



FLEXIBLE WORKING – THE RIGHT TO APPLY

This procedure has been agreed by the following professional associations/trade unions representing staff in schools.

- National Union of Teachers
- National Association of Schoolmasters Union of Women Teachers
- Association of Teachers and Lecturers
- National Association of Headteachers
- Association of School and College Leaders
- UNISON
- GMB

Revised May 2009

Flexible Working – The Right to Apply

Guidance for Headteachers and Employees

Background

The right to request flexible working was introduced in 2003 for parents of young and disabled children, and the scope of the law was extended to carers of certain adults with effect from 6 April 2007. From 06 April 2009 the right to request flexible working is being extended to parents of children aged 16 and under. This right allows parents/carers to request a variation in their contract so that they can work more flexibly. It will not provide an automatic right to work flexibly as there will always be circumstances when the employer is unable to accommodate the desired work pattern. The right is designed to meet the needs of both parents/carers and employers.

What is flexible working?

There are many different types of flexible working, some examples are:

- part-time working;
- home working;
- job sharing;
- flexi working;
- shift working.

Some types of flexible working may not be possible for certain posts within schools.

Eligibility

In order to make a request under the Act an employee will:

Parents

- have worked for Shropshire County Council continuously for 26 weeks at the date the application is made;
- have a child aged under sixteen, or under 18 where disabled;
- make a request no later than two weeks before the child's sixteenth birthday (or 18th birthday in the case of a disabled child);
- be either the mother, father, adopter, guardian or foster parent of the child, or the spouse or partner of such a person and living with the child;
- have, or expect to have responsibility for the child's upbringing;
- be making the application to enable them to care for the child;
- not have made an application to work flexibly under the right during the past 12 months.

Carer of adults who are in need of care

- have worked for Shropshire County Council continuously for 26 weeks at the date the application is made;
- be the carer of an adult in need of care (as defined at appendix 1);

- be caring for or expect to be caring for an adult who is married to, or the partner/civil partner of, or the relative of, or lives at the same address as the employee;
- be making the request to help care for the adult;
- not have made an application to work flexibly under this right during the past 12 months.

If an employee is unable to meet all the above criteria they do not qualify to make a request to work flexibly in law.

Eligible employees will be able to request to work a flexible working pattern that is different from their current working pattern, under their right by law. This may be a change to the hours they work; a change to the times they are required to work or in some cases to work from home. It is however recognised that for some posts or occupational groups the ability to work from home will not be an option.

Making an application

The following procedure must be followed when a request to work more flexibly is made. An application must:

- be in writing;
- explain what effect, if any, the employee thinks the proposed change would have on the workplace and how, in their opinion, any such effect might be dealt with;
- specify the flexible working pattern applied for;
- state the date on which it is proposed the change should become effective (if accepted implementation may take approximately 8 weeks);
- state whether a previous application has been made to the employer and, if so when it was made (an employee is able to make one application per year);
- be signed and dated.

To ensure that an employee includes the above compulsory information, the employee should complete a Flexible Working Request form (appendix 2).

It is suggested that employees seek advice/guidance from their relevant Professional Association/Trade Union representative.

Considering an application

The employee's application must be considered by their headteacher to establish whether the desired work pattern can be accommodated within the school. Advice should be sought from your Human Resources Officer prior to any meeting, to ensure fairness and consistency.

Following an application to work flexibly, the headteacher will arrange a meeting to discuss the request with the employee. This meeting must be arranged within 28 days after the date an application is received. If it is difficult to arrange a meeting within 28 days the headteacher should seek the employee's agreement to extend the period and agree a date.

When considering a different working pattern both the headteacher and employee must be aware of the employee's rights under the Working Time Regulations. The following employee rights must be considered:

- An entitlement to a rest period of 11 uninterrupted hours between each working day;
- An entitlement to one whole day off a (seven day) week;
- If an employee is required to work more than six hours in one period, they are entitled to a rest break of 20 minutes. The rest break should be taken during the six-hour period and not at the beginning or end of it. (A manager must make sure that employees *can* take their rest, but they are not required to make sure they *do* take their rest).
- There are additional rights for young workers (aged 16-18), please contact your Human Resources Officer for further advice.

The employee has the right to bring a friend/colleague or Professional Association/Trade Union representative with them to the meeting, if they feel this will help them. Their role will be to support the employee; if required, to address the meeting and to confer with the employee, but they may not answer questions for the employee.

The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. Both the employee and headteacher should be prepared to be flexible. If the original request cannot be accommodated, then an alternative working arrangement may be discussed.

The headteacher and employee may wish to agree that the new working pattern will take place for an agreed trial period in order to establish whether it is workable and whether there are any adverse effects on colleagues or the school.

Reaching a Decision

Accepting a request

Once both parties have discussed the request, the headteacher must notify the employee of the decision in writing. Notification must take place within 14 days following the date of the meeting.

When accepting a request the headteacher must write to the employee detailing the new working pattern, stating the date on which it will start and the duration of any trial period and date of review, ensuring the notice is dated.

The headteacher must notify Human Resources of the changes to an employees working pattern so that the relevant paperwork can be completed and a record of the change can be held on the employee's personal file.

If the headteacher needs more time to consider the request, they must obtain the agreement of their employee for an extension to the 14 days in which to inform them of the decision following the meeting. In these circumstances the proposal for an extension is likely to be in the employee's interests and the employee should be open to such requests.

To ensure that an employee receives all the information when a request has been accepted, the headteacher should complete a Flexible Working Acceptance form (appendix 3).

Declining a request

Advice should be sought from Human Resources prior to declining a request, to ensure fairness and consistency.

An application may only be refused where the headteacher has a clear business reason for doing so. Business grounds for refusing a request will include:

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

If the request is rejected, the notification must:

- state the business ground(s) for refusing the application;
- provide a sufficient explanation as to why the business ground(s) for refusal applies in the circumstances;
- provide details of the employee's right to appeal;
- be dated.

To ensure that an employee receives all the information when a request has been declined, the headteacher should complete a Flexible Working Decline form - copy attached.

A copy of the decline will be held on the employee's personnel file.

Right of Appeal

There will be circumstances where the employee may believe that their request has not been properly considered and may want to appeal. An employee will have 14 days to appeal in writing after the date of receiving written notification of the employer's decision.

When appealing against a refused request an employee will have to set out the grounds for making the appeal, ensuring that it is dated (see appendix 5).

The appeal will be heard by an appropriate committee of the governing body. The hearing must be arranged within 14 days after receiving notification that the employee wishes to appeal. The employee can be accompanied by a friend/colleague or Professional Association/Trade Union representative.

The employee must be informed of the outcome of the appeal in writing (see appendix 6) within 14 days after the date of the meeting and a copy of the appeal will be held on the employee's personnel file.

If the appeal is upheld, the written decision must include a description of the new working pattern, state the date from which the new working pattern is to take effect and be dated.

If the appeal is dismissed, the written decision must state the ground for the decision, provide an explanation as to why the grounds for refusal apply in the circumstances and be dated.

A written notice of the appeal outcome constitutes the employer's final decision and is effectively the end of the formal procedure within the workplace.

Failure to Comply

Failure to comply with the above policy may result in an employee complaining to an Employment Tribunal. Further advice and information is available from Human Resources.

What types of care are relevant?

Carers' patterns of care-giving will vary considerably from individual to individual, both in the nature and the extent of the care given. The sort of care-giving activities that carers of adults who request flexible working are likely to be involved in to a greater or lesser extent include:

- help with personal care (e.g. dressing, bathing, toileting);
- help with mobility (e.g. walking, getting in and out of bed);
- nursing tasks (e.g. daily blood checking; changing dressings);
- giving/supervising medicines;
- escorting to appointments (e.g. General Practitioner (GP), hospital, chiropodist);
- supervision of the person being looked after;
- emotional support;
- keeping the care recipient company;
- practical household tasks (e.g. preparing meals, doing shopping, domestic labour);
- help with financial matters or paperwork.

This is not an exhaustive list: some activities feature more prominently for some groups of carers than others. Carers of older people, for example, may need to ensure proper eating, while carers of people with mental health problems may need to order and supervise medication. Carers of people who have mental problems and who are in paid work may also need to help the person they care for with routine tasks such as getting to work.

(BERR Employment Guidance - Flexible Working: The right to request and the duty to consider)

FLEXIBLE WORKING REQUEST
For parents with children under the age of sixteen (or under the age of 18 if disabled) and for carers of adults in need of care

School:

Employee's Name:Personal No

Date last applied under this right

I would like to apply to work a flexible working pattern that is different to my current working pattern under my right provided by law. I confirm I meet each of the eligibility criteria as detailed overleaf.

1. Describe your current working pattern (day/hours/times worked):

2. Describe the working pattern you would like to work in future (days/hours/times worked):

(you may continue on a separate sheet if necessary)

I would like this working pattern to commence from
(insert date)

3. Impact of the new working pattern. I think this change in my working pattern will affect my employer, colleagues and the school as follows (please explain the affect):

Name (signature) Date.....

Note to headteacher: This is a formal application made under the legal right to apply for flexible working and the duty on employers to consider applications seriously. You should arrange a meeting with your employee to discuss their request within 28 days of receipt of this application. **Please confirm receipt of this application as soon as possible.**

FLEXIBLE WORKING REQUEST

Eligibility Criteria

To be eligible to submit a request for flexible working you must:

Parents

- have worked continuously as an employee of the County Council for the last 26 weeks (6 months);
- have responsibility for the upbringing of either a child under sixteen (or a disabled child under 18);
- be the mother, father, adopter, guardian or foster parent of the child, or married to or partner of the child's mother, father, adopter, guardian or foster parent;
- be making the request to help care for the child/children;
- be making the request no later than two weeks before the child's sixteenth birthday or 18th birthday where disabled;
- not have made a request to work flexibly under this right during the past 12 months.

Carers of adults who are in need of care

- have worked continuously as an employee of the County Council for the last 26 weeks (6 months);
- be the carer of an adult in need of care (as defined at appendix 1);
- be caring for or expect to be caring for an adult who is married to, or the partner/civil partner of, or the relative of, or lives at the same address as the employee;
- be making the request to help care for the adult;
- not have made a request to work flexibly under this right during the past 12 months.

FLEXIBLE WORKING ACCEPTANCE

School:.....

To (employee's name) Personal No

Following receipt of your application and our meeting on I have considered your request for a new flexible working pattern.

- I am pleased to confirm that I am able to accommodate your application.
- I am unable to accommodate your original request. However, I am able to offer the alternative pattern which we have discussed and you agreed would be suitable to you.

Your new working pattern will be as follows:

Your new working arrangements will begin from

Optional

At the meeting we agreed that the new working pattern will take place for a trial period up to (insert date) to establish whether the new working pattern is suitable to yourself and your colleagues and the school. As agreed this will be reviewed on (insert date).

Note to the employee: Please note that when you have reached the end of your trial period and your new working pattern is agreed, this will become a permanent change to your terms and conditions of employment and you will have no right to revert to your previous working pattern.

Name (signature) Date:

Note to Headteacher – Please return this form to your employee and forward a copy to Human Resources.

FLEXIBLE WORKING DECLINE

School:.....

To (employee's name) Personal No

Following receipt of your application and our meeting on I have considered your request for a new flexible working pattern.

Unfortunately we are unable to accommodate your request on the following business ground(s):

The grounds apply in the circumstances because:

Note to headteacher: You should explain why any other working pattern you may have discussed at the meeting is also inappropriate. Please continue on a blank sheet if necessary.

Name (signature) Date:

FLEXIBLE WORKING APPEAL

School:

Name: Personal No

Note to employee: If your application has been refused, you may appeal against the decision. You can use this form to make your appeal. You should set out the grounds on which you are appealing, and do so within 14 days of receiving written notice that your application for flexible working has been turned down.

I wish to appeal against my headteacher's decision to refuse my application for flexible working. I am appealing on the following grounds:

Name (signature)Date:

PLEASE RETURN THIS FORM TO YOUR HEADTEACHER WITHIN 14 DAYS OF RECEIVING WRITTEN NOTICE THAT YOUR APPLICATION FOR FLEXIBLE WORKING HAS BEEN TURNED DOWN.

Appendix 6

FLEXIBLE WORKING APPEAL REPLY

Dear (employee's name) Personal No

Following our meeting on (insert date) I have considered your appeal against the decision to refuse your application to a flexible working pattern as follows:

Your new working arrangements will begin from (insert date).

Note to employee: Please note that the change in your working pattern will be a permanent change to your terms and conditions of employment and you have no right to revert to your previous working pattern.

I am sorry but I must reject your appeal on the following ground(s):

The ground(s) apply because:

THIS DECISION IS FINAL AND THERE IS NO FURTHER RIGHT OF APPEAL.

Name (signature) Date

Flexible Working Guidance Notes

Flexible Working Framework Guidance Notes for Headteachers and Employees

The following guidance notes are to help both employees and Headteachers in the process of finding appropriate working patterns to suit both parties. It will explain how to request an alternative work option and how to complete the relevant forms. It also gives helpful hints when considering alternative working options, preparing to meet with your Headteacher/employee, accepting and declining a request and the appeal procedure, should the request be declined. Further information is also available from Human Resources.

Making an Application - 'Flexible Working Request' form

This form is used to make an application to request a different work option. Please note an employee may only make one request in any 12 month period unless specific circumstances apply. Copies of all the forms can be obtained from Human Resources.

Helpful hints for employees completing the request form

- It is important that you provide as much information as you can about your desired work option so that your Headteacher can consider your request. It is important that all of the questions are complete or the application may not be valid.
- When completing sections 2 and 3, think about what effect changing your working pattern will have on your job. You should aim to show in your application that your plans will not harm your department's service and may in fact enhance it. It may mean that you are available to provide extra cover at peak hours, thereby improving the service.
- Take time to consider how your colleagues will manage if your work option changes. If you have any colleagues or friends who are already working flexibly, ask them about their experiences.
- Think about how any potential problems your plans may present to your Headteacher could be overcome and ensure that you include these in your application.
- It is to your advantage to provide as much detail as possible about the pattern you would like to work.
- A new working pattern will normally be a permanent change unless otherwise agreed so think carefully about the request as there is no right to revert to your former hours of work. You may wish to discuss a change in hours for a trial period. You may wish to consult with your Professional Association/Trade Union representative prior to submitting your request;
- If you request a flexible working pattern that results in you working fewer hours you should consider the impact this will have on your pay and pension;

- Remember to contact Human Resources for further information and advice on requesting a new work option.
- Once the request form is complete, forward it to your Headteacher (keep a copy for your own records). They will then have 28 days after the day the application is received in which to arrange a meeting with you to discuss your request.
- Remember, the more notice you provide, the more likely your Headteacher will be able to implement the change when it suits you.
- Check who will consider your application if your Headteacher is not available. It may be necessary to send it to an alternative Manager.
- If you are due to go on maternity leave, think carefully about when to make your request. You might wish to mention to your Headteacher before you take leave that you are interested in requesting an alternative work pattern. Bear in mind that you may need to attend meetings with your Headteacher so that your request can be properly considered. If you would like the changes to start on your return from maternity leave, you should make your application in good time.

How long will it take before the request can be implemented?

Requests will be considered in the quickest possible time but it may take up to 8 weeks for a decision regarding your request to be confirmed. Employees must therefore ensure that they submit their application to their Headteacher well in advance of the date they wish the request to take effect.

Preparing for the meeting

An **employee** should think about the following prior to the meeting:-

- Be prepared to expand on any points within your application;
- Prepare to be flexible. Your Headteacher may ask if there are any other working patterns you would be willing to consider or, if you would consider another start date or a trial period;
- You have a right to bring a companion with you. This may be one of your colleagues. If you are taking a companion along, ensure that they are fully briefed on your request before the meeting, provide them with a copy of your request form and inform your manager that a companion will be present.

It will be useful for you to familiarise yourself with this guidance before the meeting.

A **Headteacher** may wish to consider the following prior to the meeting:-

You might wish to:

- Make a list or draft an agenda of the issues you would like to discuss at the meeting, e.g. if you are already aware that the request can be granted, you

may wish to discuss a suitable start date before formally accepting the request;

- Inform your employee of anyone you have asked to join the meeting;
- Ask the rest of your staff if they would like to cover any extra hours that may be created as a result of granting the request;
- Speak to Human Resources to ensure that you are clear about your options. You will need to ensure that the working patterns to be discussed comply with the Working Time Regulations.

It will be useful for you to familiarise yourself with this guidance before the meeting.

Employee Rights under the Working Time Regulations

When considering a different working pattern both the Headteacher and employee must be aware of an employee's rights under the Working Time Regulations. In brief, the following employee rights must be considered:

- An entitlement to a rest period of 11 uninterrupted hours between each working day;
- An entitlement to one whole day off a week;
- If an employee is required to work more than six hours at a stretch, they are entitled to a rest break of 20 minutes. The rest break should be taken during the six-hour period and not at the beginning or end of it. (A Headteacher must make sure that employees *can* take their rest, but are not required to make sure they *do* take their rest).
- There are additional rights for young workers (aged 16-18). Please contact Human Resources for further advice.

Accepting the request - 'Flexible Working Acceptance' form

This form is completed by the employee's Headteacher when accepting an application to a new work option. They must complete and forward this form to the employee within 14 days following the meeting.

If the request cannot be accommodated, alternatives may be explored to find a working pattern suitable to both.

The 'Flexible Working Application Decline' form should be used if the employee's working pattern cannot be changed, and no other suitable alternatives can be found.

A copy of this form must be forwarded to Human Resources and held on the employee's personal file.

Declining the request - 'Flexible Working Decline' form

This form is completed by the employee's Headteacher when declining an application and should be returned within 14 days following the meeting. Before completing this

form, the Headteacher must ensure that full consideration has been given to the application.

An application may only be refused where the Headteacher has a clear business reason for doing so.

This may be:-

- Additional costs;
- Unable to re-organise work among existing staff;
- Impact on performance;
- Insufficient work during periods when the employee proposes to work;
- Planned structural change.

In addition to providing a specific business ground the Headteacher must include an explanation about why the business ground applies in the circumstances. This should include the key facts that should be accurate and clearly relevant to the business ground. It is suggested that around two paragraphs is sufficient, although the actual length of explanation necessary to demonstrate why the business ground applies will differ depending on each individual case. It is not a requirement for the Headteacher to have to provide a lengthy and complex explanation looking to cover each query in fine detail - the aim is for the Headteacher to explain to the employee, in terms that are relevant, why the requested work option cannot be accepted.

A copy of this form must be forwarded to Human Resources and held on the employee's personal file.

Appealing - 'Flexible Working Appeal' form

It will not always be possible for a Headteacher to agree to a new work option in every circumstance due to the needs of the school. In such circumstances, the reasoning why the request cannot be accepted should be clear to the employee from the notice of refusal. But there will be circumstances where the employee may believe that their request has not been properly considered and may want to appeal.

An employee must make their appeal in writing using the appeal form within 14 days after the date they receive written notice that their request has been declined.

There are no constraints on the grounds under which an employee can appeal. It may be that they wish to bring to attention something their Headteacher may not have been aware of when they rejected their application, e.g. that another member of staff is now willing to cover the hours the applicant no longer wishes to work. Or it may be to challenge a fact the Headteacher has quoted to explain why the business reason applies.

The appeal will be heard by an appropriate committee of the governing body. The hearing must be arranged within 14 days after receiving notification that the employee wishes to appeal. The employee can be accompanied by a friend/colleague or Professional Association/Trade Union representative.

Following the appeal meeting, the employee will be informed of the outcome in writing within 14 days after the date of the meeting.

If the appeal is upheld the written decision will:

- include a description of the new working pattern;
- state the date from which the new working pattern is to take effect; and
- be dated.

If the appeal is dismissed, the written decision will:

- state the grounds for the decision. These will be appropriate to the employee's own grounds for making the appeal;
- provide an explanation as to why the grounds for refusal apply in the circumstances;
- be dated.

Who is responsible for what?

Employees are expected to:

- work in partnership with Headteachers to explore more flexible ways of working;
- work to objectives;
- raise problems with their Headteacher or Manager at an early stage.

Headteachers and Managers are expected to:

- work in partnership with employees to encourage flexible ways of working where appropriate;
- assess, monitor & review flexible working employees and flexible working arrangements;
- follow the framework processes included in this document.

Human Resources are expected to:

- facilitate take up of flexible working;
- encourage & promote best practice in terms of flexible working;
- monitor the process;
- offer advice and guidance.