

# Accounting For Climate Change In Flexible Working Requests

By **Jonathan Carr and Gemma Taylor** (May 2, 2024)

The U.K. recently strengthened its flexible working laws to encourage more flexible and remote working. As a 2023 report by the Proceedings of the National Academy of Sciences in the U.S. found that these working models have environmental implications, should employers give greater weight to the climate when deciding whether to say "yes" or "no" to such request by employees?

On April 6, the U.K. government changed its flexible working laws to allow employees, among other things, to make requests for flexible or remote working from the first day of employment, require employers to consider those requests more quickly, and ensure that employers consult with employees before rejecting any request.

Employers can continue to reject requests on the basis of eight specific grounds. But the latest changes take no explicit account of the climate benefits — or drawbacks — of flexible or remote working.

This article discusses the environmental impact of flexible or remote working, and whether employers should — and legally could — take these into account when weighing requests. We explain that flexible and remote working can be beneficial or detrimental to the environment, depending on the circumstances, and that employers may have more discretion than they realize to take this into account.



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## Carbon Emissions

Some remote working requests, if granted, may lead to reduced carbon emissions. The obvious example relates to the emissions generated by the employee's commute to work. They fall within the employer's so-called Scope 3 or indirect carbon emissions. These are notoriously difficult to calculate, but standards do exist to support employers with doing so — including the Greenhouse Gas Protocol.[1] Employees can clearly save emissions from commuting if they work from home or work a reduced working week.

Even greater carbon savings can be achieved if the office shrinks or closes as employees work from home. In its May 2021 publication, "Stop the Clock: The environmental benefits of a shorter working week,"[2] the nonprofit organization 4 Day Week Campaign argued that shifting to a four-day working week without loss of pay could shrink the U.K.'s carbon footprint by more than the entire carbon footprint of Switzerland.

Some arrangements might even lead to more specific environmental benefits where, for example, an employee is planning to move to a more sustainable home and way of life and the remote working arrangement is part of that overall plan. Similarly, if an employer chooses to embrace hybrid working and reduce its office footprint, this can open up opportunities to move to more environmentally friendly office premises.

However, flexible and remote working is not inevitably better for the environment than office-based working. Some remote work arrangements may increase carbon emissions. In general terms, working from home results in a smaller carbon footprint, but the picture is

much more complicated when looked at on an individual level.

Depending on factors such as employees' domestic energy source and consumption, the energy efficiency of the office, the means by which workers would otherwise travel to the office, and the time of year, workers may increase their employer's Scope 3 emissions by working from home. If everyone starts using a portable air conditioning unit at home, for example, this may actually be worse for the environment compared to everyone commuting by train to an office with shared air conditioning.

The picture becomes even more complicated if we look at requests to work remotely from an overseas location. For example, a round-trip flight from London to Barbados — one of the first countries to launch a digital nomad visa — involves nearly 800 kilograms of carbon dioxide, according to the International Civil Aviation Organization's carbon emissions calculator,[3] and this is before taking into account any emissions caused by air conditioning in the building where the employee plans to work.

### **Weighing the Merits**

Arguably, employers should perhaps be more aware of the specific climate impact of any remote work request. But what about the legal position? Can an employer legally take climate impact into account when weighing up the merits of a remote work request?

If an employee asks to work remotely under the U.K. statutory regime for the right to request flexible working, employers can only say "no" based on one of eight specific grounds, such as additional cost or impact on performance. None of the eight grounds obviously relates to the environment.

When the U.K. government updated these flexible working laws on April 6, it chose to retain the same eight specific grounds and not expand them to, for example, specifically cover climate impact. Arguably, that was a missed opportunity. That is not to say, however, that employers can never take the environment into account.

First, concepts, such as cost or performance, can arguably stretch to include environmental costs or performance, especially in a business that is tracking and actively trying to reduce its carbon impact.

Second, requests to work remotely are not always made under the statutory flexible working regime. There is an argument that requests to work temporarily overseas fall outside of the legal scope of the statutory rules altogether, which succeeded in the employment tribunal's July 2023 decision in *P Corke v. Department for Transport*.<sup>[4]</sup> Even if this decision is not followed in other cases, such requests are often made under separate policies without triggering the statutory flexible working regime.

In practice, this means that some potentially environmentally damaging requests for remote working could be lawfully rejected by employers, either by relying on a broad definition of the statutory grounds for refusal or because they fall outside the statutory regime altogether.

What about flexible or remote working requests that would actually benefit the environment? There is nothing to stop employers from adopting a policy of embracing and actively encouraging these, as surveys, such as a study of over 7,000 employees conducted by Kite Insights last year, continue to show that employees care about the environment and want to see employers taking action on climate change.<sup>[5]</sup>

One thing that employers could start doing is making climate a factor in their flexible and remote working policies. Of course, there are potential risks for employers here. Employees are currently relishing remote, hybrid and flexible options and may not — despite all the surveys showing employees' eco-consciousness — be ready for climate-motivated pushback on their remote work requests.

This perhaps is where compromises may have a role to play, such as allowing employees to work remotely for parts of the year or on the condition that they power their home with sustainable or green energy.

## **In Conclusion**

The changes to the U.K. statutory flexible working regime on April 6 arguably missed the opportunity to put the environment into the equation. Yet, this does not stop employers being more aware about the environmental impact of flexible and remote working requests so that more informed requests and decisions can be made. In time, we can expect to see more employers making climate a bigger factor in their decision making.

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[1] <https://ghgprotocol.org/>.

[2] [https://6a142ff6-85bd-4a7b-bb3b-476b07b8f08d.usrfiles.com/ugd/6a142f\\_5061c06b240e4776bf31dfac2543746b.pdf](https://6a142ff6-85bd-4a7b-bb3b-476b07b8f08d.usrfiles.com/ugd/6a142f_5061c06b240e4776bf31dfac2543746b.pdf).

[3] <https://www.icao.int/environmental-protection/Carbonoffset/Pages/default.aspx>.

[4] [https://assets.publishing.service.gov.uk/media/64b94a6706f78d001474262c/Mr\\_P\\_Corke\\_vs\\_Department\\_for\\_Transport.pdf](https://assets.publishing.service.gov.uk/media/64b94a6706f78d001474262c/Mr_P_Corke_vs_Department_for_Transport.pdf).

[5] <https://www.ft.com/content/9d96cd10-b39d-4dd4-904d-2817fc8a43c1>.