

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Right to Request Flexible Working

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.
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make a complaint to an employment tribunal if the employer sought to treat the employee's flexible working request as withdrawn without having grounds to do so.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employee may make this complaint as soon as the employer has informed the employee that it is treating the request as withdrawn.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 Or, if the employee is complaining that the employer did not have grounds to treat the request as withdrawn, the "relevant date" will be the date on which the employer informs the employee that it is treating the application as withdrawn.