STATUTORY RULES OF NORTHERN IRELAND

2003 No. 173

EMPLOYMENT

Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003

Made - - - -	*13th March 2003*
Coming into operation	*6th April 2003*

The Department for Employment and Learning(**1**) in exercise of the powers conferred on it by Article 112G(1), (2) and (3) of the Employment Rights (Northern Ireland) Order 1996(**2**), and now vested in it(**3**), and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

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

Interpretation

2.—(1) In these Regulations –

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996;

"application" means an application under Article 112F of the 1996 Order (statutory right to request contract variation);

"contract variation" means a change in the terms and conditions of a contract of employment of a kind specified in Article 112F(1)(a) of the 1996 Order;

"electronic communication" means an electronic communication within the meaning of section 15(1) of the Electronic Communications Act 2000(**4**);

"writing" includes writing delivered by means of electronic communication.

(2) For the purposes of these Regulations, unless the contrary is proved, an application is taken as having been made on the day the application is received.

(3) The reference in paragraph (2) to the day on which an application is received is a reference –

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)
(**2**) S.I.1996/1919 (N.I. 16); as amended by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**3**) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
(**4**) 2000 c. 7

(a) in relation to an application transmitted by electronic communication, to the day on which it is transmitted;

(b) in relation to an application sent by post, to the day on which the application would be delivered in the ordinary course of post.

(4) For the purpose of these Regulations, unless the contrary is proved, a notice is taken as being given –

(a) in relation to a notice transmitted by electronic communication, on the day on which it is transmitted;

(b) in relation to a notice sent by post, on the day on which the notice would be delivered in the ordinary course of post.

The meeting to discuss an application with an employee

3.—(1) Subject to paragraph (2) and regulation 13, 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 application and notifies the employee accordingly in writing within the period referred to 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 in writing;

(b) (i) where the employer's decision is to agree to the application, specify the contract variation agreed to and state the date on which the variation is to take effect; or

(ii) where the decision is to refuse the application, state which of the grounds for refusal specified in Article 112G(1)(b) of the 1996 Order are considered by the employer to apply, contain a sufficient explanation as to why those grounds apply in relation to the application, and set out the appeal procedure; and

(c) be dated.

Appeals

6. An employee is entitled to appeal against his employer's decision to refuse an application 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 in writing;

(b) set out the grounds of appeal; and

(c) be dated.

8.—(1) Subject to paragraph (2), the employer shall hold a meeting with the employee to discuss the appeal within 14 days after the employee's notice under regulation 6 is given.

(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 stating the date on which the variation is to take effect.

9. Where a meeting is held to discuss the appeal, the employer shall notify the employee of his decision on the appeal within 14 days after the date of the meeting.

10. Notice under regulation 9 shall –

(a) be in writing;

(b) (i) where the employer upholds the appeal, specify the contract variation agreed to and state the date on which the variation is to take effect; or

(ii) where the employer dismisses the appeal, state the grounds for the decision and contain a sufficient explanation as to why those grounds apply; and

(c) be dated.

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 periods

12.—(1) An employer and an employee may agree to an extension of any of the periods referred to in regulations 3, 4, 6, 8, 9 and 13.

(2) An agreement under paragraph (1) shall be recorded in writing by the employer.

(3) The employer's record referred to in paragraph (2) shall –

(a) specify what period the extension relates to;

(b) specify the date on which the extension is to end;

(c) be dated; and

(d) be sent to the employee.

13. Where the individual who would ordinarily consider an application is absent from work on annual leave or on sick leave on the day on which the application is made, the period referred to in regulation 3(1) commences on the day the individual returns to work or 28 days after the application is made, whichever is the sooner.

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 reasonably requests to be accompanied at the meeting.

(2) Where this regulation applies the employer shall permit the employee to be accompanied at the meeting by a single companion who is chosen by the employee and is within paragraph (3).

(3) A person is within this paragraph if he is a worker employed by the same employer as the employee who chooses him.

(4) Where –

(a) an employee has a right under this regulation to be accompanied at a meeting;

(b) his companion will not be available at the time proposed by the employer for the meeting; and