

2007 No. 53

EMPLOYMENT

WORK AND FAMILIES

**The Flexible Working (Eligibility, Complaints and Remedies)
(Amendment) Regulations (Northern Ireland) 2007**

Made - - - - - *26th January 2007*

Coming into operation - - - - - *6th April 2007*

The Department for Employment and Learning(a), in exercise of the powers conferred by Articles 112F(1)(b), 112F(8)(a) and 112F(9) of the Employment Rights (Northern Ireland) Order 1996(b), and now vested in it(c), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 6th April 2007.

Amendment of the Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003

2. The Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003(d) are amended as follows.

3. In regulation 2 (interpretation)—

(1) In paragraph (1)—

(a) after the definition of “contract variation” insert—

““disabled” means entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(e);”;

(b) for the definition of “partner” substitute—

““partner” means the other member of a couple consisting of—

(a) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)
(b) S.I. 1996/1919 (N.I. 16) Article 112F was inserted by Article 15 of the Employment (Northern Ireland) 2002 (S.I. 2002/2836) (N.I. 2)) and amended by Article 14 of the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947) (N.I. 16)
(c) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
(d) S.R. 2003 No. 174 as amended by Article 16 of the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order (Northern Ireland) 2005 (S.R. 2005 No. 520)
(e) 1992 c. 7. Section 71 corresponds to provisions formerly contained in Article 3 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17)). Article 3 of that Order was repealed by Schedule 1 of the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (1992 c. 9)

- (a) a man and a woman who are not married to each other but are living together as if they were husband and wife, or
- (b) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners;”;
- (c) after the definition of “partner” insert—
 - ““relative” means a mother, father, adopter, guardian, special guardian, parent-in-law, step-parent, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, uncle, aunt or grandparent, and includes adoptive relationships and relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption;
 - “special guardian” means a person appointed as a special guardian under section 14A of the Children Act 1989(a);”.

(2) For paragraph (2) substitute—

“(2) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter III of Part I of the 1996 Order, as if the provision were a provision of that Order.”.

(3) Omit paragraph (3).

4.—(1) Regulation 3 (entitlement to request contract variation) is amended as follows.

(2) In the heading after “contract variation” insert “to care for a child”.

(3) In paragraph (1) after “An employee is entitled to make an application to his employer for a contract variation” insert “to enable him, in accordance with Article 112F(1)(b)(i) of the 1996 Order, to care for a child”.

(4) In paragraphs (1)(b)(i) and (1)(b)(ii) after “guardian” insert “, special guardian”.

(5) Paragraph (2) shall be omitted.

5. After regulation 3 insert—

“Age of child

3A. An application under regulation 3 must be made before the day on which the child concerned reaches the age of 6 or, if disabled, 18.

Entitlement to request a contract variation to care for an adult

3B. An employee is entitled to make an application to his employer for a contract variation to enable him, in accordance with article 112F(1)(b)(ii) of the 1996 Order, to care for a person aged 18 or over if the employee—

- (a) has been continuously employed for a period of not less than 26 weeks; and
- (b) is or expects to be caring for a person in need of care who is either—
 - (i) married to or the partner or civil partner of the employee;
 - (ii) a relative of the employee; or
 - (iii) living at the same address as the employee.”.

(a) 1989 c. 41. Section 14A (which extends to England and Wales only) was inserted by section 115(1) of the Adoption and Children Act 2002 (c. 38)

Sealed with the Official Seal of the Department for Employment and Learning on 26th January
2007



D. S. S. McAuley
A senior officer of the
Department for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 174) (“the 2003 Regulations”) to widen the scope of the statutory right for employees to request a contract variation, which previously applied to carers of children under 6 or disabled children under 18, to cover employees who care for certain adults.

This right is provided for in the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”), as amended by the Work and Families (Northern Ireland) Order 2006 (“the 2006 Order”).

Regulation 3 amends the definitions in regulation 2(1) of the 2003 Regulations. The definition of “disabled” has been removed by the 2006 Order from the relevant Article of the 1996 Order and is now contained in the Regulations but has not been amended. The amendments also define or redefine “partner”, “relative” and “special guardian”.

Regulation 4 makes technical amendments to the 2003 Regulations, and also inserts special guardian into the list of those eligible to make a request to care for a child.

Regulation 5 inserts a new regulation 3A which provides that an employee making an application for a contract variation to care for a child needs to do so before the child is 6 or, where the child is disabled, 18.

Regulation 5 also inserts a new regulation 3B which firstly enables an employee to make an application for a contract variation to care for an adult, and secondly sets out the criteria the employee is required to meet. Those criteria are that the employee must have 26 weeks’ qualifying service, and that the adult is in need of care and is married to, the partner or civil partner or a relative of the employee or is living at the same address as the employee.

An integrated impact assessment was issued as part of the public consultation on the Regulations and its findings were reiterated in a summary set out in the policy response to the consultation. Both the consultation and the policy response are available from Employment Rights Branch, Department for Employment and Learning, Adelaide House, 39 – 49 Adelaide Street, Belfast, BT2 8FD or from the Department’s web-site at www.delni.gov.uk.

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