

2006 No. 3314

TERMS AND CONDITIONS OF EMPLOYMENT

**The Flexible Working (Eligibility, Complaints and Remedies)
(Amendment) Regulations 2006**

<i>Made</i>	- - - -	<i>7th December 2006</i>
<i>Laid before Parliament</i>		<i>14th December 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2007</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 80F(1)(b), 80F(8)(a) and 80F(10) of the Employment Rights Act 1996(a).

Citation and commencement

1. These Regulations may be cited as the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 and shall come into force on 6th April 2007.

Amendment of the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002

2. The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002(b) are amended as follows.

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “contract variation” insert—

““disabled” means entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992(c);”;

(b) for the definition of “partner” substitute—

““partner” means the other member of a couple consisting of—

(a) a man and a woman who are not married to each other but are living together as if they were husband and wife, or

(b) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners;”;

(c) after the definition of “partner” insert—

(a) 1996 c.18. Section 80F was inserted by section 47 of the Employment Act 2002 (c.22). It was amended by section 12 of the Work and Families Act 2006 (c.18).
(b) S.I. 2002/3236; relevant amending instrument is the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114).
(c) 1992 c. 4. Section 71 corresponds to provisions formerly contained in Section 1 of the Disability Living Allowance and Disability Working Allowance Act 1991. Section 1 of that Act was repealed by Schedule 1 to the Social Security (Consequential Provisions) Act 1992 (c.6).

““relative” means a mother, father, adopter, guardian, special guardian parent-in-law, step-parent, son, step-son, daughter, step-daughter, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, uncle, aunt or grandparent, and includes adoptive relationships and relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption;

“special guardian”, means a person appointed as a special guardian under section 14A of the Children Act 1989(a);”.

(3) For paragraph (2) substitute—

“(2) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter 1 of Part 14 of the 1996 Act, as if the provision were a provision of that Act.”.

(4) Paragraph (3) shall be omitted.

4.—(1) Regulation 3 (entitlement to request a contract variation) is amended as follows.

(2) In the title after “contract variation” insert “to care for a child”.

(3) In paragraph (1) after “An employee is entitled to make an application to his employer for a contract variation” insert “to enable him, in accordance with section 80F(1)(b)(i) of the 1996 Act, to care for a child”.

(4) In paragraphs (1)(b)(i) and (1)(b)(ii) after “guardian” insert “, special guardian”.

(5) Paragraph (2) shall be omitted.

5. After regulation 3 insert—

“Age of child

3A. An application under regulation 3 must be made before the day on which the child concerned reaches the age of 6 or, if disabled, 18.

Entitlement to request a contract variation to care for an adult

3B. An employee is entitled to make an application to his employer for a contract variation to enable him, in accordance with section 80F(1)(b)(ii) of the 1996 Act, to care for a person aged 18 or over if the employee—

- (a) has been continuously employed for a period of not less than 26 weeks;
- (b) is or expects to be caring for a person in need of care who is either—
 - (i) married to or the partner or civil partner of the employee;
 - (ii) a relative of the employee; or
 - (iii) living at the same address as the employee.”.

Jim Fitzpatrick

Parliamentary Under Secretary of State for Employment Relations
Department of Trade and Industry

7th December 2006

(a) 1989 c.41. Section 14A (which extends to England and Wales only) was inserted by section 115(1) of the Adoption and Children Act 2002 (c.38).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 (S.I. 2002/3236) (“the 2002 Regulations”) to widen the scope of the statutory right for employees to request a contract variation, which previously applied to carers of children under 6 or disabled children under 18, to cover employees who care for certain adults.

This right is provided for in the Employment Rights Act 1996 (“the 1996 Act”), as amended by the Work and Families Act 2006.

Regulation 3 amends the definitions in regulation 2(1) of the 2002 Regulations. Those amendments define or redefine ‘partner’, ‘relative’ and ‘special guardian’. The definition of ‘disabled’ has been removed by the Work and Families Act 2006 from the relevant section of the 1996 Act and is now contained in the Regulations but has not been amended.

Regulation 4 makes technical amendments to the 2002 Regulations, and also inserts special guardian into the list of those eligible to make a request to care for a child.

Regulation 5 provides that an employee making a request to care for a child needs to do so before the child is six or, where the child is disabled, eighteen.

Regulation 5 also sets out the eligibility criteria to enable an employee to make a request to care for an adult. Those criteria are that the employee must have 26 weeks’ qualifying service, and that the adult is in need of care and is married to, the partner or civil partner or a relative of the employee or is living at the same address as the employee.

A Regulatory Impact Assessment of the costs and benefits of these Regulations to business has been placed in the libraries of both Houses of Parliament. Copies are available to the public from the Employment Relations Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. The Assessment is also accessible at the Directorate’s website on www.dti.gov.uk/files/file35189.pdf.

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