

Flexible Working Statutory Rights – Employee Guidance

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Introduction

The County Council introduced flexible working as part of its commitment to helping its employees achieve a work/life balance. The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 and the Amendment Regulations 2006 and 2009 and the Flexible Working (Procedural Requirements Regulations) 2002, provide a statutory right for parents and carers to request flexible working arrangements, and a statutory obligation for employers to have procedures in place to consider such requests seriously. A summary of these Regulations can be viewed [here](#).

The Council, after consultation and agreement with the recognised Trade Unions, has incorporated these rights into its flexible working arrangements.

These notes should help you understand what the rights are, who is covered, and the procedures that the Council has put in place (which you need to follow) if you wish to exercise these rights.

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Right to Request Flexible Working

The Regulations provide you with a right **to request** flexible working, not a right to **work** flexibly.

As a Council employee you can apply (one application per year) to your manager for a permanent/temporary variation to your contract of employment, as long as you meet the [qualifying conditions](#) and you follow the Council's [application procedures](#).

This means that you can ask for a change to the number of hours that you are contracted to work, the times that are required to work and/or where you are required to work. For example, you can ask to:

- reduce working hours, e.g. to work part time or job share;
- change working times, e.g. to work term time only, operate flexitime, stagger working hours, work compressed hours (e.g. 9-day fortnight) or work annualised hours; and/or
- change work location, e.g. occasional/permanent homeworking, teleworking or hot-desking.

Further details of the flexible options available to you can be viewed [here](#).

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Qualifying Conditions

To exercise the statutory right to apply for flexible working you **must**, on the date of your application:

- a) have been employed continuously, by the County Council, for at least 26 weeks, (it does not matter what type of employment contract, e.g. permanent, fixed-term, casual, relief, variable hour, full or part-time);
AND **EITHER**:
 - b) be the mother/father/adopter/guardian/foster parent of a child - who is under 16 years of age (or under 18 years of age for a disabled child) - or be married to/the partner of such a person; AND
 - have/expect to have responsibility for the upbringing of the child; AND
 - make your application for the sole purpose of helping you to fulfil your parental responsibilities in respect of that child; AND
 - make your application at least two weeks before the child reaches the relevant age limit (i.e. 16th or 18th birthday);
- OR**
- c) care/expect to care for a person who is aged 18 and over who is:
 - your spouse/partner/civil partner; OR
 - your near relative, e.g. grandparent, sibling, aunt/uncle, parent-in-law, 'step' family members, adopted family members; OR
 - not related to you but lives with you at your address.

In terms of this new right, an immediate relative is a spouse/civil partner/partner/ (not a child under 18) and a near relative includes parents/grand parents/siblings/uncles & aunts, whether these are full blood/half blood/adoptive/in-law relationships.

Please note that those employed on a [contract for service](#), e.g. agency staff, are not covered by the new regulations.

If you do not have a statutory right to apply for flexible working, your manager will still consider your request seriously – guidance and an application form are available [here](#).

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Application Procedures

Written Application

To ensure compliance with the Regulations, you **must** complete the appropriate form (i.e. either the [Application for Flexible Working \(Parents' Statutory Right\) Form](#) or [Application for Flexible Working \(Carers' Statutory Right\) Form](#)) and return it to your line manager.

Both forms are broken down into three sections:

Section A – asks you to confirm your personal details, and that you meet the [qualifying conditions](#).

Section B - asks you to provide specific details of the flexible working pattern that you are requesting, and evidence that you have thought about the effects your proposals may have on your workplace and how these might be overcome. Consider whether your request is realistic; for example, a Receptionist asking to work from home will not be a realistic request.

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Section C – is your declaration that you have completed the form accurately and in full.

It is important that you complete all sections in full. Failure to do so may result in a loss of your right to make an application. In addition, think about the date you would like your new working pattern to begin. Be aware that the process can take up to 14 weeks to complete, and sometimes longer where a problem arises.

Please note that to make a false application, will be considered an act of dishonesty under the Council's Disciplinary Rules, and may lead to disciplinary action being taken against you.

Meeting to Discuss Application

Your manager will arrange to meet with you to discuss your application within **28 days** of its receipt.

In some cases your manager may seek to agree an [extension to this time limit](#) with you or may not need to meet with you if he/she agrees your application immediately and confirms this to you in writing within the 28-day period.

You have the right to be accompanied at this meeting by a trade union representative or another work colleague of your choosing, where you should discuss your proposal and how it might be accommodated. Where difficulties arise in accommodating your proposals, other suitable working arrangements should be discussed.

Your manager must provide you with a written decision on your application within **14 days** of the meeting.

Where the decision is to agree your proposals, your manager will confirm the changes and their effective date. Please note that if your manager agrees to the new working conditions, the new work pattern constitutes a permanent change to your terms and conditions. You have no right to revert back to your previous working pattern, nor can your manager insist on such a reversion. However, you can agree between you to place a time limit on the new working pattern to, for example, assess how the new arrangement works out for you.

Where the decision is to refuse your proposals, your manager will provide, in accordance with the Regulations:

- details of the [grounds for refusal](#);
- sufficient explanation as to why those grounds apply; and
- details of the Council's appeal procedure.

Appeal Procedure

You may appeal against a decision to refuse your application by completing an [Appeal Form](#) and sending this to your Director (or delegated manager) **within 14 days** of receiving your manager's written decision, stating clearly the grounds for your appeal.

You will be called to an appeal hearing, **within 14 days** of the receipt of your appeal notification. The time and place of the meeting will be agreed with you, and you have the right to be accompanied by a trade union representative or a work colleague of your choosing.

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An appeal hearing may not be necessary, where the appropriate manager (within the 14-day period) upholds your appeal and writes to you to confirm this decision, his/her agreement to your proposals and an effective start date for the variation to your employment contract.

Where an appeal hearing is held, the manager must confirm the decision of the appeal hearing to you, in writing, within **14 days** of the hearing.

Where the decision is to uphold the appeal and to agree your proposals, confirmation of the changes and their effective date will be given.

Where the decision is to dismiss the appeal and to refuse your proposals, the manager will set out the grounds on which this decision has been based.

The decision of the appeal hearing is final, i.e. there is no further right of internal appeal.

Employment Tribunal

If you are not satisfied with the outcome of your appeal, you may make a claim to an employment tribunal – details of the time limits, the grounds on which you can make a claim and the remedies that may be applied can be viewed [here](#). Please note that you have no right to make a complaint if you simply disagree with the business grounds provided by your manager for declining a request, and neither has the Employment Tribunal/ACAS got binding powers to question the business reasons.

Flowchart

A flowchart depicting all stages of this procedure can be viewed [here](#).

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Further Advice

Further advice and guidance about your statutory rights in relation to the Flexible Working 'Eligibility' and 'Procedural' Regulations is available from HR teams.

General advice about work/life balance can be viewed [here](#); advice about flexible working issues can be viewed [here](#).

A copy of the application form to be completed if you wish to exercise your statutory right as a parent can be viewed [here](#); the application form for a carer can be viewed [here](#).

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