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STATUTORY INSTRUMENTS

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**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.

**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);

“adopter”, in relation to a child, means a person who has been matched with the child for adoption;

“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;

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(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.

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

“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<sup>(4)</sup> or a foster carer within the meaning of regulation 2(1) of the Fostering of Children (Scotland) Regulations 1996<sup>(5)</sup>;

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

“partner”, in relation to a child’s mother, father, adopter, guardian or foster parent, means a person (whether of a different sex or the same sex) who lives with the child and the mother, father, adopter, guardian or foster parent in an enduring family relationship but is not a relative of the mother, father, adopter, guardian or foster parent of a kind specified in paragraph (2);

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

(2) The relatives of a child’s mother, father, adopter, guardian or foster parent referred to in the definition of “partner” in paragraph (1) are the mother’s, father’s adopter’s, guardian’s or foster parent’s parent, grandparent, sister, brother, aunt or uncle.

(3) References to relationships in paragraph (2)—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such as those relationships as would exist but for the adoption, and

(b) include the relationship of a child with his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

### **Entitlement to request a contract variation**

**3.—**(1) An employee is entitled to make an application to his employer for a contract variation if he—

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

(b) is either—

(i) the mother, father, adopter, guardian or foster parent of the child or;

(ii) married to or the partner of the child’s mother, father, adopter, guardian or foster parent;

(c) has, or expects to have responsibility for the upbringing of the child.

(2) The reference in paragraph (1) 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 that paragraph were a provision of that Act.

### **Form of the application**

**4.** An application shall—

(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.)

- (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.

#### **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.

#### **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.

#### **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.

31st December 2002

*Patricia Hewitt*  
Secretary of State for Trade and Industry

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## 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](http://www.dti.gov.uk/er).