

**EXPLANATORY MEMORANDUM TO
THE FLEXIBLE WORKING (ELIGIBILITY, COMPLAINTS AND REMEDIES)
(AMENDMENT) (REVOCATION) REGULATIONS 2011**

2011 No. 989

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The instrument revokes the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2010, which were made to widen the conditions under which certain employees may request a contract variation and were due to come into force on 6 April 2011.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Regulations come into force on 1 April 2011 and revoke the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2010 ("the Amendment Regulations") which were due to come into force on 6th April 2011. The reason for the breach of the "21 day rule" is to ensure that the changes made by the Amendment Regulations do not come into force. If the changes had come into force they would have needed to have been reversed and the result would be that - for a brief intervening period - parents of 17 year olds would have the right to request a contract variation. This would clearly be unsatisfactory, causing confusion and costs to both employers and employees.

The policy to which these Regulations give effect was decided in the context of the growth review leading to the 23 March budget announcements. It has therefore not been possible to make and lay the Regulations any earlier.

4. **Legislative Context**

- 4.1 The Amendment Regulations amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 to widen one of the conditions under which employees (under section 80F of the Employment Rights Act 1996) may request a contract variation. The condition in question relates to the purpose for which the request is made. The condition requires the purpose of the request to be for the employee to care for a child under 17 or, if disabled, under 18. The amendment would have changed this to the child being under 18

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Government has concluded that the 2010 Regulations should be revoked in the context of the growth review undertaken in preparation for the Budget. As the Chancellor of the Exchequer made clear in his Budget statement, absolute policy priority needs to be given at this stage in the economic recovery to growth and job creation. Employers need to be able to focus on those objectives, and there would be a risk that bringing in this relatively small extension of the right to request flexible working at this stage would distract from that goal.

7.2 The Government remains committed to extending the right to request flexible working to all employees and will consult on this in due course. The revocation of the 2010 regulations will, however, remove the need for employers to make two separate adjustments to legislative change in this area.

- Consolidation

7.4 This order does not consolidate any other instrument.

8. Consultation outcome

8.1 No consultation was undertaken on the 2010 regulations as the decision was taken to extend the right to request, and no variance of the process was considered for this extension. This removes the necessity for a consultation to take place for this instrument as the regulations simply repeal regulations that are not in force.

9. Guidance

9.1 Supporting guidance will not be necessary as the regulations simply revoke regulations which have not yet come into force. Guidance available for employers via www.businesslink.gov.uk and for employees via www.direct.gov.uk is being updated to ensure that employers and employees are aware of their legal rights and obligations.

10. Impact

10.1 Employers will not be legally required to consider a request for a variation to their working pattern from employed parents of 17 year old children. There remains, however, no reason why employers cannot choose to consider or grant requests from this group if they so wish.

10.2 An Impact Assessment has not been prepared since it has no effect on the costs to business or the voluntary sector and simply revokes earlier regulations which are not yet in force. The Impact Assessment for the 2010 Amendment Regulations is available from www.legislation.gov.uk

11. Regulating small business

11.1 This repeals legislation that would have applied to small business.

12. Monitoring & review

12.1 No monitoring or review is required as this repeals regulations that are not in force.

13. Contact

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