

The Flexible Working Regulations 2014

Lead department	Department for Business, Energy and Industrial Strategy
Summary of measure	A statutory right for employees to ask their employer for a change to their contractual terms and conditions of employment to work flexibly provided they have worked for their employer for 26 weeks continuously at the date the application is made.
Submission type	Post-implementation review (PIR)
Review date	By 29 June 2021
Department recommendation	Keep
RPC reference	RPC-BEIS-5089(1)
Opinion type	PIR
Date of issue	22 July 2021

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The evidence and analysis is proportionate to the measure and sufficient to support the proposal to retain the regulations. The PIR uses a good range of data collection methods and addresses, in some detail, achievement against the policy objectives. The PIR would benefit from further assessment of business impacts, including a more-detailed re-assessment of the assumptions and estimates in the original impact assessment (IA).

¹ The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust, as set out in the [better regulation framework](#), to support the departmental recommendation. RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality	RPC comments
Recommendation	Green	The evidence and analysis is proportionate to the measure and sufficient to support retaining the regulations.
Monitoring and implementation	Good	The PIR uses a good range of research and evidence. The PIR provides good detail of the extensive data collection methods, including consultation with stakeholders.
Evaluation	Good	The PIR provides a clear report of indicators of progress against the objectives of the policy, including survey comparisons before and after policy implementation. The PIR reviews unintended effects and original IA assumptions. This would benefit from strengthening in some areas, particularly assessment of business impacts, and re-visiting the IA's cost estimates.

Summary

The right to request a contractual change to accommodate flexible working was first introduced by section 47 of the Employment Act 2002, giving the right to parents of children under six years of age or disabled children under 18 years from 6 April 2003. Under the original legislation, qualifying employees, who had been employed continuously by their employers for 26 weeks, could apply to that employer requesting a change in hours, times or location of work as between their home and employer's place of business. Since then, successive governments have extended the right to request flexible working to other categories of employees, including employees who care for dependant adults (from 6 April 2007) and employees with parental responsibility for children under 17 years (from 6 April 2009).

Under the Children and Families Act 2014, from June 2014 all employees would have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly provided they have worked for their employer for 26 weeks continuously at the date the application is made. An employee would be able to make one statutory request in any 12-month period. A statutory application under the 'right to request' legislation involves the following steps:

- The employee writes to the employer.
- The employer considers the request and makes a decision within three months - or longer if agreed with the employee.
- If the employer agrees to the request, they must change the terms and conditions in the employee's contract.
- If the employer disagrees, they must write to the employee giving business reasons for the refusal. The employee may be able to complain to an employment tribunal.

The legislation also replaced the statutory process for considering requests with a statutory code of practice requiring employers to give "reasonable" consideration to requests.

The extension was intended to prompt both employees and employers to review current working practices and exchange information about what working arrangements might be possible. It was perceived that because employers would be required, under the legislation, to consider requests seriously, employees would be more confident to approach their employer. As a result, it was expected that the flow of information between parties would be improved, leading to better-informed decisions and enhanced outcomes for both employees and employers.

Recommendation

The recommendation of the PIR is to 'keep' the regulations. This is supported by a proportionate range of evidence, as discussed below. The PIR recognises that the extent of the long-term impact of the COVID pandemic on the take up of flexible working patterns across the economy is not yet known.

Monitoring and implementation

Proportionate

The Department has undertaken an appropriately-substantial PIR for a measure with significant wider societal impacts (albeit with a relatively modest net present value and estimated direct impact on business).

Range of evidence

The PIR uses a suitable and extensive range of evidence and research methods for a significant policy measure. The data collection methods are set out in detail at pages 11-15 of the PIR. These include: survey research using the British Social Attitudes Survey, Management and Wellbeing Practices Survey; research with employees and employers, including interviews with employer representative organisations; a literature review; and further analysis of survey and administrative data. The review aimed to measure outcomes before, and after, the legislation, primarily by surveying employers and employees and making comparisons with survey data collected prior to the extension of the regulation. Quantitative data is supplemented with qualitative interviews and case studies. The report explains that the issue of right to flexible working is not UK-specific (page 28) and makes some references to international evidence (pages 15, 24 and 48).

Gaps in evidence justified

The review is transparent about major gaps or limitations in the evidence base. For example, it notes that changes to questions in the survey of employers restricts comparability before, and after, the extension was implemented (pages 45, 52 and footnote 112). It also notes where the limited number of differences in survey results are not statistically significant (for example, pages 24 and 58 – table 4.16).

Evaluation

Overall, the PIR provides a strong labour market analysis of the measure but could assess further the specific impacts on business. The PIR provides a good review of indicators of progress against the policy objectives (see detailed comments below) but could discuss further where these indicators might be less favourable, such as availability, awareness and take-up of flexible working in smaller workplaces.

Policy objectives considered

The review provides a clear report of indicators of progress against the original objectives of the policy, often using survey comparisons between 2013 and 2018. The PIR covers, for example, the proportion of employers/workplaces:

- providing written organisational policies on flexible working for their staff increased by nine percentage points;
- reporting that their managers actively promote flexible working and leave arrangements increased from 43 to 48 per cent (page 48-49).

- receiving flexible working requests increased across most types of flexible working, particularly job sharing, working school term time, working from home and annualised hours (page 55).

The review concludes that the evidence is consistent with there being a modest shift in attitudes among employers that flexible working has benefits for a more diverse group of individuals beyond parents and carers. However, the proportion of part-time employees making flexible working requests appears to run counter to this and the PIR would benefit from further discussion of this, for example whether this might be because employees who wish to have flexibility can now achieve this while working full-time.

The PIR notes that there has been little change recorded over time in the proportion of employers that think those who request to work flexibly are less committed to their work (page 58). The PIR would benefit from discussing this further (it notes, at page 59, that more research is needed).

The review found that the majority of employees were comfortable about asking for flexible working arrangements (summary box at the top of page 25). While employers reported a greater number of formal requests than anticipated in the original IA, the review states it did not find any evidence that this placed an unreasonable burden on business (box at the top of page 67). The review would benefit from greater explanation of the latter comment.

Unintended effects

The PIR lists potential unintended consequences identified at the time of the extension (pages 8-9):

- The 26-week qualifying period for the right to request flexible working resulting in some existing employees working flexibly being deterred from changing their employer.
- The measure increasing negative attitudes to those who work flexibly, resulting in negative consequences (e.g. worsened promotion prospects).
- An unreasonable burden being placed on business, both in terms of the impact of flexible working, and the administration associated with processing extra requests.
- An increase in complaints and use of employment tribunals.

The PIR reviews these unintended effects, particularly at pages 69-70. The review would benefit from further consideration in places, in particular regarding the impact on employers.

Impact of Covid-19

The PIR discusses the impacts of Covid-19, noting that changes in the ways of working have largely been imposed out of necessity in response to public health measures and do not constitute flexible working in its true form. It also refers to informal survey evidence pointing to a slight reduction in perceived negative career consequences among employees working from home (page 32). The PIR notes that “*Understanding the extent to which the Covid-19 restrictions and ‘work from home’ guidance has affected perceptions of career consequences and challenged ‘presenteeism’ cultures in workplaces will be important in building upon progress made since the 2014 regulatory extension*” (page 42). The PIR would benefit from further consideration in any future review of the impacts of Covid-19, in particular developing the discussion around the possible durability of new working arrangements for office staff in towns and cities and the issue of employees in other sectors where opportunities for more flexible working may be limited.

Original assumptions

The PIR reports that the original impact assessment estimated a net present value £116 million over ten years (page 6 and subsequent table). The impacts were based on estimates of a further 81,000 requests a year, leading to approximately 64,000 new working arrangements a year. The extension was expected to lead to between 0.75 and 1.25 percentage point increase in requests. The PIR notes that estimating the impact of the proposal is difficult because of problems in constructing a counterfactual and with the validity of employees with less than 26 weeks continuous service as a comparator. Nevertheless, the PIR reports that 30 per cent of employers received a request from staff to change their working pattern in 2018, with the mean number of requests being 3.8 (compared to 1 in 2013).

The review tests the validity of the assumptions made in the IA appraisal and whether anticipated outcomes were achieved (page 7). There are some areas, listed below, where the assessment against the assumptions and overall estimates in the IA could be strengthened.

The PIR reports annual cost estimates from the IA of £15.8 million in making adjustments to working patterns and around £24 million in procedural/administrative costs. The PIR would benefit from providing a broad re-assessment of these estimates or explaining why this is not possible. Question 21 on page 6, referring to an “*unreasonable burden on business*” would benefit from being less subjective and more targeted on specific costs, for example hours of staff time to comply with each request. The PIR would benefit from explaining what is meant by “*...no evidence has been found of unreasonable burdens on business since the right was extended*” (page 62).

The Department reviews the extent to which “*employers experiencing improvements at their workplace as a result of employees working flexibly*” (Q20, pages 59-60).

This assessment would benefit from:

- providing benchmarks/comparators for the “*more than six in ten employers report positive effects of flexible working on employee relations and staff motivation and commitment*” (figure 4.7);
- discussing the finding that fewer employers note improvements to reducing labour turnover, reducing absenteeism and on employee relations; and
- providing percentages for the views expressed by senior managers regarding staff retention and recruitment.

The review notes that the IA estimated savings of £8.4 million per year in “*reduced vacancy costs and increased labour retention*”. The PIR would benefit from evaluating this figure, in particular whether the survey findings referred to above suggest the savings might be lower.

The PIR would benefit from discussing further the finding that fewer employers reported positive improvements of flexible working in reducing absenteeism in 2018 compared with 2013.

The review reports that a greater proportion of written requests are received by workplaces than anticipated in the IA but would benefit from discussing what this means in practice, in terms of costs and benefits.

The PIR notes that the IA assumed that 10 per cent of requests would be formal under the new code of practice and that the replacement of the statutory process would save employers £9.1 million per year (page 66). It would appear that this particular measure could be evaluated and, if so, the PIR could discuss this further, assessing whether the IA estimates remain reasonable.

Small and micro businesses (SMBs)

The PIR covers impacts by size of business, for example, showing availability, and take-up and, particularly, awareness of flexible working is less common among smaller workplaces (page 48). The PIR would benefit from exploring this aspect further and discussing further any differential impacts on SMBs, including the greater role of senior management in making decisions on accepting requests. The PIR could also develop the discussion around “*accommodating flexible working could present challenges for resourcing, particularly among smaller workplaces*” (page 52).

Impact of wider labour market changes

The PIR would benefit from discussing further the impact of wider labour market and employment pattern changes, such as growth of the gig economy and zero hours contracts, since the right to request flexible working measure policy was conceived and implemented.

Improvements or alternatives considered

The PIR reports that manager training, to prevent value judgments and unconscious bias, can help improve consistency in flexible working implementation and the role of sharing best practice (page 53). It also lists measures for raising awareness and persuading more workplaces and managers of the business benefits of flexible working (page 71). The PIR would benefit from discussing any specific initiatives and how these might be taken forward.

The review notes that discussions with stakeholders have identified some potential opportunities for making the request process more flexible and efficient for employees and employers. These relate to the 26-week qualifying period, the business reasons for refusing a request, the limit on the number of requests that can be made per year and the length of time within which employers are required to respond to requests (page 71). The PIR would benefit from setting out specifics for how these would be taken forward.

Future impacts considered

The PIR states that the IA made it clear that the legislation would need around 10 years to achieve aims of the policy (page 5). In view of this, and possible implications arising from the pandemic, the PIR would benefit from discussing further what the next review will cover and how the success of the policy will be measured and assessed at that point. The PIR notes that the Government's manifesto contains a commitment to "*encourage flexible working and to consult on making it the default unless employers have good reason not to*" (page 32).

Regulatory Policy Committee

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