

Acas consultation on the draft Code of Practice on handling requests for flexible working

Important: This consultation closed on 6 September 2023. [Read our response to this consultation.](#)

Foreword from Susan Clews, Acas Chief Executive Officer

Acas is updating its statutory Code of Practice on handling requests for flexible working. We are doing this to reflect the anticipated reforms to legislation, significant shift in flexible working in the workplace and changing views since our existing Code was published in 2014. We will also update our non-statutory guidance which sits alongside the Code.

The aim of the Code is to provide employers, employees and representatives with a clear explanation of the law on the statutory right to request flexible working, alongside good practice advice on handling requests in a reasonable manner.

The draft Code under consultation has been prepared carefully by Acas and has benefited from the expertise and scrutiny of the Acas Council, made up of employer representative, worker representative and independent members.

The evidence on flexible working is clear: flexible working can bring a wide range of positive outcomes to both businesses and individuals. And there has been a significant change in perceptions of flexible working globally, due in part to ways of working changing during and since the covid-19 (coronavirus) pandemic. Our objective is to ensure that our guidance is as relevant and helpful as possible for everyone in today's workplaces.

The updated Code seeks to encourage a more positive approach to flexible working, through a new Foreword to the Code and an emphasis on fostering an environment in which requests are not rejected by default without open-minded consideration and meaningful dialogue. We are especially keen to hear views on what guidance would be most beneficial for users on the new and important requirement for consultation with an employee before a request can be rejected.

The updated Code also seeks to strengthen the Code's good practice messages by:

- extending the categories of those individuals who may accompany an employee at meetings to discuss a request
- providing guidance that employers should set out such additional information as is reasonable to help explain their decision
- providing guidance that employers should allow an appeal where a request has been rejected

The draft Code on handling requests for flexible working draws on Acas's in-depth experience and knowledge of the world of work and of good employment relations. We encourage all interested individuals and organisations to respond to this consultation and look forward to receiving and considering your valuable contributions.

Introduction

Why we are consulting

The Department for Business and Trade (DBT) is currently legislating to reform the flexible working provisions set out in the Employment Rights Act 1996. In response to these changes, Acas is updating its statutory Code of Practice on handling in a reasonable manner requests to work flexibly.

[The updated draft Acas Code](#) is intended to provide employers, employees and representatives with good practice advice on how the new flexible working rules should work in practice. Statutory Codes of Practice are not legally binding, but they are taken into account by courts and employment tribunals when considering relevant cases.

Consultation details

Issued: 12 July 2023

Respond by: 11:59pm on 6 September 2023

Enquiries: workplacepolicy@acas.org.uk

We welcome contributions from all interested individuals and organisations. This includes employers, employees, trade unions, business representative groups, legal representatives, and any other organisations or individuals with an interest in flexible working practices and good employment relations.

How to respond

This consultation has closed.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Acas.

Acas will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Background

In September 2021, the Government launched a [consultation on making flexible working the default](#). This contained a series of proposals to reform flexible working legislation.

The consultation outcome was published in December 2022. It confirmed that the Government would make the right to request flexible working apply from the first day of employment, thereby removing the current qualifying period of 26 weeks.

The response also confirmed the Government's backing of the measures set out in the [Employment Relations \(Flexible Working\) Bill](#), a Private Member's Bill introduced by Labour MP Yasmin Qureshi on 15 June 2022. These measures would:

- require employers to consult with their employees, as a means of exploring the available options, before rejecting their flexible working request

- allow employees to make 2 flexible working requests in any 12-month period, instead of the current 1
- require employers to respond to requests within 2 months, instead of the current 3
- remove the current requirement for employees to set out how the effects of their flexible working request might be dealt with by the employer

At the time of launching this consultation on Acas's statutory Code of Practice, the Employment Relations (Flexible Working) Bill is making its passage through Parliament. With cross-party support, the bill is expected to achieve royal assent in due course, before coming into force in 2024 as the Employment Relations (Flexible Working) Act. The day 1 right to request will come into effect at the same time.

Acas's existing statutory Code of Practice on handling in a reasonable manner requests to work flexibly was published on 30 June 2014. This Code was developed in response to legislative changes extending the right to request to all employees with 26 weeks' continuous service. (This right had previously been available to carers of adults and carers of all children under the age of 17.) No revisions to the Code have since been made.

In anticipation of the passing of the Employment Relations (Flexible Working) Bill and the new day 1 right to request, Acas has prepared an updated draft statutory Code of Practice on handling requests for flexible working.

In accordance with section 200 of the Trade Union and Labour Relations (Consolidation) Act 1992, Acas is now publishing the draft Code for public consultation. We will consider any representations made to us about it and may then modify the draft accordingly. If we determine to proceed with the draft Code, it will be presented to the Secretary of State for Business and Trade who, if they approve it, will lay it before Parliament.

Sitting alongside the existing Code, Acas currently provides non-statutory guidance on making a flexible working request and responding to a flexible working request which set out additional guidelines on the law and good practice for employers and employees. This guidance will also be updated in line with the new flexible working measures and the updated Acas Code.

Comments are invited on all aspects of the draft Code, however there are a number of specific issues on which Acas is especially keen to hear your views. These are set out in the remainder of this document. We encourage you to [read the draft Code](#) in full before responding to the consultation.

Consultation questions

The following questions relate to the [draft updated Code of Practice on handling requests for flexible working](#).

Section A: Review of the existing Code

While Acas's existing Code requires updating due to changes in the law, we see this as a welcome opportunity to conduct a full review of the document. In this regard, we recognise in particular the brevity of the existing Code and its primary focus on the requirements of the legal process around handling requests.

Since the publication of the Code in 2014, a number of developments – most strikingly, rapid advances in technology and the covid pandemic – have driven an increasing interest in flexible working and changing attitudes towards it. An important debate has gained momentum around the possibilities, practicalities and expectations around ways of working for many individuals and organisations. Globally and across many industries, there has been a newfound appreciation for flexible working and the benefits it can bring to both employers and employees.

With this in mind, Acas has sought not only to update the Code to bring it in line with new legal provisions, but moreover to reconsider and reposition its overall messaging on good practice. At the same time, we have sought to ensure that the Code retains the simplicity of general principles, allowing for a clear understanding of the standards it sets out, and to use our accompanying non-statutory guidance to provide more detailed guidance on the principles set out in the Code.

Question 1

In addition to updating the Code to reflect changes to the law, should Acas also reconsider the overall good practice principles in the Code?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

Section B: Foreword

A new Foreword and overall messaging

Acas has added a Foreword, which, while not part of the Code itself, helps explain and set the tone for what follows in the Code. As noted above, Acas feels that in redrafting the Code it has been important to convey the shift in attitudes towards flexible working since the Code was originally published. The Foreword affirms the benefits that flexible working can bring and encourages implementation of it where possible.

The Foreword recognises that flexible working can take many forms and that what may be possible in a particular situation will depend on the nature and circumstances of the individual's role and the employer's organisation. While some arrangements may prove more difficult to implement, the Foreword encourages parties not to assume that difficulties cannot be overcome and to consider if there may be other workable options.

The Foreword makes clear the legal requirement that employers must agree to requests except in cases where there is a business reason not to (reasons which are set out later in the draft Code). It further highlights the value in having early and meaningful discussions to help in making well-informed decisions. It encourages employers to approach flexible working with an open mind, including giving consideration to flexibility when designing and advertising jobs.

The remaining comments in the Foreword seek to emphasise the importance of several principles of good practice that are set out in the Code: ensuring transparency in the decision-making process, being proactive in offering an appeal if a request is rejected, and allowing employees to be accompanied at meetings.

Question 2

Does the Foreword to the Code strike the right tone in encouraging an open-minded approach to flexible working, with a focus on what may be possible?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

Definition of flexible working requests

The draft Foreword includes a definition of what constitutes a flexible working request based on [section 80F of the Employment Rights Act 1996](#). The inclusion of this definition is intended to help users of the Code distinguish between statutory and non-statutory requests, specifically by highlighting that requests made under the statutory procedure must be for a contractual change in terms and conditions of employment.

Another option would be to provide a broader definition of flexible working itself. However, this raises the question of how helpful any such definition might be given that the forms that flexible working can take in practice are so varied.

Our current intention is therefore not to include a definition of flexible working within the Code itself, but to include a definition in the Foreword and more detailed guidance on the diverse types of flexible working within Acas's non-statutory guidance.

Question 3

Do you think that it is helpful to include a definition of 'flexible working' within the Foreword to the Code?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

If you answered 'yes' to question 3, which definitions should the Foreword provide?

- A definition of a statutory flexible working request, based on the Employment Rights Act 1996
- A broader definition of flexible working
- Both a definition of a statutory flexible working request and a broader definition of flexible working
- None of the above
- Don't know

Please explain the reasoning for your answer.

Section C: Legal terminology

The requirement to consult

One significant change to the Code relates to the new legal requirement on an employer to consult an employee before they may refuse a flexible working request.

The draft Code seeks to provide clarity on what 'consultation' should involve by building on the provision within the existing Code that employers should arrange a meeting with the employee after receiving their request.

A new section in the draft Code expands on this to suggest that the employer should arrange a formal meeting with the employee before rejecting the request, during which the parties should consider and explore the potential for any alternative arrangements which may be available and suitable. Another option would be to provide guidance on consulting with employees only in Acas's non-statutory guidance rather than in the Code.

Question 4

Should the Code provide guidance on 'consulting' with employees about a request?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

Additionally, if you answered 'yes', please outline any other issues which the Code or non-statutory guidance should provide guidance on, to help employers and employees understand what is expected during consultation.

This section in the draft Code goes on to suggest that offering a meeting could be beneficial even in cases where an employer is intending to accept a request. This departs from the position set out in the existing Code which states that a meeting is not needed where an employer intends to accept a request. Acas believes that there can be added value in discussing all requests in greater detail, as this can bring to light any additional considerations which may be important to consider, for instance to help in implementing a flexible working arrangement successfully.

Question 5

What is your opinion on the guidance in the Code about offering an employee a meeting, even when the employer plans to accept their request?

Please include your reasoning.

Protection from detriment and dismissal

The Employment Rights Act 1996 already provides protections for employees from detriment and dismissal, however these are not cited in the existing Code. Acas considers that referencing such protections within this wider update will help to increase awareness of these protections and of employers' responsibilities. Such reassurance may help some employees to feel more confident to make a flexible working request.

Question 6

Should the Code include a section on the protection from detriment and dismissal?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

Section D: Procedural guidance within the Code

Acas recognises the potential to enhance the existing Code to provide greater guidance on various aspects of the procedure involved in the reasonable handling of requests.

Allowing employees to be accompanied

Although employees have no legal right to be accompanied at meetings held to discuss flexible working requests, the existing Code states that an employer should allow them to be accompanied by a work colleague, including for any appeal meeting.

Acas believes that it can be helpful for a companion to be allowed at such meetings, where desired. This can help support the discussion around what flexible working arrangement(s) may be possible and suitable.

In the updated draft Code, the definition of companion has been broadened to include a trade union representative or an official employed by a trade union. This mirrors the categories of companion allowed in discipline and grievance meetings where a statutory right of accompaniment does apply.

We believe that extending these familiar categories of companion to the Code will have the benefit of introducing consistency between Acas Codes regarding the companions allowed at different types of formal meetings, and that this will not create an onerous burden on employers. However, we recognise there is some risk that this could cause confusion about the applicable legal entitlements and protections for both employees and their representatives in meetings for flexible working requests.

Question 7

What are the advantages and disadvantages of the Code recommending that employees should be allowed to be accompanied at meetings to discuss flexible working?

Please include your reasoning.

Question 8

What is your opinion on the Code recommending the same categories of companion as those that are allowed in discipline and grievance meetings?

Please include your reasoning.

Communicating the decision

Acas believes it is important to emphasise the need for transparency in decision-making about flexible working requests, both in the interests of maintaining trust that a request has been duly considered, and to enable an informed consideration by the employee of whether they wish to appeal to the decision.

Specifically, the draft Code places a responsibility on the employer, where they reject a request, to communicate not only the relevant business reason(s) as set out in the Employment Rights Act 1996, but also any additional information as is reasonable to help explain the decision.

Question 9

Should the Code recommend that employers provide any additional information as is reasonable to help explain why a request has been rejected?

- Yes
- No

- Don't know

Please explain the reasoning for your answer.

Handling an appeal

The draft Code makes clear that employers should proactively offer an appeal where a request has been rejected, and should handle an appeal in an impartial manner. Acas considers it good practice to appoint, where possible, a different manager to deal with an appeal, while recognising that this may be less feasible within smaller and micro businesses. The draft Code therefore introduces this expectation for larger organisations only.

Question 10

For larger organisations, what are the advantages and disadvantages of the Code stipulating that, where possible, an appeal should be handled by a manager not previously involved with a request?

Please include your reasoning.

Section E: The statutory right to request a predictable work pattern

The [Workers \(Predictable Terms and Conditions\) Bill](#) is currently before Parliament. If enacted, it will give employees and workers a right to request a predictable work pattern under the Employment Rights Act 1996, subject to certain eligibility criteria.

In anticipation of this legislation coming into effect, Acas has agreed to a request by the Department for Business and Trade (DBT) to produce a new statutory Code of Practice on handling requests for a predictable work pattern. Acas will consult separately on that draft Code.

The right to request flexible working and the right to request a predictable work pattern are interrelated in respect of how many requests an employee may make in any 12-month period as well as rules around not having concurrent requests. Acas therefore considers it appropriate and helpful to include in the Code a section on this additional right for employees and its interaction with the right to request flexible working. This section aims to provide sufficient detail to highlight the overlapping areas, while encouraging users to find further information in the separate Acas Code of Practice on that right to request.

Question 11

Should the Code include a section about the right to request a predictable work pattern if that right is introduced?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

If you answered 'yes' to question 11, do you believe that paragraphs 27 to 29 in the draft Code provide sufficiently clear guidance on the interaction between the 2 rights?

- Yes
- No

- Don't know

Please explain the reasoning for your answer.