how does it work?

- ‘As someone who is trying to juggle home and work life myself, I know how hard it can be. I also know that with the right motivation from staff and the right kind of management it can be very productive for all concerned. In the team we try to be:
  - Predictable and transparent in our working patterns. Everyone knows who is in the office when, and tries to plan work accordingly.
  - Giving people a real job. Reduced hours workers have full areas of responsibility, this is far more efficient than giving them ‘bits and pieces’ because they cannot be at every meeting.
  - Flexibility: there is an expectation that if something very important is going on then the relevant person will do their best to be there, even if it is not on a day that they usually work – this includes linking in by telephone and making this work.
  - Availability: mobile phones and emails make it easy to stay in touch if something really urgent comes up out of normal working hours but allowing people to say ‘I can’t talk now’ if it is just not possible.
  - Openness: The aim is not that those working reduced hours should do a full time job in fewer days. Rather, we need to be clear from the start what is/is not reasonable to do in the time available, and to review that constantly.
  - The team appreciate that during busy periods colleagues who work flexibly can help with peaks of work, which reduces pressure on everyone. Our clear work plans ensure everyone has a fair workload appropriate to the hours they work.
  - My experience as a manager is that reduced hours colleagues appreciate the flexibility that they have been given, and use it well. Being organised around tasks, rather than about time, enables people to take responsibility for delivering their work in the best way. A win-win all round!’
- The recruitment process also supports the aspiration for the Civil Service to be an exemplar in flexible working. The current e-recruitment system (CS Jobs) for advertising Civil Service vacancies has a default setting that states: ‘This job/these jobs are available for full-time, part-time or flexible working arrangements’. Departments that wish to deviate from this have to complete a robust business case.

### ***Working with the Private Sector***

- A Private Sector Working Group to promote flexible working was formed in March 2011. Chaired by Sarah Jackson, the Chief Executive of Working Families, the group brings together a range of experts who understand the challenges faced in the private sector when implementing flexible working.
- Other organisations represented are the Confederation of British Industry, Women Like Us, Trades Union Congress, the Chartered Institute of Personnel and Development, the Engineering Employers’ Federation, Federation of Small Businesses, British Chambers



of Commerce, the Recruitment & Employment Confederation and Equality and Human Rights Commission.

- The Group is currently taking forward work on developing practical tools to stimulate wider awareness and take up of the business benefits of flexible working, and is looking at how to encourage flexible working at recruitment.

### ***Jobcentre Plus***

- The Department for Work and Pensions is currently developing a modern online job posting and matching service (Universal Jobmatch) where companies can manage their jobs online and receive automated matches from jobseekers to meet their requirements.
- When posting jobs, companies will be able to insert the hours and days required for the job in the job description, with a pick list to include flexible working options. When the jobseeker is searching for jobs they will be able to include the search option of part-time or full-time and they will be able to include further information about their preferred work considerations within their CV.
- Monster Worldwide Limited, a market leader in the recruitment sector, has been awarded the contract to deliver and manage the Universal Jobmatch service, which will go live in November 2012.
- Jobcentre Plus Personal Advisers will continue to ensure jobseekers receive personally tailored help and support to suit, their needs, part of which involves work targeted discussions about the customers work capabilities and flexible working patterns.
- The Jobcentre Plus 'Small Business Recruitment Service' Helpline Advisers now discuss and promote flexible working practices with small businesses contacting the helpline, when it becomes apparent that flexible working may be a practical solution to meet their business needs. In addition, as part of their script, employer advisers will suggest to employers that may wish to consider offering flexible working patterns in order to attract more applicants.

### **Additional comments (Q14)**

#### ***Q. 14 Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible working?***

Total number of responses 100

- No single issue emerged on this question. Many respondents used this as an opportunity to reinforce the responses given to previous questions, but the most common theme was infrastructure issues, such as the availability of childcare, transport and calling for improved packages of support for carers. Other issues included the recognition that flexible working may increase pay roll costs for employers, difficulties in calculating holidays, contracts and bank holidays and calls for the recruitment industry to be better equipped to sell the advantages of flexible working to employers and be in a position to help design jobs.

# Modern Workplaces Consultation: Government Response to Flexible Working Proposals

## Summary of Policy Intention

- Following analysis of the feedback received during the consultation process, the Government will implement a package of measures to make the UK's employment practices more flexible and family-friendly. This includes reforming the right to request flexible working regulations in line with the coalition commitment to extend the right to request flexible working to all employees. The key elements of this package will be:

### Extend the Right to Request Flexible Working

- The right to request flexible working is currently only available to qualifying parents and carers with the required period of service with their employer. Whilst the legislation has helped to raise awareness of flexible working and its benefits, it has also created the belief amongst some employers that the benefits are restricted to parents and carers. Employees also stated that flexible working is aimed at parents and carers, and employees who work flexibly are less committed to their job. This has resulted in concern from some employees that working flexibly is not for them and will harm their career prospects; they are therefore less likely to request it.
- The Government wants to highlight the benefits flexible working brings and make them available to all parts of society and the economy. We will therefore continue with our plan to extend the right to request flexible working to all employees with 26 weeks continuous service with their employer. Introducing a right to request flexible working for all employees will enable both employees and employers to enjoy the benefits flexible working brings.
- Government will also continue to encourage a cultural change in flexible working to eliminate the barriers to all employees considering flexible working as an option for them as well as supporting people into work who need flexible working arrangements in order to start employment.

### **Replace the current statutory process for considering flexible working requests, with a duty on employers to deal with requests in a reasonable manner, within a 'reasonable' period of time; and create a statutory code of practice to explain the meaning of 'reasonable' to employers.**

- The existing statutory process for considering flexible working requests is considered overly burdensome and needs to be simplified. Government will replace it with Statutory Code of Practice that places a duty on employers to deal with requests in a 'reasonable' manner when handling requests.
- ACAS (the Advisory, Conciliation and Arbitration Service) will consult on the full detail of the Code of Practice in due course. The code will be supported by an ACAS best practice guide for employers which will include guidance on the definition of what the

Government consider to constitute ‘reasonable’ and how they can meet their obligation; how employers can handle temporary changes to working patterns; as well as providing guidance on how employers can prioritise conflicting requests when received at the same time. The Code will have a statutory basis to ensure tribunals take the code into account when considering complaints.

## Rejected proposals

- The consultation also proposed a number of other reforms to the flexible working process. It has been decided either not to implement these reforms or to implement them through non-legislative means. These include.

### **Retain the qualifying period of 26 weeks of continuous employment with their employer before an employee can make a flexible working request.**

- The current 26 week qualifying restriction was designed to reflect the needs of employers having certainty over terms and conditions when recruiting new employees. However it’s long been argued that this restriction whilst supporting employers does not lend it self to supporting people who need flexible working in order to start employment.
- The Government has considered the arguments put forward during the consultation. We judge that effective flexible working relies on a shared understanding of the organisation; a new member of staff is unable to demonstrate how the flexibility will work with the employers business. Additionally employers need certainty over the terms and conditions that they recruit an employee on. Our assessment is that any legislative reform in this area could have an adverse impact on people seeking to get into or returning to the labour market, as outlined in the consultation. Government will therefore retain the current qualifying period for the right to request flexible working and look at other ways to support people who need to work flexibly into employment.

### **Remove the restriction on the number of requests an employee can make within any 12 month period**

- The current flexible working regulation restricts employees to one request in any 12 month period. This protects employers from receiving multiple requests from the same employee and gives the employer confidence that if an employee changes their working pattern it will be for a significant period of time. The consultation asked whether this restriction should be relaxed for employees who have a need for temporary flexibility, for example caring for someone recently diagnosed with a serious illness.
- Feedback received during the consultation process shows that many businesses (35% of respondents to the consultation) identified that this change would increase the burden on business; and during workshops with key stakeholders it was highlighted that the statutory process for considering flexible working requests takes time and would be too slow in supporting employees in the circumstances described in the consultation. This means that employers would therefore only be able to support these employees through informal requests. It was also stated that most employers would be sympathetic to these sorts of requests anyway.

- Government has therefore decided to retain the current condition that restricts the number of requests within a 12 month period but support employers by including best practice guidance in the new Code of Practice on how to handle temporary changes to working patterns

### **Exempt micro businesses from the extension to the right to request flexible working.**

- The consultation sought views on whether micro businesses (those with less than 10 employees) and start-ups should be exempted from the extension to the right to request flexible working.
- Ministers have considered options around exempting micro businesses from the right to request flexible working, including exempting micro businesses from the extension to the right to request, and repealing existing flexible working legislation for micro businesses. However the new parental leave directive requires parents returning from parental leave to have a right to request flexible working. This means that any micro business exemption would create a two tiered system for the right to request and not support the Government's message that flexible working is good for business as well as employees.
- Micro businesses will experience the same benefits of flexible working as large employers, and so we judge that to exempt micro businesses from the legislation would reduce opportunities for flexible working in micro businesses because employees would not be willing to ask for flexible working.
- The Ministerial Star Chamber considering the results of the Employment Regulations Red Tape Challenge discussed this issue at length. Ministers are keen to ensure that the Code of Practice is concise and easy to use regardless of the size of a business. Ministers will consider the composition of the code of practice to ensure that it is simple and easy to use by all businesses.

### **Non legislative measures (DWP lead)**

- The Civil Service will become an exemplar in flexible working practices therefore leading by example.
- The Government is working collaboratively with a wide range of representatives from the private sector who understand the benefits and barriers found in the private sector when promoting flexible working.
- Jobcentre Plus will work to improve culture change through engagement with employers and people seeking work.
- Through the Age Positive Sector Initiative and Ageing Well Legacy work, Government will continue to provide information for the business community on how flexible working can help employers to retain and transfer the valuable skills and experience of their older workers.
- Below is just a sample of how flexible working has helped employers retain the skills and experience of their older workers:

- "Weekends are a very busy time for us and many older people are attracted to weekend working. We have job sharing; flexible retirement and part-time working, helping us attract and retain staff. Quite simply, employing older people makes good business sense to our company." **HR Director Hunter Estates Agents**
  
- Construction firm '**Killby & Gayford**' has used flexible working in a number of ways to retain skills and experience: part-time working for later phased retirement; a 'pool' of skilled retired employees to provide holiday cover as a more viable alternative to agency workers; ad hoc consultancy contracts to retired professionally qualified employees; and flexible working to help employees returning to work after being treated for serious illness, and through periods of care for seriously ill relations. "We don't see flexible working as a problem. As a business we need to be agile and responsive to customer need. Employing workers on a flexible basis - whether it is part-time, condensed hours or project specific - makes real business sense. Killby & Gayford benefit from retaining skills and knowledge whilst getting a return on our significant investment in training and development."

## NEXT STEPS

- The extension to the right to request flexible working to all employees will require primary legislation. The Government will bring forward a Bill (The Children and Families Bill) as soon as the Parliamentary timetable permits:
  - Introduce legislation during the Second Parliamentary Session (between May 2012 and April 2013)
  - Consult on Code of Practice (2013)
  - Implementation - 2014

# Enquiries

Enquiries can be addressed to:

Sammy Harvey  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

**Email : [modernworkplacesconsultation@bis.gsi.gov.uk](mailto:modernworkplacesconsultation@bis.gsi.gov.uk)**

# Annex A

## List of questions

- Q1 Should the Government legislate to extend the right to request flexible working to all employees?
- Q2 Do you support the proposal to replace the statutory process for the consideration of requests with a Code of Practice?
- Q3 Should the Code of Practice detail the existing statutory procedure
- Q4 Should a Code of Practice be principle-based (i.e. requiring requests to be considered in a '*reasonable*' manner and time) or provide a safe harbour (i.e. where employers following the process precisely get protection)? Please explain your response.
- Q5 If you do not agree that we should introduce a Code of Practice to govern flexible working requests, what alternative could be introduced to reduce the administrative burdens of considering requests, without diminishing employee rights? Please explain response.
- Q6 Do you agree with our proposals on prioritisation of multiple flexible working requests that cannot all be accommodated?
- Q7 Do you agree that the current 26-week qualifying period should be retained?
- Q8 Do you agree that the restriction on the number of requests allowed in any 12-month period should be changed?
- Q9 Do you have an alternative proposal for promoting temporary changes to working patterns?
- Q10 Do you agree with the Government that micro-businesses and start-ups should be exempted from the extension to the right to request flexible working for the three year moratorium?
- Q11 What support do you think employers need to enable them to operate flexible working? Employers: What existing support and guidance have you used? Has this been helpful to you? Please explain your response.
- Q12 When looking for jobs, what could employers or recruitment agencies provide that would highlight that a job has flexible working opportunities?
- Q13 What support is required to help people to undertake varied-hours working?



Q14 Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible working?

# Annex B

## Responses to specific questions

1. *Question (Q1) - Should the Government legislate to extend the right to request flexible working to all employees?*
  - Total number of responses - 190
  - Nil response - 12 (6%)
  - Yes - 161 (80%)
  - No - 29 (14%)
  
2. *Question (Q2) - Do you support the proposal to replace the statutory process for the consideration of requests with a Code of Practice?*
  - Total number of responses - 174
  - Nil response – 28 (14%)
  - Yes - 97 (48%)
  - No - 77 (38%)
  
3. *Question (Q3) - Should the Code of Practice detail the existing statutory procedure?*
  - Total number of responses - 128
  - Nil response - 74 (36%)
  - Yes - 94 (47%)
  - No - 34 (17%)
  
4. *Question (Q4) - Should a Code of Practice be principle-based (i.e. requiring requests to be considered in a reasonable manner and time) or provide a safe harbour (i.e. where employers following the process precisely get protection)?*
  - Total number of responses - 113
  - Nil Response - 74 (37%)
  - Principle based - 66 (32%)
  - Safe harbour - 36 (18%)
  - Neither - 17 (8%)
  - Mixture - Principle approach with upper limits – 10 (5%)
  
5. *Question (Q5) If you do not agree that we should introduce a Code of Practice to govern flexible working requests, what alternative could be introduced to reduce the administrative burdens of considering requests, without diminishing employee rights?*
  - Total number of responses - 64
  - Nil Response 138 (68%)

6. *Question (Q6) - Do you agree with our proposals on prioritisation of multiple flexible working requests that cannot all be accommodated?*

- Total number of responses - 140
- Nil Response - 62 (30%)
- Yes - 100 (50%)
- No - 40 (20%)

7. *Question (Q7) - Retain the qualifying period of 26 weeks of continuous employment with their employer before an employee can make flexible working requests?*

- Total number of responses - 174
- Nil Response – 28 (14%)
- Yes - 102 (50%)
- No - 72 (36%)

8. *Question (Q8) Do you agree that the restriction on the number of requests allowed in any 12-month period should be changed?*

- Total number of responses - 165
- Nil Response 37 (18%)
- Yes 111(55%)
- No 54 (27%)

9. *Question (Q9) Do you have an alternative proposal for promoting temporary changes to working patterns?*

- Total number of responses - 67
- 135 (67%) respondents either did not have an alternative or did not respond

10. *Question (Q10) - Do you agree with the Government that micro-businesses and start-ups should be exempted from the extension to the right to request flexible working for the three year moratorium?*

- Total number of responses - 151
- Nil Response - 51 (25%)
- Yes - 62 (31%)
- No - 89 (44 %)

**Question (Q11 – 14) Approaches to support people into flexible working – DWP Lead**

11. *Question (Q11) - What support do you think employers need to enable them to operate flexible working? Employers: What existing support and guidance have you used? Has this been helpful to you? Please explain your response.*

- Total number of responses – 94

12. Question (Q12) - *When looking for jobs, what could employers or recruitment agencies provide that would highlight that a job has flexible working opportunities?*

- Total number of responses – 114

13. Question (Q13) - *What support is required to help people to undertake varied-hours working?*

- Total number of responses - 98

14. Question (Q10) - *Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible working?*

Total number of responses - 100

# Annex C

## Key Events

<u>Date</u>	<u>Event</u>
	BIS Stakeholder Engagement Meetings with key stakeholders including the British Chambers of Commerce (BCC), Federation of Small Business (FSB), Institute of Directors (IoD), Confederation of British Industry (CBI), Engineering Employers Federation (EEF), Employers for Carers (EfC), Working Families, Equalities and Human Rights Commission (EHRC).
16 May 2011	Launch event to raise awareness of the consultation
	BIS Focus Group meetings with stakeholders.
29 June 2011	Confederation of British Industry (CBI) meeting with business to encourage contributions to be more candid and more focused)
	Ministerial meetings included The Chartered Institute of Personnel and Development (CIPD)
	Working Families Annual Review included a quote on Governments proposed reforms to parental leave and flexible working to raise awareness of the consultation
	Survey on Prioritisation for companies known to be going beyond current legislation
6 July 2011	EEF Focus Groups meetings with members

# Annex D

## Written responses to the consultation were received from:

### List of Respondents:

- Aces
- Accenture
- Age UK
- Anglia Business Resources Ltd
- Association of Convenience Stores
- Association of Women Solicitors
- Bauer Group
- Beach croft LLP
- Berwyn Leighton Painter LLP
- Birmingham Law Society
- British Airways
- British Chambers of Commerce
- British Retail Consortium
- British Retail Consortium2
- BT
- Business West
- Carers UK
- Catalysts of Change
- CFS Management Services Limited
- Chartered Institute of Payroll Professionals
- Chartered Management Institute
- Chartered Management Institute2
- Chartered Society of Physiotherapy
- CIFAS – The UK's Fraud Prevention Service
- Citizens Advice
- CLIC Sergeant
- CMS Cameron McKenna LLP
- Confederation of British Industry (CBI)
- COSLA (the Convention of Scottish Local Authorities)
- Daycares Trust
- Derbyshire County Council
- Dickinson Dees LLP
- Diverse Cyrus
- DLA Piper UK LLP
- EEF Limited
- Equality and Human Rights Commission (EHRC)
- Emplex Employment Law Consultants
- Employers for Carers
- Employers Forum on Age
- Employment Tribunal
- Essex County Council SENCAN
- Essex County Council Specialist Teacher Team
- Eversheds
- Every Disabled Child Matters
- Family and Parenting Institute
- Family Housing Association
- Federation of Small Business (FSB)
- Flexible Working Researcher
- Ford Motor Company Ltd
- Forum of Private Business
- Fox Williams LLP
- Gingerbread
- Grandparents plus
- Greater Manchester Chamber of Commerce
- Hair and beauty salons
- Hampshire Chamber of Commerce
- Hogan Lovells
- Hogan Lovells International LLP
- Independent Marketing Consultant (for last 4 months)
- Institute of Directors (IOD)
- Jaguar Land Rover
- John Lewis Partnership
- Keep Time for Children @ Relationships Foundation
- KHL Group
- L G Harris
- Law Society
- Legal & General Group Plc
- Lewis Silkin LLP's
- Local Authority
- Local Government Group
- LYONS DAVIDSON
- Marks and Spencer PLC

- Maternity Action
- Merseyside Fire and Rescue Authority
- MIND
- Ministry of Defence
- Mothers' Union
- Mumsnet
- My Family Care
- National Museum Directors' Conference  
HR Forum
- National Union of Journalists
- National Union of Journalists 2
- National Union of Teachers
- nef (the new economics foundation)
- Network Rail
- North East Chamber of Commerce
- North East of England European Social  
Fund Project 'Working and learning in to  
later life: Opportunity and Choice for all'
- Opportunity Now, Business in the  
Community
- Peekaboo Communications
- People Matters HR Consultancy
- Plymouth City Council
- Podworking
- PricewaterhouseCoopers LLP
- PROSPECT
- RBS Mentor Services
- Redcar and Cleveland Borough Council
- Rethink Mental Illness
- Rethink Mental Illness2
- Ross Con Club
- Royal College of Midwives
- Royal College of Nursing
- Scope
- Scottish Council on Deafness
- Skills - Third Sector
- South East Employers
- South Lanarkshire Council
- Stephenson Harwood
- TAEN - The Age and Employment  
Network
- Tesco
- The British Hospitality Association  
Employment, Education and Skills  
Network
- The British Psychological Society
- The Chamber of Shipping
- The Chartered Institute of Personnel and  
Development (CIPD)
- The Employment Lawyers Association  
(ELA)
- The General Council of the Bar
- The Fawcett Society
- The Law Society of Scotland
- The National Council of Women of Great  
Britain
- The Newspaper Society
- The Public and Commercial Services  
Union (PCS)
- The Recruitment & Employment  
Confederation (REC)
- The Single Parent Action Network
- Trade Union Congress
- Transport for London
- Travers Smilth LLP
- UKCAE (UK Council for Access and  
Equality)
- Union of Shop, Distributive & Allied  
Workers (Usdaw)
- UNISON
- Unite the Union
- Universities and Colleges Employers  
Association
- University and College Union
- University of Bath
- Warwick University
- West Yorkshire Police
- Women Like Us
- Women's Support Network within NHS
- Working Families
- York College
- Zurich Employment Services Ltd
- Zurich Insurance plc
- 3SL
- 4Children

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit [www.nationalarchives.gov.uk/doc/open-government-licence](http://www.nationalarchives.gov.uk/doc/open-government-licence), write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication is also available on our website at [www.bis.gov.uk](http://www.bis.gov.uk)

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

**URN 12/1269**