

Introduction

From April 2003 mothers and fathers of children aged under six, or of disabled children aged under eighteen, will have the right to apply to work flexibly and their employers will have a duty to consider their requests seriously. It will benefit both businesses and their employees. Flexible working arrangements enable employers to retain skilled staff and reduce recruitment costs, to decrease absenteeism, and to be more effective at reacting to changing market conditions. This is why the Government actively encourages businesses through its Work-Life Balance Campaign¹ to follow best practice and offer flexible working opportunities across the workforce. The Government wants flexible working arrangements to become available more readily to parents of young and disabled children. This new right will ensure that these parents have such opportunities.

2. The need to provide parents with more flexible working opportunities emerged through the work associated with the Government's Green Paper *Work and Parents: Competitiveness and Choice*². The Government listened to all of the views expressed and announced that there would be legislation aimed at parents of young children that would build on good practice, be light-touch and recognise the needs of small businesses. In June 2001 it set up the Work and Parents Taskforce, composed of equal numbers of family and business organisations including two small businesses, to consider the issues carefully and develop the detail. The Taskforce reported in November 2001.

3. The new right to apply for flexible working will take forward the recommendations of the Work and Parents Taskforce. The recommendations are detailed in the Taskforce's report *About Time: Flexible Working*³ and the

¹ Information on the Government's Work-Life Balance Campaign can be found at www.dti.gov.uk/work-lifebalance

² "Work and Parents: Competitiveness and Choice", a Government Green Paper, December 2000

³ "About Time: Flexible Working", Work and Parents Taskforce, November 2001

Government's response to the Taskforce⁴. To provide parents with the right to apply for flexible working, new legislation is necessary. The primary legislation to underpin the right forms part of the Government's Employment Act 2002⁵, which received Royal Assent on 8 July 2002. This primary legislation includes a number of regulatory making powers to provide the detail of how the new right will operate. This consultation document concerns those regulations.

4. In drafting the legislation the Government has sought to keep as close as possible to the Taskforce's recommendations. It took this approach in drafting the primary legislation and has continued the approach in drafting the regulations. To help the Government consider the options for areas that needed further detail it formed a Flexible Working Regulations Advisory Group. This constituted of AMACUS, the Confederation of British Industry, British Chamber of Commerce, Employment Lawyers Association, Engineering Employers Federation, and Equal Opportunities Commission. The Government also wrote to interested parties about the maximum level of compensation that might be awarded under the right.

5. The draft regulations are in two parts titled: 'The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002' and 'The Flexible Working (Procedural Requirements) Regulations 2002'. The first, as its name implies, covers eligibility requirements, breaches of the regulations that entitle an employee to make a complaint to an employment tribunal, and the maximum amount of compensation that a tribunal may award. The second covers the procedure that the employer will need to ensure is followed when considering an application to work flexibly and provides for the employee to be able to appeal.

6. This document and the associated draft regulations are available on the Work and Parents: Competitiveness and Choice website at www.dti.gov.uk/er/review.htm. The website includes earlier publications including the Green Paper and Work and Parents Taskforce report. It also details the options put forward in the Green Paper that the Government is pursuing to help make it easier for parents who choose to work to do so. These include:

- Simplification of arrangements for maternity leave and pay
- Introduction of paid paternity leave
- Introduction of paid adoption leave
- Changes to parental leave.

⁴ "Work and Parents: The Government Response to the Flexible Working Taskforce", DTI, November 2001

⁵ Information on the Employment Act 2002 is available at www.dti.gov.uk/er/employ/index.htm.

7. Any comments on the draft regulations should be sent by **Thursday 10 October 2002** to:

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8. Comments received, as part of this consultation may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public you must state in the comments which parts you wish to be kept confidential. Where confidentiality is not requested, responses may be available to any enquirers, including from outside the UK, or published by any means, including on the Internet.

An overview of the right to apply to work flexibly

9. The new law will provide parents of children aged under six, and parents of disabled children aged under eighteen, with the right to apply to work flexibly. Employers will have a duty to consider requests seriously and will be able to refuse a request only where there is a clear business reason.

10. The Work and Parents Taskforce specifically designed the right to meet the needs of small businesses. It is straightforward and takes a light-touch legislative approach. The right also seeks to foster an open and constructive dialogue to help the parent and their employer find an outcome suitable to them both. Where issues are identified, the expectation is that both parties will explore solutions together and resolve problems amicably at the workplace. The support and guidance that will accompany the right will continue in this vein helping to ensure the right is fully and effectively implemented.

11. The initial onus in taking forward an application will be on the parent. They will have to set out the working pattern that they wish to adopt and explain the effect that they envisage it will have on their employer, including how it might be accommodated. The employer will then have to arrange to meet the parent to discuss the request within 28 days of receiving the request. It will be at this meeting that both parties will explore any potential issues with the request and if appropriate consider alternative work patterns. The employer will subsequently notify the employee of their decision in writing. Where an employer agrees to a new working pattern best practice suggests that it will take around eight weeks to implement. Employers who reject an application will have to provide a specific business reason, which must be one of those stated in the legislation, and an explanation as to why the ground applies in the circumstances.

12. In some instances parents will be dissatisfied with employers' handling of their applications. The right provides parents with the ability to appeal within 14 days of being notified of their employers' decisions and is again designed to encourage both parties to reach a satisfactory outcome at the workplace. The Government is also separately exploring widening the scope of the ACAS' binding arbitration scheme to cover requests for flexible working.

13. Where a case is taken to an employment tribunal the employer will need to demonstrate that they have gone through the procedure – including having held the meeting and having given an explanation of the business grounds for

refusing the request to the parent. The tribunal will verify whether the employer has followed all the proper procedures and will examine any disputed facts relating to why the business grounds for refusal apply. The legislation does not give tribunals the power to question the commercial validity of the employer's decision, but it does allow for the case to be sent back to the employer for reconsideration where the procedure has not been followed correctly or where the employer has failed to explain why the business grounds applies. The tribunal may also order compensation.

Eligibility, Complaints and Remedies

14. The legal right to apply to work flexibly will be available only to parents with children aged under six or disabled children aged under eighteen. These parents face particular challenges and the Government is committed to helping make their lives easier. By ensuring employers consider their requests seriously, more of these parents will have the opportunity to adopt a work pattern that better suits them to balance their childcare responsibilities with their commitments at work. Employers who do not consider requests seriously will risk being taken to an employment tribunal and possibly having to pay compensation to their employee.

15. The draft regulations 'The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2003' cover the eligibility criteria to make a request, breaches of the legislation that will entitle an employee to make a complaint to an employment tribunal, and the maximum amount of compensation that a tribunal may award.

Eligibility

16. The eligibility criteria are summarised in the box below, many of which are covered in the primary legislation in the Employment Act 2002.

To be eligible to apply to work flexibly under the new right the individual must:

- Be an employee
- Have a child aged under six years, or under eighteen years where disabled
- Be responsible for the child as its parent
- Be making the application to enable them to care for the child
- Have worked with their employer continuously for 26 weeks at the date the application is made
- Not be an agency worker
- Not be a member of the armed forces
- Have not made another application to work flexibly under the right during the past twelve months

17. The eligibility criteria that are detailed in the regulations cover:

- The duration of employment
- The relationship with the child
- The form of an application

Duration of employment

18. The draft regulations require an employee to have worked with their employer continuously for no less than 26 weeks before they can make an application. The period of 26 weeks was recommended by the Work and Parents Taskforce and is not an issue for consultation.

Relationship between the parent and child

19. The ability to make a request to work flexibly will depend on the employee's relationship with their child. The Government was clear in the Work and Parents Taskforce's terms of reference that the right will be limited to parents, and would not include aunts, uncles or grandparents unless they had responsibility as a parent for the child. In addition, the Work and Parents Taskforce added that the right should apply equally to anyone who has responsibility as a parent of a child. They were particularly concerned that the right should not present any additional barriers to same sex couples.

20. There are a number of circumstances where an employee may have responsibility as a parent for a child. The draft regulations set out that an employee will satisfy the relationship requirements if he or she expects to have responsibility for the upbringing of the child. In addition the employee will have to meet one of the following conditions.

That the employee is:

- (i) the biological parent, guardian, adopter or foster carer of the child,
- (ii) married to a person within (i) and lives with the child,
- (iii) the partner of a person within (i) and lives with the child.

21. The inclusion of parents who adopt is consistent with the Government's approach of providing these parents with employment rights that are as equal as far as is possible to those available to biological parents. From April 2003 adoptive parents will gain the right to take adoption leave, which will be similar to maternity leave, and paternity leave⁶.

⁶ Information on the other employment rights for parents being introduced in April 2003 can be found at www.dti.gov.uk/er/review.htm

22. The regulations have also been drafted to include foster parents within the scope of the right and the Government would welcome views on their inclusion. It is not uncommon for such individuals to have long-term, as well as short-term, responsibility for the upbringing of a child. And, the right is specifically designed to cater for long-term flexible working arrangements. It will usually take up to 14 weeks to consider a request, around eight weeks to implement a new work pattern and requests will be limited to one a year. Foster parents, like other parents, will have to bear in mind that if their application is accepted it will be a permanent change to their terms and conditions of employment. This might be an issue for parents who change their work pattern on the assumption that they will be caring for a child on a long-term basis which ends sooner than expected. In such circumstances they will not have any right to revert back to their former work pattern.

23. The Government would welcome views about the eligibility criteria setting out the relationship between the employee and the child.

- Are the criteria defining who may be considered a parent and their relationship with the child appropriate?
- Is it appropriate to include adoptive parents within the scope of the right?
- Is it appropriate to include foster carers within the scope of the right?

Form of applications

24. The Work and Parents Taskforce recommended that the process of making a request should from the outset seek to encourage parents to consider all the options open to them and the ability of the employer to subsequently adopt the preferred pattern of working. The information that an employee will have to provide when making an application is detailed in the box below.

An application for flexible working under the right must :

- State that it is such an application
- Specify the flexible working pattern applied for and the date on which it is proposed the change should become effective
- Explain what effect, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with
- Explain how the employee satisfies the requirements relating to the relationship with the child
- Be in writing (whether on paper, email or fax)
- State whether a previous application has been made to the employer and, if so when
- Be signed and dated

25. The Taskforce recommended that the initial application by the parent should be in writing (on email as well as on paper). The draft regulations take this approach. An issue that remains unresolved is whether the employee's application should be made on a statutory form. It would mean that for any request to be valid under the right it will have to be made on the statutory form devised by Government. If adopted an employee will not have the choice to make a request under the right in a letter to their employer or from using a tailored form their employer might already provide to consider flexible working requests. A statutory form can help employees and employers become more familiar with their obligations under the right. It would provide an helpful steer to those employees who are not familiar with drafting letters, or for whom English is not their first language, or who may have learning difficulties or have problems with literacy. Employees will be guided to provide all the appropriate information to ensure their application is valid and neither their time, nor their employers, is wasted. An application made on a statutory form will also send a clear signal to the employer that a request is being made under the legal right and that they are obliged to take subsequent action.

26. Alternatively, the Government can provide a standard 'best practice' form which is not statutory. If pursued, the employee will have complete freedom about how they make their application, whether freeform, in a letter or an email, on a standard form provided by their employer, or on the best practice form provided by Government. The approach will allow existing procedures established by employers to be used. The availability of a best practice form will continue to ensure that those employees who need help in making a request are guided in drafting their application. But, where the employee opts to make their application in a letter there will be a risk that some necessary information is overlooked. And, the employer might not recognise that the application is being made under the right and that they have certain obligations that have to be met.

27. The Government invites views on what form an application should take. At present the regulations are drafted to accommodate either approach depending on the final decision taken and the Government would welcome comments on which should be adopted.

- Should an application under the right have to be made on a statutory application form for it to be valid?
- Or, should there be freedom about the form of an application, allowing requests to be made in freeform letters, on tailored forms devised by employers and on a best practice form provided by Government?

The date of making an application

28. An employer will have a duty to consider applications to work flexibly by following a specified procedure. Each step is time dependent. These are set out separately, in full, in 'The Flexible Working (Procedural Requirements) Regulations 2002'. These regulations are covered in the next section of this consultation document. For example, on receipt of an application an employer will have to arrange a meeting where both parties can discuss the request. This must take place within 28 days after the date an application is received. An employer who fails to meet the timescales will risk being taken to an employment tribunal. It is therefore important that it is clear when an application will be taken as made.

29. The draft regulations take the date when an application is made to be *the date on which it is received by the employer* and, to provide absolute certainty, the regulations detail how this is determined where it is not handed directly to the employer. This approach keeps to the Taskforce's recommendations of ensuring that the initial onus of making an application is with the employee and that an employer has up to 28 days to arrange a meeting to discuss the request. It is also consistent with other related employment legislation. For example, when an employee is asked by her employer to notify them when she intends to return after additional maternity leave she must give the requested notification within 21 days of *receiving* the request.

30. An alternative approach would have been to use the date on the employee's application. However, any delay from completing the application to passing it to the employer would reduce the number of days the employer has to consider an application. It would also rely on the employee ensuring that the application was dated correctly and sent to the employer immediately, without delay.

31. The Government welcomes views on when an application is to be treated as having been made.

- Should the date the application is made be the date on which the employer receives it?

Breaches of the regulations by the employer

32. In specific circumstances the employee will be able to take a disputed case to an employment tribunal. The draft regulations set out the breaches of the procedure which will entitle an employee to make a complaint to an employment tribunal. Essentially an employee will be able to take action wherever there is a breach in the procedure that is not a result of the application being rejected, withdrawn or dealt with through agreement.

33. The draft regulations do not include breaches concerning the right to be accompanied either at the main or appeal meeting. Circumstances where an employer prevents an employee from having a companion are covered in The Flexible Working (Procedural Requirements) Regulations 2002. The regulations mirror the existing provisions set out in Section 11 of the Employment Relations Act 1999⁷ (ERA 1999).

34. The Government welcomes comments about the approach taken to specifying breaches of the regulations by the employer which would entitle the employee to make a complaint to an employment tribunal.

- Do the regulations ensure that all breaches of the procedure, where appropriate, provide for the employee to be able to make a case to an employment tribunal?

Remedies

35. The Work and Parents Taskforce recommended that where a disputed case is taken to an employment tribunal and the tribunal finds against the employer then the employer can be ordered to reconsider the application and pay compensation to the employee. A tribunal will not have the power to order an employer to implement a flexible working arrangement.

Compensation

36. The primary legislation states that the amount of compensation shall be an amount that the tribunal considers is just and equitable in all the circumstances and no more than the permitted maximum. The permitted maximum is to be detailed in the regulations and will be a specified number of weeks' pay. The week's pay will itself be limited to the maximum provided under Section 227 of the Employment Rights Act 1996. This is reviewed annually and is currently £250.

37. The Government circulated a paper about determining the level of compensation earlier this year to help identify the number of weeks' pay. This set out a number of factors that were likely to be relevant in considering the permitted maximum compensation. A copy of the paper is available from the DTI's website at www.dti.gov.uk/er/review.htm. The initial suggestions expressed have differed widely and the Government is interested to hear further views.

38. Suggestions from employer representatives so far have ranged from four to thirteen weeks. Employer representatives stress that the right is not an

⁷ Section 11 of the ERA 1999 provides for an employee to make a complaint to an employment tribunal where the employee is prevented from being accompanied.

'automatic right' and that there is no absolute certainty employers will be able to change the work pattern as requested by the employee. On this basis they question whether an employee can suffer any actual loss and argue that the emphasis of the award should not be compensatory. Instead, employers highlight that their duty under the right will be to ensure the application is properly considered by following the procedure correctly and, in essence, argue that the nature of any award ordered by a tribunal should be a fine against the employer for failing to follow the stated procedure. Some employer representatives have drawn an analogy to insolvency law where an employee can claim up to twelve weeks' pay (subject to the limit on a week's pay) as compensation where the employer fails to give the proper period of notice of dismissal.

39. Employer representatives also point out that an employee will have the opportunity to seek greater compensation in serious cases, through existing legislation, where an employer discriminates against an employee on grounds of sex, race or disability. For example, the amount of compensation a tribunal may award under sex discrimination legislation is unlimited.

40. Employer representatives add that in accordance with the overall approach taken with the design of the right the compensation should not be set at such a high level that it acts as a disincentive to the wider aim and may sour the relationship with the employee.

41. Most employee representatives on the other hand are arguing for the permitted maximum to be set much higher at 52 weeks' pay. Employee representatives believe that the level of compensation needs to be set sufficiently high to ensure that it is meaningful to all potential breaches of the right. These might range from a genuine single accidental breach in the procedure to an employer who has no intention of considering the request and deliberately sets out to fabricate a basis for the application's refusal.

42. Employee representatives also argue that there is the potential for the employee to suffer loss and that the amount a tribunal may be awarded should incorporate a 'compensatory' element. Additional childcare costs are frequently quoted as a possible financial loss. An example might be the employee incurring additional unexpected childcare costs while their request remains unresolved as a result of the employer failing to follow the procedure and therefore not considering the application properly.

43. Employee representatives also suggest that employees will need encouragement to use the new process rather than using sex discrimination legislation to pursue their desire to work a flexible working arrangement. An argument put forward is that if the maximum level of compensation is too low it will not be in employees' interests to use the right to request flexible working. Instead, employees, who can, may opt to pursue working flexibly through sex

discrimination legislation, where compensation is unlimited, and involves greater costs and complexity for both employers and employees.

44. At present the number of employer representatives and employee representatives who have expressed their views on this matter is relatively small. The initial views are at different ends of a spectrum and ultimately the Government will have to take a decision and settle on a single number of weeks. The Government is therefore particularly interested to hear further views on the amount of compensation that an employment tribunal may order the employer to pay to the employee.

- What number of weeks' pay will provide a meaningful level of compensation and act as an incentive to ensure employers consider applications properly?

Summary

This chapter set out the issues that are covered in the draft Flexible Working (Eligibility, Remedies and Complaints) Regulations 2002. Views are welcome on any aspect of the draft regulations and in particular on the following issues:

The proposed definition of the relationship between the parent and the child.

- Are the criteria defining who may be considered a parent and their relationship with the child appropriate?
- Is it appropriate to include adoptive parents within the scope of the right?
- Is it appropriate to include foster carers within the scope of the right?

The form of an employee's application to work flexibly.

- For a valid request to be made under the right should it have to be made on a statutory application form?
- Or, should there be freedom about the form of an application, allowing requests to be made in freeform letters, on tailored forms devised by employers and on a best practice form provided by Government?

The date of making an application

- Should the date the application is made be the date on which the employer receives it?

Breaches of the procedure by the employer

- Do the regulations ensure that all breaches of the procedure, where appropriate, provide for the employee to be able to make a case to an employment tribunal?

Compensation

- What number of weeks' pay will provide a meaningful level of compensation and act as an incentive to ensure employers consider applications properly?

Procedural Requirements

45. The Work and Parents Taskforce designed a light-touch legislative right to ensure that employers give serious consideration to parents' requests to work flexibly. The new right places a duty on employers to follow a straightforward procedure to enable both parties to find a flexible working arrangement that suits them both. Where an employer is unable to accept a request, the employer also has a duty to provide a clear business reason for the decision, together with an explanation of why the business reason applies in the circumstances. The procedure provides for an employee who has reason to believe that their application has been not been considered properly to be able to appeal.

46. The draft Flexible Working (Procedural Requirements) Regulations 2002 set out the procedure that an employer will have to follow to consider a request properly, including how to appeal in cases of dispute. In accordance with the Government's overall approach these follow and build on the Work and Parents Taskforce's recommendations. Key issues covered in the draft regulations are:

- The periods of time within which each step of the procedure must take place
- The employer's response to an employee's application
- Who can accompany the employee at meetings
- The appeal process
- Extension of time limits
- Establishing when an application can be taken as withdrawn

47. It should be noted that the draft regulations alone will not provide the whole picture about how the procedure is intended to work in practice. The package of support that will accompany the legislation will play an important role in managing expectations and ensuring the rights and responsibilities of the different parties are understood.

48. The key steps of the procedure are:

- On receipt of an application the employer will begin to consider whether it can be accepted.
- Within **28 days** after the date of receipt, the employer must hold a meeting to consider the request. A parent can, if they wish, bring someone to accompany them. The meeting is an opportunity to discuss the request, the issues it raises for the business and any compromises that may be acceptable.
- Within **14 days** after the date of the meeting, the employer must write to the parent either: (a) accepting the request and establishing a start date; or (b) confirming any compromise agreed in the meeting; or (c) rejecting the application, providing a business ground and an explanation as to why the business ground is relevant in the circumstances, together with details of the appeal process.
- An employee has **14 days** to appeal after the date of notification of the employer's decision. Where an appeal is made the employer must arrange an appeal meeting to take place within **14 days** after the date of receiving notice of the appeal and inform the employee of the outcome of the appeal within **14 days** after the date of the meeting.

The meeting

49. The employer will be responsible for arranging the meeting and ensuring that it takes place within 28 days after the date of receipt of their employee's application. The meeting between the parties will provide the employer and the employee with the opportunity to explore the desired work pattern in depth and discuss how it might be accommodated. It will also be an opportunity to consider alternative suitable working arrangements if there are problems in accommodating the employee's desired pattern outlined in the application. The accompanying guidance will seek to foster an open and constructive discussion and encourage both parties to be prepared to be flexible. To facilitate this approach the draft regulations take a light-touch approach about how the meeting to discuss the request should take place. They require the employer to ensure that the meeting is to be held at an appropriate time and place convenient to both parties.

50. The Government invites comments on the approach taken in the draft regulations to arranging meetings.

- Is the approach taken in the regulations to arranging the meeting to discuss the request and the appeal meeting appropriate?

Employees' right to be accompanied

51. The draft regulations allow for an employee to be accompanied by one person at the meeting to discuss the application and at the appeal meeting, if there is one. The Work and Parents Taskforce suggested that the person accompanying the employee should be a fellow employee, friend or appropriate recognised trade union representative.

52. The question of who can accompany the employee is a key issue on which the Government would particularly welcome views. Essentially two points of view have been expressed, and at present the regulations have been drafted to cover both options depending on the final view taken.

53. The view favoured by employee representatives is for the definition to be entirely consistent with the existing statutory right to be accompanied at disciplinary and grievance hearings provided for in the Employment Relations Act 1999 (ERA 1999). This would allow for the person accompanying the employee to be either a:

- Fellow worker, i.e. another of the employer's staff
- A full-time official employed by a trade union⁸; or a lay union official, so long as they have been reasonably certified in writing by their union as having experience of, or as having received training in, acting as a worker's companion at meetings

54. Employee representatives favour this approach as they believe it will provide the widest choice of appropriate individuals who can accompany the employee. This includes trade union officials, possibly not working within the company, with knowledge of flexible working arrangements. They argue that following the existing definition used for disciplinary and grievance procedures ensures a consistent and straightforward approach. It will also be in keeping with the aim of encouraging both sides to find a solution, amicably within the workplace, by ensuring key sources of expertise are available.

55. Employers and their representatives would prefer a definition that restricts the companion to another member of staff from the work place. This approach would still allow a trade union representative who works at the same place as the employee but would not allow a trade union official who does not work for the company to accompany the employee.

⁸ As defined in sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992

56. Employer representatives believe that the new right to apply for flexible working is fundamentally different to the existing right in the ERA 1999 which applies to discipline and grievance hearings. They feel that if the right is to encourage an open and constructive discussion between all parties then it should not mirror a discipline or grievance hearing. Employers are concerned that the presence of a representative, like a full-time official of an union, from outside the work place is likely to be perceived as being more formal and will work against fostering an open discussion. Employers are also concerned that companions who do not have an appreciation of how their companies operate may suggest inappropriate flexible working patterns which may raise the expectations of their employee and which the employer will not be able to meet.

57. Both approaches are likely to present problems to small employers and their employees. Small employers are unlikely to have the greater flexibilities to meet requests that are more often found in larger companies and hence their concerns about the involvement of an individual unfamiliar with the company are heightened. By restricting the companion to individuals from within the organisation this will mean that there will be very limited choice for the employee of who might accompany them, where they want to be accompanied.

Friend

58. The Work and Parents Taskforce used the term 'friend' to ensure that an employee had the potential to ask someone with expertise in flexible working arrangements to accompany them and potentially help overcome any issues identified. The word 'friend' can be interpreted extremely widely which suggests it is not appropriate to be included within the regulations. The Government, however, does not want to deter the involvement of such individuals where it would be helpful. It therefore intends for guidance to suggest that employers should consider allowing the employee to be accompanied by someone who is outside the scope of the regulations where it might be helpful in reaching a solution suitable to them both.

Role of the companion

59. Employer and employee representatives have suggested to the Government that the role of the accompanying companion should be identical to the role of a companion under section 10 of the ERA 1999⁹. Under section 10, a companion has the right to address the meeting and is allowed to confer with the employee during the hearing, but he is not permitted to answer questions on the employee's behalf. The draft regulations also replicate the provisions of section 11 of the ERA 1999 concerning complaints to an employment tribunal by an employee where an employer has failed to comply with the right to be

⁹ Section 10 of the ERA 1999 provides for a right to be accompanied in disciplinary and grievance hearings.

accompanied. In such circumstances a tribunal is able to award compensation to the employee of an amount not exceeding two weeks' pay.

60. The Government is interested to hear views on who can accompany the individual.

- Should the regulations allow for an employee's companion to be from outside the company?
- Or, should the regulations allow for an employee's companion to be only from within the company?
- Which approach would better serve the needs of small employers and their employees? Why?
- Should the guidance suggest employers should consider allowing the employee to be accompanied by someone who is outside the scope of the regulations where it might be helpful in reaching a solution suitable to them both?
- Should the role of the companion follow the existing definition as set out in the ERA 1999? If not, how should it differ?
- Is the remedy set out in section 11 of the ERA appropriate in cases where an employer fails to comply with the right to be accompanied set out in these regulations?

The employer's decision

61. The draft regulations require the notification of the employer's decision to be in writing and it must be provided to the employee within fourteen days after the date of the meeting. Depending on the employer's decision the draft regulations require certain information to be provided. These requirements are detailed in the table over leaf.

Table showing the information that the draft regulations require employers to provide in writing when they notify the employee of their decision

Request agreed	Request rejected
<ul style="list-style-type: none"> • A description of the new working pattern • The date from which the new working pattern is to take effect • The notice must be signed and dated. 	<ul style="list-style-type: none"> • The business grounds for refusing the application • A sufficient explanation as to why the business grounds for refusal apply in the circumstances • A statement that the employee has a right to appeal • The notice must be signed and dated.

Unresolved applications

62. The draft regulations adopt the approach that unless the employer has either:

- reached agreement with the employee about what the new working pattern will be and when it will commence, or
- rejected the application,

no agreement has been reached and notice of the employer’s final decision can not be given.

63. It is entirely likely, however, that there will be circumstances when following the meeting the employer may be minded to agree to a new working pattern, perhaps an alternative discussed during the meeting, but more time is needed to explore the issue further. In such circumstances the employer will need to agree with an employee an extension of time to deal with the request. This is described in paragraphs 73 - 74.

Form of the Employer’s Notice

64. The regulations are drafted to provide employers with the freedom to decide how this written notification is to be given. They do not require the employer to give notice on a statutory form. Unlike employees’ applications, which will always cover the same types of information, employers’ decisions will cover a variety of situations. Employers are more likely to want the freedom to express their reasoning when declining a request in order to demonstrate that they have fully considered an application and in certain circumstances may

want to provide information additional to that required. The Government still intends, however, to include a series of best practice forms or letter templates as part of the support package to be available for employers.

Applications that are rejected

65. When an application is rejected the draft regulations require the employer to provide specific information to explain why. This must include a clear business reason (or reasons) which justifies why the working arrangement cannot be accepted. This business reason can only be one of those provided for in the primary legislation. In addition, the draft regulations require the employer to provide a sufficient explanation as to why the business reason applies in the circumstances. In its report the Work and Parents Taskforce envisaged that a couple of paragraphs would usually be sufficient. The intention is to include a range of examples indicating what is an appropriate level of explanation within the accompanying guidance.

66. The Government welcomes comments on the approach to the employer's notification adopted within the draft regulations. In particular:

- Is it sensible to provide the employer with choice about the form of how they provide written notification (as opposed to giving notice on a statutory form)?
- Is the information that the employer must provide appropriate?
- Is the approach of requiring the employer to seek the employee's agreement for an extension to the time when they must give notice of their decision appropriate where further action is identified at the meeting to consider whether a desired working pattern can be implemented?
- Is it appropriate that the guidance to accompany the right should indicate the level of explanation that an employer should provide when a request is declined, including a set of examples covering a range of circumstances?

Appeals

67. By having the opportunity to discuss and explore a request, and by providing that even where the request is rejected the employee is given a proper explanation, it is envisaged that the vast majority of applications will reach an amicable conclusion. There will however always be a minority of instances where the employee will feel their request has not been considered properly and that they will want to take their request further. The draft regulations set out an appeal process for such circumstances.

Making the appeal

68. The draft regulations require an employee who wants to appeal against their employer's decision to make the appeal in writing within 14 days after the date of receipt of the notice that their request has been rejected. The same question arises about the form of the appeal as the form for making an application. Should an appeal made under the right have to be on a statutory form or should the draft regulations allow for the employee complete freedom about how they express their appeal, with the Government considering the provision of a best practice form as part of the guidance? An employee may feel that they have greater opportunity to express their complaint if they have complete freedom in drafting their appeal. But employees who are not familiar with drafting letters, or for whom English is not their first language, or who may have learning difficulties or have problems with literacy, may value a statutory form. Such a form would also send a clear signal to the employer that an appeal is being made under the right. But it would prevent the employer from using established in-house appeal procedures that are consistent with the appeal process provided under the draft regulations.

69. The Work and Parents Taskforce was keen that every opportunity should be taken to resolve requests in the workplace. It therefore recommended that at this stage the grounds for making an appeal should not be constrained in the same way as the circumstances for making a complaint to an employment tribunal. The draft regulations therefore do not provide any restrictions on what may constitute a ground for making an appeal.

When appealing against a refused request an employee will have to

- Make it in writing 14 days after the date of receipt of their employer's decision
- Set out the grounds of appeal
- Sign and date the appeal

Responding to the appeal

70. The draft regulations require an employer to hold a meeting to consider an appeal within 14 days after the date of receipt of the appeal. The draft regulations apply the same requirements for arranging the meeting and for who may accompany the employee as those that apply to the meeting to consider the request.

71. The employer will notify the employee within 14 days after the date of the appeal meeting of their decision. The draft regulations require this notification to be in writing and provide employers with the freedom to choose the form of the notification. Again, it is the Government's intention to consider a

standard letter template or form to be included within the guidance.

- Where the employer upholds the appeal and thus agrees to the implementation of the desired working pattern they will have to specify the agreed change and the date from which the change will take effect.
- Where the employer dismisses the appeal they will have to set out the grounds on which the refusal is based.

72. The Government welcomes any comments on all aspects of the appeal process. In particular:

- For an employee's appeal to be valid should it have to be on a statutory form, or should the employee be provided with complete freedom as to how they can provide a written appeal? In the latter case, the Government would provide a voluntary 'best practice' form.

Extension of time limits

73. The draft regulations allow for extensions to the time limits within the procedure where the employer and employee agree. For example, the employee and their manager may conclude at the meeting to consider the request that an alternative working pattern is more suitable but to ensure that it can be implemented the employer may need further time to explore the work pattern with his personnel officer.

74. Making a record of the agreed variation will always be good practice as otherwise misunderstandings may occur. What an employer may understand to be an agreed variation, the employee may feel is a breach of procedure providing a basis for making a complaint to an employment tribunal. And, given that the main test of whether an application has been properly considered will be the evidence that the procedure has been followed suggests that a written record of the extension should be made. But should the regulations require an actual written record of the variation or should this be left to best practice?

75. The Government particularly welcomes views on what should happen when the individual to whom an application is made is absent from work. It will appear to be unfair on employers who may subsequently find that they are in breach of the procedure when they have not been present to consider an application. But neither would it be fair to the employee to wait in all circumstances for their employer's return before their application is considered, particularly if the manager is working elsewhere. The draft regulations take the approach that the time limit will be extended only where the individual who would be expected to consider the application is absent because of annual leave or sick leave. In such circumstances the employer will have 28 days to

arrange the meeting from the day of their return back to work. There is no provision for any other circumstances to justify an automatic extension.

76. The Government would welcome comments on how the draft regulations should tackle variations of time limits.

- Is it sufficient for the draft regulations to provide for employers and employees to be able to agree variations of time limits, and leave it to best practice about whether a written record is made?
- Or should variations be recorded in writing as misunderstandings may occur and evidence of the agreement may be required at a later stage?
- Should there be an automatic extension to the time period where an application is submitted and the individual is absent? If so, what types of absences should justify an extension and for how long?

When an application may be treated as withdrawn

77. The draft regulations provide for circumstances when employers may treat an application as withdrawn and are no longer under a duty to consider requests any further. In the majority of such circumstances these will be where the employee notifies the employer that they are withdrawing their application. This should be done in writing. Where this is not forthcoming, the regulations require the employer to write seeking clarification that the employee has withdrawn their application. There will also be occasions when the employee may fail to meet their responsibilities under the procedure and it is fair in the circumstances for the employer to assume that the application is no longer being pursued. The draft regulations states these to be:

- Failure to attend the meeting to discuss the application or the appeal meeting more than once (i.e. fails to attend two meetings)
- Unreasonably refusing to provide the employer with information the employer requires in order to assess whether the contract variation can be granted. For example, to agree to a request to work at home the employer may insist on a health and safety assessment of the home environment.

78. The Government is interested to hear views on the circumstances in which an employer may consider an application as having been withdrawn.

- Are the circumstances in which an employer may consider an application as having been withdrawn described in the draft regulations appropriate?
- Are there other such circumstances that would be appropriate to consider within the draft regulations?

Summary

This chapter set out the issues that are covered in the draft Flexible Working (Procedural Requirements) Draft regulations 2002. Views are welcome on any aspect of the draft regulations and in particular on the following issues:

The Meeting

- Is the approach taken in the regulations to arranging the meeting appropriate?

Employees' right to be accompanied

- Should the regulations allow for an employee's companion to be from outside the company?
- Or, should the regulations allow for an employee's companion to be only from within the company?
- Which approach would better serve the needs of small employers and their employees? Why?
- Should the guidance suggest employers should consider allowing the employee to be accompanied by someone who is outside the scope of the regulations where it might be helpful in reaching a solution suitable to them both?
- Should the role of the companion follow the existing definition as set out in the ERA 1999? If not, how should it differ?
- Is it appropriate for a different remedy to apply where the employer is found to have prevented an employee from having a companion as set out in section 11 of the ERA 1999?

The employer's decision

- Is it sensible to provide the employer with choice about the form of how they provide written notification (as opposed to giving notice on a statutory form)?
- Is the information that the employer must provide appropriate?
- Is the approach of requiring the employer to seek the employee's agreement for an extension to the time when they must give notice of their decision appropriate where further action is identified at the meeting to consider

whether a desired working pattern can be implemented?

- Is it appropriate that the guidance to accompany the right should indicate the level of explanation that an employer should provide when a request is declined, including a set of examples covering a range of circumstances?

The appeal procedure

- For an employee's appeal to be valid should it have to be on a statutory form or, should the employee be provided with complete freedom as to how they can provide a written appeal? In the latter case, the Government would provide a voluntary 'best practice' form.

Extensions of time limits

- Is it sufficient for the draft regulations to provide for employers and employees to be able to agree variations of time limits, and leave it to best practice about whether a written record is made?
- Or should variations be recorded in writing as misunderstandings may occur and evidence of the agreement may be required at a later stage?
- Should there be an automatic extension to the time period where an application is submitted and the individual is absent? If so, what types of absences should justify an extension and for how long?

Withdrawal of an application

- Are the circumstances in which an employer may consider an application as having been withdrawn described in the draft regulations appropriate?
- Are there other such circumstances that would be appropriate to consider within the draft regulations?

Other issues

Use of Employers' Grievance Procedures

79. The Work and Parents Taskforce felt that every opportunity should be taken at the workplace by both parties to reach a satisfactory outcome when dealing with a request for flexible working. It therefore recommended that if employers do not respond to an application, or do not hold meetings to consider it, or refuse to allow the parent to be accompanied by someone, the parent should complain through the employer's grievance procedure. Many employers presently provide a grievance procedure and the guidance will highlight this route as one such avenue to overcome any disputes.

80. In addition, the Employment Act 2002 provides for minimum statutory grievance procedures. These procedures will be inserted as an implied term into the contracts of those employees who do not have access to voluntary procedures which meet these minimum standards. The DTI estimates that six million employees currently fall into this category. When these provisions of the Act, together with their accompanying regulations, come into effect, they will ensure that all employees are entitled to raise grievances with their employer about the right to apply to work flexibly.

ACAS binding arbitration

81. The Work and Parents Taskforce recommended that where cases cannot be resolved in the workplace, binding mediation and arbitration, including through the Advisory Conciliation and Arbitration Service (ACAS) should be available. The DTI is presently working with ACAS to ensure that it will provide conciliation and binding arbitration as an alternative to an employment tribunal to resolve any disputes arising from this right.

Regulatory impact assessment

82. A partial regulatory impact assessment (RIA), assessing the costs and benefits of the new right to apply for flexible working has been published with the Employment Bill (available at www.dti.gov.uk/er/employ/index.htm). Further comments are invited on any aspects of the RIA.

How to Respond

83. This consultation paper sets out questions surrounding the draft regulations required to implement the right to apply to work flexibly. Comments on these issues and any other aspects of the draft regulations are invited.

84. Copies of this consultation and draft regulations are available from the DTI's website www.dti.gov.uk/er/review.htm.

85. Responses are required by **Thursday 10 October 2002** and should be sent to:

Work and Parents Team
Room UG130
Department of Trade and Industry
1 Victoria Street
London
SW1H 0ET

Email: reviewteam@dti.gsi.gov.uk
Fax: 020 7215 5450
Tel: 020 7215 2559

STATUTORY INSTRUMENTS

2002 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Flexible Working (Eligibility, Complaints and Remedies)
Regulations 2002

<i>Made</i>	2002
<i>Laid before Parliament</i>	2002
<i>Coming into force</i>	2002

The Secretary of State, in exercise of the powers conferred on her by sections 80F(1)(b), 80F(5) and (8), 80H(3)(b) and 80I(3) of the Employment Rights Act 1996^(a) and of all other powers enabling her in that behalf, hereby makes the following Regulations: -

Citation and commencement

1. These Regulations may be cited as the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 and shall come into force on 6th April 2003.

Interpretation

2. In these Regulations -

“the 1996 Act” means the Employment Rights Act 1996;

“adopter” means a person with whom a child is placed for adoption;

(a) 1996 c.18; sections 80F, 80H and 80I were inserted by section 47 of the Employment Act 2002 (c...).

“application” means an application by an employee to his employer made under section 80F of the 1996 Act (statutory right to request a contract variation);

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“contract variation”, in relation to an employee, means a change to the employee’s terms and conditions of employment;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer” means the person by whom an employee is (or, where the employment has ceased, was) employed;

“foster parent” means a foster parent within the meaning of regulation 2(1) of the Fostering Service Regulations 2002(a) and a foster carer within the meaning of regulation 2(1) of the Fostering of Children (Scotland) Regulations 1996(b);

“guardian” means a person appointed as a guardian within the meaning of section 5 of the Children Act 1989(c) and sections 7 and 11 of the Children (Scotland) Act 1995(d);

“partner”, in relation to a child’s mother, father, adopter, guardian or foster parent, means a person (whether of a different sex or the same sex) who lives with the child and the mother, father, adopter, guardian or foster parent in an enduring family relationship but is not a blood relative;

“working day” means any day on which the employer is open for business.

Entitlement to request a contract variation

3. (1) The conditions as to duration of employment and as to relationship in respect of a child that an employee must satisfy so as to be entitled to make an application to his employer for a contract variation are that the employee -

- (a) has, on the date on which the application is made, been continuously employed for a period of no less than 26 weeks,
- (b) is -

(a) S.I. 2002/57.

(b) S.I. 1996/3263.

(c) 1989 c.41.

(d) 1995 c.36. Sections 7 and 11 were amended by the Children (Scotland) Act 1995 (Commencement No 2 and Transitional Provisions) Order 1996, SI 1996/2203 and section 11 was amended by the European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001, SSI 2001/36.

- (i) the mother, father, adopter, guardian or foster parent of the child,
 - (ii) married to a person within sub-paragraph (i) and living with the child, or
 - (iii) the partner of a person within sub-paragraph (i), and
- (c) has or expects to have responsibility for the upbringing of the child.

(2) The reference in paragraph (1) to a period of continuous employment is to a period computed in accordance with Chapter 1 of Part 14 of the 1996 Act.

Form of the application

4. (1) An application shall -

- (a) be made in writing,
- (b) state whether a previous application has been made to the employer and, if so, when, and
- (c) be signed and dated.

[4. An application shall be made in the form set out in the Schedule to these Regulations.]

(2) For the purposes of paragraph (1), an application is made “in writing” if it is in manuscript or typed in paper form or electronic form, provided that the information it contains is in a form which is clearly legible by the recipient.

When is an application to be taken as made

5. (1) Subject to paragraphs (2)-(4), an application shall be taken as made on the date on which it is received by the employer.

(2) Where an application is sent to the employer by post and the envelope containing the application is properly addressed and pre-paid, the application shall be taken as made at the time at which the application would be delivered in the ordinary course of post if delivered on a working day, or on the first working day after the day of delivery in the ordinary course of post if delivered on a non-working day, unless the contrary is proved.

(3) (a) Where an application is sent to the employer by facsimile transmission and it is sent on a working day before 4 pm, the application shall be taken as made on that day; if it is sent on a working day at or after 4 pm, the application shall be taken as made on the first working day after the day on which it is transmitted, unless the contrary is proved.

(b) Where an application is sent to the employer by facsimile transmission and it is sent on a non-working day, the application shall be taken as made on the first working day after the day on which it is transmitted, unless the contrary is proved.

(4) Where an application is sent to the employer by electronic method, the application shall be taken as made on the first working day after the day on which it is transmitted, unless the contrary is proved.

Breaches of the regulations by the employer entitling an employee to make a complaint to an employment tribunal

6. The breaches of regulations under section 80G(1)(a) of the 1996 Act which entitle an employee to make a complaint to an employment tribunal under section 80H notwithstanding the fact that his application has not been rejected, disposed of by agreement or withdrawn are -

- (a) failure to hold a meeting in accordance with regulations 3(1) and 8(1) of the Flexible Working (Procedural Requirements) Regulations 2002,
- (b) failure to give notice to an employee in accordance with regulations 4 and 9 of those, or
- (c) failure to provide an employee with a right of appeal in accordance with regulation 6 of those.

Compensation

7. The maximum amount of compensation that an employment tribunal may award under section 80I of the 1996 Act where it finds a complaint by an employee under section 80H of the Act well-founded is [] weeks' pay.

Department of Trade and Industry

DRAFT STATUTORY INSTRUMENTS

2002 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Flexible Working (Procedural Requirements)
Regulations 2002

Made 2002

Coming into force 6th April 2003

Whereas a draft of the following Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996^(a) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by section 80G(2) and (3)^(b) of that Act and of all other powers enabling her in that behalf, hereby makes the following Regulations -

(a) 1996 c.18; section 236(3) was amended by paragraph 42 of Part 3 of Schedule 4 to the Employment Relations Act 1999 (c.26) and paragraph 49 of Schedule 7 to the Employment Act 2002 (c.).
(b) Section 80G was inserted by section 47 of the Employment Act 2002.

Citation and commencement

1. These Regulations may be cited as the Flexible Working (Procedural Requirements) Regulations 2003 and shall come into force on 6th April 2003.

Interpretation

2. (1) In these Regulations -

“the 1996 Act” means the Employment Rights Act 1996;

“application” means an application made under section 80F of the 1996 Act (statutory right to request a contract variation);

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“contract variation” means a change in the terms and conditions of a contract of employment of a kind specified in section 80F(1)(a) of the 1996 Act;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer” means the person by whom an employee is (or, where the employment has ceased, was) employed;

“worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under) -

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

(2) Any provision in these Regulations for notice to be given in writing is complied with if the notice is in manuscript or typed in paper form or electronic form, provided that the information it contains is in a form which is clearly legible by the recipient.

The meeting to discuss an application with an employee

3. (1) Subject to paragraph (2), an employer to whom an application for a contract variation is made shall hold a meeting to discuss the application with the employee within 28 days after the date on which the application is made.

(2) Paragraph (1) does not apply where the employer agrees to the contract variation proposed by the employee and he notifies the employee accordingly in writing within the period specified in that paragraph.

(3) A notice under paragraph (2) shall specify -

- (a) the contract variation agreed to, and
- (b) the date from which the variation is to take effect.

4. Where a meeting is held to discuss an application the employer shall give the employee notice of his decision on the application within 14 days after the date of the meeting.

5. A notice under regulation 4 shall -

- (a) be given in writing,
- (b) (i) where the decision is to agree to the contract variation, specify the variation agreed to and the date from which the contract variation is to take effect, or
(ii) where the decision is to refuse the contract variation, set out the grounds for refusal in accordance with section 80G(1)(b) of the 1996 Act, contain a sufficient explanation as to why those grounds for refusal apply in relation to the application, and set out the appeal procedure, and
- (c) be signed and dated.

Appeals

6. An employee shall be entitled to appeal against his employer's decision under regulation 4 by giving notice in accordance with regulation 7 within 14 days after the date on which notice of the decision is given.

7. A notice of appeal under regulation 6 shall -

- (a) be given in writing,
- (b) set out the grounds of appeal, and
- (c) be signed and dated by the employee.

[7. An employee shall notify his employer of his intention to appeal against the decision in the form set out in the Schedule to these Regulations.]

8. (1) Subject to paragraph (2), the employer shall hold a meeting with the employee to hear the appeal within 14 days after the date on which notice under regulation 6 is given by the employee.

(2) Paragraph (1) does not apply where, within 14 days after the date on which notice under regulation 6 is given, the employer -

- (a) upholds the appeal, and
- (b) notifies the employee in writing of his decision, specifying the contract variation agreed to and the date from which the contract variation is to take effect.

9. An employer shall notify the employee of his decision on an appeal within 14 days after the date of the meeting to discuss the appeal.

10. Notice under regulation 9 shall -

- (a) be given in writing,
- (b) (i) where the employer upholds the appeal, specify the contract variation agreed to and the date from which the contract variation is to take effect, or
(ii) where the employer dismisses the appeal, set out the grounds on which the dismissal is based, and
- (c) be signed and dated by the individual who heard the appeal.

11. The time and place of a meeting under regulation 3(1) or 8(1) shall be convenient to the employer and the employee.

Extension of time limits

12. (1) An employer and an employee may agree to an extension of any of the time limits referred to in regulations 3, 4, 6, 8 and 9.

(2) An agreement under paragraph (1) must

- (a) be recorded in writing by the employer,
- (b) specify what time limit the extension relates to,
- (c) specify the date on which the extension is to end,
- (d) be signed and dated, and
- (e) sent to the employee.

13. Where the individual who would ordinarily consider an application is absent on annual leave or on sick leave at the time the application is received, the time limit referred to in regulation 3(1) will be extended to the date falling 28 days after the date on which the individual returns.

Right to be accompanied

14. (1) This regulation applies where -

- (a) a meeting is held under regulation 3(1) or 8(1), and
- (b) the employee requests to be accompanied at the meeting.

(2) Where this regulation applies the employer must permit the employee to be accompanied at the meeting by a single companion who -

- (a) is chosen by the employee and is within paragraph (3)
- (b) is to be permitted to address the meeting (but not to answer questions on behalf of the employee), and
- (c) is to be permitted to confer with the employee during the meeting.

(3) A person comes within this paragraph if he is -

- (a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992(a)^(a);
- (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as an employee's companion at meetings under regulation 3(1) and 8(1), or
- (c) a worker employed by the employer.

[(3) A person comes within this paragraph if he is a worker employed by the employer and he works at the same place of work as the employee.]

(4) If -

- (a) an employee has a right under this regulation to be accompanied at a meeting,
- (b) his chosen companion will not be available at the time proposed for the meeting by the employer, and
- (c) the employee proposes an alternative which satisfies paragraph (5),

(a) 1992 c.52.

the employer must postpone the meeting to the time proposed by the employee.

(5) An alternative time must -

(a) be reasonable, and

(b) fall before the end of the period of five days beginning with the first day after the day proposed by the employer.

(6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying an employee in accordance with a request under paragraph 1(b).

(7) Sections 168(3) and (4), 169 and 171 to 173 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties) shall apply in relation to paragraph (6) above as they apply in relation to section 168(1) of that Act.

15. (1) An employee may present a complaint to an employment tribunal that his employer has failed, or threatened to fail, to comply with regulation 14(2) or (4).

(2) A tribunal shall not consider a complaint under this regulation in relation to a failure or threat unless the complaint is presented -

(a) before the end of the period of three months beginning with the date of the failure or threat, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds that a complaint under this section is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.

(4) Chapter 2 of Part 14 of the 1996 Act (calculation of a week's pay) shall apply for the purposes of paragraph (3); and in applying that Chapter the calculation date shall be taken to be the date on which the relevant meeting took place (or was to have taken place).

(5) The limit in section 227(1) of the Employment Rights Act 1996 (maximum amount of a week's pay) shall apply for the purpose of paragraph (3) above.

Withdrawal of application by the employee

16. (1) An employer shall treat an application as withdrawn where the employee has -

(a) indicated to him whether orally or in writing that he is withdrawing the application,

(b) failed to attend a meeting under regulation 3(1) or (8)(1) more than once, or

(c) unreasonably refused to provide the employer with information the employer requires in order to assess whether the contract variation should be agreed to.

(2) An employer shall confirm the withdrawal of the application to the employee in writing unless the employee has provided him with written notice of the withdrawal under paragraph 1(a).