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Scope and Purpose

1. These guidelines set out the criteria, process and conditions for making and considering a flexible working request under the statutory right to request a flexible working pattern, as set out in the amended Employment Rights Act 1996. The guidelines also reflect the 2014 amendments to the Flexible Working Regulations. These amendments, which came into force on 30th June 2014, extend the right to request flexible working to all employees with 26 weeks service.

2. These guidelines also include advice about how to request changes to working patterns to enable mothers to continue to breastfeed after a return to work. Although these are potentially short-term changes which might not require a change of contract, it may be useful to consider them at the same time as other aspects of flexible working. The information relating to breastfeeding is contained in sections 27-33.

3. This information will be updated by Human Resources to reflect any changes to statutory arrangements or University practices, and is correct as of August 2015.
Introduction to flexible working

4. 'Flexible working' describes any working pattern where the number of hours worked, or the times when work takes place, varies from the standard practice for a post. It may involve working fewer hours, such as part-time working or job share, or changing when or where contractual hours are worked.

5. Flexible working patterns can have benefits both for staff and for the University. For example, they can help staff achieve a better balance between their home and work responsibilities, and enable departments to structure working patterns around the peaks and troughs of demand.

- Examples of flexible working patterns include:
  - Part-time working
  - Job sharing
  - Term-time only working
  - Compressed hours
  - Staggered hours
  - Home working

Further information on different types of flexible working is attached at the end of this document in paragraphs 23-26.

Right to request a flexible working pattern

6. Under the amended Employment Rights Act 1996 and Flexible Working Regulations, staff have a statutory right to request a flexible working pattern provided they have a minimum of 26 weeks continuous service at the University at the time of applying. Staff can make only one statutory request to work flexibly in any 12-month period.

7. The University has a statutory duty to seriously consider flexible working requests and may decline a request where there are recognised business grounds for doing so (see paragraph 19 below).

8. Where a staff member has a disability and moving to a flexible working pattern has been recommended as a ‘reasonable adjustment’ to their working practices, an application under these guidelines does not need to be made.

Making an Application

9. Staff who meet the service requirement should make their request using the Flexible Working Application Form. Editable electronic copies of the form are also available on the Human Resources website at https://intranet.birmingham.ac.uk/hr/leave/flexible/index.aspx and paper copies on request from your Human Resources team. The application form asks staff to state:

- The flexible working pattern they wish to move to
- The date they wish it to be effective from
• What effect the change will have on the staff member’s colleagues and department (for example, if hours are reduced, what will the effect of the person being absent during those hours be?)
• The staff member’s suggestions as to how these effects be dealt with
• Whether they are requesting a trial period.

10. The staff member is asked to provide this information to help the University seriously consider their request. If the application is incomplete, the staff member may be asked to resubmit it. Once a flexible working arrangement has been agreed to, there is no automatic right to change back to the old working pattern, unless this was agreed at the time the application was made. As flexible working often involves reducing the number of hours worked, thought should be given to the effect this will have on salary, pension contributions, holiday leave and other benefits, all of which will be reduced in line with any reduction in working hours.

11. Staff are advised to also read the Flexible Working FAQs and Homeworking Guidance (if relevant), attached as appendices 1 and 2 to this document, before submitting an application.

12. The form should be submitted to the staff member’s line manager and a copy sent to their Human Resources team. Ideally, the form should be submitted as far in advance as possible, to ensure there is time for the request to be considered before the proposed arrangement needs to begin. All requests, including appeals, must be considered expeditiously and, in any event, decided upon within a period of three months from first receipt although this period may be extended by mutual agreement.

Considering the Request

13. The University has a duty to give serious consideration to a statutory flexible working request and whether it can be reasonably accommodated. Requests may be declined when they cannot be accommodated on business grounds. When considering a statutory request, the University will seek to accommodate the staff member’s needs, but will also need to balance these against the operational needs of the staff member’s team or department and the wider interests of the University.

14. Managers are advised to read the Flexible Working FAQs and Homeworking Guidance (if relevant), attached as appendices 1 and 2 to this document, when considering an application.

15. If the flexible working request can be agreed to on the basis of the application alone, it is not necessary to hold a meeting with the staff member and they should be informed of the decision in writing as outlined in paragraph 18 below. In all other cases a meeting should be held as soon as reasonably possible. The purpose of this meeting is to discuss in further detail the changes that the staff member is looking for and to discuss alternatives if the request cannot be accommodated in its current form.

16. If a meeting is arranged to discuss the application (including any appeal) and the staff member fails to attend, the meeting should be re-arranged. If the staff member fails to attend both of these meetings without good reason, the line manager may consider the application to be withdrawn and will inform the staff member of this.

17. One outcome of the meeting may be that both parties agree flexible working be undertaken for a trial period before a decision on granting the request is made. This
agreement should be put in writing and a date for a further meeting to discuss the request and outcome of the trial period agreed. The process in paragraph 16 and from paragraph 18 onwards will then continue to apply.

18. If the request – or an alternative arrangement – is agreed to, the line manager will send a written confirmation of this to the staff member, together with a copy to Human Resources. This written confirmation will include the new working arrangement, the date it will begin from and, if appropriate, the date it will end.

19. If – after giving the application serious consideration and looking at possible alternatives – it is felt that a statutory request cannot be accommodated on business grounds, the staff member will receive written confirmation of this from the line manager. The written confirmation will include the business grounds for rejecting the request and how they apply in that particular case. The staff member may appeal the University’s decision. Under the statutory right to request flexible working, the recognised business grounds for refusing a request are:

- Burden of additional costs
- Detrimental effect on the ability to meet customer demand
- Inability to re-organise work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during the periods the employee proposes to work
- Planned structural changes

**Appeals process**

20. Staff may appeal the University’s decision to refuse their statutory flexible working request. The appeal should be made in writing as reasonably possible and should state the grounds on which they are appealing against the decision. The letter of appeal should be sent to their Head of College or Budget Centre and a copy to their Human Resources team.

21. An appeal meeting will be held by the Head of College or Budget Centre, or their representative, as soon as reasonably possible after receiving the appeal letter.

22. Following the meeting, written notification of the outcome of the appeal will be sent to the staff member. If the request to work flexibly is accepted, this will confirm the new working arrangement, the date it will begin from and, if appropriate, the date it will end. If the appeal is rejected, the letter will state the business grounds for this decision and how they apply in that particular case.

**Types of Flexible Working**

23. The term ‘flexible working’ encompasses a wide range of activities and types of working. Typically it involves some form of change to how much time is worked, when work is undertaken or where that work is undertaken, or a combination of these.

24. **Changes to how much time is worked**
Part-time working involves working less than the standard full-time hours for a post. This may be by reducing the number of days worked per week, or by working a full week but reducing the number of hours worked each day. There are a number of variations on part-time working, such as job-share and term-time only working.

Job sharing involves two people sharing the duties and responsibilities of one full-time post, on the appropriate pay scale and terms of employment designed for that particular job. The division of hours is often 50/50; although some job-share arrangements involve other options, (e.g. alternate weeks, mornings/afternoons, two days/three days etc.).

Term-time only working involves working only during University or school term-times. Actual working hours during term time may be full- or part-time, and salaries may be paid pro rata during the year or holidays may be treated as unpaid leave.

Arrangements that involve **reducing the number of hours worked** will result in a reduction in salary and also other forms of remuneration and benefits, such as pension contributions and holiday leave.

25. Changes to when work is undertaken

- Staggered hours arrangements are when the staff member works set hours every day, but the start and finish times are earlier or later than standard. The staff member may still work their standard weekly hours, or may combine this arrangement with a reduction in the number of hours worked.

- Compressed hours arrangements involve extending the number of hours worked per day, so that standard weekly hours are worked over 4 or 4.5 days instead of 5, or standard fortnightly hours worked over 9 days instead of 10. Working arrangements will still need to be compliant with the Working Time Directive, and staff considering compressed working hours should give full consideration to the impact of extended working hours on their work-life balance.

- Seasonal/annualised hours are most effective in posts where there are significant variations in workload from one time of the year to another. Working hours are calculated over the period of a year, rather than a week, and work arranged in accordance with the peaks and troughs of the workload. This results in staff working their standard annual hours, but with more weekly hours then standard being worked at particular times of the year and fewer at other times.

26. Changes to where work is undertaken

- Homeworking/remote working involves a staff member working from home for part of their standard working hours. Home working enables staff to focus on their work in a quiet environment and so is suited to work that requires sustained periods of concentration and minimum face-to-face interaction with other staff and customers. It will involve the provision of appropriate home computing and telephone equipment to enable effective communication, and any necessary health and safety checks will also need to be undertaken. Managers and staff will also need to reach agreement on monitoring the output of work undertaken at home.

- The University has produced [Homeworking Guidance](#), attached as appendix 2 to this document.
Changes to working patterns to accommodate breastfeeding.

27. The New and Expectant Mothers at Work Guidelines set out the University’s obligations in providing facilities for breastfeeding mothers. This section is concerned with making requests to change working patterns on a temporary basis in order to accommodate breastfeeding.

28. Breastfeeding can be a sensitive issue for an employee to broach. Therefore the request can be made in several ways, to enable employees to choose the route that they are most comfortable with.

29. A written request can be made to your line manager and a copy sent to your Human Resources Team. This can be done at the same time as a flexible working request.

30. Alternately, a member of staff may prefer to discuss this with their line manager or a member of the HR team at a KIT day, or by telephone. A note should be made of what was discussed and agreed.

31. Discussion will need to cover what changes are requested and how these might be accommodated by the University. Examples might include taking short breaks in order to express milk.

32. As it is difficult for mothers to estimate how long they will wish to breastfeed for, it is good practice to set a date to review arrangements, rather than to make them for a specified period.

33. Changes to working pattern in order to accommodate breastfeeding are not long-term contractual changes. They do not count towards the one application per year under the flexible working policy.
Appendix 1

Flexible Working FAQs for staff and managers

1. Can any member of staff ask to work flexibly?

Yes. Whilst this statutory right has existed for some years for those with young children, it has recently been extended to all employees, subject to their having been employed here for at least 26 weeks. The reason for asking to work flexibly no longer has to be a reason relating to child or elder care.

2. Are there any advantages in allowing someone to work flexibly?

Potentially, yes. There are many different kinds of flexible working and, together with a member of staff who wishes to make a request, managers need to work out whether there is a mutually acceptable way of the individual achieving what s/he wants. This might mean being better prepared to deal with departmental peaks and troughs in managing workload; or, if the member of staff wishes to reduce his/her working time, that could result in a financial saving.

There is also an advantage in having a member of staff who is able to strike a good balance between his/her work activities for the University and activities outside work, because the member of staff will be more committed to work activities knowing there is space for the non-work activities.

3. So what are the disadvantages?

In considering a request for flexible working, managers need to ensure not only that the work is covered, but that it is covered in a way which does not adversely affect other members of staff. Secondly, managing staff who are working flexibly means that they may not be around when everybody else is, and this can create challenges for arranging meetings, and ensuring all staff are appropriately briefed.

Managers may find that, having agreed that one member of staff can work flexibly, they have to refuse another member of staff because they have used up all of the flexibility they are able to exercise (e.g. in re-allocating work) on the first case.

4. If anybody can now apply to work flexibly, how do I prioritise dealing with requests? Do I have to give preference to those making requests on grounds of childcare?

Managers should deal with requests in the order that they receive them. They should not give preferential treatment because they may think one reason is better than another.

5. Can I agree to flexible working for a fixed period?

Normally, when you agree to a flexible working request, your agreement is contractually binding permanently. So, if it is agreed that a member of staff can move from full time to half time working, their contract will be amended, and both parties will be committed to that way of working for the foreseeable future; there is no right on either side to change that agreement unilaterally.
However, a member of staff can ask to work flexibly for a limited period, or it may be agreed that a request be granted only for a limited period, (providing there are reasonable business grounds for that decision). If the agreement is for temporary flexible working, at the end of the fixed period, the working pattern will revert to its original, unless both parties agree to extend the period of flexible working.

6. To what extent can I expect staff who are working flexibly to adjust their flexible working pattern for what I consider to be a good reason?

Maybe the point to start with this is at the time you give your agreement for the person to work flexibly, when you might have a conversation about what you will both do if ever there is a need for the member of staff to work in their ‘flexible’ time – when otherwise they wouldn’t be doing University work. That may be the point at which, between you, you work out some way of managing that.

Most staff will try to make ad hoc arrangements so that they can balance their activities within and outside the University, particularly if they understand the reason for the request. Often, employees are prepared to be more flexible in responding to such ad hoc requests if managers are also prepared to be flexible in responding to their occasional need for greater flexibility.

You can have a greater expectation that a member of staff will adjust their working pattern who is a full time/full year employee - whom you expect to attend a work activity during the normal working day - than you could if they have reduced their hours to half time and you want them to come into work when they are not contracted to do so. For example:

a) A full time/full year employee is used to leaving work at 3pm to do the school run, but makes up the time in the evenings and at weekends. You find there is no alternative but to arrange a meeting at 4pm, which this member of staff is required to attend. You will want to explain to the individual why it was necessary that the meeting be held at that time and that their attendance is essential; and it would be important that you give as much notice as possible to allow the employee to make alternative childcare arrangements. That done, it would be a reasonable expectation that the member of staff should fulfil his/her contractual commitment and attend the meeting. Your expectation would be much less strong if the meeting were at, say, 7pm.

b) A full time/full year employee has made a request to reduce his/her working hours to 60% of full time, to which you have agreed, and the employee has taken a cut in salary as a result, such that s/he now works only three days, Monday – Wednesday each week. You want this employee to carry out a piece of work (which only s/he can do) in the University at the end of a week - it cannot wait until next Monday – but the employee says s/he is unable to comply. Unlike example a) above, you cannot in this case rely on a reasonable management instruction, because there is no contract in force for the end of the week. Maybe, if the employee is unable to attend the University, s/he could carry out the work remotely before Monday – depending on his/her other commitments – and in return you might agree some additional time off the following week, or at some other mutually convenient time.
7. How should I respond if a member of staff who is on a task-based contract – as are all academic and related staff – asks to work compressed hours?

The point of a task-based contract is that the contract itself provides a degree of flexibility about how and when the tasks are completed. The University sets out the duties and the standard to which they must be completed; sometimes, the duties may be fixed in time (e.g. timetabled teaching commitments) and it may therefore be difficult to move them, while other duties may have deadlines – but the way in which the member of staff works to meet the deadline may, to some extent at least, be a matter of choice for the individual. A task-based contract is not consistent with fixed working hours, which is what is implied by a request to work compressed hours e.g. to work full time over, say, 4.5 days a week.

One response might be to say that, if the member of staff can meet his/her obligations to the University in the compressed hours, the task-based contract already provides the room for that to happen. But some task-based contracts may be more constrained – provide less flexibility - than others, in that the tasks, and how and when they are to be carried out, are more closely defined.

In all cases, if a flexible working request is made in accordance with the statutory requirements, a manager will have an obligation to consider the request seriously, and may either grant the request or refuse it for one of the specified reasons (see Q10). This is equally true of requests made by staff on task-based contracts. If the work cannot reasonably be managed in such a way as to accommodate a compressed hours arrangement, there are a number of suitable reasons for declining the request.

8. A member of my staff is requesting time off in the summer for childcare purposes: do I have to grant this flexible working request?

Firstly, the reason for the request is irrelevant (see Q1). Secondly, the request only has to be granted if there is no good reason to refuse it: see Q10.

If the member of staff is employed full time, that includes working out of term times, subject to the usual leave entitlements. This request for flexible working seems to be a request for unpaid leave of absence for the summer vacation, which would be a perfectly valid request under the flexible working arrangements. As a manager, you would need to consider how that person’s work could be shared out between other members of staff, or whether it would be reasonable for the work to be done later, once the new academic year gets underway, or not be done at all. If you judge there is a way in which the request can reasonably be accommodated, you should approve it; otherwise, you should identify a suitable reason for rejecting it. But, if you approve, the member of staff is not entitled to continue to receive full pay if s/he is not carrying out his/her duties.

9. What factors should I consider when someone asks to work from home?

In addition to deciding for themselves when they carry out their work, academic staff often have some flexibility about where they carry it out, for example it may be easier to do some marking at home, where there is peace and quiet to get on with the job, rather than in the office, where there may be constant interruptions. What this shows is that there can be advantages to the University in homeworking, as well as to the individual.

However, other jobs may be more constrained in that they need to interact on a regular basis with colleagues, where being in the office and being available to others is an important part of why the job exists. It may therefore be more difficult in these cases to agree to a request for homeworking, although occasionally, say where there is a non-standard piece of project work to do, homeworking might be possible.
Regular homeworking – say every Friday - could become contractual, through custom and practice, so it is important to give careful consideration at the outset to the kind of precedent you would be setting by agreeing to such a request. Maybe it’s something you would want to agree to for a limited period, at least in the first instance, so that you can review it after a period to make sure the job is still being done as effectively as it can be, and then at regular intervals thereafter.

It is important that you keep track of the work that is being done while someone is working from home, so that you are able to judge that not only the quality but also the quantity of the work being done is satisfactory.

Having the ability to communicate during the working day with a home-worker will be vital in most cases, so make sure you can contact the person by email and by telephone if need be.

If a member of staff is a permanent home worker, or spends a large proportion of his/her working time away from the University, making sure s/he feels and remains part of the wider team and is kept up to date with developments is another significant consideration.

There are also important technical considerations – equipment, health and safety, data security, insurance and so on – which are perhaps more significant the more frequently the person would be working from home but which need to be considered in all cases.

10. If a member of my staff asks to work flexibly, can I refuse?

Yes, but your refusal should be reasonable; you may not reject a request out of hand; you must consider it seriously. The Flexible Working Guidance sets out the statutory reasons for refusing a request for flexible working.

11. Can the member of staff challenge my decision?

Yes. If you refuse a flexible working application, you should give the member of staff the opportunity to appeal. Please seek the advice of your local HR team if you receive such an appeal.
Appendix 2

Homeworking Guidance for staff and managers

Introduction

1. For a variety of reasons, and with varying degrees of frequency, staff may undertake some of their duties away from their normal place of work at the University premises. Whilst there is an expectation that normally staff will be in the workplace, it is accepted that occasionally there will be circumstances where an individual and the relevant line manager agree that it is mutually beneficial for that individual to work at home, or somewhere remote from the University, whether ad hoc, regularly or permanently (although this would be rare).

2. This guidance has been developed to provide a clear approach for dealing with home working on a regular and frequent basis. They are not intended to address ad hoc one off arrangements for home working for short periods to complete specific agreed pieces of work, nor are they intended to change existing arrangements or working practices.

Definition of homeworking

3. Home working means performance of University work for agreed hours from the home (i.e. normally in the employee’s private dwelling) or another remote location. The flexibility and productivity outcomes available from home working can be attractive to both the University and employees. The arrangements are based on a management philosophy of trust and mutual benefit. The employee will retain access to a University office workstation (or desk-sharing arrangement).

4. Both staff and managers should be aware of the following points when making and considering an application for homeworking:

Suitability of the role for home working

5. Working from home should not create additional workload for other employees, or otherwise affect operational efficiency and effectiveness. Positions with one or more of the following requirements will not normally be considered for home working:
   - direct face to face contact on a frequent basis (for example reception duties for internal and external visitors);
   - being a member of a team who needs to have face to face contact with other team members such as checking or signing documents, providing cover during breaks etc.;
   - servicing and serving other University facilities or assets (e.g. security office, physical recreation assistant, grounds worker); where there is a need for face to face supervision such as allocating work on an ongoing basis, dealing with queries, checking work, organising rotas.

Health and safety considerations

6. University Policy requires the University to make arrangements to ensure the health and safety of its staff when carrying out work on behalf of the University. This includes when they carry out University work at home.
7. For practical reasons the University cannot check individual's homes and reliance is placed on the individual to assess their own workstation and other working arrangements to ensure that they are working in a healthy and safe manner. The University has produced guidance will help them do this. The guidance can be accessed at: https://intranet.birmingham.ac.uk/hr/documents/public/hsu/hsuguidance/21HW.pdf

**Provision of equipment**

8. As the University campus remains a work base for the home worker and a desk and equipment is provided on campus, the University will not normally provide the home worker with additional IT equipment, phone, broadband connection or furniture to work from home.

9. The home worker is responsible for ensuring that they have suitable telephone and broadband services where required, and for contacting the service provider in the event of any technical issues. It is not possible for the University to provide IT support for equipment owned by members of staff.

**Running costs and expenses**

10. Where staff perform duties at home no contribution will be made towards any additional costs or expenses incurred, including heating, lighting, cleaning, broadband, etc. When an employee is working at or from home, journeys made to the normal office base will not be reimbursed.

11. Business telephone calls made from home will, however, be reimbursed, in accordance with the staff expenses guidance:
https://intranet.birmingham.ac.uk/finance/documents/staff/expensesguide.pdf

12. The University holds liability insurances that provide cover for the legal liabilities of the University and its employees whenever they are engaged in University business. This cover applies irrespective of where the activity is taking place. The staff member may need to consider whether they need to advise their mortgage or insurance company that they are undertaking work at home. Further guidance can be found at:
https://intranet.birmingham.ac.uk/hr/wellbeing/worksafe/topics/offcampus.aspx

**Data and Document security**

13. Employees who are carrying out work at home must still operate in accordance with the University’s IT security and data protection policies. Details of these can be found at:
https://intranet.birmingham.ac.uk/it/governance/policy/index.aspx
Communication

14. Good communication is an essential part of any successful home working arrangement. Provision must be made to allow effective communication with work colleagues and external clients during the working day.

15. If contact is required during set hours or at specific times the employee must ensure that they are contactable at these times (email/telephone). The arrangements for contact should be agreed prior to working from home and kept up to date.

16. The employee’s home telephone number and home address and personal non work email address may not be divulged to third parties without their express permission.

17. Under no circumstances are arrangements to be made for students, clients or representatives to meet with the employee at their home. All such meetings should be carried out at the University campus or a similar professional setting in order to maintain the necessary level of professionalism and safety.

18. Visits from University staff to a home worker’s home should only take place under exceptional circumstances, such as welfare reasons or for security purposes.

Establishing measure of outputs

19. Effective flexible working is based around a focus on results and measuring employee contribution by outputs rather than numbers of hours spent in the workplace. Managers and staff need to work together to establish clear, measurable objectives by which achievements will be measured Effective measures could include:

- Quality standards
- Setting and meeting deadlines
- Financial objectives
- Customer services