

EXPLANATORY MEMORANDUM TO
THE FLEXIBLE WORKING (ELIGIBILITY, COMPLAINTS AND REMEDIES)
(AMENDMENT) REGULATIONS 2007

2007 No. 1184

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2007 (the Amendment Regulations) amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 (S.I. 2002/3236 – “the 2002” Regulations”), which prescribed the employees eligible for the statutory right to request flexible working. The 2002 Regulations were amended by the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (“the 2006 Regulations”), which widened the scope of the prescribed eligible employees to include employees who care for certain adults. The 2006 Regulations inserted into regulation 2 of the 2002 Regulations a definition of relatives in respect of whom employees may be eligible for the extended right, but it omitted “son-in-law” and daughter-in-law”. The Amendment Regulations add those categories of relative to the scope of the right.

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

3.1 None.

4. Legislative Background

4.1 As was the case with the 2006 Regulations, the Amendment Regulations are made under powers contained in the Employment Rights Act 1996 (the 1996 Act) as amended by the Work and Families Act 2006 (the 2006 Act), which was introduced into Parliament on 18 October 2005 and received Royal Assent on 21 June 2006. Section 12 of the 2006 Act provides the power for the Secretary of State to make regulations setting out the eligibility criteria for employees to claim the statutory right to request a contract variation in order to care for another person. It extends the power to apply not only to employees caring for children but also those caring for prescribed categories of persons aged 18 or over.

4.2 The 2002 Regulations, as amended by the 2006 Regulations, prescribe the categories of person in respect of whom the newly extended right to request a contract variation apply. The Amendment Regulations add “son-in-law” and “daughter-in-law” to those categories.

5. Territorial Extent and application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 On 28 February 2005, the Department of Trade and Industry published a consultation document, "*Work and Families: Choice and Flexibility*" (available at: www.dti.gov.uk/workandfamilies). This set out a series of proposals for further improvement to the framework of support for working families, including extending the right to request flexible working (which was introduced for parents of young and disabled children in 2003) to new groups of employees.

7.2 The Department of Trade and Industry subsequently published the Government's Response to the consultation, including a summary of responses in October 2005. This is available at: www.dti.gov.uk/employment/workandfamilies/index.html.

7.3 Insofar as the right to request flexible working was concerned, the Response said that the Government would extend the right to carers of adults and explore further which carers should be covered by it. On 31 January 2006, the Department of Trade and Industry therefore published draft regulations on changes to the 2002 flexible working regulations for consultation. Seventy-six responses, from a wide range of stakeholders, were received.

7.4 The Government's Response to the consultation on the draft amending regulations was published on 9 November 2006, and is available at: <http://www.dti.gov.uk/files/file35189.pdf>. The Response made clear that an employee would be eligible for the extended right to request flexible working if, among other things, that employee was, or expected to be, caring for a relative. Relatives would include a son-in-law or a daughter-in-law.

7.5 The 2006 Regulations were intended to implement the Government's Response to the 2006 consultation. In particular, they inserted the definition of a relative into regulation 2 of the 2002 Regulations, but "son-in-law" and "daughter-in-law" were omitted from that definition.

7.6 The Amendment Regulations add “son-in-law” and “daughter-in-law” to the definition of relative. The Amendment Regulations are being made as soon as possible after the entry into force of the 2006 Regulations on 6 April 2007.

7.7 In order to keep stakeholders informed, guidance on the legislation on the DTI’s website contains a reference to the omission of “son-in-law” and “daughter-in-law” from the 2006 Regulations, together with a note to the effect that an appropriate amendment will be made as soon as possible.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) covering the measures introduced by the 2006 Regulations was attached to the explanatory memorandum submitted in December 2006 in support of those Regulations. That RIA was written on the basis that “son-in-law” and “daughter-in-law” were to be included in the definition of relative.

8.2 The impact on the public sector is expected to be in line with that on all employers, as set out in the RIA

9. Contact

9.1 Name of contact at the Department of Trade and Industry who is able to answer any queries regarding the instrument:

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