

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Right to Request Flexible Working

Section 131: Removal of the requirement to be a carer

693. This section removes the requirement that an employee must have parental or caring responsibility in order to make a request to their employer to change their terms and conditions with respect to hours and location of work.
694. *Subsection (1)* repeals section 80F(1)(b) of the ERA which requires an employee to be responsible for the care of a child or in certain cases a person over the age of 18 in order to make a request for flexible working. This means that all employees who have the necessary period of service with their employer (currently 26 weeks) will have a right to request flexible working.
695. *Subsection (2)* also repeals other provisions which are no longer necessary following the removal of the requirement to be the carer of a child or adult.

Section 132: Dealing with applications

696. This section deals with changes to the procedure which employers must follow when dealing with a flexible working request.
697. *Subsection (2)* amends section 80G of the ERA to remove the requirement on employers to follow a statutory procedure when considering flexible working requests. This procedure is currently set out in the [Flexible Working \(Procedural Requirements\) Regulations 2002 \(S.I. 2002/3207\)](#). These regulations will be revoked. In place of this, *subsection (2)* introduces a duty on employers to consider requests in a reasonable manner.
698. *Subsection (2)* also amends section 80G to introduce a requirement on the employer to notify the employee of its decision within a certain period of time. *Subsection (3)* provides that the employer must give its decision within 3 months beginning on the date that the application is made. This period can be extended by agreement between the employer and employee.
699. *Subsection (4)* sets out the circumstances in which the employer can treat a flexible working request as withdrawn. They are where an employee fails to attend two consecutive meetings to discuss the request or an appeal with their employer without good reason.

Section 133: Complaints to employment tribunals

700. This section amends the rules which apply to the making of a complaint relating to a request for flexible working to an employment tribunal.

*These notes refer to the Children and Families Act 2014
(c.6) which received Royal Assent on 13 March 2014*

701. *Subsection (2)* amends section 80H of the ERA to provide that an employee may make a complaint to an employment tribunal if the employer sought to treat the employee's flexible working request as withdrawn without having grounds to do so. *Subsection (5)* provides that an employee may make this complaint as soon as the employer has informed the employee that it is treating the request as withdrawn.
702. *Subsection (3)* amends section 80H of the ERA to provide a change consequential on the addition of a new ground of complaint.
703. *Subsection (4)* amends section 80H of the ERA to set out the rules on when an employee may make a complaint relating to a flexible working request to an employment tribunal. It provides that an employee cannot make a complaint to an employment tribunal until a final decision has been made by their employer. An employee is required to have exhausted any appeal which is offered by the employer before making a complaint.
704. It also amends section 80H of the ERA to provide that if the employer does not inform the employee of its decision within the required period of time, the employee may make a complaint to an employment tribunal or, if the employer and employee have agreed an extension of time, the employee may make a complaint at the end of the extended period.
705. An employee has a period of three months from the "relevant date" to make a complaint relating to a flexible working request to an employment tribunal. *Subsection (6)* provides that the "relevant date" will be the date on which the employer informed the employee of its final decision. Or, if the employee is complaining that the employer did not have grounds to treat the request as withdrawn, the "relevant date" will be the date on which the employer informs the employee that it is treating the application as withdrawn.

Section 134: Review of sections 131 to 133

706. This section sets out the requirement for the Secretary of State to review sections 131 to 133 of the Act and to set out the conclusions in a report which he or she must publish.
707. The report must include the objectives of the amendments to the ERA; to what extent those objectives have been achieved; and whether the objectives should remain the same and whether there is a less regulatory approach that could achieve the same objectives.
708. The report must be published within 7 years of the sections coming into force and subsequent reports must be published in not more than 7 year intervals from publication of the previous report.