

Flexible Working Policy

This document outlines the Scottish Prison Service Policy and Procedure in relation to Flexible Working

Published by Organisational Development Directorate

Published 6 April 2024

Unlocking Potential - Transforming Lives.

Policy Number:

HR024/003

Directorate Owners:

Organisational Development Directorate

Policy Scope:

All Staff

Links to Other Policies:

[Occasional Home Working Policy](#)

[Protecting the Personal Data of Staff Members and Others](#)

Approved by:

Director of Organisational Development

Effective date:

6 April 2024

Review Date:

This policy will be reviewed as and when required to reflect changing business and legislative requirements.

Policy Contents

1.0 Introduction.....1

2.0 Aim.....1

3.0 Policy Statement.....1

4.0 Types of Flexible Working2

5.0 Roles and Responsibilities3

 5.1 Employees..... 3

 5.2 Managers’ Responsibilities..... 3

 5.3 Human Resources Responsibilities..... 4

6.0 Procedure for Flexible Working Requests4

 6.1 Application Requirements 4

 6.3 Considering a Flexible Working Request 5

 6.4 Flexible Working Request Decision 6

 6.4.1 Request Agreed in Full 6

 6.4.2 Request Agreed in Part..... 6

 6.4.3 Request Declined..... 7

 6.5 Right to Appeal 7

7.0 Monitoring Process8

1.0 Introduction

This policy and the incorporated guidance set out the Scottish Prison Service (SPS) approach to flexible working, the process employees should follow to make a flexible working request, and the manner in which the SPS will consider and respond to requests for flexible working.

2.0 Aim

The aim of this policy is to ensure that all flexible working requests received from SPS employees are given due consideration, and that management decisions are fair, objective, and non-discriminatory.

3.0 Policy Statement

SPS recognises the importance of balancing work and home life and aims to accommodate a range of working arrangements, where operationally feasible, to help employees achieve this balance.

Flexible working covers a variety of arrangements for organising working time, whether it be the number of hours worked, the number of days attended and/or the place an employee carries out their duties from.

This policy and guidance have been developed in partnership with SPS Management and the Trade Union Partners. This policy applies to all SPS employees, regardless of the nature of their contract of employment. Requests for flexible working that are a reasonable adjustment for a disability/health condition should not be made using this policy or related forms. Reasonable adjustments should be requested in consultation with the employee's line manager and local HR Team.

SPS is required to ensure that all requests, including any appeals, is considered, and decided on within a period of two months from first receipt. If the request cannot be considered within two months, then this timescale can be extended provided the employee agrees to this.

There is no automatic right to work flexibly. Each request will be considered individually, taking into account the nature of the job, as well as the current structural, organisational, operational requirements and priorities of the team at the time that the request is made.

4.0 Types of Flexible Working

Flexible working incorporates a wide range of working practices. A flexible working pattern can be a different working pattern to the normal pattern in the organisation. However, alternative working patterns, must be compliant with the Working Time Regulations, and related SPS policies.

The following flexible working options are examples of the arrangements that employees can request, but the SPS recognises that there may be alternatives or a combination of options which are suitable to both the organisation and the employee:

- **Compressed hours** – Where an employee works their usual full-time hours in fewer days by working longer blocks meaning that there is no reduction in their pay. For example, a five-day week is compressed into four days, or a ten-day fortnight into nine days.
- **Flexi-time** – This allows employees to choose, within agreed limits, when to begin and end work. Employees may be required to work during ‘core hours’ and must work a minimum number of hours in a specified accounting period.
- **Home working** – An employee may wish to apply for Home Working, please see our separate policies which sets out our approach to remote working.
- **Staggered hours** – Where employees in the same workplace have different start, finish, and break times. This can be an effective means of covering longer hours.
- **Part-time working** – Any arrangement where an employee is contracted to work anything less than typical full-time hours for the type of work in question.
- **Job sharing** – is an arrangement where a full-time post is divided into two part-time roles. The two job holders then share the overall duties and responsibilities. Their skills and the hours that each employee wishes to work must be compatible and meet the needs of the organisation.
- **Partial Retirement** – Subject to certain conditions detailed in the [Partial Retirement Scheme Guidance](#) members of the pension scheme can take some or all of their pension and carry on working on a part-time basis.

SPS is committed to providing a range of appropriate working patterns. However, employees and management need to be realistic and to recognise that not all flexible working options will be appropriate for all roles.

A change to an employee’s working pattern agreed under this policy is a change to their terms and conditions of employment.

Employees who require more detailed information on how their pay and conditions may be affected, can contact their local HR team prior to submitting their request.

5.0 Roles and Responsibilities

5.1 Employees

SPS affords employees the right to have a Trade Union Representative or workplace colleague present at any meeting to discuss their application. They also have the right to have their application properly considered in accordance with the set procedure and refused only where there is a clear operational ground(s) for doing so. To ensure an application can be progressed as efficiently as possible, employees have a number of responsibilities as follows:

- To ensure that they are familiar with the Flexible Working Policy and the procedure for making a request;
- To ensure that their application is valid by checking they have provided all the necessary information;
- To ensure, as far as possible, that the application is compliant with the Working Time Regulations;
- To ensure the application is made well in advance of when they want it to take effect;
- To be prepared to discuss their application in an open and constructive manner; and,
- If necessary, be prepared to consider alternative proposals where the line manager is unable to fully accommodate the proposed request; and/or be willing to undertake the proposed pattern on a trial basis where the line manager has reservations as to how well this could work in practice.

5.2 Managers' Responsibilities

All managers involved in the various stages of the consideration of the flexible working request have a number of responsibilities as follows:

- To attend relevant training and to cascade policy actions to their teams;
- To consider requests/appeals properly in accordance with the set procedure and using the tools provided in the Manager's Guidance: Handling Flexible Working Requests;
- To ensure the local HR team is aware of any flexible working requests/appeals and seek advice on any policy matters or concerns relating to the requested change;
- To ensure time limits within the procedure are adhered to i.e., that all requests, including any appeals, are considered, and decided on within a period of **two months** from first receipt.

- To provide the employee with appropriate support and information during the course of the application.
- To only decline a request/uphold an original decision where there is one or more recognised operational ground(s) for doing so and to provide a detailed explanation to the employee in writing;
- To ensure any variation with the procedure is agreed in advance with the employee and recorded in writing; and,
- Where relevant, to consider alternative proposals, seek agreement with the employee, where possible.

5.3 Human Resources Responsibilities

Human Resources have responsibility for:

- Providing advice and guidance on the application of this policy and incorporated procedure to all involved;
- Supporting managers by attending formal meetings/appeals in cases where such support is requested;
- Confirming outcomes in writing, including any changes to the employee's terms and conditions of employment as a result of an agreed flexible working arrangement; and
- Monitoring and reviewing this policy and the associated procedure, in consultation with the Trade Union Side (TUS).

6.0 Procedure for Flexible Working Requests

6.1 Application Requirements

Employees have the right to submit a Flexible Working Application from the first day of their employment with SPS. A [Flexible Working Request Application Form](#) must be completed fully, submitted to the Line Manager, and copied to the HR Team.

6.2 Flexible Working Request Meeting(s)

To support the application process, the Line Manager must meet with employee to discuss the flexible working request. This allows them to find out more about the proposed working arrangements and to determine how it could be of benefit to both the employee and SPS. To adhere to the overall 2-month timescale, Managers are encouraged to hold a meeting with the employee, within **10 working days** of its receipt wherever possible.

The Line Manager must discuss the flexible working request with the HR team and with the Second Line Manager prior to the meeting with the employee. This is to ensure that the Line Manager is aware of all relevant operational information prior to considering their decision. Line managers should also check that all health and safety requirements have been met in the proposal, seeking guidance if necessary.

A summary note of the meeting should be taken as this may be useful when reflecting upon the discussion and reaching a decision. Line managers may therefore ask a suitable note-taker to attend the meeting to assist them and/or a member of the HR team.

The employee can be accompanied by either a TU representative or workplace colleague. A mutually agreeable time for all parties should be agreed in advance in order to avoid any unnecessary delay. The role of the TU representative or workplace colleague is to support the employee. The colleague / TU representative is able to address the meeting, and to confer with the employee during it, but they may not answer questions put directly to the employee.

Taking operational needs into consideration, line managers should accommodate requests from employees to take time off during working hours to accompany a co-worker to a formal meeting in their capacity as a “workplace colleague”. The time off is paid.

If an employee fails to attend the meeting without notification, they should contact the Line Manager as soon as possible to explain their absence, and to allow the Line Manager to rearrange the meeting at the next mutually convenient time. Should the employee fail to attend the meeting on two occasions without good reason, the Line Manager may treat the application as having been withdrawn. In such circumstances, HR will write to the employee confirming that the application is considered to have been withdrawn.

6.3 Considering a Flexible Working Request

Managers should consider the proposed flexible working arrangements, looking at both the potential benefits and adverse effects to both the employee and to the organisation in implementing the proposed changes.

Each request will be considered on its own merits. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar change to their working pattern – the decision has to be based on resources, workload, and operational requirements at the point in time at which the request is considered.

The employee will be informed in writing of the decision as soon as is reasonably practicable, but usually no later than **5 working days** after the meeting.

The request may be granted in full, in part or declined. A modified version of the request may be proposed, or the employee may be asked to try the flexible working arrangement for a trial period.

6.4 Flexible Working Request Decision

6.4.1 *Request Agreed in Full*

Any request that is made and accepted will be a permanent change to the employee's contractual terms and conditions (unless agreed otherwise). The employee has no right to revert back to the previous working pattern. A variation to the employee's statement of terms and conditions of employment will be sent by the Human Resources Department to the employee detailing the revised working pattern, and any other respective changes.

Prior to the flexible working arrangement commencing, the employee's outstanding annual leave, TOIL, flexi, banked leave etc. should be reviewed and reduced where necessary to ensure that manageable balances are carried forward into the period following the change of contractual terms.

The change to terms and conditions is in relation to the employee's current role and may not necessarily be transferable should the employee be promoted, transfer laterally or opt-down. Employees should discuss this with the manager of the post they are being considered for before accepting the post where offered.

If the employee has any questions or concerns about the terms and conditions of employment, they should contact their local HR team to discuss the matter further.

6.4.2 *Request Agreed in Part*

Where requests cannot be agreed on a permanent basis, for example, if an employee's proposed working pattern is suitable in the immediate term but you or senior management are aware of planned structural changes, that will be announced or implemented within the next 12 months or so and which may render the proposal unsuitable, then it may be appropriate to agree the change on a temporary basis.

Where there are reservations about how a requested working pattern will work in practice, it may be beneficial to consider a trial period initially. The Line Manager and employee should agree how long this initial trial period will be. Best practice suggests that a reasonable duration for a trial period should not exceed three months. However, this can be extended if an accurate assessment of the working arrangements could not be carried out in this three-month period. Review points should be set where the line manager and employee can jointly discuss how the new arrangements are working and make any adjustments necessary. Any subsequent adjustments made following review will remain part of the original application.

The use of a trial period will extend the timescales for providing a decision on the flexible working request (and hearing any appeal) beyond the required 3-month period. Therefore, in agreeing to the trial period, the employee is also agreeing to an extension of these timescales.

Where a trial or temporary period has been agreed, the HR team will issue the employee with written details of their new working pattern, making it clear that it is only a temporary variation to the terms of the employee's contract. The employee will be

informed in writing of the start and end dates (although, these can be adjusted where necessary).

If, prior to the end of the trial period, evidence determines that the working arrangements can be accommodated, or the working arrangements are not meeting needs, the trial period can be ended sooner. At the end of the trial period, the line manager and employee should have a discussion about the trial to determine whether the working pattern can be approved on a permanent basis. If the line manager is unable to grant a permanent change, then the employee's application for a permanent change should be declined as per section 6.4.3. The employee would revert to their previous working arrangement but still has the right to appeal the decision made by the line manager.

6.4.3 Request Declined

There will be circumstances where, due to operational requirements, SPS will be unable to support a request. There are a number of operational grounds for declining a request, and the reason for refusing a request **must** be from one of the following:

- The burden of additional costs.
- An inability to reorganise work amongst employees.
- An inability to recruit additional employees.
- A detrimental impact on quality.
- A detrimental impact on performance.
- Detrimental effect on ability to meet customer demand.
- Insufficient work for the periods the employee proposes to work.
- Planned structural change(s) within SPS.

A letter providing reasons why the application cannot be supported must be provided to the employee which will:

- State the operational ground(s) which apply to the decision;
- Provide an explanation of why the operational grounds apply in the circumstances; and,
- Set out the appeal procedure.

Providing an explanation about why the operational ground(s) apply provides an opportunity for employees to be satisfied that their application has been considered seriously.

6.5 Right to Appeal

The employee has the right to appeal the decision if their request is refused or is only partially accepted. The employee should submit their [Flexible Working Request](#)

[Appeal Form](#) to the Governor or Divisional Head and a copy to the relevant HR team within **10 working days** of being notified of a decision on their application.

The appeal meeting will usually take place within **10 working days** after receiving the notice of appeal. The Governor or Divisional Head should normally chair the appeal hearing, although they may delegate this to another manager, no lower than Deputy Governor or equivalent. In all cases, the chair of the appeal hearing must be at least one pay band above the manager who initially considered the request. However, in cases where the GIC/Divisional Head was involved in the original decision, a GIC/Divisional Head from an alternative establishment/function will consider the appeal. The HR Business Partner will assist in determining an appropriate nominee in such cases.

The employee can be accompanied by either a TU representative or workplace colleague and a mutually agreeable time for all parties should be agreed in advance in order that the timescales are not unnecessarily delayed.

The employee will then be informed of the outcome to their appeal usually within **5 working days** of the appeal meeting. These time limits may be extended with the agreement of both the employee and the Chair of the appeal meeting. The outcome of the appeal is the end of the formal procedure.

Should the employee fail to attend the appeal meeting on two occasions without good reason, the Line Manager may treat the appeal as having been withdrawn. In such circumstances, the Line Manager should write to the employee confirming that their appeal is considered to have been withdrawn.

7.0 Monitoring Process

Local HR teams will keep records of flexible working requests received and the decisions reached in each case for monitoring and evaluation purposes. Where required to do so, the statistics concerning flexible working requests will be included in equality and diversity reporting internally and externally.

Further Information:

The SPS recognises that from time-to-time employees may have questions or concerns relating to Flexible Working. In certain situations, employees' rights and obligations regarding Flexible Working may change. In these circumstances the SPS will abide by any statutory obligations.

The SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with the appropriate Line Manager in the first instance.

Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with the SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

Equality Statement

The SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity, and human rights and to ensuring our culture, working environment, policies, processes, and practices are free from bias. This policy applies to all employees regardless of protected characteristics, and, subject to any eligibility criteria, length of service, grade, working pattern or operational status.

GDPR

This Policy has been subject to a Data Protection Impact Assessment to ensure compliance with GDPR.

Inclusive Communications

It is our ambition to ensure that SPS documents are readable, accessible, and engaging for staff. In formatting this document, good practice principles around engagement and inclusive communications have been adhered to. If you require this document in an alternative format, please contact Human Resources.

Review and Monitoring

This policy will be reviewed as and when required to reflect changing business and legislative requirements.

Human Resources Policy and Guidance in SPS

SPS policies take into account current legislation, rules, regulations, and best practice guidance from a range of professional and public bodies, including the following:



UK Civil
Service
Management
Code



UK Legislation



EU
Legislation



ACAS



CIPD Best
Practice