

EXPLANATORY MEMORANDUM TO
The Flexible Working (Eligibility, Complaints and Remedies) (Amendment)
Regulations (Northern Ireland) 2010

2010 No. 221

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 112F(1)(b) and (9) of the Employment Rights (Northern Ireland) Order 1996 and is subject to the negative resolution procedure.
- 1.3. The rule is due to come into operation on 18 July 2010.

2. Purpose

- 2.1. The purpose of this S.R. is to amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 174) to extend the right to request flexible working to parents of children aged 16 and under.

3. Background

- 3.1. The Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) introduced new rights for working parents and provides a statutory right for a qualifying employee to apply to his or her employer for a change in terms and conditions of employment to facilitate childcare.
- 3.2. Prior to the introduction of this S.R., parents of children aged up to six (and parents of children with disabilities aged up to 18), as well as carers of adult dependants (provided they meet certain other qualifying conditions), had a statutory right to ask their employer for a variation in their contract of employment (a flexible working request) in order to facilitate their caring responsibilities. The employer is obliged by law to give due consideration to such a request, which can only be denied on the basis of one of a specified list of business reasons.
- 3.3. The review of the right to request in Northern Ireland which informed the development of the S.R. was prompted by changes in Great Britain where, following a public consultation based on the recommendations of the Walsh review, the right to request flexible working was extended to parents of children aged 16 and under from 6 April 2009.

4. Matters of Special Interest to the Employment and Learning Committee

- 4.1. None.

5. Consultation

- 5.1. The Department carried out a public consultation on Flexible Working between August and October 2009.

- 5.2. Nearly all of those who responded to the consultation referred to the benefits of the right to request flexible working and believed that it should be extended to cover wider groups of employees. Out of the five options proposed (no change to existing law, extension to employees with parental responsibility for children aged 12 and under, 16 and under, 18 and under, extension of right to all employees), opinion was almost evenly divided between those supporting extension of the right to all employees and those who advocated extension to employees with parental responsibility for a child aged 16 or under. Several respondents made the point that while an extension to all employees might be desirable, increasing the age limit to 16 and under – which would also restore parity with Great Britain – struck the right balance between extending the right to wider groups and making the extension manageable for Northern Ireland businesses.
- 5.3. The Department considered representations carefully and concluded that if all employees were able to make a request, there would be a danger of overstressing employers, thereby limiting the number of successful requests by parents and carers. There is insufficient evidence that the benefits to wider society of an extension to all employees at this stage would outweigh the risks to the specific groups at whom the right is currently targeted.
- 5.4. On the basis of both the feedback from the public consultation and the impact assessments carried out, it was decided to extend the right to request flexible working to employees who have parental responsibility for a child aged 16 or under.

6. Position in Great Britain

- 6.1. In November 2007, the Government commissioned a review by Imelda Walsh to consider how the right to request should be extended to parents of older children and the upper age limit which should apply. Ms Walsh published her report in May 2008, recommending that the right to request flexible working should be extended to employees with parental responsibility for children aged 16 and under.
- 6.2. The Government accepted the recommendations set out in Imelda Walsh's report in full and the right to request flexible working in Great Britain was extended to parents of children aged 16 and under from 6 April 2009.

7. Equality Impact

- 7.1. An Equality Impact Assessment has been carried out and has established that there will be no negative differential impact on any of the Section 75 groups, but that there is likely to be a positive impact on individuals in the following categories: age, marital status, gender, disability.

8. Regulatory Impact

- 8.1. A Regulatory Impact Assessment has been carried out based on extending the right to include those parents with children aged 16 and under. The total costs are estimated at £2.3m and the total benefits at £2.4m, providing an overall estimated benefit of £0.1m. The full regulatory impact

assessment is available from the Department for Employment and Learning on request.

9. Financial Implications

9.1. No additional Exchequer expenditure is anticipated. The cost to business is described above.

10. Section 24 of the Northern Ireland Act 1998

10.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

11. EU Implications

11.1. None.

12. Additional Information

12.1. Not applicable.