

GUIDANCE NOTE

FLEXIBLE WORKING

This note provides managers with guidance on the application of the Councils [Flexible Working Policy](#) and gives direction on the practical handling of requests from employees to work flexibly.

The Council is committed to offering more flexibility to employees and recognises that there are multiple benefits, both as an employer and for the employee. It encourages Managers to be receptive and open to requests put forward by employees. In this spirit Managers are encouraged, where suitable, to use trials and pilots to try out new ideas on ways of working. However, all requests for flexible working must be considered against the need to provide effective and efficient services which forms the basis for Managers to assess applications.

The information in this guidance note is not intended to be exhaustive or to cover every eventuality and should be read in conjunction with the [Flexible Working Policy](#). If you have any queries on how to deal with a specific request The Employment Services Team will be the main source for information on the procedures to be followed to ensure requests for flexible working are dealt with in accordance with agreed procedures.

Adherence to the procedures outlined in this Guidance Note should ensure Managers meet all necessary statutory requirements, laid down in the Employment Act 2002 and Work and Families Act (2006).

This Guidance Note will:

1. Explain why we have a Flexible Working Policy and set out the Legislative Framework.
2. Explain the roles of the Employment Services Team, the Manager/Supervisor and the Pay, Equalities and Performance (PEP) Team in handling requests to work flexibly;
3. Explain the overlaps with several other Policies and Advisory/Guidance Notes already in existence which link to requests to work flexibly;
4. Provide guidance on the likely changes to employees' contracts of employment and advice on how these should be dealt with.
5. Explain the main types of flexible working arrangements.

1. Why Have A Flexible Working Policy

Demographic and social changes are having a significant impact on the profile of the UK's workforce, and this trend will continue.

The trend is towards:

- An ageing population.
- A high proportion of women in full time employment.
- Increase in lone parents.
- Increase in carers of elderly people.
- Increase in dual earning families.
- Younger generation placing greater emphasis on careers with employers that understand and value staff.

People have different lifestyle expectations and place greater emphasis on the need for wellbeing. It is important to realise that, by acknowledging an employee's need for a life outside work – whether for relationships, relaxation, voluntary and community work or sport – you are enabling individuals to make their own choices about how they balance work with the rest of their lives.

As a service provider, our employees provide our services. We need to maximise the talents of employees, whoever they are. Enabling all kinds of people to take up employment, and stay in employment, helps broaden perspectives. Very often we are unable (or unaware of the opportunity) to make the most of our staff, for example, although there are more women in the workplace, there is still very few in senior management positions.

For the Council to fail to consider these issues as part of its recruitment and retention and general policy development strategies will place it at a distinct disadvantage in terms of providing a quality service to the public.

There are number of proven benefits to the Council in helping employees to achieve a better work life balance.

- Financial savings due to a reduction in lost time costs due to absence.
- Improvements in staff retention due to reduced staff turnover.
- Improved perception of potential employees as a Work Life Balance employer.
- Reduction in the overall levels of absences, short term absences and stress related absences.
- Improved morale and commitment of staff showing positive changes in culture and attitude and a reduction in stress levels.
- Improved Work Life Balance policies and practices and improved awareness and understanding from employees.
- Increased take up of existing and new Work Life Balance opportunities.

1.2 Legislative Framework

In terms of the right to request to work flexibly, there are several key pieces of legislation that Managers need to be mindful of when processing applications for flexible working. The procedures contained in this handbook are designed to meet the legal requirements.

➤ *The Flexible Working Regulations 2002*

The main consideration for Managers is to ensure they follow the agreed policies and procedures to avoid breaching the Flexible Working Regulations 2002. They provide a right for eligible employees with children under six, or disabled children under 18, to request a flexible working pattern. It also places a duty on employers to consider

their requests seriously. The initial onus is on the employee to prepare a carefully thought-out application well in advance of when they would like the desired working pattern to take effect.

➤ ***The Work & Families Act (2006)***

The Work & Families Act (2006) extended the right to request to work flexibly for those in “carer” roles. Carer roles is defined as an employee who expects to be caring for an adult who is married to, or the partner or civil partner of the employee, is a near relative of the employee (including parents, parent in law, adult child, adopted child, siblings (including those who are in laws), uncles, aunts or grandparents and step relatives or falls into neither category but lives at the same address as the employee.

This Guide, if followed, should ensure Managers comply with the statutory obligations.

➤ ***The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2009***

The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2009 extended the right to request to work flexibly for eligible employees with children up to and including the age of 16.

➤ ***Indirect Sex Discrimination***

In dealing with requests for flexible working, it is possible that indirect sex discrimination may occur.

Indirect discrimination occurs when an employee can show an employment tribunal:

- that it would be to the detriment of a considerably larger proportion of women than to men;
- that the employer cannot show it to be justifiable, irrespective of the sex of the person to whom it is applied; and,
- it is to his/her detriment.

Case law has now clarified the position to the effect that a refusal to allow an employee to return part-time following maternity leave may be considered indirect sex discrimination unless the employer can show objective justification irrespective of sex.

Although there is no automatic right to work flexibly for a women returning from maternity or adoption leave, or because of childcare commitments, Managers must be clear that they can justify the refusal of such requests on the business grounds laid out in the Employment Act 2002.

➤ ***Part-Time Workers Discrimination***

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations make it unlawful to treat part-timers less favourably in their contractual terms and conditions than comparable full-timers.

This means that, when granting a request for flexible working that involves a reduction in working hours, Managers should be aware that these employees are still entitled to the same considerations in respect of training, promotion and financial issues.

2. Roles

The Employment Services Team

Managers/Supervisors may use the Employment Services Team to provide general advice and guidance on the following:

- the application process, how to advise the employee of the outcome and what the appeals process is;
- work life balance practices;
- How to set up a new flexible working arrangement, including any necessary changes to terms and conditions of employment, any risk assessment issues, etc.

The Employment Services Team will also be responsible for updating payroll of all information as a result of a change in working hours based on the Change of Circumstance Form generated by the Manager through the Establishment Approval Process. (Note: new practice will be that copy letters will no longer be acceptable)

Managers

The handling of requests for flexible working is the responsibility of the Manager, who should receive applications, assess the requests and advise the employee of the outcome.

Depending on the management responsibility of some Managers, there may be a need to involve the next tier of management in the assessment process. This varies from Service to Service. Executive Directors will determine where this is appropriate to the structures in their Service.

Pay, Equalities and Performance (PEP) Team

Although dealing with requests for flexible working is the Managers' responsibility, the PEP Team has an input into ensuring the Policy works fairly and is non discriminatory in its application.

Advice and guidance on any aspect of flexible working is available from the PEP Team.

3. Links with Other Policies and Guidance Notes

The Policies and Advisory Notes referred to are:

3.1 [Job Share Policy](#)

The existing Job Share Policy and [Guidance Note](#) will continue to apply where an employee(s) apply/applies to job share.

The existing application form and exclusion form should also be completed.-

3.2 [Home Working Policy, Guidance Note for Manager’s & Employees, Acceptance Letter \(Home Working Request\).](#)

The Employment Services Team may need to make reference to the Home Working Policy when reading this section.

A Manager processing a request from an employee to work at home should follow the Council’s agreed Home Working Policy and Guide for Manager’s & Employees. Applications to home work can be made using the Flexible Working Application Form.

For employees requesting to work at home “occasionally”, as defined under the Policy, on each occasion they wish to work at home, they should submit an application using the “Occasional Home Working” form where no other mechanisms or processes are in place.

This allows Managers to assess each occasion the employee wishes to work at home, what tasks will be undertaken at home, how completed work will be measured and allows time worked at home to be recorded.

All requests to work at home should be assessed using the information in the Guidance Note, with a recommendation to Executive Director, or nominated Officer, to accept or refuse the request to work at home.

➤ **Acceptance Letter (Home Working Request)**

A model letter for issue to the employee, accepting their request to work at home can be found under the model letters section of Eric.

In accordance with the agreed Council Policy on Home Working, with the exception of occasional home working (on an ad hoc basis only), all requests to work at home will constitute an amendment to the terms and conditions of employment of the employee. See table below for further information on this.

Definition of Home Working	Description of Definition	Amendment to Terms & Conditions Required (Temporary or Permanent)
Occasional	Employee works occasionally from home on an ad hoc basis for one off pieces of work or for specific circumstances	No, Where applicable an Occasional Home Working Form completed for each occasion home working is requested.

Occasional	Employee works at home on average less than 60% of their working time, for example, at the most an employee would work 2 days per week (full time employee) on average over a given period.	Yes, Where applicable an Occasional Home Working Form completed for each occasion home working is requested.
From Home	Employee works at home on average at least 60% of their working time, for example, at least 3 days per week (full time employee) on average over a given period.	Yes, Appropriate Flexible Working Application Form to be completed. Occasional Home Working Form may be used.
At Home	Employee works at home full time.	Yes, Appropriate Flexible Working Application Form to be completed.

3.3 [Maternity Leave/Adoption Leave/Carer Leave/Parental Leave/Paternity Leave](#)

On returning to work from maternity, adoption, carer, additional paternity and parental leave, some employees may wish to consider changing the hours they work, when they work, or may wish to work at home.

Requests in these circumstances should be made in the same way as an employee who is at work, by using the [Flexible Working Application Form](#). As it does take some time for Managers to consider applications and for arrangements to be put in place to meet new working arrangements, employees should be encouraged to request the new working pattern well in advance of the date they would like the new arrangement to start, ideally within 28 working days from their return to work date.

Guides are available for employees on [Maternity](#) and [Adoption](#) Leave.

3.4 **Guidelines on Compressed Hours Working**

Applications for compressed hours should be made using the [Flexible Working Application Form](#).

As with other requests for flexible working, a recommendation should be made to the Service Executive Director, or nominated Officer, to accept or refuse the request to work compressed hours.

A model letter for issue to the employee, accepting their request to work compressed hours can be found under the model letters section on Eric. The main changes to terms and conditions are outlined in 4 below.

Other implications to take into consideration when moving to compressed hours include the need for annual leave entitlement to be calculated in hours rather than days. Although the employee may still be working full time hours because the

working pattern has changed and they will be working a shorter number of days in the week or a fortnight the calculation of annual leave will change. Dependent on the employee's non-working day there may also be implications for public holidays.

Appendix A shows examples of how annual leave/public holidays will be affected for members of staff who work different patterns of compressed hours.

The Employment Services Team should ensure they have entered any new compressed hours working arrangement on Resource Link to enable correct sickness absence reporting.

4. Changes to Employees' Contracts of Employment

There are many types of flexible working practices that an employee may request to be considered for. All will require changes to contracts of employment and some may require approval through the Establishment Approval Process. Advice should initially be sought from the Employment Services Team or the PEP Team for advice on policy interpretation.

The Employment Services Team must note that any requests to work flexibly will result in a permanent change of an employee's terms and conditions, unless otherwise mutually agreed by both parties.

Where groups of employee's make an application to work flexibly departmental trade union representatives should be advised by the Manager.

It will be the Manager's responsibility using the model letters to prepare and issue the acceptance letter for a new working arrangement. The Employment Services Team will support Manager's where necessary regarding the relevant clauses from the Master SEP.

5. Types of Flexible Working Arrangements: (this list is not exhaustive):

- **Flexi-time** Where the employee can participate in a corporate or tailored flexible working hours scheme which gives them some choice about their actual working hours, usually outside certain agreed core times, and which fits around the needs of the Service.

It is a legal requirement to state in the SEP the hours of work that an employee must work and this includes any flexible working hour's arrangement. It is also important that an employee becoming eligible for flexible working hours understands the rules that apply to avoid any misunderstanding.

- **Part Time Work** Where an employee works less than full time hours.

When an employee's working hours are reduced to less than full time working, it is important to remember that there is a legal requirement to ensure they are not treated less favorably than full time workers engaged in the same or broadly similar work. In addition, the terms and conditions must not be less favorable than those that applied in his/her full time capacity, however, the terms and conditions are applied on a pro-rata basis.

Managers should be aware that this applies to all general terms and conditions of employment, such as occupational sick provisions, maternity provisions, pension provisions, annual and other leave, all training provisions and entitlements and promotion opportunities.

5.1 Time off in Lieu Where employees agree with their manager to take time off at a mutually convenient time to make up for extra hours worked. Used to compensate people who attend evening meetings or do weekend work. Normal practice is that time off in lieu is managed by the Manager.

5.2 Job Sharing Where two people carry out the duties of a post that would normally be done by one person. Each person is employed part-time but together they cover a full-time post and divide the pay, holidays and other benefits.

Job Sharing is considered a form of part time working, therefore there is a legal requirement to ensure they are not treated less favourably than full time workers engaged in the same or broadly similar work, however, the full time employment conditions are shared on a pro rata basis.

The conditions of employment for job sharing are contained in the [Guidance Note for Job Sharing](#)

5.3 Shift/Rota Working Where service provision can be extended to provide a better service with people working shifts following on from each other to provide a service. This can provide more flexibility about how shifts are organised, giving more choice.

5.4 Staggered Hours Where employees within a workplace have different start, finish and break times. Usually used to cover longer opening hours. Provides more choice for people.

5.5 Shift Swapping means employees can negotiate working times to suit their needs and re-arrange shifts amongst themselves or within teams to meet the needs of the service.

5.6 Self Rostering gives team members more control over their work times. The numbers of staff and the skill mix required are agreed, then shift patterns are compiled, matching as closely as possible the individual preferences of staff to the agreed staffing levels.

5.7 Working at Home for some or all of the working time with or without the use of a laptop or PC.

The Council has certain health and safety obligations to employees who work from or at home which must be addressed, usually prior to the commencement of working at home. Separate advice and guidance is available from Human Resources on this and should be referred to.

As per the agreed policy, with the exception of occasional home working (on an ad hoc basis) all requests to work at home will constitute an amendment to the terms and conditions of employment of the employee. A sample letter for

accepting a home working request can be found under the model letters section of Eric.

5.8 Term Time Working means remaining on a permanent contract, either full or part-time, and having paid or unpaid leave of absence during the school holidays.

If an employee is granted term time working, the employment contract needs to make clear the working hours relating to the contract, usually by agreeing the dates at the beginning of each school year. The contract should also be clear about when holiday entitlement is taken, for example, if it must all be taken during school holidays or if some days are kept for emergencies during term time.

5.9 Compressed Working Hours allows people to work their total number of agreed hours over a shorter number of working days, for example, you could work full time hours over four days a week instead of five, or over nine days instead of ten.

The main changes to an employee's terms and conditions if they are working compressed hours are:

Annual Leave & Public Holiday Entitlement

Both annual leave and public holiday entitlement will be taken in hours instead of days.

Flexible Working Hours Scheme

Employees working compressed hours can continue to use the Flexible Working Hours Scheme with the agreement of their manager. Local arrangements can be made in relation to the ability to take flexi-leave, subject to service delivery and the ability to accrue leave. The Employment Services Team should action a change to the working pattern in ResourceLink.

Working Time Regulations 1999

No compressed hours working arrangement should breach the Working Time Regulations 1999. Managers should monitor the working hours of employees to prevent employees from working excessively long hours.

5.10 Annual Hours systems organise working time on the basis of the number of hours to be worked over a year rather than a week – usually used to fit in with peaks and troughs of work.

5.11 Voluntary Reduced Work Time where an employee reduces hours for an agreed temporary period with a reduced salary and with a guarantee to return to full time working when that period ends.

5.12 Flexible Retirement Practice where, on nearing retirement, part time working is operated, usually with arrangement to protect pension entitlements. This is currently only available to Teaching Staff through the Winding-Down Scheme. Further information can be found in the [Retirement Scheme](#).

For further information or guidance on this Guidance Note, please contact the Employment Services Team.

Compressed Working Hours Example

Example 1

Employee works an average of 36 hours over a fortnight with every second Monday off. (Based on an employee who entitled to 31 days annual leave a year)

Week 1 – Monday to Friday (8h) - 40 hours

Week 2 – Tuesday to Friday (8h) - 32 hours

36 hours per week average

Annual Leave	= 223.20 hours (36 hours / 5 days) x 31 days
Public Holiday	= 50.40 hours (36 hours / 5 days) x 7 public holidays
Total	= 273.60 hours

Public Holidays relevant to working Days

02/01 -8hrs = 265.60 hours

03/01 -8hrs = 257.60 hours

06/04 -8hrs = 249.60 hours

09/04 -8hrs = 241.60 hours

25/12 -8hrs = 233.60 hours

26/12 -8hrs = 225.60 hours

31/01 -8hrs = 217.60 hours

Total annual leave hours available = 217.60 hours

In the above scenario as the public holidays for this year fall on what would be a normal working day the hours are deducted from the overall annual leave total.

It should also be noted that when calculating public holidays relevant to working days the number of hours that is deducted is the number of hours the employee works under their compressed working hour's agreement – in this scenario 8 hours per day.

The total annual leave hours may vary slightly year on year dependant on when the public holidays fall i.e. a non working day or normal working day.

Should an employee start compressed working hours part way during a year the above calculations will be pro-rated accordingly.

Example 2

Employee works 32 hours over a 4 day week with every Friday off. (Based on an employee who is entitled to 33 days annual leave a year).

Mon-Thurs (8h)

32 hours a week

Annual leave	= 211.2 (32 hours / 5 days) x 33 days
Public Holiday	= 44.8 (32 hours / 5 days) x 7 public holidays
Total	= 256.00 hours

Public Holidays relevant to working days

02/01 - 8hrs = 248.00 hours

03/01 - 8hrs = 240.00 hours

09/04 - 8hrs = 232.00 hours

25/12 - 8hrs = 224.00 hours

26/12 - 8hrs = 216.00 hours

31/12 - 8hrs = 208.00 hours

Total annual leave hours available = 208.00 hours

In this example no hours are deducted for the public holiday on the 6 April as this is a non working day.