

# Final stage impact assessment

Title: Making flexible working the default

Type of measure: Primary/Secondary Legislation

Department or agency: Department for Business and Trade

IA number: DBT-041-24-CMRR

RPC reference number: ...

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## 1. Summary of proposal

1. Employees have an existing right to make a statutory request for flexible working from their first day in a job. Employees can request to change the number of hours they work, when they start or finish, the days they work, and where they work. Employers must deal with statutory requests in a reasonable manner, can refuse a request if they have a business reason for doing so and must consult the employee before rejecting (e.g. the employer could invite the employee to a consultation meeting to discuss the request).
2. The Plan to Make Work Pay committed “*to make flexible working the default from day one for all workers, except where it is not reasonably feasible*”. The Employment Rights Bill will amend existing legislation so that:
  - Employers can only reject a flexible working request where it is *reasonable* to do so on the grounds of one (or more) of the eight business reasons (which are already set out in primary legislation).
  - If an employer wants to reject a request, they will need to consult with the employee (as they currently do) but, in doing so, follow a specified process, which will be set out via secondary legislation.
  - If an employer rejects a request, they must explain to the employee why their decision is reasonable.

3. Alongside these legislative changes, Government intends to publish a Code of Practice to assist employers to consider requests and meet their obligations under the new reasonableness test.
4. Currently if an employee takes a claim on flexible working to an employment tribunal, the claim may succeed only if the employer's decision was based on incorrect facts or if the manner the employer dealt with the application was not reasonable. These changes mean that employment tribunals will also be able to consider the reasonableness of an employer's decision to accept or reject a request.
5. Taken together these changes may help more people access flexible working more easily, whilst retaining employers' ability to reject requests when it is not feasible to accommodate the change.
6. The eight valid business reasons for refusing a flexible working request will not change. They are:
  - extra costs that will be a burden on the business
  - the work cannot be reorganised among other staff
  - people cannot be recruited to do the work
  - flexible working will negatively affect quality
  - flexible working will negatively affect performance
  - the business' ability to meet customer demand will be negatively affected
  - there is a lack of work to do during the proposed working times
  - the business is planning structural changes

## 2. Strategic case for proposed regulation

7. Having the ability to vary the time, hours and place of work is key to the functioning of the UK's flexible labour market. The right to request flexible working provides a framework, alongside the wider cultural changes in flexible working, through which employers and employees can remove barriers to flexible working.
8. Although there is a strong demand for more flexible jobs<sup>1</sup>, the number of employees that request flexible working is relatively low<sup>2</sup>. The proposed changes aim to make it easier to access flexible working and ensure requests for flexible working are only rejected where it is reasonable to do so. This could encourage more employees to request flexible working thus allowing a greater number of employees and employers to realise the documented benefits (e.g., improved employee wellbeing, staff retention and productivity<sup>3</sup>).
9. The Government intervenes in the labour market to extend individual employment rights for efficiency and equity reasons. A well-functioning labour market, which provides necessary rights and protections, provides employees with high quality jobs while also empowering business to operate competitively.

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<sup>1</sup> Timewise. ['The TimeWise Flexible Jobs Index 2023'](#). 2023 (accessed on 9 Oct 2024)

<sup>2</sup> Department for Business, Energy, Industry and Strategy. ['Post-Implementation Review of the 2014 flexible working regulations'](#). 2021 (accessed on 9 Oct 2024)

<sup>3</sup> See the 'Problem under consideration and rationale for intervention' section of this IA for a fuller discussion.

### 3. SMART objectives for intervention

10. The aims of this proposal are to:

- Improve access to flexible working by putting more emphasis on employers accepting flexible working requests where they are feasible.
- Allow an Employment Tribunal to scrutinise whether the decision to reject a flexible working request was reasonable, thereby encouraging employers to more carefully consider flexible working requests.
- Improve employee-employer discussions on flexible working and transparency in how a decision for refusing flexible working is reached.

11. The intended outcomes are:

- Enable, as much as possible, a broad range of employees and employers to benefit from flexible working arrangements.
- That employers accept flexible working requests except where it is not 'reasonably' feasible for them to be accommodated.

12. These reforms contribute to the Government's agenda to support working people and encourage economic growth. Recognising that many employers already provide good, flexible conditions for their workers because they know that doing so improves productivity, morale and retention, introducing clearer requirements on employers to consider flexible working requests means that working people can enjoy a better work-life balance that benefits their wellbeing and productivity. This supports the objective around tackling inactivity and getting more people into work by ensuring that employers have strong talent pools to hire from to grow the economy.

### 4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives

13. Two options have been carried forward for the purpose of the analysis.

#### Option 1: Do Nothing

- "Status Quo" or "no change" from the current system, enabling employers to reject a request on 8 valid business grounds, irrespective whether it is reasonable to rely on those grounds.

#### Option 2: Making flexible working the default (where not unreasonable)

- Changing legislation so that employers can only reject a flexible working request where they consider one or more of the eight business reasons (set out in legislation) applies, and it is reasonable for the employer to reject the request on those grounds (preferred).

14. The proposed option is to legislate to ensure:

- Employers can only reject a flexible working request where it is *reasonable* to do so on the grounds of one (or more) of the eight business reasons, which are already set out in primary legislation.
- If an employer wants to reject a request, they will need to consult with the employee and follow a specified process, which will be set out via secondary legislation.

- If an employer rejects a request, they must explain to the employee why their decision is reasonable.
- Employment tribunals will be able to consider the reasonableness of an employer's decision to reject a request.

15. The preferred option achieves the policy objectives by:

- Making clear that employee flexible working requests must be accepted, unless the employer can demonstrate and explain why their rejection is reasonable.
- Encouraging employers to consider requests more carefully and increasing the likelihood that employee requests will be successful.
- Encouraging and facilitating dialogue between employers and employees, to find arrangements that work for both parties.
- Providing recourse to the Employment Tribunal if an employer had unreasonably rejected a request.

## 5. Summary of long-list and alternatives

16. Given that there is further policy development and consultation to come, our Impact Assessment (IA) at this stage provides high-level analysis of the impacts that could follow from primary powers and are not assessments of a specific implementation approach. Nevertheless, consideration was still given to non-regulatory options and the inclusion of small and micro businesses.

17. The policy was a manifesto pledge set out by the Government's 2024 'Plan to Make Work Pay' (MWP). It committed "*to make flexible working the default from day one for all workers, except where it is not reasonably feasible*". This reform requires amendments to existing legislation to encourage employers to consider more carefully a flexible working request and accept requests except where it is not reasonably feasible to do so. A 'do-nothing' approach and non-regulatory reforms are insufficient to meet the requirements of this pledge.

18. The preferred option is expected to be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all employees deserve the same access to the right to request flexible working and the same level of consideration from employers, irrespective of the size of the organisation they work for. A full Small and Micro Business Assessment can be found in the evidence base section of this IA.

## 6. Description of shortlisted policy options carried forward

19. Two broad options have been carried forward for the purpose of the analysis:

### **Option 1: Do Nothing.**

- "Status Quo" or "no change" from the current system, enabling employers to reject a request on 8 valid business grounds, irrespective whether it is reasonable to rely on those grounds.

**Making flexible working the default (where not unreasonable)** by introducing stricter requirements on employers before rejecting a request, as described above.

20. The policy is expected to be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all employees deserve access to the right to request flexible working and the same level of consideration from employers, irrespective of the size of the organisation they work for.
21. Analysis of DBT’s 2023 Business Population Estimates<sup>4</sup> finds that overall, 96.5% of businesses in Great Britain are small and micro businesses (fewer than 50 employees) and these businesses account for 29.0% of all employees.
22. While it is recognised that smaller businesses may face challenges due to their limited resources, the broader societal benefits of increased worker security and fairness in the labour market justify the policy’s scope. The Flexible Working Post Implementation Review found that the availability of at least one form of flexible working arrangement within workplaces is almost universal across the British economy. Smaller employers (5-49 staff) are less likely (85%) to report any staff taking up flexible working compared with those in larger workplaces (99%). Staff employed in larger firms (250 or more staff) were more likely to report taking up flexible working (64%) than medium-sized workplaces (55%). Nearly three in five (58%) staff members in smaller firms (5-49 employees) reported working with any form of flexible working arrangement. Unsurprisingly, larger employers are more than twice as likely to receive flexible working requests than smaller workplaces.
23. Small and micro businesses are not expected to bare a disproportionate share of overall costs for these reforms.

## 7. Regulatory scorecard for preferred option

### Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare		Directional rating
		Note: Below are examples only
<b>Description of overall expected impact</b>	The overall expected impact on total welfare is uncertain. This is because it has not been possible to reliably quantify all benefits and costs for both businesses and households. In addition, it is unclear whether, and by how much, the small monetised costs to business (in the form of familiarisation and administration) will outweigh the unmonetised benefit to individuals and households.	<b>Uncertain</b> Based on all impacts (incl. non-monetised)
<b>Monetised impacts</b>	Business Costs: <ul style="list-style-type: none"> <li>• One-off familiarisation costs (£7.8 million).</li> </ul>	<b>Negative</b> Based on likely £13.2m NPSV

<sup>4</sup> Department for Business and Trade. [Business Population Estimates](#). 2023 (accessed on 9 Oct 2024)

	<ul style="list-style-type: none"> <li>Ongoing admin costs (£0.6 million).</li> </ul> <p>Total £-13.0m NPSV</p>	
<b>Non-monetised impacts</b>	<p>Business Costs:</p> <ul style="list-style-type: none"> <li>Costs of accommodating flexible working requests are not included as they are considered discretionary – employers can reject if they impose undue cost on the business. Therefore, rational employers only accept when the benefit outweighs the costs.</li> </ul> <p>Business Benefits:</p> <ul style="list-style-type: none"> <li>Non-monetizable benefits (e.g. productivity, employee loyalty, worker satisfaction, retaining knowledge and skills). Employers may have strong talent pools to hire from to grow the economy. Attracting and retaining more employees.</li> </ul> <p>Household Benefits:</p> <ul style="list-style-type: none"> <li>Non-monetizable benefits (e.g. job satisfaction, productivity, work-life balance, wellbeing impacts by remaining in employment retaining knowledge and skills).</li> </ul>	<b>Positive</b>
<b>Any significant or adverse distributional impacts?</b>	The right to request flexible working already covers all employees from day one of employment. Flexible working has traditionally been of particular benefit to some groups (parents and carers etc) over others but more recently has seen broad take-up. There are no significant or adverse distributional impacts.	<b>Neutral</b>

## (2) Expected impacts on businesses

<b>Description of overall business impact</b>	<p>Businesses will be impacted in 3 main ways:</p> <ul style="list-style-type: none"> <li>One-off familiarisation costs.</li> <li>Ongoing employer administration costs relating to the small amount of additional time in ensuring the reason to reject is 'reasonable'.</li> </ul>	<b>Neutral</b>
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	<ul style="list-style-type: none"> <li>• Non-monetisable benefits from securing flexible working arrangements beneficial to both employees and employers.</li> </ul> <p>Businesses only accept flexible working where the benefits outweigh the costs.</p> <p>These reforms may encourage more employees to request flexible working (if they perceive the likelihood of success has increased) which will increase admin costs. Estimates have been presented showing the impact of a 1 percentage point increase in the request rate and a 1 percentage point decrease in the rejection rate, but given the uncertainty in response to the policy these are for illustrative purposes only and are not captured in formal monetised estimates.</p>	
<p><b>Monetised impacts</b></p>	<ul style="list-style-type: none"> <li>• One-off familiarisation costs (£7.8 million)</li> <li>• Ongoing admin costs (£0.6 million)</li> </ul> <p>Business NPV £13.0m Approx net financial cost to business EANDCB £1.5m of which admin costs are £0.6.</p> <p>No pass through costs from households to business have been deducted from these figures.</p>	<p><b>Negative</b></p> <p>Based on likely business £5.2m NPV</p>
<p><b>Non-monetised impacts</b></p>	<p>Non-monetisable benefits include:</p> <p>Increased productivity, employee loyalty, worker satisfaction, knowledge and skills retention). Employers may have strong talent pools to hire from to grow the economy. Attracting and retaining more employees. Reduced costs associated with employee churn and dissatisfaction.</p> <p>Ensuring employers only reject flexible working requests where it is not 'reasonably' feasible for them to be accommodated. Employers and employees finding flexible working arrangement that is mutually beneficial – wellbeing, retention and productivity value.</p>	<p><b>Positive</b></p>
<p><b>Any significant or adverse distributional impacts?</b></p>	<p>As reported in the Post Implementation Review, smaller employers (5-49 staff) are less likely to report any staff taking up flexible working compared with those in larger workplaces. As expected, larger employers are more than twice as likely to receive flexible working requests than smaller workplaces of 5-49 staff.</p>	<p><b>Neutral</b></p>

	Smaller businesses may face challenges due to their limited resources but there is no evidence that these reforms have any significant or adverse impacts.	
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<b>(3) Expected impacts on households</b>		
<b>Description of overall household impact</b>	<p>The policy is expected to provide positive wellbeing impacts on employees as the gain a better understanding of the reasons why a flexible working request has been rejected and this can improve employer-employee relations.</p> <p>In addition, any associated increase in the number of flexible working arrangements reached will mean increased job satisfaction, productivity, work-life balance, wellbeing impacts by remaining in employment retaining knowledge and skills.</p>	<b>Positive</b>
<b>Monetised impacts</b>	We have not calculated any monetised impacts on individuals/households.	<b>Neutral</b>
<b>Non-monetised impacts</b>	<p>Non-monetised impacts include increased job satisfaction, productivity, work-life balance, wellbeing impacts by remaining in employment retaining knowledge and skills.</p> <p>There is evidence that most workers value hybrid working (specifically) at somewhere between zero and ten percent of their salary<sup>5</sup>.</p>	<b>Positive</b>
<b>Any significant or adverse distributional impacts?</b>	The right to request flexible working legislation already covers all employees from day one of employment. Flexible working has traditionally been of particular benefit to some groups (parents, carers, etc.) over others but more recently has seen broad uptake. There are no significant or adverse distributional impacts.	<b>Positive</b>

### Part B: Impacts on wider government priorities

<b>Category</b>	<b>Description of impact</b>	<b>Directional rating</b>
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<sup>5</sup> CMA Microeconomics Unit '[Competition and market power in the UK labour markets](#)'. 2024 (accessed on 9 Oct 2024)



<p><b>Business environment:</b></p> <p>Does the measure impact on the ease of doing business in the UK?</p>	<p>This policy is unlikely to have a significant effect on the business environment. The changes apply to all businesses and all sectors of the economy and given the small proportion of flexible working cases that are rejected; the vast majority of employers will not be affected.</p>	<p><b>Neutral</b></p>
<p><b>International Considerations:</b></p> <p>Does the measure support international trade and investment?</p>	<p>From a legal standpoint, the policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK.</p> <p>In addition, the impact is on total labour costs and therefore comparative advantage will be small. Furthermore, the preferred option will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned.</p>	<p><b>Neutral</b></p>
<p><b>Natural capital and Decarbonisation:</b></p> <p>Does the measure support commitments to improve the environment and decarbonise?</p>	<p>We expect that there is no or negligible impact on the environment, natural capital, and decarbonisation as a result of the policy. The regulation does not directly relate to environmental or decarbonisation goals.</p>	<p><b>Neutral</b></p>

## 8. Monitoring and evaluation of preferred option

24. The Government intends to undertake proportionate monitoring and evaluation of this measure. However, since policy design detail and implementation will be determined through subsequent secondary legislation it is not possible to lay out the timings and basis for this review at this stage.
25. Ahead of secondary legislation, the Government will determine the nature of the post-implementation review to develop more detailed plans for data collection and evaluation. This will include monitoring the impact of the change to assess whether the preferred option is meeting the objective(s) laid out in Section 4.
26. The monitoring and evaluation plans will likely overlap with existing review plans related to Employment Relations (Flexible Working) Act 2023.<sup>6</sup> The monitoring and PIR will assess whether the changes to the statutory framework have had a positive impact in encouraging more effective employee and employer conversations on flexible working. Stakeholder feedback will form the primary source of evidence, but we also anticipate that the series of employer and employee surveys will continue, and these surveys can be designed to capture some of the effects of these specific reforms. Data on the number of Employment Tribunal cases by jurisdiction will also indicate whether fewer employee-employer disagreements arise that require Employment Tribunal intervention.

<sup>6</sup> Department for Business, Energy, Industry and Strategy. [‘Post-Implementation Review of the 2014 flexible working regulations’](#). 2021 (accessed on 9 Oct 2024)

27. The date these reforms are to be brought into force is not yet known. A review of the changes would likely take place five years after implementation, when the reforms have had time to be sufficiently established.
28. Review objective: The objective of the review would be to assess the effectiveness of the policy in achieving the following:
- Improve access to flexible working by putting more emphasis on employers accepting flexible working requests where they are feasible.
  - Allow an Employment Tribunal to scrutinise whether the decision to reject a flexible working request was reasonable, thereby encouraging employers to more carefully consider flexible working requests.
  - Improve employer transparency around how they reach a decision for refusing flexible working which will give employees greater clarity.
  - Encourage more positive discussions between employers and employees and to encourage agreements on flexible working requests where feasible.

## **9. Minimising administrative and compliance costs for preferred option**

29. Ways of mitigating the administrative burdens on businesses will be tested via consultation, including ensuring that businesses have access to guidance and advice to navigate the changes and prevent disputes from escalating to tribunal. Recognising that smaller businesses may have limited resources compared to larger businesses, ways of mitigating impacts on smaller businesses will be tested via consultation.

# Summary: Analysis and Evidence

Price base year:

2023

PV base year:

2025

This table may be reformatted provided the side-by-side comparison of options is retained	<b>1. Business as usual</b> (Used as a baseline for the analysis)	<b>3. Preferred way forward</b> (if not do-minimum)
<b>Net present social value</b> (with brief description, including ranges, of individual costs and benefits)	Used as baseline for the analysis	Total £ NPSV is expected to <u>-£13.0 million</u> . The monetised £NPSV does not include non-monetised benefits to employees and employers.
<b>Public sector financial costs</b> (with brief description, including ranges)	Used as baseline for the analysis	Total public sector financial costs are expected to be nil/negligible as the impact on ACAS and the Employment Tribunal system, in terms of caseload, is assumed to be small. In addition, the impact on the public sector (as an employer) is assumed to be small as employers retain the ability to reject requests if they impose extra costs.
<b>Significant un-quantified benefits and costs</b> (description, with scale where possible)	Used as baseline for the analysis	Non-monetised impacts include better work-life balance that benefits employee wellbeing and productivity. Employers may have strong talent pools to hire from to grow the economy. Attracting and retaining more employees. The right to request flexible working already covers over 28m employees from the first day of employment, nudging employers to clarify their decision making and potentially accept more requests could impact 35,600 flexible working requests that are rejected each year.
<b>Key risks</b> (and risk costs, and optimism bias, where relevant)	Used as baseline for the analysis	Policy detail is required to understand the extent of the requirement on employers to more objectively justify a decision to reject a flexible working request. The analysis makes use of the best available evidence, but uncertainty remains around the request rate, share of 'formal' flexible working request (those made under the statutory framework) and rejection rate assumptions.
<b>Results of sensitivity analysis</b>	Used as baseline for the analysis	Sensitivity analysis has been undertaken to account for the uncertainty in the estimate of flexible working request which are made under the statutory framework. Assumptions have been taken from previous Impact Assessments and tested with relevant stakeholders. Where possible, evidence gaps will be tested during consultation.

# Evidence base

## Problem under consideration, with business as usual, and rationale for intervention

30. Flexible working is key to helping people balance work with other responsibilities in their personal lives, such as childcare. There are particular times in people's working lives when they may need extra flexibility to balance their work with other commitments – for instance as they approach retirement, recover from a longer-term illness, pursue study or retraining, provide care for a loved one, or when they have a child or as childcare arrangements change.
31. The availability of workplace flexibility is positively related to employee engagement and self-reported job performance. In being offered flexible working, employees perceive that employers care about their wellbeing which makes them feel satisfied at work.<sup>7</sup>
32. The current system means people may be put off making a flexible working request, believing it won't be accepted. An employer only needs to consider one of the eight valid business reasons for refusing a request applies. This can be challenged at Tribunal, but only on the basis that the correct process was not followed, or that the decision was made based on incorrect facts.
33. In September 2021, the Government published a Post Implementation Review (PIR) of the 2014 Flexible Working Regulations<sup>8</sup> and made the following findings (mainly based on pre- and early pandemic data):
  - 57% of employees in Britain were aware that any employee has the legal right to request a flexible working arrangement.
  - The majority of employees (80%) and employers (96%) report availability of flexible working at their workplace.
  - 4% of employees a year make a request for flexible working in writing which may generate a statutory request.
  - The following groups were more likely to be working flexibly:
    - Female employees (64%) than male employees (54%).
    - Parents (64%) and carers (63%) are slightly higher than among employees overall (59%).
    - Part-time working was more commonly reported among employees aged 65 and older (31%) and those aged 16-24 (30%) than other age groups.
    - Asian/Asian British employees were more likely to report flexible working (66%) than employees of White/White British ethnicity (58%).
    - London and the South East based employees (62 per cent respectively) than those in the East Midlands (51 per cent).
    - Staff employed in larger firms of 250 or more staff (64%) than those in medium-sized workplaces (55%) and those in smaller firms of 1-49 employees (58%).
    - Those working in Managerial, Senior Directors (64%), Professional (69%) and Associate Professional and Technical (65%) than those working in Skilled Trades (36%) and Process, Plant and Machine operatives (25%).

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<sup>7</sup> Bal, P.M., and De Lange, A.H. (2014) 'From flexibility human resource management to employee engagement and perceived job performance across the lifespan: A multi-sample study' *Journal of Occupational and Organisational Psychology*, Vol 88, Issue 1: pp 126–154.

<sup>8</sup> Department for Business, Energy, Industry and Strategy. '[Post-Implementation Review of the 2014 flexible working regulations](#)'. 2021 (accessed on 9 Oct 2024)

- By sector, those employees in Business and Professional Services (70%), and Public Administration and Health (64%) than those in Construction (43%) and Transport (34%) sectors.
- In 83% of workplaces no requests had been turned down. In 9% of workplaces a request had been turned down, but in around half of these cases it was only one request in the organisation that had been turned down. The remaining 8% of workplaces did not know if any requests had been rejected. The most common reasons given were business needs/operational reasons, cited by 30% of those who had turned down a request for flexible working, followed by the disruption it would cause, reported by 23% of workplaces.
  - Larger employers of more than 250 staff were three times more likely (30%) to turn down a flexible working request than the economy average (9%). Education (15%), Public administration and defence (15%) and Manufacturing sector employers (14%) were also more likely to report turning down a flexible working request than workplaces overall (9%).
  - 40% of employees who did not currently have a flexible working arrangement in 2018 thought it is likely that their employer would agree to them working flexibly. This has remained largely unchanged since 2012 (38%).
  - There has been a decrease in the proportion of employees without a flexible working arrangement who think it is unlikely that their employer would agree to them working flexibly, from 38% in 2012 prior to the regulatory extension, to 34% in 2018.
  - Employees tend to consider many factors when deciding to work flexibly and best practice suggests that employees benefit from support when making formal requests to their employer to work flexibly using the right to request. Further support from colleagues, particularly managers that have been trained on family-supportive behaviours could also facilitate more flexible working.
34. The experience of the Covid-19 pandemic has shown many organisations that they can do things differently in the workplace as the pandemic necessitated large scale flexible working for many employees. In particular, home-working but also adjustments to start and finish times. While use of flexible working has fallen back from the peak of 46.6% of people doing at least some work from home in April 2020, it remains higher than before Covid-19. In addition, the Business Insights and Conditions Survey shows 20.3% of all businesses (Feb to Mar 2024) reported using or intending to use increased homeworking as a permanent business model and 66.0% of businesses reported (Sep-Oct 2023) that the number of days a week employees will work from home in the next 12 months will 'likely stay the same'.
35. The right to request flexible working provides a framework, alongside the wider cultural changes we have seen, through which employers and employees can realise the benefits of flexible working. We know that there is a strong demand for more flexible jobs and scope for employers to go further to realise the benefits, for example:
- According to the 2023 Flexible Jobs Index, while 9 in 10 want to work flexibly, only 6 in 10 employees are currently working flexibly and only 3 in 10 jobs are advertised with flexible working.<sup>9</sup>

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<sup>9</sup> Timewise. [‘The TimeWise Flexible Jobs Index 2023’](#). 2023 (accessed on 9 Oct 2024)

- 9 in 10 employees surveyed for HSBC consider flexible working to be a key motivator to their productivity at work (89% – even more than financial incentives (77%).<sup>10</sup>
- According to a 2023 Chartered Institute for Professional Development (CIPD) survey, almost two-fifths (38%) of organisations say that more home/hybrid working has increased their organisation’s productivity/efficiency. Just 13% say it has decreased their organisation’s productivity/efficiency.<sup>11</sup> Additionally, research by the Equal Parenting Project found that 75% of UK managers believe flexible working increases productivity and 62.5% believe it boosts motivation.<sup>12</sup>
- The CBI Employment Trends survey found that 99% of all businesses surveyed believed that a flexible workforce is vital or important to competitiveness and the prospects for business investment and job creation.<sup>13</sup>

36. Wider research indicates that flexible working can unlock opportunities for growth. In the absence of suitable working hours or locations, groups of people are either not employed, have retired early, or are working below their potential<sup>14</sup>. Additionally, the Flexible Working PIR showed that flexible working can reduce vacancy costs; increase skill retention; enhance business performance; and reduce staff absenteeism rates.<sup>15</sup>

37. In the context of labour shortages in the economy, there is a role for flexible working in attracting and keeping people in work. Research conducted by the Behavioural Insights Team<sup>16</sup> has shown that offering flexible working can attract up to 30% more applicants to job vacancies (helping employers to recruit from a more diverse talent pool) and a recent ONS publication revealed that older workers working flexibly would be more likely to be planning to retire later<sup>17</sup>. The CIPD<sup>18</sup> reported an Institute of Employment Studies paper that found higher levels of engagement, experienced by working flexibly, can reduce staff turnover by 87%. Conversely, the Modern Families Index<sup>19</sup> finds that flight risk has increased with 42% of working parents likely to look for new employment in the next twelve months. After pay, seeking better family support is highest on the list of reasons for leaving (32% of respondents).

38. There are potentially three market failures related to flexible working in the economy: positive externalities, equality, and asymmetric information. All can be addressed through this policy reform.

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<sup>10</sup> London School of Business & Finance. [‘Flexible working is a key employee motivator, research shows’](#). 2023 (accessed on 9 Oct 2024)

<sup>11</sup> CIPD. [‘An update on flexible and hybrid working practices’](#). 2022 (accessed on 9 Oct 2024)

<sup>12</sup> University of Birmingham. [‘Managers believe flexible working can boost productivity’](#). 2023 (accessed on 9 Oct 2024)

<sup>13</sup> Pertemps. [‘Employment Trends Survey 2017’](#). 2017 (accessed on 9 Oct 2024)

<sup>14</sup> Department for Business, Innovation & Skills. [‘Work life balance: business costs and benefits - literature review’](#). 2014 (accessed on 9 Oct 2024)

<sup>15</sup> Department for Business, Energy, Industry and Strategy. [‘Post-Implementation Review of the 2014 flexible working regulations’](#). 2021 (accessed on 9 Oct 2024)

<sup>16</sup> Government Equalities Office and Women and Equalities Office. [‘Encouraging employers to advertise jobs as flexible’](#). 2021 (accessed on 9 Oct 2024)

<sup>17</sup> Office for National Statistics. [‘Living longer: impact of working from home on older workers’](#). 2021 (accessed on 9 Oct 2024)

<sup>18</sup> CIPD. [‘Flexible working business case’](#). 2019 (accessed on 9 Oct 2024)

<sup>19</sup> Bright Horizons. [‘Modern Family Index 2024 Report’](#). 2024 (accessed on 9 Oct 2024)

## Positive externalities

39. This occurs when the consumption or production of a good, causes a benefit to a third party. For example, when business's production increases the well-being to others but the firm is not compensated by those others who benefit. The Flexible Working (PIR) has highlighted positive externalities to both participation and satisfaction with work-life balance. For participation, an informal study carried out prior to the Covid-19 pandemic made reference to the untapped productive potential in the economy, whereby segments of the population could be enabled to work more productively (full-timers), work more hours (part-timers) or could be more willing to work (unemployed/inactive) if provided the opportunity to work flexibly.<sup>20</sup> Over half of employees (55%) working flexibly in the 2020 Employee Rights Survey said that a positive consequence of these arrangements was a better work-life balance.<sup>21</sup>
40. An ONS Lifestyle Survey (Wave 2) finds that among those who would consider returning to work (58%), the most important factors when choosing a paid job were flexible working hours (32%), good pay (23%) and being able to work from home (12%). Flexibility in the workplace were also important factors to those currently in work. Among adults aged 50 to 65 years who said they currently had a paid job, the most common factors they considered important were their main job offering, 'permanent employment' (61%) and flexible working hours (48%).<sup>22</sup>
41. Government policy can help ensure that the wider societal benefits from flexible working are maximised<sup>23</sup>. For example, these wider societal benefits can result from helping parents to manage their childcare responsibilities or help carers balance their caring commitments with work, meaning that there is less demand on the state to support those who have not felt able to stay in employment.

## Equality

42. It is important that we continue to ensure equality and fairness for both employees and employers in considering requests for flexible working. It is also important that we support employers to achieve the business benefits where these are to be gained from accommodating requests. The proposed reforms will help to ensure that the right to request is applied fairly and transparently. The reforms will support all employees, but we know from the 2021 PIR of the extension to flexible working, that some underrepresented and disadvantaged groups (e.g. females, those aged 16-24 and 65+, Asian/Asian British, etc.) are more likely to report availability and use of specific forms of flexible working.

## Asymmetric information

43. This type of market failure exists when one party has more information than another party and uses that as an advantage. The Flexible Working PIR<sup>24</sup> assessing the impact of the 2014 extension highlighted an information failure (or asymmetric information) in employers

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<sup>20</sup> CEBR. 'The productive value of the untapped workforce: A study into the potential economic impacts of a flexible working culture, Centre for Economic and Business Research'. 2014

<sup>21</sup> Department for Business and Trade. 'Employee Rights Survey 2020'. (forthcoming)

<sup>22</sup> Office for National Statistics. '[Reasons for workers aged over 50 years leaving employment since the start of the coronavirus pandemic: wave 2](#)'. 2022 (accessed on 9 Oct 2024)

<sup>23</sup> Department for Business and Trade. 'Employee Rights Survey 2020'. (forthcoming)

<sup>24</sup> Department for Business, Energy, Industry and Strategy. '[Post-Implementation Review of the 2014 flexible working regulations](#)'. 2021 (accessed on 9 Oct 2024)



understanding the benefits of flexible working and addressing “cultural expectations” that flexible working only has benefits for some groups of employees (e.g. parents and carers). Whilst there is a likelihood that this information failure has improved through the pandemic, awareness statistics (cited in the PIR) suggest there is still some scope for improvement. These reforms may encourage employers to consider and embed flexible working for all employees. Additionally, the PIR highlighted that there is still a risk that there are negative perceptions of how flexible working may impact career consequences and it is important to continue to tackle this. Increasing the requirements on employers around providing a reasonable justification for refusing a request may encourage them to consider more carefully how to maximise flexible working to benefit their business and support their employees. This could in turn help to remove any stigma associated with flexible working.

#### Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

44. We have made use of the available evidence base to model the costs of reforming the existing framework. Where relevant, we have used methodology from similar family-related leave policies to model the impacts on business. We have drawn on the conclusions made in the PIR of the 2014 extension to Flexible Working and used relevant survey evidence, from the Management and Wellbeing Practices Survey<sup>25</sup> and the forthcoming Employee Rights Survey<sup>26</sup>, to feed into the cost modelling.

#### **Policy objective**

45. The proposed reforms to Flexible Working aim to:

- Improve access to flexible working by putting more emphasis on employers accepting flexible working requests where they are feasible.
- Allow an Employment Tribunal to scrutinise whether the decision to reject a flexible working request was reasonable, thereby encouraging employers to more carefully consider flexible working requests.
- Improve employee-employer discussions and transparency in how a decision for refusing flexible working is reached.

46. We will monitor the number of Employment Tribunal jurisdictional complaints received under the ‘Suffer a detriment and/or dismissal for claiming under the flexible working regulations or be subject to a breach of procedure’ to identify whether these reforms have had an impact on Employment Tribunal caseload. The directional impact on ET caseload is not clear at this stage, on one-hand introducing a new ‘reasonableness’ test creates an additional evidence for Tribunals to consider while on the other hand, encouraging employers to think more carefully before refusing requests may reduce the instances where employees consider the employer to have acted unfairly and therefore reduce the number of individuals seeking to enforce their rights through ET.

47. Further indicators of success will be captured through feedback from stakeholders (primarily representatives of employer and key employee groups that use flexible working) asking questions assessing how the reforms are working in practice and how it has impacted employer behaviour.

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<sup>25</sup> National Institute of Economic and Social Research. [‘Findings from the Management and Wellbeing Practices Survey’](#). 2023 (accessed on 9 Oct 2024)

<sup>26</sup> Department for Business and Trade. ‘Employee Rights Survey 2020’. (forthcoming)



48. We will also look to collect evidence via survey from stakeholders such as the CIPD and anticipate that the series of periodic employer and employee surveys (every 5 years etc) will represent an opportunity to capture some representative and quantitative findings of the effects of these specific reforms.
49. These objectives align with the wider Government objective to support working people and economic growth by improving the baseline set of rights means that working people can enjoy a better work-life balance that benefits their wellbeing and productivity balanced in a way to fit the workplace and the nature of work. Make Work Pay sets out the importance to ensure workers can benefit from flexible working, including opportunities for flexi-time contracts and hours that better accommodate school terms where they are not currently available, by making flexible working the default from day one for all workers, except where it is not reasonably feasible.
50. This also supports the wider objective around tackling inactivity and getting more people into work by ensuring that employers have strong talent pools to hire from to grow the economy.

### **Description of options considered**

51. As this is a manifesto commitment, a long list of policy options was not developed for this IA. However, consideration was still given to non-regulatory options and the inclusion of small and micro businesses.
52. The policy was a manifesto pledge set out by the Government's 2024 'Plan to Make Work Pay' (MWP)<sup>27</sup>. It committed "to make flexible working the default from day one for all workers, except where it is not reasonably feasible". This reform requires amendments to existing legislation to encourage employers to accept flexible working requests, except where it is not feasible. A 'do-nothing' approach and non-regulatory reforms are insufficient to meet the requirements of this pledge.

### **Summary and preferred option with description of implementation plan**

53. The preferred option will be delivered through primary and secondary legislation. Primary legislation will be required in order to enact amendments that achieve the Government's policy aims. We anticipate that the new arrangements will apply to a specific date and will be enacted through commencement orders, therefore transitional arrangements will not be required. Once the required amendments to primary legislation are in place, secondary legislation will later be required to set out much of the detail.
54. We will consult on the implementation of the Employments Rights Bill (ERB) powers, provisionally expected to be during 2025. Following consultation, the reforms will be delivered via secondary legislation.

### **NPSV: monetised and non-monetised costs and benefits of each shortlist option (including administrative burden)**

55. Impact on businesses is expected to be net negative and driven by familiarisation and small administration costs.

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<sup>27</sup> Labour. ['Labour's Plan to Make Work Pay'](#). 2024 (accessed on 9 Oct 2024)

56. The impact on households is expected to be net positive and driven by wellbeing benefits arising from employers only rejecting a flexible working request where it is not reasonably feasible for it to be accommodated. This could result in fewer requests being rejected, improved employee-employer relationships and less need for Employment Tribunal intervention to resolve disputes and conflicts.

57. There may be wider economic impacts (both positive and negative).

## **Costs and benefits to business calculations**

### **Monetisable Costs to Business**

58. The costs to employers of accommodating flexible working (e.g., re-organising work schedules, adjustments to IT systems, recruiting additional staff to cover an employee on reduced hours) have not been included for these reforms for the following reasons:

- The regulatory changes are permissive in nature as they allow, but do not force, businesses to do something. In this case, businesses must consider requests for flexible working, but they are free to reject requests on one of the 8 valid business grounds<sup>28</sup> where it is reasonable to do so (e.g., it introduces costs to business, etc.). Where an employer accepts a request for flexible working, we assume that the benefits to the business (workforce satisfaction, retention, productivity etc) outweigh the direct costs. Only where an employer rejects a request must they give consideration as to whether the reason provided was 'reasonable'.
- We assume that costs of accommodating flexible working have fallen significantly since the widespread use of portable IT (i.e., laptops and smartphones) over the past decade, increased awareness and greater use of flexible working generally (outside of the right to request legislation) and more recently large shifts to remote working and other forms of flexible working during the pandemic (at the peak of the pandemic restrictions, the share of those in employment doing some form of homeworking stood at around 45%<sup>29</sup> of the population).
- Crucially, there is further evidence that businesses are looking to or have already imbedded flexibility into everyday business functions<sup>30</sup> and encourage flexible working to reduce office costs<sup>31</sup>. This will serve to reduce the burden of accommodating particular requests under the legislation.

59. Recent reforms which require employers to consult with employees before rejecting any requests (delivered as part of the Employment Relations (Flexible Working) Act 2023)<sup>32</sup> will already (in part) prompt employers to explain their decision, identify workable alternatives, reduce the potential for conflict and possibly the need for complaints to reach employment

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<sup>28</sup> <https://www.gov.uk/flexible-working/after-the-application> (accessed on 9 Oct 2024)

<sup>29</sup> Evidence from the ONS Labour Market Survey suggested that 46.6% of people were doing some work from home in April 2020. This compares to the Opinions and Lifestyle Survey estimate of 44.6% for the period 9th to 20th April and the Business Impacts of Coronavirus survey estimate of 46.8% for the 6th to the 19th of April. See Office for National Statistics. '[Coronavirus and homeworking in the UK: April 2020](#)'. 2020

<sup>30</sup> The 'big four' auditors are a high-profile example of organisations adopting hybrid working <https://www.ft.com/content/dc461e5b-37c5-44f4-aaad-0406b82230f2> (accessed on 9 Oct 2024)

<sup>31</sup> Business in the Community. '[Boost to business from flexible working worth up to 20% of annual payroll cost, analysis finds](#)'. 2024 (accessed on 9 Oct 2024)

<sup>32</sup> Legislation.gov.uk. '[Employment Relations \(Flexible Working\) Act 2023](#)'. 2023 (accessed on 9 Oct 2024)

tribunals. This reform complements and builds on those previous reforms which should help to reduce burdens on business.

## Recurring Administration costs

### *Number of flexible working requests rejected*

60. Recurring administrative costs typically refer to the cost of administering (i.e., receiving, responding and recording) flexible working requests. However, these reforms do not introduce any significant additional administrative costs to employers as the changes make an adjustment to the existing legislative framework therefore this will only require minor modification of employers' processes to ensure that decisions to reject a request can be defended as being 'reasonable'. Given legislation came into effect in April 2024 that requires an employer to consult with an employee before rejecting a flexible working request, the reform simply means the decision given by an employer can be scrutinised at Employment Tribunal. This may mean employers 'formalise' the rationale they provide during the consultation meeting with the employee informed by Government guidance to support them in doing this. We assume an employer may spend an additional 30 minutes per leave request ensuring the reason they provide is 'reasonable'.

61. The PIR of the 2014 extension to the right to request flexible working which brought all employees with 26 weeks continuous service into scope did not find evidence of any unreasonable costs or administrative burdens on business resulting from the extension. Some employers recall making few changes, if any, to their working practices in relation to administering requests.<sup>33</sup>

62. Prior to assessing the administration costs generated by any policy option, we first have to estimate the population in scope of the right to request flexible working (i.e., all employees have the legal right to request flexible working). The Annual Population Survey estimates that there 28.5 million employees in the labour market between Jan to Dec 2023.<sup>34</sup> We have focused on 'employees' only (i.e., excluded the self-employed as they are ineligible under the right to request) as well as those based in Great Britain only (as employment law is devolved to Northern Ireland).

*Table 1: Number of flexible working requests rejected where employers will potentially need to ensure the reason to reject was 'reasonable'*

Population in Scope	Scenario	Request Rate	Share of requests made under the statutory right to request <sup>29</sup>	Rejection rate	Requests made that are rejected
28.5 million	Low	4%	10%	9%	10,200
	Central	4%	35%	9%	35,900
	High	4%	60%	9%	61,500

63. We have estimated the number of requests that are currently rejected using survey evidence which supports take-up and rejection rate assumptions and present a range based on

<sup>33</sup> Department for Business, Energy, Industry and Strategy. ['Post-Implementation Review of the 2014 flexible working regulations'](#). 2021 (accessed on 9 Oct 2024)

<sup>34</sup> DBT access to ONS Annual Population Survey, Jan to Dec 2023, microdata

requests which are made outside the formal statutory framework as these do not follow the same process. Uncertainty remains in reliably predicting employee behaviour in response to a regulatory change, but this approach makes use of the strongest available evidence and attempts to capture costs within a realistic range.

64. The 4% request rate assumption is based on evidence reported in the Flexible Working PIR which estimates the request rate from the 2018 British Social Attitudes Survey. The 9% rejection rate is also reported in the Post Implementation Review of the 2014 extension to the Right to Request<sup>35</sup> and is based on evidence reported in the Management and Wellbeing Practices Survey which found 9% of workplaces had turned down at least one flexible working request (but in around half of these cases it was only one request that had been turned down).<sup>36</sup>
65. In the central scenario, we have taken evidence from the Employee Rights Survey<sup>37</sup> which found that 35% of requests result in a contractual change, this provides a reasonable proxy of formal, or requests made under the statutory framework. However, as there is some uncertainty over the proportion requested in this way, we present a low scenario based on the previous IA produced for the 2014 extension. It found that a 10% share of requests are made under the statutory right to request framework (as opposed to informally agreed or non-statutory requests). For the high scenario, we have applied the differences between the central and low estimate to increase the share of requests made under the statutory right to request to 60%.
66. This analysis suggests that **between 10,200 and 61,500 flexible working requests are rejected each year where employers will now need to ensure that the reason they have rejected is ‘reasonable’.**

*Impact of potential increase in flexible working requests and decrease in rejection rate*

67. The analysis in Table 1 estimates the number of requests that are received and rejected at the currently observed rates. The policy aims to nudge employers to give further consideration to flexible working requests to ensure they are only rejected where it is not ‘reasonably’ feasible for them to be accommodated. This could potentially increase the number of requests and reduce the number of rejections. However, we do not have any reliable evidence to support this impact so have provided illustrative impacts based on a 1 percentage point increase in the request rate and a 1 percentage point decrease in the rejection rate (see Table 2 and Table 3)

*Table 2: Illustrative impact of 1 ppt increase in flexible working requests in response to policy reform*

Scenario	Request Rate	% of requests made under the statutory right to request <sup>29</sup>	Number of requests made under statutory framework
Before intervention	4%	35%	398,500

<sup>35</sup> Department for Business, Energy, Industry and Strategy. [‘Post-Implementation Review of the 2014 flexible working regulations’](#). 2021 (accessed on 9 Oct 2024)

<sup>36</sup> National Institute of Economic and Social Research. [‘Findings from the Management and Wellbeing Practices Survey’](#). 2023 (accessed on 9 Oct 2024)

<sup>37</sup> DBT (forthcoming) Employee Rights Survey 2020, Department for Business and Trade

After intervention	5%	35%	498,100
Difference (Additional cases)	-	-	99,600

Table 3: Illustrative impact of 1 ppt decrease in flexible working requests rejected in response to policy reform

Number of additional requests made under statutory framework (illustrative)	Rejection rate	Number of additional requests made under statutory framework that are rejected
99,600	8%	8,000

68. We assume that large and small businesses will spend the same amount of time on processing requests (30 additional mins per leave request). These reforms clarify that employers should have a reasonable basis for rejecting a flexible working request and the policy complements recent legislation that already requires employers to consult with employees before rejecting a request so this reform should not impose any significant administrative burdens. Based on 2023 Annual Survey of Hours and Earnings (ASHE) data<sup>38</sup>, we use average hourly earnings data (plus uprate to include non-wage labour costs to account for employer pensions and national insurance contributions etc) for an HR professional, to arrive at an estimate of £31.83 per hour. For firms with fewer than 50 employees, we estimate the wage for a Manager/Director (as smaller companies are less likely to have a dedicated HR function) to arrive at an estimate hourly wage rate of £28.86 per hour. The steps outlined in the figure below show how administration costs are calculated.

#### Figure 1: Administration costs calculation

$$\text{Administration costs} = P \times R \times F \times RR \times (\text{unit cost of a request})$$

Where:

**P** is the population of interest (all employees);

**R** is the request rate for flexible working (assumed to be 4%<sup>25</sup> in the central case);

**F** is the share of requests (35% in the central case) which are made under the statutory right to request (where  $1 - F = \text{Informal request}$ );

**RR** is the share of those requests which have been rejected (and as above is assumed to be 9%);

**Unit cost to employer to ensure 'reasonable' decision** = average time to ensure decision can be defended as 'reasonable' if it came to an Employment Tribunal a request x hourly wage of individuals responsible for reviewing/making decision.

69. Employer administration costs will be incurred from the point the employer receives a request, irrespective of whether they accept or reject the request. Any further costs associated with accepting a statutory request (e.g. one that changes the terms of the employee's contract) are excluded on the basis that employers can still reject requests on cost grounds and we assume rationale employers only accept requests where the benefits outweigh the costs.

<sup>38</sup> Office for National Statistics. ['Employee earnings in the UK: 2023'](#). 2023 (accessed on 9 Oct 2024)

Table 4: Total Administration costs by business size

	Low Estimate	Best Estimate	High Estimate
No. of flexible working requests rejected	10,200	35,900	61,500
Large firms			
Flexible working requests rejected in employers with 50 or more employees	7,300	25,500	43,700
Time per case (per hour)	0.5	0.5	0.5
Upated hourly rate of HR Manager	£31.83	£31.83	£31.83
Total cost to business with =>50 employees	£0.1m	£0.4m	£0.7m
Small firms			
Flexible working requests rejected in employers with up to 49 employees	3,000	10,400	17,800
Time per case (hours)	0.5	0.5	0.5
Upated hourly rate of Manager/Director	£28.86	£28.86	£28.86
Small business total	<i>Less than £0.1m</i>	£0.1m	£0.3m
<b>Total Administration Costs</b>	<b>£0.2m</b>	<b>£0.6m</b>	<b>£1.0m</b>

70. The costs range from a low of £0.2 million to a high of £1.0 million. The **total administration costs of introducing a ‘reasonableness test’ for employers when rejecting a flexible working request is £0.6 million in the central case.**

*Illustrative additional admin costs (ongoing)*

71. To show the hypothetical impact of the reform increasing the flexible working request rate by 1 percentage point (from 4% to 5%) and a similar decrease in the rejection rate (from 8% to 7%) we apply the same assumptions around unit costs to employers to estimate illustrative additional administration costs. For all 99,600 additional requests, we assume employers would spend 0.5 hours reviewing a request before deciding whether it can be accommodated. This is consistent with the approach taken in the 2023 IA which made the right to request flexible working a day one right.<sup>39</sup> In addition, we assume that employers would now reject 8% of flexible working request and for these cases they would need to spend a further 0.5 hours to ensure the reason for rejecting is ‘reasonable’, this is consistent

<sup>39</sup> Department for Business and Trade. [‘The Flexible Working \(Amendment\) Regulations 2023’](#). 2023 (accessed on 9 Oct 2024)



with the approach taken in the analysis based on the currently observed request and rejection rate.

72. Table 5 below provides illustrative additional admin costs to business of £1.7m per annum if the reforms drive an increase in requests and decrease in rejections.

*Table 5: Illustrative costs of additional admin costs, central case*

	Illustrative cost in central case
Number of additional flexible working requests (illustrative)	99,600
Time per case (per hour)	0.5
Upated hourly rate of HR Manager	£31.83
Total Admin cost	£1.6m
Number of additional flexible working requests that are rejected and require employers to provide 'reasonable' reason (illustrative)	8,000
Time per case (per hour)	0.5
Upated hourly rate of HR Manager	£31.83
Total Admin cost	£0.1m
<b>Total additional admin associated</b>	<b>£1.7m</b>

#### Familiarisation Costs

73. New employment reforms typically introduce costs to business in having to familiarise with the new requirements. Familiarisation with the legislation is illustrative at this stage but is assumed to consist of reading and understanding the legislation, and informing staff within the organisation.

74. However, it is not possible to reliably estimate the cost of familiarisation at this stage as further policy work is required to understand how 'reasonable' will be judged. For the purposes of illustration, familiarisation time is assumed to be 10 mins. As described in the policy background section, a package of flexible working reforms came into force in April 2024. The change proposed here will complement previous reforms, for example, the requirement on employers to consult with employees before rejecting a request should mean that they have already started to consider whether their decision is 'reasonable' and if alternative flexible working arrangements can be agreed.

75. Introducing this reform at a similar time will improve awareness and compliance for both businesses and employees. We expect some businesses may even familiarise themselves with all of the changes at the same time. We have assumed that the time taken to familiarise is the same for SMEs and non-SMEs.

76. To estimate the number of businesses impacted we use DBT Business Population Estimates (2023)<sup>40</sup> and strip out figures for Northern Ireland to ensure businesses in Great Britain only are captured. We also remove those businesses with zero employees<sup>41</sup>. We then estimate

<sup>40</sup> Office for National Statistics. '[Business Population Estimates 2023](#)'. 2023 (accessed on 9 Oct 2024)

<sup>41</sup> The Business Population Estimates only provides a category for the public sector for businesses which combines businesses with zero or one employee. To remove those with zero employees, we have used the

total administration cost to business based on the number of employees in those businesses that make requests that are rejected.

77. The Business Population Estimates, show that around 96.5% of businesses affected are small and micro business and these businesses account for 29.0% of employees.

78. An HR Manager or Director is likely to be responsible for familiarisation. Using data from the Annual Survey of Hours and Earnings 2023 (ASHE), the median hourly wage rate is £26.31 per hour.<sup>42</sup> Applying an uprating of 21% to include non-wage labour costs results in a total rate of £31.83 per hour. Table 6 below shows the approach taken for estimating familiarisation costs.

*Table 6: Illustrative additional familiarisation costs for businesses*

Number of firms	Assumed Time (mins)	Wage and non-wage cost (per hour)	Total Costs
1,470,000	10	£31.83	<b>£7.8m</b>

79. We have cautiously estimated **total one-off familiarisation costs to potentially be up to £7.8m** but this assumes all firms in Great Britain familiarise with the legislation on introduction and for the same amount of time. Further work will be undertaken to understand what level of familiarisation will be required but, in reality, we expect costs to be much lower than those estimated.

#### Total Business Costs

80. Therefore, the central estimate of total cost to businesses is estimated at £8.4 million per year. The costs of this policy will be realised when the regulations come into effect. See Table 7 below for estimated costs for all scenarios.

*Table 7: Total business costs associated with policy reforms by scenario*

	Low estimate	Central estimate	High estimate
Recurring (annual) Administration costs	£0.2m	£0.6m	£1.0m
One-off Familiarisation costs	£7.8m	£7.8m	£7.8m
<b>Total business costs</b>	<b>£8.0m</b>	<b>£8.4m</b>	<b>£8.8m</b>

#### Employment Tribunal impact: Introduce a ‘reasonableness’ test.

81. HM Courts and Tribunals Service data covering 2014/15 to 2022/23<sup>43</sup> (see Table 8) indicates there are on average 130 cases per year in relation to the “FLW (ST) - suffer a detriment and/or dismissal for claiming under the flexible working regulations or be subject to a breach of procedure” jurisdiction which covers the total employee population within scope of the statutory right to request, an estimated 28.5 million employees.

ratio of businesses with zero employees in the private sector and applied it to the whole economy. Private sector businesses make up the vast majority of the business population, so aggregate results are not strongly affected by this.

<sup>42</sup> Office for National Statistics. [‘Employee earnings in the UK: 2023’](#), 2023 (accessed on 9 Oct 2024)

<sup>43</sup> Available on request from HMCTS\_Analysis\_and@justice.gov.uk



*Table 8: The number of accepted jurisdictional complaints received under the 'FLW (ST)' jurisdiction, 2014 to 2023*

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22 (Q2-Q4) <sup>i, ii</sup>	2022-23 <sup>ii</sup>
<b>FLW (ST)</b>	100	90	100	110	170	180	130	100	160

Table notes

- i. Only Q2-Q4 data can be provided (as per published statistics).
- ii. From September 2022, the Employment Tribunal system moved to a new case management system (Reform ECM). Cases in the new system are not included.
- iii. Data for all years covers 1st April to 31st March unless stated otherwise.

82. This reform builds on the existing statutory framework and recent reforms to flexible working (e.g., the requirement that since April 2024 employers must already consult the employee when rejecting a request) but this enables an employment tribunal to assess whether the reason a business provided for rejecting a flexible working request was itself 'reasonable'. Therefore, while this reform potentially increases the length of some employment tribunals, it is not possible at this stage to reliably estimate how much of an impact this would have.

83. Furthermore, the introduction of a requirement of reasonableness could help to clarify employer decision making in responding to flexible working requests. Statutory guidance for employers in considering a flexible working request and the evidence requirements for justifying the valid business reasons for rejection will provide clarity to employers. This aims to lead to more positive discussions between employers and employees, fewer flexible working requests being rejected, fewer workplace disagreements/conflicts and a reduced number of ET cases in relation to flexible working.

84. It is difficult to make a reliable assessment of the impact of these reforms on the employment tribunal system but given the low volume of cases currently seen and the policy objective to provide more clarity to employers, we estimate that this reform is likely to have, on balance, a negligible overall impact on the number of employment tribunals cases being brought.

**Benefits to employers**

85. Helping employers and employees to agree flexible working arrangements that work for them can deliver strong benefits to employers.

86. According to a 2023 CIPD survey, almost two-fifths (38%) of organisations say that more home/hybrid working has increased their organisation's productivity/efficiency<sup>44</sup>. Just 13% say it has decreased their organisation's productivity/efficiency. Additionally, research by the Equal Parenting Project found that 51.8% of managers agree that working from home improves employee concentration; 59.5% agree it increases productivity; and 62.8% agree it increases motivation. An even larger proportion of managers (76.5%) believe flexible working generally increases productivity.<sup>45</sup>

<sup>44</sup> CIPD. ['Flexible working business case'](#). 2019 (accessed on 9 Oct 2024)

<sup>45</sup> University of Birmingham. ['Managers believe flexible working can boost productivity'](#). 2023 (accessed on 9 Oct 2024)

87. The CBI Employment Trends<sup>46</sup> survey found that 99% of all businesses surveyed believed that a flexible workforce is vital or important to competitiveness and the prospects for business investment and job creation.
88. Wider research indicates that flexible working can unlock opportunities for growth. It suggests that, in the absence of suitable working hours or locations, groups of people are either not employed, have retired early, or are working below their potential.<sup>47</sup> Additionally, the PIR showed that flexible working can reduce vacancy costs; increase skill retention; enhance business performance; and reduce staff absenteeism rates<sup>48</sup>.
89. In the context of labour shortages in the economy, there is a role for flexible working in attracting and keeping people in work. Research conducted by the Behavioural Insights Team has shown that offering flexible working can attract up to 30% more applicants to job vacancies (helping employers to recruit from a more diverse talent pool)<sup>49</sup> and a recent ONS publication revealed that older workers working flexibly would be more likely to be planning to retire later.<sup>50</sup> The CIPD reported an Institute of Employment Studies paper that found higher levels of engagement, experienced by working flexibly, can reduce staff turnover by 87%.<sup>51</sup> Conversely, the Modern Families Index finds that flight risk has increased with 42% of working parents likely to look for new employment in the next twelve months. After pay, seeking better family support is highest on the list of reasons for leaving (32% of respondents).<sup>52</sup>

## Impact on small and micro businesses

90. The proposed policy will affect businesses of all sizes, including small and micro-businesses. We do not intend to exempt small and micro-businesses from this reform to the existing framework. Exempting them would not help in meeting the intended policy objective for employees who happen to work in smaller businesses. Creating a different process for businesses of different sizes would create complexity and would undermine equal rights of employees. The policy needs to be consistent across employers for it work. The benefits that occur to individuals and employers in agreeing flexible working arrangements would not materialise in the event that small and microbusinesses were exempted from the policy.
91. Using Business Population statistics<sup>53</sup>, we estimate that around 96% of businesses affected are small and micro business and these businesses account for 29% of employees. The Flexible Working PIR found that the availability of at least one form of flexible working arrangement within workplaces is almost universal across the British economy. Smaller employers (5-49 staff) are less likely (85%) to report any staff taking up a flexible working compared with those in larger workplaces (99%). Staff employed in larger firms (250 or more staff) were more likely to report taking up flexible working (64%) and medium-sized workplaces (55%). Nearly three in five (58%) of staff in smaller firms of 1-49 employees

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<sup>46</sup> Pertemps. '[Employment Trends Survey 2017](#)'. 2017 (accessed on 9 Oct 2024)

<sup>47</sup> Department for Business, Innovation & Skills. '[Work life balance: business costs and benefits - literature review](#)'. 2014 (accessed on 9 Oct 2024)

<sup>48</sup> Department for Business, Energy, Industry and Strategy. '[Post-Implementation Review of the 2014 flexible working regulations](#)'. 2021 (accessed on 9 Oct 2024)

<sup>49</sup> Government Equalities Office and Women and Equalities Office. '[Encouraging employers to advertise jobs as flexible](#)'. 2021 (accessed on 9 Oct 2024)

<sup>50</sup> Office for National Statistics. '[Living longer: impact of working from home on older workers](#)'. 2021 (accessed on 9 Oct 2024)

<sup>51</sup> CIPD. '[Flexible working business case](#)'. 2019 (accessed on 9 Oct 2024)

<sup>52</sup> Bright Horizons. '[Modern Family Index 2024 Report](#)'. 2024 (accessed on 9 Oct 2024)

<sup>53</sup> Office for National Statistics. '[Business Population Estimates 2023](#)'. 2023 (accessed on 9 Oct 2024)

reported any flexible working. As expected, larger employers are more than twice as likely to receive flexible working requests than smaller workplaces of 5-49 staff.

92. The Management and Wellbeing Practices<sup>54</sup> found that larger workplaces were much more likely to say that all requests were made in writing; this applied for 84 per cent of workplaces with 250 or more employees, compared with 48 per cent of workplaces with fewer than 50 employees. A more informal approach seems to be more prevalent in small workplaces; in 30 per cent of small workplaces no requests were made in writing, compared with less than 0.5 per cent of large workplaces reporting this to be the case.

93. Based on evidence from the employer survey we do not expect small and micro businesses to bare a disproportionate share of the costs associated with this regulatory change.

*Table 9: Number of firms and employees by firm size, GB and UK, 2023*

<b>Firm size (number of employees)</b>	<b>Number of firms (Great Britain only)</b>	<b>Number of employees (UK wide)</b>
1 <sup>(a)</sup>	126,500	134,000
2-4	778,400	2,071,000
5-9	283,000	1,895,000
10-19	149,700	2,069,000
20-49	82,500	2,539,000
50-99	26,700	1,887,000
100-199	12,100	1,717,000
200-249	2,600	592,000
250-499	5,200	1,811,000
500+	5,600	15,352,000
<b>Total</b>	<b>1,472,200</b>	<b>30,067,000</b>
<b>Total in small and microbusinesses</b>	<b>1,420,100</b>	<b>8,708,000</b>
<b>Percentage in small and micro-businesses</b>	<b>96.5%</b>	<b>29%</b>

94. For the administration costs, the analysis presented earlier in the IA splits out the costs by business size based upon assumptions from the Business Population estimates for the proportion of employees in each category. We find that micro and small businesses (1-49 employees) bare 27% of the administration costs, medium sized businesses (50-249 employees) bare 14% of administration costs and large business (250+ employees) bare 59% of the administration costs<sup>55</sup>.

95. The illustrative familiarisation costs do not differentiate by size of firm as further policy detail is needed to understand how employers will respond to the 'reasonable' test before we can break down by firm size.

## **Costs and benefits to households' calculations**

96. The right to request flexible working provides a framework, alongside the wider cultural changes we have seen, through which employers and employees can consider the benefits

<sup>54</sup> National Institute of Economic and Social Research. ['Findings from the Management and Wellbeing Practices Survey'](#). 2023 (accessed on 9 Oct 2024)

<sup>55</sup> These percentages are slightly different to those included in the table as we assume in small and micro businesses a Manager or Director would be responsible for receiving and responding to the request rather than a HR Professional in a firm with at least 50 employees. HR professionals have a higher average hourly wage than a Manager or Director in the Annual Survey of Hours and Earnings. See the Office for National Statistics. ['Business Population Estimates 2023'](#). 2023 (accessed on 9 Oct 2024)

that come with removing these invisible barriers. We know that there is a strong demand for more flexible jobs and scope for employers to go further to realise the benefits, for example:

- According to the 2023 Flexible Jobs Index, while 9 in 10 want to work flexibly, only 6 in 10 employees are currently working flexibly and only 3 in 10 jobs are advertised with flexible working.<sup>56</sup>
- 9 in 10 employees surveyed for HSBC consider flexible working to be a key motivator to their productivity at work (89% – even more than financial incentives (77%).<sup>57</sup>
- According to a 2023 CIPD survey, almost two-fifths (38%) of organisations say that more home/hybrid working has increased their organisation’s productivity/efficiency. Just 13% say it has decreased their organisation’s productivity/efficiency<sup>58</sup>. Additionally, research by the Equal Parenting Project found that 51.8% of managers agree that working from home improves employee concentration; 59.5% agree it increases productivity; and 62.8% agree it increases motivation. An even larger proportion of managers (76.5%) believe flexible working generally increases productivity.<sup>59</sup>
- The CBI Employment Trends<sup>60</sup> survey found that 99% of all businesses surveyed believed that a flexible workforce is vital or important to competitiveness and the prospects for business investment and job creation.

97. Wider research indicates that flexible working can unlock opportunities for growth. It suggests that, in the absence of suitable working hours or locations, groups of people are either not employed, have retired early, or are working below their potential<sup>61</sup>. Additionally, the Flexible Working PIR showed that flexible working can reduce vacancy costs; increase skill retention; enhance business performance; and reduce staff absenteeism rates<sup>62</sup>.

98. In the context of labour shortages in the economy, there is a role for flexible working in attracting and keeping people in work. Research conducted by the Behavioural Insights Team has shown that offering flexible working can attract up to 30% more applicants to job vacancies (helping employers to recruit from a more diverse talent pool)<sup>63</sup> and a recent ONS publication revealed that older workers working flexibly would be more likely to be planning to retire later.<sup>64</sup> The CIPD reported an Institute of Employment Studies paper that found higher levels of engagement, experienced by working flexibly, can reduce staff turnover by 87%.<sup>65</sup> Conversely, the Modern Families Index finds that flight risk has increased with 42% of working parents likely to look for new employment in the next twelve months. After pay,

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<sup>56</sup> Timewise. [‘The TimeWise Flexible Jobs Index 2023’](#). 2023 (accessed on 9 Oct 2024)

<sup>57</sup> London School of Business & Finance. [‘Flexible working is a key employee motivator, research shows’](#). 2023 (accessed on 9 Oct 2024)

<sup>58</sup> CIPD. [‘Flexible working business case’](#). 2019 (accessed on 9 Oct 2024)

<sup>59</sup> University of Birmingham. [‘Managers believe flexible working can boost productivity’](#). 2023 (accessed on 9 Oct 2024)

<sup>60</sup> Pertemps. [‘Employment Trends Survey 2017’](#). 2017 (accessed on 9 Oct 2024)

<sup>61</sup> Department for Business, Innovation & Skills. [‘Work life balance: business costs and benefits - literature review’](#). 2014 (accessed on 9 Oct 2024)

<sup>62</sup> Department for Business, Energy, Industry and Strategy. [‘Post-Implementation Review of the 2014 flexible working regulations’](#). 2021 (accessed on 9 Oct 2024)

<sup>63</sup> Government Equalities Office and Women and Equalities Office. [‘Encouraging employers to advertise jobs as flexible’](#). 2021 (accessed on 9 Oct 2024)

<sup>64</sup> Office for National Statistics. [‘Living longer: impact of working from home on older workers’](#). 2021 (accessed on 9 Oct 2024)

<sup>65</sup> CIPD. [‘Flexible working business case’](#). 2019 (accessed on 9 Oct 2024)

seeking better family support is highest on the list of reasons for leaving (32% of respondents).<sup>66</sup>

## **Business environment**

### **Competition Assessment**

99. The policy under discussion would apply to all employers and is unlikely to adversely affect the competitiveness of any particular sector given the policy will only potentially require an employer to do more to justify a decision to refuse a request. Businesses could still reject requests where they are legitimately not feasible. The policies are not expected to affect market structure, the ability of new firms to enter markets, or firm's production decisions. Similarly, the policies are not expected to affect investment or innovation.

100. Using the Competition and Market Authority's (CMA) "competition assessment checklist"<sup>67</sup> we find there is no need to conduct a detailed assessment of the impact of the proposals on competition. We do not expect the market share for products and services provided by either the private or public sector to be affected by the proposed policy. The changes would apply to all sectors of the economy and businesses could still reject requests where they are legitimately not feasible

## **Trade implications**

101. From a legal standpoint, the policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK. In addition, the impact is on total labour costs and therefore comparative advantage will be small. Furthermore, the preferred option will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned.

## **Environment: Natural capital impact and decarbonisation**

102. We expect that there is no or negligible impact on the environment, natural capital, and decarbonisation as a result of the policy. The regulation does not directly relate to environmental or decarbonisation goals.

## **Other wider impacts**

103. Wider research indicates that flexible working can unlock opportunities for growth. It suggests that, in the absence of suitable working hours or locations, groups of people are either not employed, have retired early, or are working below their potential. Additionally, the Flexible Working PIR showed that flexible working can reduce vacancy costs; increase skill retention; enhance business performance; and reduce staff absenteeism.

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<sup>66</sup> Bright Horizons. '[Modern Family Index 2024 Report](#)'. 2024 (accessed on 9 Oct 2024)

<sup>67</sup> Competition and Market Authority. '[Competition assessment: guidelines for policymakers](#)'. 2015

104. In the context of labour shortages in the economy, there is a role for flexible working in attracting and keeping people in work. Research conducted by the Behavioural Insights Team has shown that offering flexible working can attract up to 30% more applicants to job vacancies (helping employers to recruit from a more diverse talent pool)<sup>68</sup> and a recent ONS publication revealed that older workers working flexibly would be more likely to be planning to retire later.<sup>69</sup> The CIPD reported an Institute of Employment Studies paper that found higher levels of engagement, experienced by working flexibly, can reduce staff turnover by 87%.<sup>70</sup> Conversely, the Modern Families Index finds that flight risk has increased with 42% of working parents likely to look for new employment in the next twelve months. After pay, seeking better family support is highest on the list of reasons for leaving (32% of respondents).<sup>71</sup>

## Benefits to wider economy and Exchequer

105. The policy supports broader goals of addressing female participation gaps and the impact to employed parents of starting a family as although, flexible working is a right for all employees, the evidence from the PIR suggests it particularly supports parents.

106. Around half of mothers returning to work after maternity leave changed their working patterns, such as their working hours (32%) or agreed new working arrangements (24%). Of the mothers that changed jobs since returning from maternity leave, around two fifths did so because they wanted a flexible working arrangement (including 27% said part-time working; 11%\* flexitime).<sup>72</sup>

107. The majority of fathers (93%) returning to work after the birth of their child did not change their working hours or agree new working arrangements. Of the fathers that changed jobs since returning from parental leave, around a third did so because they wanted a flexible working arrangement (of which 17% said flexitime arrangements). These findings indicate there is strong demand for flexible working among parents returning to work following the birth of their child.

108. For employers, offering new arrangements has the potential to improve staff retention among parents returning from parental leave.

109. Increased parental and female labour market retention can lead to increased productivity, economic diversification, and reductions in income inequality.<sup>73</sup>

## Public Sector Equality Duty

### Equality Assessment

110. As a part of the Equality Act 2010, public bodies are expected to account for equality impacts. The Public Sector Equality Duty (PSED), created under the Act, considers the potential effects of intervention on individuals with 'protected' characteristics. Specifically, the Public Sector Equality Duty (PSED) requires public bodies to consider the need to:

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<sup>68</sup> Government Equalities Office and Women and Equalities Office. ['Encouraging employers to advertise jobs as flexible'](#). 2021 (accessed on 9 Oct 2024)

<sup>69</sup> Office for National Statistics. ['Living longer: impact of working from home on older workers'](#). 2021 (accessed on 9 Oct 2024)

<sup>70</sup> CIPD. ['Flexible working business case'](#). 2019 (accessed on 9 Oct 2024)

<sup>71</sup> Bright Horizons. ['Modern Family Index 2024 Report'](#). 2024 (accessed on 9 Oct 2024)

<sup>72</sup> Institute for Employment Studies. ['Parental Rights Study 2019'](#). 2019 (accessed on 9 OCT 2024)

<sup>73</sup> International Monetary Fund. ['Pursuing Women's Economic Empowerment'](#). 2018 (accessed on 9 Oct 2024)



- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

111. The PSED covers 9 protected characteristics in total: age, race, gender, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership.

112. The right to request flexible working policy already covers all employees from their first day of employment and this policy reform does not change the eligible population.

113. We have undertaken an assessment of the impact of the policy on protected characteristics under the Equality Act 2010. The policy will deliver positive benefits in relation to Age, Disability, Gender Reassignment, Pregnancy & Maternity, Religion & Belief, and Sex/Gender. No disproportionately negative impacts have been identified.

## Risks and assumptions

114. The analysis presented in this Impact Assessment makes use of extensive evidence collected as part of the PIR published in 2021<sup>74</sup> and two subsequent Impact Assessments on Flexible Working. The survey evidence is reliable and representative of Great Britain, but uncertainty remains in forecasting requests of flexible working, whether these are done under the statutory framework and how employers may respond to this nudge to assess whether they have justification for rejecting.

115. The widespread shift to increased forms of flexible working in recent years is not assumed to be in direct response to the right to request framework but has come from employers responding to external challenges – with the Covid-19 pandemic being the obvious example. Even before the impact of the pandemic, many employers were moving beyond the individual request and response framework to develop broader flexible working policies that gave employees and line-managers scope to agree flexible working arrangements without need to make a formal request and contractual change. Furthermore, the ONS Business Insights and Conditions Survey<sup>75</sup> suggests that many employers expect to use increased flexible working as part of their permanent business model, demonstrating that employers are moving beyond the need for an individual flexible working request. If employer-led flexible working continues as the primary or sole method for agreeing flexible working, the business costs estimated in this analysis will represent an over-estimation.

116. The core analysis produced for this IA does not model a change in either the request rate or rejection rate, but it does present impacts for illustrative purposes only. This reform is technical in nature and essentially clarifies what employers should already be doing, that is, giving due consideration to the merits of flexible working in their organisations. It is not possible to confidently predict whether the reform will encourage more employees to request flexible working if they perceive it to be more likely that the employer will accept their request and given employers can continue to reject any requests on cost grounds, provided that is

<sup>74</sup> Department for Business, Energy, Industry and Strategy. '[Post-Implementation Review of the 2014 flexible working regulations](#)'. 2021 (accessed on 9 Oct 2024)

<sup>75</sup> Office for National Statistics. '[Business Insights and Conditions Survey](#)'. 2022 (accessed on 9 Oct 2024)

reasonable. We assume rationale employers will only accept requests where the benefits of doing so outweigh the costs.

117. Further policy detail is required to understand the extent of the requirement on employers to more objectively justify a decision to reject a flexible working request. Consultation evidence will be used to test and support the key assumptions made.