

Employment Rights Act 2025: refusing flexible working requests comes under the spotlight.

On 5 February 2026, the Government opened a consultation on the flexible working changes included in the Employment Rights Act 2025. In particular, views are sought on the new statutory process that an employer must follow should it wish to reject a flexible working request.

What is the current position on flexible working requests?

All employees have the right to request a flexible working arrangement from Day 1 of their employment. Currently, employers may refuse flexible working requests where they consider that at least one of eight grounds specified in the Employment Rights Act 1996 applies. This includes things like the burden of additional costs, an inability to reorganise work among existing staff or detrimental impact on quality or performance. Importantly, this is a *subjective* test, which means that as long as an employer considers that one of the eight grounds applies, and that view is based on correct facts, that is a sound basis upon which to reject a request.

In terms of process, from 6 April 2024 employers have been required to consult with employees *before* refusing a request. However, the nature of the consultation is not set out in law. Instead, the [statutory Acas Code of Practice on requests for flexible working](#) (the **Code**) sets out recommendations on

the scope of such consultation. The Code suggests gathering all relevant information, holding a meeting with the employee to discuss the request and considering alternatives if needed. A written record of the meeting should be kept, and a right of appeal is also recommended. A failure to follow the Code does not give rise to a claim, but Tribunals are able to take into account when considering relevant cases.

What changes will be made by the Employment Rights Act 2025 (the ERA)?

The ERA will make changes to the flexible working regime in 2027.

First, it will require an employer's refusal of a request to be based on one of the existing eight grounds and be an *objectively reasonable* one. The employer will need to notify the employee of the ground for refusing the request and explain why it considers that it is reasonable to refuse the application on a particular ground. Where an employer's decision is not reasonable, or where it fails to explain this to the employee, the employee will be able to complain to an Employment Tribunal. A Tribunal could order the employer to reconsider its decision and/or award compensation of up to eight weeks' pay (currently capped at £719 per week).

Second, the steps that an employer needs to take to consult with an employee before refusing a request will be set down in legislation for the first time. The aim is to introduce consistency for employees and clarity for employers.

The Government promised to consult about the detail of these

changes before bringing them into force in 2027. The [Consultation on improving access to flexible working](#) was launched on 5 February 2026 (the **Consultation**).

What does the Consultation say?

As far as the new reasonableness test is concerned, the Consultation simply seeks evidence on current approaches to handling flexible working requests. It is said that this information will be used to help shape guidance and resources for employers, employees and other stakeholders.

As to the new statutory process, views are sought on the proposed process that employers will need to follow. It is said that the proposed process represents a “*a series of light touch requirements*” which have been drawn from the current Acas Code of Practice.

The proposed statutory consultation process will require an employer that is considering refusing a flexible working request to meet with the employee. Views are sought on the following matters:

- **The objective of the meeting:** it is said that the purpose of the meeting is to discuss challenges with the request and explore alternative options. Views are sought on whether this is the right objective for the meeting.

- **Setting up the meeting:** it is said that the meeting must take place within the two-month period for making a decision (but that, in practice, it should take place within six weeks of the request to allow time for follow up conversations). The employee must be informed about the context of the meeting in advance to give them time to prepare. A person with authority to make a decision must attend the meeting and keep a record of the discussion. Views are sought on whether these requirements are right and how much notice should be given to the employee.

- **During the meeting:** it is said that the meeting must allow for sufficient discussion of the request and potential alternatives. The decision-maker must:

- clarify whether the proposed arrangement should be treated as a reasonable adjustment under the Equality Act 2010;

- explain any challenges with the original request and why it would not be feasible to accommodate it, referring to the relevant business reason;

- consider whether there are any ways around the identified challenges;

- consider alternative arrangements; and

- consider allowing a trial period if the impacts of an arrangement are unclear.

Views are sought on whether these are the right things to be addressed at the meeting.

- **Communicating the outcome in writing:** it is said that employers must provide written notice of the outcome of the meeting, including a summary of the discussion and any conclusions or next steps that were agreed. It must also provide written notice of its final decision on the request (i.e. whether it was approved, rejected or if an alternative arrangement is agreed). Views are sought on whether it is right to require employers to communicate both the outcome of the meeting and the decision on the request in writing. Views are also sought on whether the new process will take more, less or a similar amount of time to existing processes.

What will these changes mean for employers in practice?

We think the change to the reasonableness test means that employers will have to go further to be able to justify the ground or grounds for refusal. For example, if a request is refused on the basis of an inability to reorganise work among existing staff or recruit additional staff, and the employer has not consulted with existing staff about the possibility of doing so, or considered the feasibility of recruiting additional staff, it is likely that a refusal on such grounds would be unreasonable. Or where a request is refused on the

basis of detrimental impact on quality or performance, again, the question will be: what is the evidence for this view? Unless there is some historical evidence (e.g. if an employee has worked the same or similar pattern in the past and it was unsuccessful), it is likely that an employer would need to allow a trial period of the proposed working pattern for a reasonable period of time in order to assess whether there was, in fact, such a detrimental impact. The end result is that more requests are likely to be accepted.

The impact of the changes to the consultation process is likely to be minimal. Employers are used to the requirements of the Acas Code of Practice, including the need to hold a meeting. That said, employers will need to take care not to trip up on the finer detail since mistakes could give rise to a Tribunal claim. Interestingly, unlike the Acas Code of Practice, the proposed statutory procedure does not provide that the employer should allow an employee to be accompanied to the meeting, nor offer a right of appeal.

What are the next steps?

Employers wishing to respond to the Consultation may do so online, by email or in writing by 30 April 2026.

The Government will finalise its proposals and publish a response in due course, to be followed by draft regulations. In addition, it is said that Acas may open a consultation on revising its Code of Practice and guidance on flexible working.

The reforms are due to come into force on an as yet

unspecified date in 2027.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.