
STATUTORY INSTRUMENTS

2002 No. 3236

TERMS AND CONDITIONS OF EMPLOYMENT

The Flexible Working (Eligibility,
Complaints and Remedies) Regulations 2002

Made - - - - 31st December 2002
Laid before Parliament 3rd January 2003
Coming into force - - 6th April 2003

The Secretary of State, in exercise of the powers conferred on her by sections 80F(1)(b), 80F(5) and (8)(a), 80H(3)(b) and 80I(3) of the Employment Rights Act 1996(1), hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 and shall come into force on 6th April 2003.

Commencement Information

II [Reg. 1](#) in force at 6.4.2003, see [reg. 1](#)

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996;

“the Procedure Regulations” means the Flexible Working (Procedural Requirements) Regulations 2002(2);

[^{F1}“adopter”, in relation to a child, means—

(a) a person with whom an adoption agency has decided the child should be placed for adoption, or

(1) 1996 c. 18; sections 80F, 80H and 80I were inserted by section 47 of the Employment Act 2002 (c. 22).
(2) S.I.2002/3207.

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- (b) a person who has given notice of his intention to apply for an adoption order as required by section 44 of the Adoption and Children Act 2002 or section 22 of the Adoption (Scotland) Act 1978;]

[^{F2}“adoption agency” means an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002, Article 3(3) of the Adoption (Northern Ireland) Order 1987 or section 1(4) of the Adoption (Scotland) Act 1978;]

“application” means an application under section 80F of the 1996 Act (statutory right to request contract variation);

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“contract variation”, means a change in the terms and conditions of a contract of employment of a kind specified in section 80F(1)(a) of the 1996 Act;

[^{F3}“disabled” means entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992;]

“electronic communication” means an electronic communication within the meaning of section 15(1) of the Electronic Communications Act 2000(3);

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer” means the person by whom an employee is (or, where the employment has ceased, was) employed;

“foster parent” means a foster parent within the meaning of regulation 2(1) of the Fostering Services Regulations 2002(4) or a foster carer within the meaning of regulation 2(1) of the Fostering of Children (Scotland) Regulations 1996(5);

“guardian” means a person appointed as a guardian under section 5 of the Children Act 1989(6) or section 7 or 11 of the Children (Scotland) Act 1995(7);

[^{F4}“partner” means the other member of a couple consisting of—

- (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;]

[^{F5}“private foster carer” means a person fostering a child privately within the meaning of section 66 of the Children Act 1989 or an individual other than a parent of the child who maintains the child as a foster child for the purposes of the Foster Children (Scotland) Act 1984, or otherwise looks after the child in circumstances in which that Act applies by virtue of section 17 of that Act;]

[^{F6}“relative” means a mother, father, adopter, guardian, special guardian parent-in-law, step-parent, son, step-son, [^{F7}son-in-law,] daughter, step-daughter, [^{F8}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;

(3) 2000 c. 7.

(4) S.I. 2002/57, amended by S.I. 2002/865.

(5) S.I. 1996/3263.

(6) 1989 c. 41.

(7) 1995 c. 36; section 11 was amended by the European Communities (Matrimonial Jurisdiction and Judgements) (Scotland) Regulations 2001 (S.S.I. 2001/36.)

[^{F9}“residence order” means a residence order as defined by section 8(1) of the Children Act 1989 or section 11(2)(c) of the Children (Scotland) Act 1995;]

“special guardian”, means a person appointed as a special guardian under section 14A of the Children Act 1989;]

“writing” includes writing delivered by means of electronic communication.

[^{F10}(2) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter 1 of Part 14 of the 1996 Act, as if the provision were a provision of that Act.]

[^{F11}(3)

Textual Amendments

- F1** Words in reg. 2(1) substituted (1.10.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (No. 2) Regulations 2007 (S.I. 2007/2286), regs. 1, **3(a)**
- F2** Words in reg. 2(1) inserted (1.10.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (No. 2) Regulations 2007 (S.I. 2007/2286), regs. 1, **3(b)**
- F3** Words in reg. 2(1) inserted (6.4.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (S.I. 2006/3314), regs. 1, **3(2)(a)**
- F4** Words in reg. 2(1) substituted (6.4.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (S.I. 2006/3314), regs. 1, **3(2)(b)**
- F5** Words in reg. 2(1) inserted (1.10.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (No. 2) Regulations 2007 (S.I. 2007/2286), regs. 1, **3(c)**
- F6** Words in reg. 2(1) inserted (6.4.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (S.I. 2006/3314), regs. 1, **3(2)(c)**
- F7** Words in reg. 2(1) inserted (3.5.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2007 (S.I. 2007/1184), regs. 1, **3(a)**
- F8** Words in reg. 2(1) inserted (3.5.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2007 (S.I. 2007/1184), regs. 1, **3(b)**
- F9** Words in reg. 2(1) inserted (1.10.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (No. 2) Regulations 2007 (S.I. 2007/2286), regs. 1, **3(d)**
- F10** Reg. 2(2) substituted (6.4.2007) by The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (S.I. 2006/3314), regs. 1, **3(3)**
- F11** Reg. 2(3) omitted (6.4.2007) by virtue of The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (S.I. 2006/3314), regs. 1, **3(4)**

Commencement Information

- I2** Reg. 2 in force at 6.4.2003, see **reg. 1**

Entitlement to request a contract variation [^{F12}to care for a child]

3.—(1) An employee is entitled to make an application to his employer for a contract variation [^{F13}to enable him, in accordance with section 80F(1)(b)(i) of the 1996 Act, to care for a child] if he—

(a) has been continuously employed for a period of not less than 26 weeks;

[^{F14}(b) is either—

(i) the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of, or a person in whose favour a residence order is in force in respect of, the child; or

(ii) married to, the civil partner of or the partner of—

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- (aa) the child’s mother, father, adopter, guardian, special guardian, foster parent or private foster carer, or
- (bb) a person in whose favour a residence order is in force in respect of the child;]
- (c) has, or expects to have responsibility for the upbringing of the child.

^{F15}(2)

Textual Amendments

F12 Words in [reg. 3 heading](#) inserted (6.4.2007) by [The Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2006 \(S.I. 2006/3314\)](#), regs. 1, [4\(2\)](#)

F13 Words in [reg. 3\(1\)](#) inserted (6.4.2007) by [The Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2006 \(S.I. 2006/3314\)](#), regs. 1, [4\(3\)](#)

F14 [Reg. 3\(1\)\(b\)](#) substituted (1.10.2007) by [The Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) \(No. 2\) Regulations 2007 \(S.I. 2007/2286\)](#), regs. 1, [4](#)

F15 [Reg. 3\(2\)](#) omitted (6.4.2007) by virtue of [The Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2006 \(S.I. 2006/3314\)](#), regs. 1, [4\(5\)](#)

Commencement Information

I3 [Reg. 3](#) in force at 6.4.2003, see [reg. 1](#)

^{F16}**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.

Textual Amendments

F16 [Regs. 3A, 3B](#) inserted (6.4.2007) by [The Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2006 \(S.I. 2006/3314\)](#), regs. 1, [5](#)

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 section 80F(1)(b)(ii) of the 1996 Act, 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;
- (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 employeee.]

Textual Amendments

F16 [Regs. 3A, 3B](#) inserted (6.4.2007) by [The Flexible Working \(Eligibility, Complaints and Remedies\) \(Amendment\) Regulations 2006 \(S.I. 2006/3314\)](#), regs. 1, [5](#)

Form of the application

4. An application shall—
- (a) be made in writing,
 - (b) state whether a previous application has been made by the employee to the employer and, if so, when, and
 - (c) be dated.

Commencement Information

I4 Reg. 4 in force at 6.4.2003, see reg. 1

Date when an application is taken as made

- 5.—(1) Unless the contrary is proved, an application is taken as having been made on the day the application is received.
- (2) The reference in paragraph (1) to the day on which an application is received is a reference—
- (a) in relation to an application transmitted by electronic communication, to the day on which it is transmitted,
 - (b) in relation to an application sent by post, to the day on which the application would be delivered in the ordinary course of post.

Commencement Information

I5 Reg. 5 in force at 6.4.2003, see reg. 1

Breaches of the Procedure Regulations by the employer entitling an employee to make a complaint to an employment tribunal

6. The breaches of the Procedure Regulations which entitle an employee to make a complaint to an employment tribunal under section 80H of the 1996 Act notwithstanding the fact that his application has not been disposed of by agreement or withdrawn are—
- (a) failure to hold a meeting in accordance with regulation 3(1) or 8(1),
 - (b) failure to notify a decision in accordance with regulation 4 or 9.

Commencement Information

I6 Reg. 6 in force at 6.4.2003, see reg. 1

Compensation

7. The maximum amount of compensation that an employment tribunal may award under section 80I of the 1996 Act where it finds a complaint by an employee under section 80H of the Act well-founded is 8 weeks' pay.

Commencement Information

I7 Reg. 7 in force at 6.4.2003, see reg. 1

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31st December 2002

Patricia Hewitt
Secretary of State for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the new statutory right to request a variation to the terms and conditions of an employee's contract of employment to enable the employee to care for a child. This new right is provided for in the Employment Act 2002 and the relevant provisions are incorporated by that Act into the Employment Rights Act 1996 ("the 1996 Act").

Entitlement to request a contract variation is available under regulation 3 to an employee with 26 weeks' qualifying service, who is either the mother, father, adopter, guardian, or foster parent of the child, or the partner or spouse of any of these relatives, and who has or expects to have responsibility for the upbringing of the child.

Regulation 4 imposes requirements as to the form of the application. Regulation 5 provides when an application is taken as having been made by the employee.

Regulation 6 specifies which breaches of the Flexible Working (Procedural Requirements) Regulations 2002 entitle the employee to make a complaint to an employment tribunal notwithstanding the fact that his application has not been disposed of by agreement or withdrawn.

Regulation 7 provides that the maximum amount of compensation that an employment tribunal may award where it finds a complaint under section 80H well-founded is 8 weeks' pay. A week's pay is to be calculated in accordance with Chapter 2 of Part 14 of the 1996 Act. The maximum amount of a week's pay is currently £250 but this sum may be varied by the Secretary of State by Order.

A Regulatory Impact Assessment of the costs and benefits of these Regulations to business has been placed in the libraries of both Houses of Parliament. Copies are available to the public from the Employment Relations Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. The Assessment is also accessible at the Directorate's website www.dti.gov.uk/er.

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