EXPLANATORY MEMORANDUM TO

THE FLEXIBLE WORKING (ELIGIBILITY, COMPLAINTS AND REMEDIES) (AMENDMENT) (NO. 2) REGULATIONS 2007

2007 No. 2286

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (No. 2) Regulations 2007 (the Amendment Regulations) amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 (S.I. 2002/3236 – "the 2002 Regulations"), which prescribed in Regulation 3 the employees eligible for the statutory right to request flexible working. The 2002 Regulations have been amended three times: firstly, to take account of Civil partnership legislation (by S.I. 2005/2114), secondly by the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (S.I. 2006/3314 - "the 2006 Regulations"), which widened the scope of the prescribed eligible employees to include employees who care for certain adults; and, thirdly, by the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2007 (S.I. 2007/1184 – "the 2007 Regulations"), which further widened the scope of the prescribed eligible employees.

2.2 The Amendment Regulations amend the definition of "adopter" in Regulation 3 of the 2002 Regulations, and add to the categories of those eligible to request a contract change to care for a child private foster carers and employees in whose favour a residence order is in force in respect of a child.

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

3.1 None.

4. Legislative Background

4.1 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. Section 80F of the 1996 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.

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 The 2002 Regulations introduced a right to request flexible working for parents of children below the age of six, or below 18 in the case of a disabled child. As well as natural parents, adopters, foster parents and guardians are entitled to the right, as are the spouses, partners or civil partners of such people, if they are responsible for the upbringing of the child. People who have adopted in the UK or have adopted a child from overseas, if the effect of that adoption order is recognised in the UK, will be treated as parents and, as such, able to apply in that capacity.

7.2 When the scope of the 2002 Regulations was extended by the 2006 Regulations to include certain employees who have caring responsibilities for adults, special guardians – a type of guardian which did not exist when the 2002 Regulations were made - were added to the list of those employees who are eligible to make a request for flexible working in order to care for a child.

7.3 The definition of adopter in the 2002 Regulations covered those matched for adoption by an adoption agency, but excluded a small number of adoptions where the UK adoption agency does not place the child with the adopter, for example adoptions by relatives, and in inter-country adoptions, where the child is placed by an agency in the child's own country. As a matter of policy, it has been agreed to amend the definition to encompass these other adopters, and in recognition of a change in terminology in respect of "matching", which now reads "placed for adoption”.

7.4 In addition, private foster carers and employees who hold a residence order in respect of a child were not included in the list of employees in the 2002 Regulations who are eligible to make a request for flexible working in order to care for a child. The Department accepts that these employees have the same parental responsibilities as others who care for a child, and has decided to add them to the list of eligible employees in the 2002 Regulations. By including these groups of employees, we are providing parity of treatment for all employees who have responsibility for caring for children.

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. No Impact Assessment of the costs and benefits of the Amendment Regulations has been prepared because the additional costs to business are estimated to be negligible.

8.2 The impact on the public sector is expected to be in line with that on all employers.

9. Contact

9.1 Name of contact at the Department for Business, Enterprise and Regulatory Reform who is able to answer any queries regarding the instrument:

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