

EMPLOYMENT ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Miscellaneous and General

Miscellaneous

Section 47 and Schedule 7: Flexible working

80F Statutory right to request contract variation

120. Section 80F sets out the criteria that must be satisfied in order for an employee to be eligible to make a request for a flexible working pattern. It is intended to ensure that requests are not made on the spur of the moment and as such the employee will have to make a formal application containing specified information.
121. Subsection (1) identifies the kind of variations of the terms and conditions a qualifying employee may apply to his employer for under this part of the Act. It is intended that the changes are limited to the hours the employee is required to work, the times he is required to work, and where he is required to work. The intention is that this will cover work patterns such as compressed hours; flexitime; home working; job-sharing; teleworking; term-time working; shift working; staggered hours; annualised hours; self-rostering. By regulations, the Secretary of State may also specify further criteria if it is found at a later date that the list is not exhaustive enough to cover all the changes that may be needed.
122. Subsection (1) also makes clear that these changes can only be made for the purpose of caring for a child. The right to apply will be available to a qualifying employee who has a relationship with the child, which will be specified in regulations. It is intended that this will cover anyone who has responsibility as a parent of an eligible child. For example, biological parents, adoptive parents, and new partners of parents where they share the responsibility of caring for the child. It is not the intention that the ability to apply for flexible working should extend as far as anyone who lives in the same house as the child but does not have responsibility for caring for the child e.g. grandparents, aunts, uncles (unless they specifically have parental responsibility).
123. Subsection (2) sets out what must be included in an application. Qualifying employees will have to explain why they are eligible for making a request i.e. self-certify. The effect of an application being accepted will result in a variation of the terms and conditions of an employee's contract of employment. This means that should an employer subsequently discover that their employee has lied and never intended to use the flexible working pattern for the purposes of caring for the child then they may take disciplinary action.
124. Subsection (3) specifies the age limits of the child. The ability to request flexible working will be open to those employees who care for children under six years of age so as to cover two periods when the levels of requests are expected to be high; that is, the time following the child's birth and when the child starts school. Regulations will allow

*These notes refer to the Employment Act 2002
(c.22) which received Royal Assent on 8 July 2002*

for the possibility of changing the age limit in the light of experience (subsection (6)). Parents of disabled children face greater challenges in raising their children and they will be able to make requests up until their child is 18 years of age. It is not the intention of the Government that it will use this power in the short-term. The Government will first review the right three years after it comes into force.

125. Subsection (4) deals with the frequency of applications. It limits the number of requests an employee may make to one per year, from the date the application is made, because of the costs of dealing with an application. The latest an employee will be able to make an application is 14 days before their child reaches either age limit. Once this time period is reached, the employee will no longer have the right to apply to change their working pattern and their existing working pattern will continue. The Work and Parents Taskforce did not find a willingness amongst employers and employees for undoing the original changes made to implementing a flexible working pattern when either of the limits is reached.
126. Subsection (5) provides for regulations allowing changes to how an application should be made.
127. Subsection (7) provides that the reference to a disabled child for the purposes of this section is to a child claiming disability living allowance within the meaning of Section 71 of the Social Security Contributions and Benefits Act 1992.
128. Subsection (8) provides the power to establish the criteria under which a person will be classed as an employee for the purposes of making an application. It is intended that the requirement as to duration of employment will be continuous service with the same employer for at least 26 weeks. Agency workers who are employees will not be eligible to make a request. This is for practical reasons. The agency will not have a detailed knowledge of the business of the company with which the agency worker is placed to be in a position deal with an application. On the other hand the company with which the agency worker is placed will have approached the agency to provide a specific service without an expectation of having to adjust their working patterns to the individual's circumstances.