

## **EXPLANATORY MEMORANDUM TO**

### **The Flexible Working Regulations (Northern Ireland) 2015**

#### **S.R. 2015 No. 105**

#### **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), (5) and 8(a), 112H(3)(b), 112I(3) and 251(6) of the Employment Rights (Northern Ireland) Order 1996 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. These Regulations deal with eligibility, applications, breaches of procedure and compensation in relation to statutory applications for contract variation to allow flexible working under the Employment Rights (Northern Ireland) Order 1996.
- 2.2. They lay down the qualifying condition for an employee to be entitled to make such a statutory application to his employer, prescribe the form of that application and state when it is to be taken as made. They also specify the breaches of procedure that entitle an employee to make a complaint to an industrial tribunal and prescribe the maximum amount of compensation that can be awarded by an industrial tribunal for breach of the statutory right.
- 2.3. These Regulations revoke and replace the Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003 ("the 2003 Regulations"), subject to savings.

#### **3. Background**

- 3.1. The Flexible Working Regulations (Northern Ireland) 2015 are part of a package of legislative measures to supplement the Work and Families Act (Northern Ireland) 2015. Previous regulations in this series conferred the right to request flexible working on specific categories of employee, namely qualifying parents and carers of adult dependants. The success of that more constrained right to request flexible working encouraged the Department to propose a more far-reaching right to request, available to all employees. These Regulations, by replacing the 2003 Regulations, provide that employees with 26 weeks' continuous service with their employer have the right to make a flexible working request from 5th April 2015.
- 3.2. The statutory procedural steps for making and responding to a flexible working request, set out in the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003, are unchanged.

#### **4. Consultation**

- 4.1. Public consultation explaining Great Britain proposals dealing with the rights of working families and asking whether it would be appropriate to

take forward comparable measures in Northern Ireland took place between 6th June and 23rd August 2013.

- 4.2. The consultation asked for views on the merits of the Great Britain programme; the extent (if any) to which it should be implemented in Northern Ireland; and whether alternative options would be appropriate.
- 4.3. The Department considered a number of policy options as to eligibility to request flexible working. The first option was to leave eligibility unchanged. The second was to extend it to a wider group of employees (to be determined based on feedback from the consultation). The third was to extend the right to request to all employees with 26 weeks' continuous service with their employer. Stakeholders favoured the third option, and the Department has proceeded accordingly.
- 4.4. The Department also considered options in respect of the process for making and responding to a request. The first was to leave the existing statutory steps unchanged. The second was to introduce a code of practice and "reasonableness" based approach similar or identical to that taken forward in Great Britain. There was majority support for the first option, on the basis that the existing requirements are clear and well understood.

## **5. Equality Impact**

- 5.1. An assessment of the equality impact of the complete package of proposals concluded that, of the nine equality categories set out under section 75 of the Northern Ireland Act 1998, the primary beneficiaries of the proposals are anticipated to be older workers, male and female employees, dependants and persons with disabilities.
- 5.2. The Department concluded that these particular Regulations have the potential to benefit lone parents and carers, in that they will promote the normalisation of varied working patterns that allow people to balance competing work and home priorities. They will help challenge the assumption that flexible working is a 'women's issue'. There are benefits to those with dependants generally, as this group can require particular flexibility to meet competing demands. The Regulations are also of potential benefit to older workers who wish to phase their retirement.
- 5.3. The Department has acknowledged that, with larger numbers of requests received by employers, the groups to whom the right was previously confined (parents and carers) may find that some requests cannot be accommodated. While the Department does not accept the idea that there is a limited 'supply' of flexibility that can be accommodated by employers, it will monitor the impact of the extension of this right by taking as a baseline cases which are currently brought before industrial tribunals concerning the right to request flexible working and monitoring the number of these cases to determine if there is any adverse impact. It will also work to ensure that guidance sets out clearly how a fair process should be operated.

## **6. Regulatory Impact**

- 6.1. There are one-off and recurring costs for employers associated with the extension of the right to request flexible working. These are estimated to

be £459,000 in one-off costs and recurring costs of £1,191,000; set against recurring benefits and savings of £729,000.

## **7. Financial Implications**

7.1. Estimated costs to the Exchequer are considered to be negligible.

## **8. Section 24 of the Northern Ireland Act 1998**

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

## **9. EU Implications**

9.1. Not applicable.

## **10. Parity or Replicatory Measure**

10.1. The model introduced in Great Britain imposes a duty on employers to deal with requests reasonably, supported by a code of practice and guidance. This differs from the position in Northern Ireland, where stakeholders generally supported the retention of a series of clear statutory steps to deal with requests. The relevant Great Britain provisions are in the Flexible Working Regulations 2014 (S.I. 2014/1398).

## **11. Additional Information**

11.1. Not applicable.