



BRIEFING PAPER

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Flexible working

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Summary

The statutory right to request flexible working entitles qualifying employees to apply to their employers for a change to their terms and conditions of employment relating to their hours, times or location of work. The change could include, for example, working part-time, from home or compressed hours. Employers may only refuse the request on grounds defined in legislation, for example, the burden of additional costs or a detrimental effect on the ability to meet customer demand.

The right to request flexible working was introduced by section 47 of the *Employment Act 2002*. Since then successive Governments have extended the right to wider categories of employees. On 30 June 2014 the right was extended to all employees by the *Children and Families Act 2014*.

This briefing provides an overview of the right to request flexible working. It explains the legal framework, charts the development of the right since its introduction and discusses government policy

1. Introduction

The statutory right to request flexible working, introduced in 2002, entitles qualifying employees to apply to their employers for a change to their terms and conditions of employment relating to their hours, times or location of work. As originally framed, the right applied to limited categories of employees with parental or caring responsibilities. The *Children and Families Act 2014* extended the right to all employees with 26 weeks' continuous employment.

Flexible working is seen as a means of enabling employees to balance their personal and working lives, benefiting employers in terms of workforce recruitment, motivation and retention. For these reasons the gradual extension since 2002 of the right to request flexible working has largely been supported by business and subject to broad political consensus. The 2011 [Consultation on Modern Workplaces](#) (the consultation on which the *Children and Families Act* changes were based) provided some examples of flexible working:

Part-time: employees are contracted to work less than normal full-time hours.

Flexi-time: employees work a standard core time, but can vary your start, finish and break times each day within agreed limits.

Compressed hours: employees work their total number of contracted weekly hours in fewer than the usual number of working days each week by working longer individual days.

Homeworking: employees work all or part of their contracted hours from home.

Annualised hours: employees average out working time across the year so they work a set number of hours per year rather than per week. Normally, they are split into core hours that are worked each week and unallocated hours that can be used for peaks in demand.

Term-time working: employees' work follows school term patterns. They work as normal during term-time. During school holidays they do not go to work but are still employed.

Structured time off in lieu: employees work longer hours during busy periods and take an equivalent amount of time off (with pay) at a less busy time. There may be limits on the number of hours individuals can build up and when they can take time off.

Job-sharing: employees work part-time (which could be part-day, part-week or part-year) and share the duties and responsibilities of a full-time position with another worker.

Varied-hours working or time banking: prospective employees advertise which hours they are available to work for the day and employers employ them for short periods of time to manage specific pieces of work, such as covering a telephone help-line. For example, an individual might be employed between 6pm and 9pm on a Tuesday evening.¹

¹ BIS, *Consultation on Modern Workplaces*, 2011, p31

2. The legal framework

2.1 The right

The right to request flexible working is set out in [Part 8A](#) and [section 47E](#) of the *Employment Rights Act 1996*, as amended, and associated regulations.² An employee who has been employed continuously for 26 weeks or more may apply to his employer requesting a change in hours, times or location of work as between his home and employer's place of business.³ The application must:

- be in writing;
- state that it is a flexible working application;
- specify the change applied for and the date on which it is proposed the change should become effective;
- state whether the employee has previously made an application to the employer and if so when;
- explain what effect, if any, the employee thinks making the change applied for would have on his employer and how, in his opinion, any such effect might be dealt with; and
- be dated.⁴

Only one application may be made by an employee in any 12-month period.⁵

Until 30 June 2014, the right was only available where the purpose of the change was to enable the employee to care for certain categories of dependant (e.g. children and relatives at the same address). [Part 9](#) of the *Children and Families Act 2014* amended [Part 8A](#) of the *Employment Rights Act 1996*, extending the right to all employees with 26 weeks' continuous employment (see below).

2.2 Employer's duties in relation to an application

The employer must deal with the request "in a reasonable manner" and respond within three months or such longer period as agreed by the employer and employee.⁶ What is "reasonable" depends on the particular circumstances and is not defined in the legislation, although the Advisory, Conciliation and Arbitration Service has published a [Code of Practice](#) on what is likely to be considered reasonable.⁷

Should the employer refuse to grant the request it has discretion as to whether to allow an appeal; if it does, the same time limits apply.⁸ The

² See *The Flexible Working Regulations 2014* ([SI 2014/1398](#))

³ *Employment Rights Act 1996*, section 80F(1), *The Flexible Working Regulations 2014* ([SI 2014/1398](#)), regulation 3

⁴ *Employment Rights Act 1996*, section 80F(2), *The Flexible Working Regulations 2014* ([SI 2014/1398](#)), regulation 4

⁵ *Employment Rights Act 1996*, section 80F(4)

⁶ *Employment Rights Act 1996*, section 80G(1) & 80(G)(1B)

⁷ ACAS, *Code of Practice on handling in a reasonable manner requests to work flexibly*, June 2014

⁸ *Employment Rights Act 1996*, section 80G(1A)

employer may only refuse the application because he considers that one or more of the following grounds applies:

- the burden of additional costs;
- detrimental effect on ability to meet customer demand;
- inability to re-organise work among existing staff;
- inability to recruit additional staff;
- detrimental impact on quality;
- detrimental impact on performance;
- insufficiency of work during the periods the employee proposes to work; or
- planned structural changes.⁹

The employer may treat the employee's application as withdrawn if the employee, without good reason, fails to attend both the first meeting arranged by the employer to discuss the application and the next meeting arranged for that purpose.¹⁰

2.3 Remedies

If the employer fails to comply with these obligations, makes his decision based on incorrect facts or treats the employee's application as withdrawn in circumstances that do not satisfy the statutory conditions, the employee may present a complaint to an employment tribunal. The tribunal may make an order for reconsideration of the application and award compensation of such amount it considers just and equitable, not exceeding eight weeks' pay. A weeks' pay is subject to the statutory maximum set annually by regulations. The most recently prescribed limits are:¹¹

Date	Maximum amount of one week's pay (£)
6 April 2018 - 5 April 2019	508
6 April 2017 - 5 April 2018	489
6 April 2016 - 5 April 2017	479

2.4 Acas Code of Practice

The extension of the right to request flexible working is supported by a statutory [Code of Practice](#) produced by the Advisory, Conciliation and Arbitration Service (Acas). Acas has also published a [guidance document](#) on the right as well as a [guide](#) for employers and employees on homeworking.¹²

Acas consulted on the Code for a period of 12 weeks, from 25 February 2013 to 20 May 2013. The consultation and responses are available on

⁹ *Employment Rights Act 1996*, section 80G(1)(b)

¹⁰ *Employment Rights Act 1996*, section 80G(1D)

¹¹ *The Employment Rights (Increase of Limits) Order 2015 (SI 2015/226); The Employment Rights (Increase of Limits) Order 2014 (SI 2014/382)*

¹² Acas, *The right to request flexible working: an Acas guide*, June 2014; Acas, *Homeworking – a guide for employers and employees*, May 2014

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the Acas website, [here](#).¹³ A revised draft Code was published, [here](#), and scrutinised by Parliament.¹⁴

¹³ Acas publishes consultation responses & new draft Code and guidance on flexible working

¹⁴ Acas, *Draft Code of Practice on Handling in a Reasonable Manner Requests to Work Flexibly*

3. The Children and Families Act 2014

On 30 June 2014 [Part 9](#) of the *Children and Families Act 2014* amended the law on flexible working requests to extend the right to all employees with 26 weeks' continuous employment. It also removed previous procedural requirements for employers' responses, replacing these with a duty to deal with the application in a reasonable manner.

3.1 Background

The Coalition Agreement included a commitment to extend to all employees the right to request flexible working.¹⁵ In a speech on 17 January 2011 the then Deputy Prime Minister, Nick Clegg, articulated part of the rationale for extending the right:

...the Coalition Agreement commits us to a universal right to request flexible working. Extending flexible working beyond mothers and fathers is essential if we are to dispel the stigma many men, and some employers, still attach to it. By extending flexible leave, for example to grandparents, or close family friends, we hope to make it much more common – a cultural norm.¹⁶

The proposal was taken forward as part of the *Children and Families Bill*, which received Royal Assent on 13 March 2014 (see below). Prior to publication of the Bill, the Government consulted on changes to flexible working as part of the Modern Workplaces consultation.

Modern Workplaces consultation

The Modern Workplaces consultation document presented the Government's case for change:

Through the right to request flexible working, many parents and carers have already benefited from flexibility in balancing their personal and working lives. 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.¹⁷

The document highlighted research undertaken by Industrial Relations Services which indicated wide support for flexible working amongst human resources professionals.¹⁸ That study, a survey of human resources practices in 162 organisations, found that approximately two-

¹⁵ HM Government, [The Coalition: our programme for government](#), May 2010, p18

¹⁶ [Speech by Rt.Hon. Nick Clegg MP](#), Cabinet Office website, 17 January 2011 (accessed 3 June 2014)

¹⁷ BIS, [Consultation on Modern Workplaces](#), 16 May 2011, p2

¹⁸ *Ibid*, p33; IRS, *IRS flexible working survey 2010: take-up and employee requests*, 22 March 2010

thirds of employers that had introduced flexible working during the recession had managed to cut costs and reduce job losses.¹⁹

The extension of flexible working was seen as supporting a number of the Government's other key policies, namely: welfare reform, tackling child poverty, closing the gender pay gap, supporting carers who provide unpaid support for friends or family, supporting older workers, facilitating shared parenting and supporting family and community cohesion.²⁰ It was also in line with the Government's strategy to promote economic growth through a labour market that is "flexible, effective and fair".²¹

The document set out the Government's intention to:

- extend to all employees the statutory right to request flexible working;
- reduce the administrative burden of considering such requests by replacing the statutory process for considering requests with a requirement that employers give "reasonable" consideration to requests;
- introduce a statutory Code of Practice to provide guidance on what consideration is likely to meet the requirement of reasonableness;
- leave unchanged the grounds on which a request can lawfully be refused;
- retain the 26-week qualifying period for the statutory right;
- consider the possibility of allowing for more than one flexible working request in any 12 month period, provided the employee states in their original request that they expect the change to last less than a year; and
- encourage more recruitment agencies to provide services in relation to part-time or varied-hours working.²²

Alongside extending the right to request flexible working, one of the most significant of these changes is the replacement of the statutory procedure for considering flexible working requests with a requirement to give the request "reasonable" consideration. The consultation document set out the reasons for this:

We want employers to be able to adopt flexible working, in their workplace, as easily as possible. To do this we propose to replace the existing statutory process for considering requests with a duty to consider requests 'reasonably' alongside a new Code of Practice to guide employers in considering requests. This will enable employers to use their own management systems to consider requests, so long as the request is considered within reasonable amounts of time, and conducted in a fair and reasonable manner. We do not intend to change the existing business reasons under which an employer may refuse a request.²³

¹⁹ ["Flexible working being used by one-fifth of employers to avoid job cuts, survey shows"](#), *Personnel Today* [online], 22 March 2010 (accessed 8 February 2013)

²⁰ BIS, *Consultation on Modern Workplaces*, 16 May 2011, pp33-34

²¹ BIS, [Flexible, effective, fair: promoting economic growth through a strong and efficient labour market](#), October 2011

²² BIS, *Consultation on Modern Workplaces*, 16 May 2011, pp36-44

²³ BIS, *Consultation on Modern Workplaces*, 16 May 2011, pp6-7

The Department for Business, Innovation and Skills (now the Department for Business, Energy and Industrial Strategy) published an impact assessment of the proposal, which estimated the number of applicants and successful requests:

based on evidence from the Work Life Balance Surveys, estimates of deadweight [i.e. requests that would have occurred in the absence of any policy change] and take-up have been made broken down by gender. Based on these estimates we calculate that the new right to all employees (including parents of 17 year olds) will result in 2.4 million requests (around 9% of eligible employees) but that of these we estimate that the majority will be deadweight, and the remainder (290,000) will be additional requests. Non parents represent 118,754 of these new requests and 29,000 come from parents of 17 year olds.

Also based on the Work Life Balance survey we have made assumptions about the number of requests that are successful. The survey found that 78 per cent of requests were accepted at the first stage. This may be an underestimate since in the employee survey five per cent of requests were yet to be decided. Also, employer data suggests that acceptances are higher. For example, in the Work Life Balance Employer survey 90 per cent of employers indicated that they accepted all requests. We have taken a cautious approach and assumed in this impact assessment that 78 per cent of requests are successful. These rates varied very little by whether or not employees had caring responsibilities.

The Work Life Balance employee survey found that of those employees whose request was denied, 25 per cent went on to appeal. Of those only 2 per cent are successful. The same percentages have been used in this IA [Impact Assessment]. Details are provided in Table C1 in Annex C. Of the 119,000 new requests from employees with no caring responsibility it is estimated that 94,000 will lead to new working arrangements.²⁴

The consultation response was published on 13 November 2012 and confirmed its intention to bring forward legislation to extend to all employees the right to request flexible working, and to replace the statutory procedure for considering requests. The responses to the proposals were overwhelmingly positive.²⁵

On 13 November 2012 Nick Clegg summarised the Coalition Government's plan to legislate to extend the right to request flexible working:

Currently any parent with a child under 17, or under 18 if the child is disabled, can ask for more flexible working patterns. Compressed hours, flexi-time, working from home – that kind of thing. So can anyone caring for a close relative or someone within the home. But people don't always take advantage of it, and there can still be stigma attached – especially for fathers.

So, in the Coalition Agreement, we committed to extending this right to all employees. We've consulted on the best way to do that and we'll be changing the law as soon as parliamentary time allows, giving everyone this new right will help drive a culture shift in the workplace.

²⁴ BIS, [Consultation on Modern Workplaces – Extending the right to request flexible working to all: Impact assessment](#), May 2011, pp20–21

²⁵ Ibid

And it will be possible for other relatives, grandparents and even close family friends to change the way they work in order to help with childcare.

Employers will have a duty to consider all requests in a reasonable way – we'll publish guidance on that and we're working closely with business to get the detail right.

Ultimately this change is good for business: firms will be able to retain their best staff and it's good for our economy. A modern workforce is a flexible workforce too.²⁶

In a Written Ministerial Statement also on 13 November 2012, the then Parliamentary Under-Secretary of State for Business, Innovation and Skills, Jo Swinson, indicated the Government's intention to implement the reforms by 2015:

We believe that flexible working will benefit employers as well; employers report that employees who work flexibly are more productive, less likely to take sick leave and more likely to stay with their employers. Additionally we have set out the intention to remove the existing statutory procedure for considering flexible working requests, which can be bureaucratic and costly, replacing it with a duty on employers to consider requests in a "reasonable manner". We will set out in a code of practice guidance for employers on how to consider requests and what we mean by "reasonable".

The Government intend to introduce legislation as soon as parliamentary time allows, in order to implement the reforms by 2015.²⁷

3.2 The Children and Families Bill

The *Children and Families Bill* was introduced to Parliament on 4 February 2013. As noted, the Bill proposed to extend to all qualifying employees the right to request flexible working, and to replace the statutory procedure for dealing with requests with a requirement to deal reasonably with them, supported by a new statutory Acas Code of Practice (see above). At Second Reading the Minister, Edward Timpson, said that the extension would "help widen the pool of talent in the labour market, helping to drive growth"²⁸ and that:

Four out of five requests for flexible working arrangements are acceded to. The Bill will extend the right to request flexible working to all employees so that parents can be supported in their caring responsibilities by people in the wider family such as grandparents who will also be able to request flexible working.²⁹

Members who spoke at Second Reading were supportive of the extension, although some voiced scepticism over the replacement of the statutory procedure.³⁰ The Bill's flexible working proposals were supported during the rest of the Bill's passage through Parliament. Amendments were debated, albeit not agreed to, that would have

²⁶ [Greater Equality for a Stronger Economy - speech by the Deputy Prime Minister](#), 13 November 2012

²⁷ [HC Deb 13 November 2012 c8WS](#)

²⁸ [HC Deb 25 February 2013 c49](#)

²⁹ *Ibid.*, c60

³⁰ *Ibid.*, c91

extended further the right by removing the 26-week qualifying period and increased employment tribunals' powers when considering claims in relation to refused requests.³¹

The Bill received Royal Assent on 13 March 2014.

³¹ For further information see: [Children and Families Bill Committee Stage Report](#), House of Commons Library Research Paper, RP13/32, 25 June 2013

4. Women and Equalities Committee

On 22 March 2016 the House of Commons Women and Equalities Select Committee published a report following its inquiry into [the gender pay gap](#).³² Chapter 4 of the report considered the case for flexible working, noting:

There is clear evidence flexible working benefits the UK economy and individual employers. However, a culture of presenteeism and a lack of creative thinking about job design are hampering progress towards flexibility as the norm. Too few employers are considering the benefits of offering jobs as open to flexible working.³³

The Committee made the following recommendations:

All jobs should be available to work flexibly unless an employer can demonstrate an immediate and continuing business case against doing so.

...

The right to request flexible working should be amended to allow those working less than full-time hours to request the opportunity to work more.

The Department for Business Industry and Skills should immediately facilitate a campaign outlining the productivity and business benefits of flexible working and flexible hiring, sharing best practice within sectors.³⁴

4.1 Government response

The Government [responded](#) on 21 February 2017 to the Committee's report.³⁵ Regarding the recommendation that all jobs should be available to work flexibly, the response said:

The statutory Right to Request Flexible Working, which was extended to all employees with 26 weeks' continuous service in June 2014, enables employees to agree a working pattern which suits them and their employer and better balance work with other commitments.

The Government is committed to working with business and other groups to promote the business benefits of flexible working. We want to see as many jobs as possible offered in this way and while we recognise the need to increase communications activity around flexible working, we believe that individual employers are best placed to decide what types of working arrangements their business can accommodate.

The current statutory scheme strikes a balance between giving employees the flexibility to combine work with other

³² House of Commons Women and Equalities Committee, *Gender Pay Gap*, Second Report of Session 2015–16, HC 584, 22 March 2016

³³ *Ibid.*, p40

³⁴ *Ibid.*

³⁵ House of Commons Women and Equalities Committee, *Gender Pay Gap: Government Response to the Committee's Second Report of Session 2015–16*, Third Special Report of Session 2016–17, HC 963, 21 February 2017, p4

responsibilities and allowing employers to plan effectively. Employers can also advertise jobs on flexible terms or offer flexible working arrangements to their employees outside the statutory scheme if they wish – and many employers already do so.

While it is too soon to formally evaluate the extension of the Right to Request Flexible Working, we are always keen to explore how policies can be further improved and ... we will work with Acas to learn from organisations that already take a more flexible approach to recruiting and cultivating talent, to better understand the challenges faced by some employers, and to share best practice. We will also explore options for strengthening our communications to encourage employers and their employees to reap the benefits that flexible working can offer.

We believe that Government should lead by example. The Civil Service is an exemplar employer regarding its approach to flexible working in recruitment practices. When advertising vacancies, jobs are advertised as open to all working patterns and that only in exceptional circumstances should a job be considered as full-time only.³⁶

On the issue of amending the right to request flexible working, to allow requests to work more, the response pointed out that the existing law already allowed for this.³⁷ In response to the recommendation about facilitating a campaign, the Government said:

The Government recognises the need to increase communications activity around flexible working and will now explore options for doing so.³⁸

³⁶ Ibid., p6

³⁷ Ibid.

³⁸ Ibid., p8

5. Taylor Review

On 1 October 2016 the Prime Minister commissioned Matthew Taylor, Chief Executive of the Royal Society for the encouragement of Arts, Manufactures and Commerce (RSA), to assess the implications for employment regulation of new forms of work, driven by digital platforms. The Independent Review of Employment Practices in the Modern Economy launched on 30 November 2016.³⁹ The report, entitled *Good Work: The Taylor Review of Modern Working Practices*, was published on 11 July 2017. While the primary focus of the report was the law on employment status (discussed in [this](#) briefing⁴⁰), one of its recommendations concerned flexible working:

With more people participating in the labour market than ever before and as the nature of work and society changes, most people will at some point need to make different trade-offs between work and home commitments.

The desire to be able to make, often small and sometimes temporary, adjustments to working patterns to accommodate other commitments outside work is common to most under-represented groups. The Right to Request Flexible Working was extended in 2014 to all employees with 26 weeks' continuous service. With this, Government sought to take a pragmatic or 'nudge' approach, seeking to encourage rather than impose cultural change in the workplace.

There has clearly been a significant move towards this type of working over the last 10 years: 92% of employers say that they have at least one form of flexible working practice available in their workplace; 60% of employees have said they have done some form of flexible working in the last 12 months.

Crucially, flexible working can also enable people to remain in the labour market who would otherwise be forced to stop work. We know that any period of involuntary separation from the labour market significantly affects future labour market outcomes. This scarring effect is greater for longer periods of absence.

It is also much more marked for certain groups, for example disabled people and women. Disabled people are twice as likely to be unemployed, after an absence of a year, than those without a disability. For women the impact of maternity leave is evidenced through the gender pay gap.

The Review heard good examples of how thinking creatively about scheduling had enabled employers and working people to agree a solution that worked for them both. A typical work is and should be a positive part of this consideration. 75% of the self-employed say that they are satisfied with the flexibility to set their own schedule around other commitments in their life.

While the Review has heard about some of the challenges that 'gig working' brings, especially around insecurity of income, we do not see flexibility as incompatible with ensuring that more atypical workers have access to employment and social security protections. When gig workers have extolled the virtues of their

³⁹ [Taylor review on modern employment practices launches](#), Gov.uk, 30 November 2016

⁴⁰ *Employment status*, Commons Briefing papers CBP-8045

flexible schedule to the Review, they also do not see this as contradictory with access to basic protections such as the National Minimum Wage, for example. As set out in Chapter 6, the challenge is in achieving both.

Quality work that is flexible and allows for fulfilment and development requires careful thought around the interaction of consumer demand, technology and societal norms.

Technology should allow employers to examine closely which activities need to be done at a set time and which can be done on an output basis, but some sectors and organisations have seemed culturally more open to this change than others. For example, the gender pay gap in the US pharmacy sector is much lower than it was in 1973 and also than in comparably skilled professions. Over this period, in response to consumer demand for 24/7 services, the sector has moved to much more explicit shift work (rather than corporate business hours) which is thought to have enabled women especially to balance the demands of work and family.

It is the view of the Review that there is further to go in encouraging this kind of thinking at an early stage. It is still the case that too few jobs are advertised as being available to people who may wish to work flexibly. Work between employers and Government led to the creation in 2014 of the “happy to talk flexible working” strapline but more could be done to address the practical and cultural issues around flexible working.

As part of the statutory evaluation of the Right to Request Flexible Working in 2019, Government should consider how further to promote genuine flexibility in the workplace. For example it should consider whether temporary changes to contracts might be allowed, to accommodate flexibility needed for a particular caring requirement. Government should work closely with organisations like Timewise and Working Families to encourage flexible working and initiatives like “happy to talk flexible working” to a wider range of employers.⁴¹

The statutory evaluation refers to the requirement, in [section 134](#) of the *Children and Families Act 2014*, to review the extension to all employees of flexible working. The Government published its [response](#) to the Taylor Review on 7 February 2018.⁴² It agreed with Taylor’s recommendations about flexible working:

The right to request flexible working, introduced in June 2014, was a major step in making the workplace more accessible for a wide range of people. It is right that the success of this measure is evaluated and as part of that process in 2019, we will consider how further to promote genuine flexibility in the workplace. To help unlock potential in the labour market, including amongst women, older workers, carers and disabled people, **the government will launch a joint taskforce** with industry on flexible working.⁴³

⁴¹ [Good Work: The Taylor Review of Modern Working Practices](#), 2017, pp94-95

⁴² HM Government, *Good Work A response to the Taylor Review of Modern Working Practices*, February 2018

⁴³ *Ibid.*, p43

6. Duty to consider flexible working

On 1 October 2018 the Government published a press release stating that it would consider creating a duty for employers to consider, prior to advertising it, whether a job could be worked flexibly:

Working flexibly helps people to balance their work and home lives and is vital in creating an inclusive economy where those with caring responsibilities can continue working. It also gives employers access to a wider pool of talent and enables better matching of applicants and jobs.

While many companies are increasingly embracing flexible working and the benefits it brings, some employees face barriers in raising this issue with their employers.

The government will consider creating a duty for employers to consider whether a job can be done flexibly, and make that clear when advertising.⁴⁴

⁴⁴ [New measures to support workers, businesses, and entrepreneurs](#), Gov.uk, 1 October 2018

7. The development of the right to request flexible working

7.1 Labour Government policy: 1997 - 2010

Following a report by the Work and Parents Taskforce into flexible working, published on 20 November 2001, the right to request flexible working was introduced by [section 47](#) of the *Employment Act 2002*.⁴⁵ It inserted a new Part 8A into the *ERA 1996*, which came into effect on 6 April 2003 at the same time as associated regulations.⁴⁶ The legislation initially gave the right to parents⁴⁷ of children under six or disabled children under 18.

On 22 April 2004 the then Prime Minister, Tony Blair, announced plans to extend the provisions for flexible working to carers of adult dependants.⁴⁸ The consultation on the proposal ran from 28 February 2005 to 25 May 2005, with the Government's response published in October 2005,⁴⁹ which confirmed the Government's intention to extend the right to carers. Although the consultation also explored the possibility of extending the right to parents of older children, the Government decided there was not a "sufficient case for extending the law to other parents at" that time, based in part on the fact that "small employers and their representatives almost unanimously held the view that the law should not be extended to include other parents".⁵⁰

Following the consultation, the scope of the law was widened by the [Work and Families Act 2006](#) and [Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2006](#) to provide that applications for flexible working could be made for the purpose of caring for a person age 18 or over who fell within a description set by regulations.⁵¹

On 1 October 2007, the Labour Government made some minor technical amendments to the flexible working regulations, which expanded the definitions of "adopter" and "relative".⁵²

⁴⁵ Work and Parents Taskforce, *About Time: Flexible Working*, 20 November 2001; see European Industrial Relations Observatory, New rules on flexible working come into force, EIRO online (accessed 11 February 2013)

⁴⁶ [The Flexible Working \(Eligibility, Complaints and Remedies\) Regulations 2002](#) SI 2002 No. 3236; [The Flexible Working \(Procedural Requirements\) Regulations 2002](#) SI 2002 No. 3207.

⁴⁷ This includes the: mother, father, adopter, guardian or foster parent of the child or; someone married to or the partner of the child's mother, father, adopter, guardian or foster parent.

⁴⁸ Carers Online, *Carers hail new pledge from Blair*, 22 April 2004

⁴⁹ DTI, [Work and Families Consultation: Government Response](#), October 2005

⁵⁰ *Ibid.*, pp42-43, paras 5.25 and 5.28

⁵¹ The [Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2006](#) SI 2006 No. 3314 came into force on 6 April 2007. They amended the [Flexible Working \(Eligibility, Complaints and Remedies\) Regulations 2002](#) SI 2002 No. 3236 to cover employees who care for dependant adults.

⁵² By the [Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) \(No. 2\) Regulations 2007](#), SI 2007/2286

A Department of Trade and Industry report noted in 2008 that the statutory right to request flexible working had led to an increase in the number of employees requesting a change to their working patterns:

Comparisons in the availability of flexible working arrangements between 2002 and 2005 reveal some dramatic changes. In 2002, 22 per cent of fathers claimed that part-time working was provided by their employer, 22 per cent had access to flexi-time and 20 per cent could work at home occasionally. By 2005 these figures had roughly doubled to 47, 54 and 39 per cent respectively.

Greater provision led to greater use. Whereas few worked part-time, the use of flexi-time trebled from 11 to 31 per cent and working at home doubled from 14 to 29 per cent ... in 2002 less than half the mothers took advantage of this provision compared with three-quarters of mothers in 2005 ... This growth in mothers' take-up of part-time opportunities may well indicate the effectiveness of the right to request flexible working introduced in 2003.⁵³

On 6 November 2007, the Labour Government announced a review to "to determine how to extend the right to request flexible working, not just to the parents of younger children but to the parents of older children as well".⁵⁴ An independent review led by Imelda Walsh, the Director of Human Resources at J Sainsbury plc, reported on 15 May 2008, and recommended that the right be extended to those with parental responsibility for children under 17.⁵⁵ The Walsh review also considered whether the right should be extended to all employees, but concluded that this was not the right approach. Instead, she stated that she would "encourage all employers, when looking at flexible working arrangements, to consider including all employees".⁵⁶

In 2008 the Labour Government published a consultation on implementing the recommendations of the Walsh review.⁵⁷ Its response to the consultation was published in March 2009,⁵⁸ and confirmed its intention to extend the right to request flexible working to those with parental responsibility for children under 17.⁵⁹ The extension was due to take place from April 2009, despite earlier speculation in the press that the new Secretary of State for Business, Lord Mandelson, had wanted to postpone the extension.⁶⁰

The *Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2009*⁶¹ came into effect on 6 April 2009.

⁵³ DTI, [Maternity and Paternity Rights and Benefits: Survey of employees 2005](#), March 2006, p7&61

⁵⁴ [HC Deb 6 November 2007, c27](#)

⁵⁵ Imelda Walsh, [Flexible working: A review of how to extend the right to request flexible working to parents of older children](#), May 2008, p19

⁵⁶ *Ibid*, p8

⁵⁷ BERR, [Consultation on Implementing the Recommendations of Imelda Walsh's Independent Review](#), August 2008

⁵⁸ BERR, [Extending the Right to Request Flexible Working to Parents of Older Children: Government Response to Consultation on Implementing the Recommendations of Imelda Walsh's Independent Review](#), March 2009

⁵⁹ *Ibid*, p4; [HC Deb 17 December 2008, c1095](#)

⁶⁰ See for example "Mandelson faces union backlash" *Financial Times*, 20 October 2008

⁶¹ SI 2009 No. 595

They amended regulation 3A of the [Flexible Working \(Eligibility, Complaints and Remedies\) Regulations 2002](#),⁶² extending the statutory entitlements to those with parental responsibility for children under 17.

7.2 Coalition Government policy

In its 2010 manifesto, the Conservative Party pledged to extend the right to request flexible working to all parents with children under the age of 18, and to consider extending the right to all employees.⁶³ The Liberal Democrats' 2010 manifesto pledged to extend the right to all employees.⁶⁴ The [Coalition Agreement](#) contained the following commitment: "We will extend the right to request flexible working to all employees, consulting with business on how best to do so".⁶⁵

On 30 September 2010 the Coalition Government announced plans – as an interim step, prior to an extension to all employees - to extend the right to request flexible working to all parents of children under the age of 18.⁶⁶ This was due to be implemented by [Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2010](#),⁶⁷ however, the Government decided to repeal the Regulations before they came into force. The then Parliamentary Under-Secretary of State for Business, Innovation and Skills, Ed Davey, explained the repeal in a Written Ministerial Statement:

I am announcing today that I intend to repeal shortly the regulations on extending the right to request flexible working to parents of 17-year-olds that were laid before Parliament on 16 December 2010 and that were due to come into force on the 6 April 2011.... it has recently become clear that this small extension to the flexible working regulations could be an unhelpful complication at this important point in the UK's economic recovery when employers need to focus on growth and creating jobs. We therefore intend to repeal these regulations, which will also avoid multiple changes to the flexible working regulations over the coming years.⁶⁸

The Statement was accompanied by a BIS press release, which set out further details of the Government's plans, and stated that "the Government is committed to extending the right to request flexible working to all employees in due course, as set out in the Coalition Agreement", adding that "the aim behind delaying the extension of flexible working is to allow businesses breathing space in the current economic climate".⁶⁹ As noted above, the commitment to extend the right to all employees was taken forward by the [Children and Families Act 2014](#).

⁶² SI 2002 No. 3236

⁶³ *Invitation to Join the Government of Britain – The Conservative Manifesto 2010*, p42

⁶⁴ *Liberal Democrat Manifesto 2010*, pp30&50

⁶⁵ HM Government, [The Coalition: our programme for government](#), May 2010, p18

⁶⁶ BIS, [Family friendly working – next steps](#), BIS website, 1 October 2010 (accessed on 8 February 2013)

⁶⁷ SI 2010 No. 2991

⁶⁸ [HC Deb 18 March 2011, c31WS](#)

⁶⁹ BIS, [Vince Cable bins business red tape](#), 18 Mar 2011; and BIS press release, [Government bins business red tape](#), 18 March 2011

7.3 Equality and Human Rights Commission proposals

On 30 March 2009 the Equality and Human Rights Commission (EHRC) published a report, *Working Better*, which made recommendations for changes to the flexible working and parental leave regimes.⁷⁰

In regard to flexible working, EHRC research found that general awareness of the right to request a flexible working pattern among parents was low.⁷¹ It also said that flexibility is still perceived, widely but incorrectly, as the preserve of mothers of young children.⁷² It said that the UK legislation was limited because it does not provide for a reversion to the previous full-time hours after a period of flexible working. It stated that this had played a role in reinforcing the gender pay gap:

Since more women than men request reduced-hours working, this can reinforce gender inequality by confining them to part-time 'Mummy track' careers, with lower earnings, low prospects of returning to full-time working, and perceptions of lower commitment to the organisation. Laws in some other countries include rights to return to full-time work or increase hours.

This reflects a concern among policy-makers about involuntary part-time work and the marginalisation of many part-time workers in jobs with little scope for advancement. Previous research (Smeaton et al, 2007) has found that a third of UK employers do not consider part-timers when filling full-time vacancies. Within Europe, women in the UK are the least likely to change from full-time to part-time work without downgrading (Manning and Petrongolo, 2008). Most requests for flexible working come from women. But a continuing shortage of high quality flexible jobs means that those who choose reduced working hours often have to accept reduced status, pay and career prospects. This reinforces the gender pay gap. Moreover, as pointed out in Chapter 2, flexible working is a good way to alleviate child poverty, but lone parents are less likely to have access to it.⁷³

The report made a number of recommendations, specifically addressed to Government, which included extending the right to request flexible working to all employees and introducing a formal right to request a return to a full time working pattern:

- Introduce a formal right to request a return to full-time work after a previous change in working hours, to be negotiated subject to business needs
- Remove the 26 weeks eligibility criteria for right to request
- Extend the right to request to all employees alongside consideration of our proposals for improvements, including greater flexibility, to parental leave.⁷⁴

⁷⁰ Equality and Human Rights Commission, [Working Better: Meeting the changing needs of families, workers and employers in the 21st century](#), 30 March 2009

⁷¹ Equality and Human Rights Commission, [Working Better](#), 30 March 2009, p62

⁷² Ibid, p52

⁷³ Equality and Human Rights Commission, *Working Better*, 30 March 2009, p57

⁷⁴ Equality and Human Rights Commission, *Working Better*, 30 March 2009, p63

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